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On Death Row, Fate of Mentally Ill Is Thorny Problem

Can States Execute Inmates
Made Sane Only by Drugs?
Medical, Legal Quandary

A Test Case in Mr. Thompson

By **GARY FIELDS**
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NASHVILLE, Tenn. -- At 8:30 a.m., Gregory Thompson, his hands cuffed to his waist, has already swallowed eight of the 12 pills he takes a day.

Mr. Thompson is on death row at the Riverbend Maximum Security Institution, and like many prison inmates, he is mentally ill. In addition to his daily drug regimen, he receives an antipsychotic injection twice a month. The medication controls his paranoia, delusions, schizophrenia and depression. It may also make him competent enough to be executed in the oversized wooden chair housed in a building less than 100 yards away.




Gregory Thompson

Why the 45-year-old is here isn't in dispute. On New Year's Day 1985, he abducted Brenda Blanton Lane from a shopping-center parking lot in Shelbyville, Tenn., while stealing her car. He fatally stabbed the 28-year-old four times in the back. The last strike had such force that the butcher's knife he used came within millimeters of passing through her body. He left her to die at the end of an icy dirt road.

Today, however, Mr. Thompson's case is at the center of a complex debate about the death penalty in the U.S. Recently, the Supreme Court ruled that mentally retarded defendants and juveniles cannot be sentenced to death.

Mr. Thompson is asking the courts to decide whether mentally ill prisoners can be executed if rendered competent only by medication. His twice-delayed execution and similar cases are working through the judicial system; one will likely end up in front of the high court.

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There are more than 3,300 people awaiting execution in the U.S., according to the Death Penalty Information Center, a nonprofit group critical of how the death penalty is administered. Various organizations conservatively estimate that at least 10% of them suffer from serious mental illness. In all, about 17% of the nation's prisoners have a diagnosis of serious mental illness.

The Supreme Court ruled 20 years ago that federal and state authorities could not execute defendants too insane to understand that they were about to be killed. But states have wide latitude to determine how sane a defendant must be in order to be executed. They can also choose to medicate defendants to reach that point, a practice that's been outlawed in at least three states with the death penalty. Some medical and legal groups argue that it puts doctors in an ethical bind: having to treat people in order for them to be killed.

Little is straightforward in these kinds of cases. "Although there is a growing clamor to exclude the mentally ill from execution, mental illness is not easily defined," says David Elliott, who heads the National Coalition to Abolish the Death Penalty, a Washington, D.C., group. "With juveniles, you're 17 or you aren't. With mental retardation, they can do tests. Mental illness is much more complicated."

One of the most closely watched fights involves Steven Kenneth Staley, who murdered a restaurant manager during a 1989 robbery. The Texas Court of Appeals declined to hear his appeal recently, meaning Mr. Staley can be forcibly medicated. No decision has been made about how his case will proceed. Prosecutors argue that defendants could scam the system by feigning mental illness while others might avoid execution by refusing their medication.

DEATH WATCH

[Tennessee's official Web site](#)¹ allows visitors to view the facilities at Riverbend Maximum Security Institution:

- [Death Row Housing Unit](#)²
- [Deathwatch](#)³, where inmates are taken 72 hours prior to execution

Mr. Thompson, the Tennessee death-row inmate, takes Haldol, Cogentine, lithium and Prolexin. In the late 1990s, he was forcibly medicated. In 2001, the state requested the appointment of an official overseer to make sure Mr. Thompson took his medication. The state says Mr. Thompson is now doing so voluntarily. His court-appointed attorney, Dana Hansen Chavis, says that's only because Mr. Thompson "reasonably fears for his safety if

he discontinues taking them."

"If I stop taking them, I'll end up naked and restrained again, so I take them," says Mr. Thompson in an interview.

The state doesn't dispute that medication alone makes Mr. Thompson competent. Rather, it argues on procedural grounds that he shouldn't be allowed to argue the matter in court. The only issue, the state argues, is Mr. Thompson's current mental status. His "submissions arguing for his escape from the death penalty are of themselves evidence that he is competent to die," the state says in its filings.

