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Federal Appeals Court Spares Mentally Ill Man from Execution -- For Now

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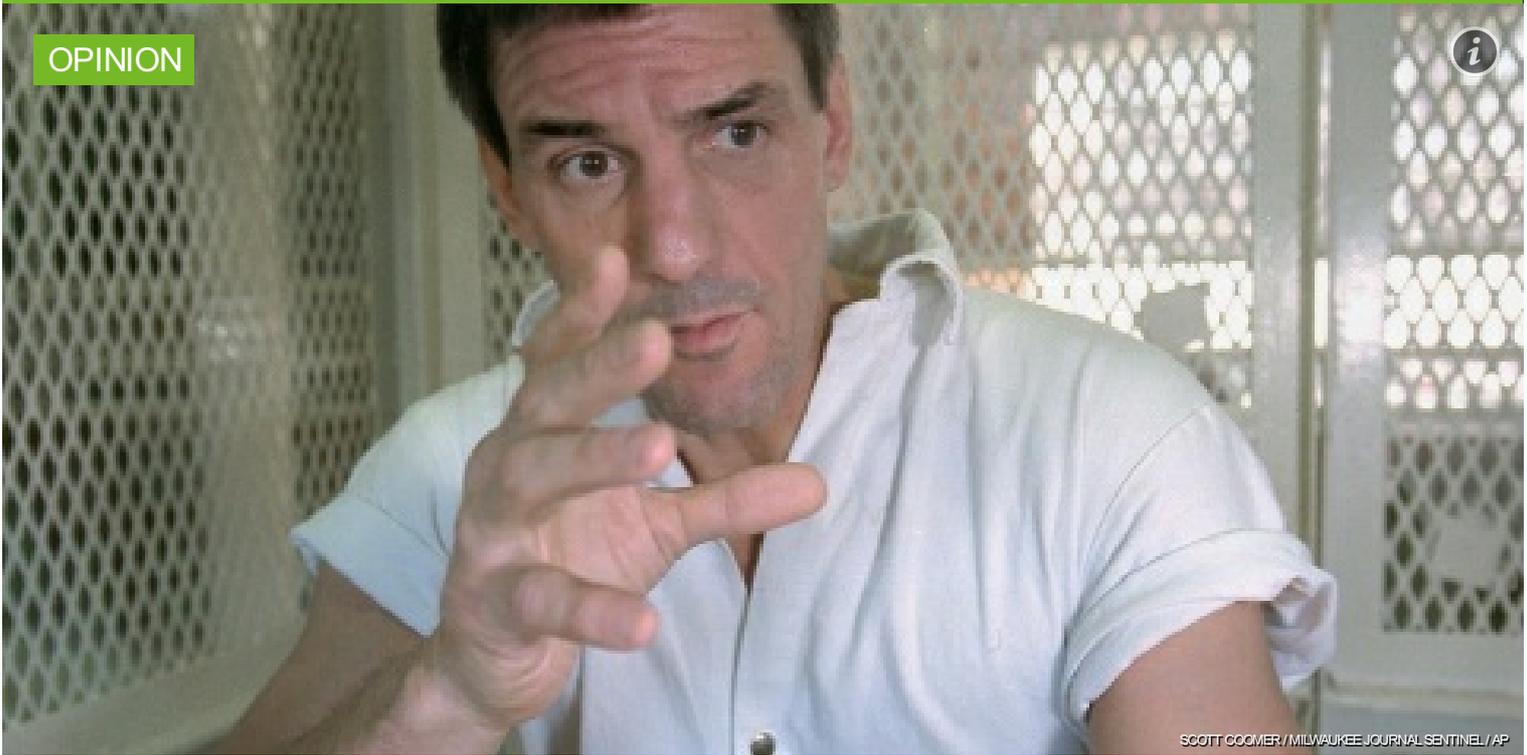
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OPINION



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*Case raises critical moral and legal questions about the death penalty*

December 4, 2014 2:00AM ET

by **Lauren Carasik**

On Wednesday, hours before his scheduled execution, the [5th U.S. Circuit Court of Appeals](#) issued a stay for Scott Panetti, 56, amid a national outcry about the legality and morality of killing an inmate with a 35-year history of severe mental illness. Panetti's guilt is not in doubt. In 1992, he shaved his head, donned military fatigues, grabbed a hunting rifle and shot his wife's parents in their home as she and their daughter watched in horror.

Panetti's long [history of mental illness](#) is well documented: He was diagnosed with schizophrenia more than a decade before the murders, and he was hospitalized, often involuntarily, more than a dozen times. Panetti's lawyers maintain he did not have a "rational understanding" of the reasons for his impending execution, as required by a [2007 Supreme Court decision](#) (PDF) on his case. Panetti claimed that the state of Texas wants to execute him for preaching the Gospel to other inmates, not in retribution for the murders he committed. But the state insists Panetti is malingering and clearly understands that the state intended to kill him and why. The planned execution has engendered a divisive debate about the United States' evolving aversion to the death penalty, especially for those whose are severely impaired by mental illness.

Panetti was sentenced to death in 1995 after a circuslike trial that hardly represented a fair adjudication of his competence and culpability. Beset by paranoia, he dismissed his court-appointed counsel and represented himself. He proceeded to dress in purple cowboy attire and subpoenaed more than 200 witnesses, including Jesus Christ, the Pope and John F. Kennedy. At times, he testified as his alter ego "Sarge" to whom he attributed the murders, recounting the day in disjointed third-person ramblings. His standby counsel at the time characterized the trial as a "[judicial farce and a mockery of self-representation.](#)" It is incomprehensible how a judge intimately familiar with Panetti's mental health history and bizarre conduct would allow him to represent himself in a proceeding to determine his fate.

