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Judging Whether a Killer Is Sane Enough to Die

By [RALPH BLUMENTHAL](#) and [ADAM LIPTAK](#)

HOUSTON, June 1 — Scott Panetti, a death row inmate in [Texas](#), understands that the state says it intends to execute him for the murder of his wife's parents.

But Mr. Panetti, 48, who represented himself in court despite a long and colorful history of mental illness, says he believes that the state's real reason is a different one. He says the state, in league with Satan, wants to kill him to keep him from preaching the Gospel.

That delusion has been documented by doctors and acknowledged by judges and prosecutors. It poses what experts call the next big question in death penalty law now that the Supreme Court has barred the execution of juvenile offenders and the mentally retarded: what makes someone too mentally ill to be executed?

A three-judge panel of the United States Court of Appeals for the Fifth Circuit, in New Orleans, recently said Mr. Panetti was sane enough to die. The full court will soon decide whether to hear the case.

Mr. Panetti, in prison now almost 14 years for the killings in 1992 in the quaint Hill Country city of Fredericksburg, has long seemed to exemplify madness, addressing himself to the jury in his trial in 1995 as "the born-again April Fool," a schizophrenic healed by God.

In and out of mental institutions 14 times and addicted to drugs and alcohol since he almost drowned as a child and was nearly electrocuted by a power line, Mr. Panetti wore cowboy costumes to court, delivered rambling monologues, put himself on the witness stand and sought to subpoena the pope, Jesus and [John F. Kennedy](#).

Jurors were clearly alienated and took little more than an hour to reject his insanity defense.

They found that Mr. Panetti knew right from wrong and so deserved the death penalty. That is a separate question from whether his mental illness should bar his execution.

Two decades ago, the [United States Supreme Court](#) in Ford v. Wainwright ruled that the Eighth Amendment prohibited the execution of the insane. Since then, lower courts have struggled to find a

way to apply that principle in practice.

The state and federal courts that have heard Mr. Panetti's case have said that a bare awareness of the fact of impending execution and the stated reason for it is enough.

"In Texas," said Greg Wiercioch, a lawyer with the Texas Defender Service who has consulted with Mr. Panetti's defense, "if you cast a shadow on a sunny day, you're competent to be executed."

Other courts require more. Relying on a concurring opinion in the Supreme Court decision, they say the inmate actually has to perceive the connection between the crime and the punishment.

The three-judge panel in Mr. Panetti's case acknowledged that he was mentally ill with what has been diagnosed as schizoaffective disorder and that he thus might lack a rational understanding of his fate. But the panel nonetheless ruled that he was competent to be executed because he was able to understand the stated basis for his execution.

His new lawyers dispute that.

"He completely scoffs at the notion that it's the State of Texas trying to execute him," said Keith Hampton, a lawyer from Austin who filed the latest appeal with a co-counsel, Michael C. Gross of San Antonio. "He thinks it's the demons and evil ones."

Legal and medical experts estimate that hundreds of people with schizophrenia and other severe mental illnesses are on death rows around the nation.

Courts have spared the lives of seven inmates based on the 1986 decision, the Texas Defender Service said.

David R. Dow, a law professor at the University of Houston who has met more than 75 death row inmates, visited Mr. Panetti at his lawyers' request. "Of all the people I have met on death row, he's the gold-medal-crazy winner," Professor Dow said.

On Sept. 8, 1992, Mr. Panetti broke into the home of his in-laws, Joe and Amanda Alvarado, and shot them to death in front of his estranged second wife, Sonja, and his 3-year-old daughter, Amanda, known as Birdie.

Taking on his defense, and calling himself as a witness, he argued that he had been taken over by an alter ego he called Sarge Ironhorse.

"Sarge boom boom," Mr. Panetti testified. "Sarge is gone. No more Sarge. Sonja and Birdie. Joe, Amanda lying kitchen, here, there blood. No, leave. Scott, remember exactly what Sarge did. Shot the

lock. Walked in the kitchen. Sonja, where's Birdie? Sonja here."

Prosecutors, their medical experts and the courts agreed that Mr. Panetti suffers from mental illness. Judge Sam Sparks of Federal District Court in Austin found in 2004 that Mr. Panetti's illness was characterized by "grandiosity and a delusional belief system in which he believes himself to be persecuted for his religious activities and beliefs."

Judge Sparks said that was not enough to spare Mr. Panetti.

Others agree.

Robert Blecker, a law professor at the New York Law School and a cautious supporter of the death penalty, said Mr. Panetti's execution could serve the goal of retribution.

"He knows what he did," Professor Blecker said. "He knows what the state is about to do to him, and why. For the retributivist, the past counts. It counts for us, and for us to be retributively satisfied, it must also count for him."

Prosecutors made the same point in a brief to the Fifth Circuit last year.

"All that is required to avoid the Eighth Amendment prohibition against cruel and unusual punishment is that the petitioner factually understand the reason for this punishment," the prosecutors wrote.

Executions of inmates who exhibited signs of madness are not unusual. In 1992, Arkansas executed Ricky Ray Rector not long after he put aside the dessert of his last meal to eat later.

In March, the United States Court of Appeals for the Fourth Circuit, in Richmond, Va., split, 7 to 6, over whether Percy L. Walton could be executed, notwithstanding his delusional belief that after his death he would "come back as a better person" and "get a Burger King." A majority said this was proof that Mr. Walton understood he would be executed.

"That a person believes that he will have an 'afterlife,' however strange his views of that 'afterlife' may be," Judge Dennis W. Shedd wrote, "necessarily suggests he believes his existing life will end."

The laws of most states, based on English common law, have long banned the execution of the insane.

"The reasons for the rule are less sure and less uniform than the rule itself," Justice Thurgood Marshall wrote in the 1986 case.

Some judges say the "miserable spectacle" of such executions simply offends humanity. Others say retribution is not served by executing someone who cannot understand why he is being put to death. Still

others point to the inability of the insane to assist their lawyers in last-minute litigation. In the Middle Ages, it was thought that madness was its own punishment.

Mr. Hampton, who filed the latest appeals brief, said that from the trial on he was revolted by the Panetti case.

"I thought there was no way, no way, no matter how bad things in the state of Texas got, that it would allow someone in the full flower of schizophrenia to represent himself," he said.

But in repeatedly calling himself insane — "I went nuts," Mr. Panetti told the police officers after the killings, "well, I am nuts" — Mr. Panetti seemed to have run into his own Catch-22, leaving jurors skeptical of anyone so eager to establish his insanity.

Now the courts, taking one last look at Mr. Panetti, must decide whether he is sane enough to die.

Ralph Blumenthal reported from Houston for this article, and Adam Liptak from New York

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