Mr. Thompson was born in Thomaston, Ga., in 1961 and from the age of five was raised by his grandmother after his mother was killed in a car accident. In documents filed with the court, his grandmother said she took to bed for six weeks after her daughter's death, drinking and not caring for her three young grandchildren. They occasionally got a meal or a can of food from neighbors, according to court documents. Other times, they would steal money from under the grandmother's mattress.

In 1979, Mr. Thompson graduated from Pike County High School in Georgia and joined the Navy. It was there he began experiencing bouts of paranoia and sudden anger, family and friends said in court testimony. He stayed in the military until he was dishonorably discharged in 1982 after attacking a noncommissioned officer. He returned home, worked a series of minimum-wage jobs and became prone to screaming and bouts of unprovoked anger, his family told the court.

During this period, he met Joanna McNamara, an unwed teenage mother. On Dec. 29, 1984, Mr. Thompson, then 24, and Ms. McNamara, then 15, traveled by bus from Marietta, Ga., to Shelbyville, Tenn., where they stayed with a family friend after claiming to be married. When the friend realized this wasn't true, she reported Ms. McNamara as a runaway, according to court documents.

As Mr. Thompson waited for relatives to wire money, he began imagining Ku Klux Klan members chasing the couple. Mr. Thompson is black, Ms. McNamara, white. To get away, he decided to steal a car.

The pair encountered Ms. Lane on the evening of Jan. 1 as she walked to her car in the Wal-Mart parking lot -- he picked Ms. Lane because she smiled and spoke to him, he recalls. She'd gone there to buy aluminum foil, recalls Sue Allison, a close friend and Ms. Lane's former boss. Ms. Lane, a newlywed, played piano for the Sunday school, ran a church prison ministry and had worked for several years as a local newspaper reporter.

"He chose the most gentle woman he could have found. Brenda would have given him the car," says Ms. Allison. "Brenda was one of just a few people I knew opposed to the death penalty."

According to testimony given at Mr. Thompson's trial, he forced Ms. Lane into the car at knifepoint and, as she recited the Lord's Prayer, drove around for over an hour looking for a place to leave her. He settled on a rural area in the lightly populated Coffee County in Tennessee's south-central region. As Ms. Lane walked away from the car, Mr. Thompson stabbed her.

Tennessee police initially thought she might have been abducted by someone she encountered through her prison ministry. Soon after, officials in Georgia called to say they'd caught Ms. McNamara and Mr. Thompson. The pair confessed and told investigators where to find Ms. Lane.

Authorities found her at 4 a.m. on Jan. 3, lying on her back at the end of a dirt road near the entrance to a soybean field. One of her lungs had been punctured, causing fatal internal bleeding. She remained conscious for about 10 minutes, according to the autopsy report.

Mr. Thompson's mental status has been the subject of a tangled dispute ever since he first stood trial and was sentenced to death. The first time Mr. Thompson's appeal traveled through the legal system, Tennessee's Supreme Court and federal district court both noted that no evidence had been presented proving he was mentally ill when the crime was committed. The Sixth U.S. Circuit Court of Appeals agreed.

In June 2004, when a federal appellate judge was preparing a law-review article on the case, an intern working for him asked why none of the mental-health experts who examined Mr. Thompson addressed his mental state during his original trial.

The judge, Richard Suhrheinrich, studied the voluminous files and discovered that depositions and information from a North Carolina forensic and clinical psychology expert had been left out of the

case. The expert, Faye Sultan, diagnosed Mr. Thompson with "Schizoaffective Disorder, Bipolar Type" and concluded he would have been suffering from symptoms at the time he murdered Ms. Lane.

"This mental illness would have substantially impaired Mr. Thompson's ability to conform his conduct to the requirements of the law," Ms. Sultan wrote in a report filed with court. Citing the missing evidence, the Sixth Circuit appeals court reopened the case and overturned its earlier ruling.

The Supreme Court intervened at the behest of the state and ruled in 2005 that the Sixth Circuit had overstepped its authority. Justice Stephen Breyer, in writing the dissent in the 5-4 decision, said the case "arises out of unusual circumstances -- circumstances of a kind that I have not previously experienced in the 25 years I have served on the bench."