Since then, Panetti and his attorneys waged a lengthy and circuitous legal battle to reverse the ruling. In August 2013 the conservative [5th Circuit](#) appeared to reason that because he was sane enough to argue that he was mentally unfit for execution, he was not ill

enough to be spared lethal injection.

Evolving legal standards

At this point the Supreme Court's view of such cases is quite clear. In 1986 it ruled in [Ford v. Wainwright](#) that executing a mentally ill person violated the Eighth Amendment's ban on cruel and unusual punishment, reflecting the "evolving standards of decency that mark the progress of a maturing society." The court held that such executions would not deter crime and that sparing those incapable of fully understanding the nature of their crime and punishment also served "to protect the dignity of society itself from the barbarity of exacting mindless vengeance." Yet the court declined to define the standard for mental illness, delegating that assessment to trial courts. Building on its evolving jurisprudence on the death penalty for those with limited cognitive capacities, the court in 2002 banned capital punishment for the "mentally retarded" in [Atkins v. Virginia](#). Three years later, in [Roper v. Simmons](#), the court prohibited the execution of juveniles convicted of crimes committed before they turned 18.

“ Texas’ aggressive pursuit of the death penalty demonstrates why the Supreme Court must outline clear standards dictating when mentally ill inmates such as Panetti are too impaired to be executed. ”

Last month [the Criminal Court of Appeals in Texas denied Panetti's appeal](#). But it was hardly an endorsement of the state's unyielding pursuit of Panetti's execution. "This court, at best, deprives appellant of a fair opportunity to litigate his claims, thereby violating the constitutionally required procedural protections recognized in Ford," Judge Elsa Alcala argued in a dissenting opinion. "At worst, this court's decision will result in the irreversible and constitutionally impermissible execution of a mentally incompetent person."

Her fellow appellate judge Tom Price penned a similarly withering dissent. "The death penalty as a form of punishment should be abolished because the execution of individuals does not appear to measurably advance the retribution and deterrence purposes served by the death penalty," he opined. "The life without parole option adequately protects society at large in the same way as the death penalty punishment option, and the risk of executing an innocent person for a capital murder is unreasonably high." He also wrote that the strict procedural impediments to challenging the death penalty and the ubiquity of ineffective legal representation at the trial and appellate stages made its imposition unconscionable.

Earlier this week, Panetti's lawyers [asked Texas Gov. Rick Perry for a 30-day stay](#) of execution after the state Board of Pardons and Parole refused Panetti's clemency request. But Perry was an unlikely ally. Texas has executed more inmates than any other U.S. state since the death penalty was reinstated in 1976 — 518 people to date. In 2001 he [vetoed a state law](#) barring the execution of those with mental retardation. And in 2004 [he rejected the board's rare recommendation of clemency](#) for Kelsey Patterson, who was also diagnosed with schizophrenia. Panetti's lawyers have also asked the [Supreme Court](#) for a stay of execution, arguing that executing a person with serious mental illness violates the Constitution.

Shifting public attitudes

Despite the gruesome and deeply personal nature of the crimes, Panetti's former wife has said she did not support his execution. Human rights advocates and a coalition of evangelical and [conservative leaders](#), including [libertarian Ron Paul](#), have argued that Panetti should be spared lethal injection. Paul has been increasingly vocal in his belief that government is incapable of imposing the death penalty in a fair and consistent manner. Some anti-abortion activists perceive state killing as inconsistent with their pro-life position, and a growing number of conservatives understand the costs of death penalty appeals exceeds the price tag for imprisoning someone for life. These sentiments reflect an emerging national consensus: In a survey conducted by [Public Policy Polling](#) last month, 58 percent of those polled opposed capital punishment for the mentally ill, with 28 percent in favor and 14 percent on the fence. And on Dec. 2, [two United Nations experts](#) implored the U.S. government to halt Panetti's execution.

Panetti is not the only mentally ill inmate Texas is planning to execute. [Andre Thomas](#), who killed his ex-wife, her daughter and his son, was diagnosed with paranoid schizophrenia. In separate incidents, he plucked out both his eyes, ingesting the second one. Yet he continues to languish on death row. The advocacy group [Mental Health America](#) has estimated that 5 to 10 percent of death row inmates suffer from a severe mental illness. Those opposing the execution of Panetti, Thomas and other mentally ill death row inmates are not suggesting they be released from prison. But commuting their death sentences to life without parole would preserve community

safety and reflect the understanding that killing those with severe mental impairments serves no legitimate penological goals.

As the Supreme Court eloquently argued in [Ford v. Wainwright](#) nearly two decades ago, capital punishment for mentally ill individuals “simply offends humanity.” To be sure, there is no ready test to measure the severity of mental illness, not least because the symptoms are neither constant nor easy to gauge objectively. But Texas’ aggressive pursuit of the death penalty amply demonstrates why the nation’s highest court must outline clear standards dictating when mentally ill inmates, including Panetti, are too impaired to be executed.

Lauren Carasik is a clinical professor of law and the director of the international human rights clinic at the Western New England University School of Law.

The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.

