

Podcast #12: Mental Illness and Intellectual Disability

Hello and welcome to the Death Penalty Information Center's podcast, exploring issues related to capital punishment. In this edition, we will be discussing mental illness.

How is mental illness defined?

According to the National Alliance on Mental Illness, mental illnesses are medical conditions that disrupt a person's thinking, feeling, mood, ability to relate to others and daily functioning. Serious mental illnesses include major depression, schizophrenia, bipolar disorder, obsessive compulsive disorder (OCD), panic disorder, post traumatic stress disorder (PTSD) and borderline personality disorder. These conditions can certainly be relevant in a death penalty case.

Insanity is an extreme form of mental illness and means being so out of touch with reality that you do not know right from wrong and cannot understand your punishment or the purpose of it.

How does mental illness affect a person's responsibility for their crime? Are mentally ill individuals barred from the death penalty?

Mental illness can affect a capital case in a variety of ways. It may be relevant to the defendant's intent when the crime was committed, the defendant's ability to assist with his or her defense at trial and post-conviction, the defendant's competency to waive appeals, and the defendant's mental condition at the time of execution.

A defendant's mental illness can be a mitigating factor in the penalty phase of a death penalty trial. Mitigating factors are evidence that the defense can present as to why the defendant should not receive a death sentence.

Generally, the mentally ill are not exempt from the death penalty. However, if a person is judged insane, he or she cannot be executed for as long as that condition persists. This was the holding of the U.S. Supreme Court in *Ford v. Wainwright* in 1986. More recently, the Supreme Court addressed the issues of mental illness and insanity in *Panetti v. Quarterman* in 2007. Scott Panetti was allowed to represent himself at trial, despite his diagnoses of bipolar disorder and schizophrenia. He wore a cowboy outfit during the trial, made incoherent statements to the jury, asked incomprehensible questions, and behaved erratically. He was convicted of capital murder and sentenced to death. During his appeals, Panetti's lawyers argued that he was mentally incompetent to be executed, but the U.S. Court of Appeals for the Fifth Circuit disagreed. The Supreme Court held that the Fifth Circuit used an overly narrow definition of insanity and they should consider how Panetti's mental illness interferes with his ability to understand the nature of his punishment. As of March, 2011, Panetti

remains on Texas' death row.

Has the Supreme Court barred any class of defendants with mental problems from the death penalty?

Yes. Defendants with intellectual disability cannot be sentenced to death.

According to the American Association for Intellectual and Developmental Disabilities, intellectual disability, formerly referred to as "mental retardation," is characterized by "significant limitations both in intellectual functioning and in adaptive behavior, which covers many everyday social and practical skills. This disability originates before the age of 18."

In 2002 in *Atkins v. Virginia*, the U.S. Supreme Court exempted inmates with intellectual disabilities from the death penalty because this condition diminishes a person's individual culpability, and because executing an intellectually disabled person is not likely to have retributive or deterrent effects. The Court's decision also referenced the "national consensus" against executing the intellectually disabled. At the time of the decision, 18 states and the federal government had outlawed the practice, in addition to the 12 states that banned the death penalty altogether.

Do any states ban the execution of the mentally ill?

Connecticut exempts a capital defendant from execution if his "mental capacity was significantly impaired or [his] ability to conform [his] conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution[.]"

Similar legislation has been proposed in other states, though none has been passed. Indiana considered legislation in 2009 to ban the execution of individuals with "severe mental illness," defined as a diagnosis of schizophrenia, schizoaffective disorder, bipolar disorder, major depression, or delusional disorder.

Both Kentucky and North Carolina considered legislation to bar the execution of a defendant who "had a severe mental disorder or disability that significantly impaired his or her capacity to appreciate the nature, consequences, or wrongfulness of his or her conduct, exercise rational judgment in relation to conduct, or conform his or her conduct to the requirements of the law." The wording used in those bills came directly from the American Bar Association's Resolution 122A, which urged states to bar the mentally ill from execution.

How might conditions on death row affect an inmate's mental health?

Death row inmates typically spend about 14 years between sentencing and

execution. During that time, they are isolated from other prisoners and sharply restricted in terms of recreation, educational and work opportunities, and visitors. These conditions can cause an inmate's mental status to deteriorate. Supreme Court justice Stephen Breyer and former justice John Paul Stevens both raised concerns over whether such conditions, and the increasingly long periods of time spent on death row, constitute cruel and unusual punishment. Many of the prisoners who have dropped their appeals and "volunteered" for execution have cited the conditions on death row in their reasons for ending the appeals process.

Have people with severe mental illness been executed?

Yes. We do not know the exact number of instances in which severely mentally ill persons have been executed, but there are recent examples:

Frank Spisak was executed in Ohio on February 17, 2011. Spisak was executed for the murders of three men and was characterized as a Nazi sympathizer. After his execution, his lawyers said "The media will focus on the 'nazi' propaganda of the prosecution...the truth is [Spisak] was seriously mentally ill and committed the crimes because of this mental illness, not because of hate."

Monty Delk was executed in Texas on February 28, 2002. His lawyer claimed that Delk had become insane while on death row. He described Delk's behavior as "long periods of psychotic thought punctuated by grandiose delusions, incoherent ramblings, and smearing himself with his own feces, interspersed with brief moments of lucidity and compliance."

Thomas Provenzano was executed in Florida on June 20, 2000. He suffered from delusions, believed that he was Jesus Christ, and that he was being executed because people hate Jesus.

Thank you for listening to the Death Penalty Information Center's podcast. To learn more about mental illness, and other issues related to the death penalty, visit deathpenaltyinfo.org.