Once a new execution date was set, Mr. Thompson's attorneys were allowed to file another appeal, although this time challenging only the sentence, not the original conviction. Nearly 22 years after the crime, his case is moving through the courts for a second time.

Mr. Thompson is now arguing he is not competent to be executed because his mental condition has deteriorated. His appeal also tries to make the case that it's unconstitutional to execute a defendant made competent only through medication.

In April, the federal district court sided with the state and found that Mr. Thompson was competent to be executed. The district court also held that "even if Thompson had demonstrated that the state authorities were actually forcing him to take the medications, he has not shown that executing him in his medicated state is unconstitutional."

The case is back with the Sixth Circuit, where Mr. Thompson is challenging his execution on the same grounds. "Any fleeting semblance of competency is achieved by the use of powerful medication which was initiated against Thompson's will," his lawyers argue in a filing. Whatever the verdict, the next step will likely be a return to the Supreme Court.

Opponents of medicating death-row inmates to make them competent argue that the practice violates the Eighth Amendment's prohibition of "cruel and unusual punishments." Many groups argue that the mentally ill shouldn't face capital charges under any circumstances. Such defendants, they argue, have reduced ability to control their conduct and therefore less moral culpability.

The Supreme Court has never addressed the medication question in a capital-case ruling. It ducked the issue in the 1990s in the case of Michael Perry, a Louisiana death-row inmate, by sending the case back to the Louisiana Supreme Court. The state's high court decided it wouldn't force Mr. Perry to take medication, due in part to the ethical dilemma such a move would present to doctors. He remains on death row.

In 2003, in the case of convicted murderer Charles L. Singleton, the Supreme Court let stand an appeals-court ruling that there is no constitutional barrier to executing someone who is medicated. Mr. Singleton, who suffered from schizophrenia, was being treated against his will because he was considered a danger to himself and others. He was executed in January 2004.

The American Medical Association has tried to weave a path through this thorny problem. It says

physicians shouldn't treat an inmate to restore competence except if medical intervention is needed to mitigate suffering, which could also hasten an execution. The AMA acknowledges "it will not always be easy" to decide whether or not to medicate and leaves the ultimate decision to the treating physicians.

Mr. Thompson's appeal is the first Tennessee death-row case questioning the validity of "chemical competency," and is taking the state into uncharted territory.

"Our organization has not considered whether we should take a stance on this issue," says Terrence Clark, president of the Tennessee Psychiatric Association. Dr. Clark said his personal opinion would turn on whether he, as a physician, is administering the medication to treat the patient's mental illness or whether he is acting as an agent of the state to further the execution.

Meanwhile, Mr. Thompson remains at Unit 2 at Riverbend, about four miles from downtown Nashville. The loudest sound comes from the clanking chains that keep Mr. Thompson's hands strapped close to his body. At 6 feet 3 inches and 263 pounds, he seems to wear the 4-by-4-foot room more than sit in it.

In a nearby building is the death chamber, with a gurney for lethal injections and an electric chair for electrocution. The chair is a wooden, brown behemoth, nearly 3 feet wide, with a back nearly 6 feet high. Plexiglas covers the seat. It hasn't been used since Nov. 7, 1960, but it has been refurbished. Inmates who committed their crimes before Jan. 1, 1999, can request it rather than lethal injection. Mr. Thompson says he'd prefer the chair.

With barely a blink of eyes yellowed by years of medication, Mr. Thompson talked for nearly an hour about his life and impending death, meandering between fact and fiction.

At one point he spoke of having his Grammy-winning career as a songwriter. The night earlier, he said, a dog came out of the floor of his cell, followed by a man he didn't recognize. "I didn't want to go through that, demons and angels coming out of the walls, things on the other side of death," he said.

He also has moments of lucidity. Mr. Thompson said he has had trouble sleeping, but "today is a good day. Right now I'm pretty clear on what happened." He added: "I killed her and they intend to kill me for it."

Write to Gary Fields at gary.fields@wsj.com⁴

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