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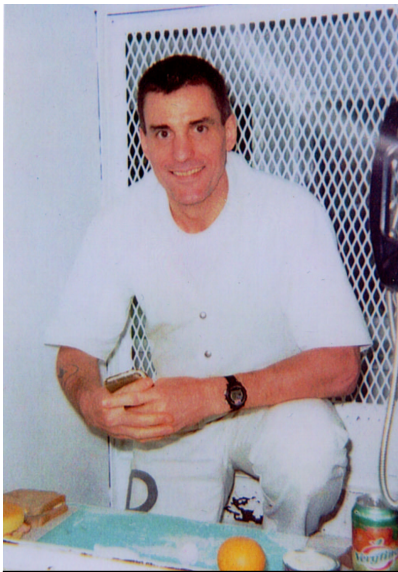
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UNITED STATES OF AMERICA

“Where is the compassion?”

The imminent execution of Scott Panetti, mentally ill offender

“He did a terrible thing, but he was sick. Where is the compassion? Is this the best our society can do?” Yvonne Panetti, mother of Scott Panetti¹



Scott Panetti, on death row.
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Scott Panetti shot his parents-in-law to death in 1992, several years after he was first diagnosed with schizophrenia. He was hospitalized for mental illness, including schizophrenia and manic depression (bipolar disorder), in numerous different facilities before the crime. Schizophrenia is a serious mental illness whose symptoms can include hallucinations, delusions, confused thinking, and altered senses, emotions or behaviour.² Bipolar disorder or manic depressive illness is a “disorder of the brain resulting in episodes of mania and depression.”³ There is evidence suggesting that Scott Panetti was psychotic at the time of the shootings, and that he may not have been competent to stand trial when he did. Not only was he tried, however, he was allowed to act as his own lawyer, which he did dressed as a cowboy and presenting an often rambling narrative in his defence. His trial has been variously described as a “circus”, a “joke”, a “farce”, “not moral”, and a “mockery”, by various lawyers, doctors and family members who attended.

Nevertheless, the trial was allowed to proceed and the jurors voted for death. Having emerged intact from the appeals process, their verdict is due to be carried out on 5 February 2004 in the Texas lethal injection chamber.

¹ *Death sentence appeal declined.* Milwaukee Journal Sentinel, 6 December 2003.

² According to the US grassroots organization, NAMI (formerly National Alliance for the Mentally Ill), “Schizophrenia is a brain disorder that interferes with a person’s ability to think clearly, manage emotions, make decisions, and relate to others. Many people with schizophrenia have hallucinations and delusions, meaning they hear and see things that aren’t there and believe things that are not real or true.” NAMI opposes the use of the death penalty against those suffering from schizophrenia. In *Understanding Schizophrenia*, NAMI writes: “Left untreated, however, schizophrenia can destroy the lives of individuals, families, and communities. Because the disorder causes unusual, inappropriate, and sometimes dangerous behavior in people who do not get treatment, they are often shunned and unnecessarily stigmatized. They may also face poverty and homelessness, or even commit suicide.”

³ *Understanding bipolar disorder.* NAMI. “When left untreated, however, bipolar illness can have destructive and costly effects, not just for the ill people, but also on the lives of their family members and society.”

The mental illness emerges



**Scott Panetti, Navy member,
aged 19 © Private (AI use)**

Scott Louis Panetti was born in Wisconsin on 28 February 1958. At the age of 18 he joined the Navy, but received an early honourable discharge due, he told his parents, to having arthritis in his hands. He joined his family who had moved to Texas. He married.

His mother has said: "Looking back, I remember the danger signs but I then associated his behaviour with typical teenager weirdness. After all, this was the early 1970's. Mental illness was not publicized or admitted to. I told myself that Scott was just a unique person. There were no support groups to contact that I know of, where one could go to for advice. Psychiatry was eyed with suspicion. I now understand what I didn't want to see then. There was something dreadfully wrong with Scott."⁴

The family moved back to Wisconsin in 1982. Scott Panetti stayed in Texas, but moved back to Wisconsin in 1986. His mother says: "Our plan was to get Scott the help he needed in the more progressive state of Wisconsin. Texas had a bad reputation concerning its treatment of the mentally ill."⁵ In 1986, Scott Panetti's wife filed for divorce. She said that he had become obsessed with the notion that the devil lived in their house. At one point he had buried furniture from the family home, in the belief that the devil was in the furniture. He also nailed the curtains shut. Also around this time, 1986, he was having hallucinations where he saw the devil on the wall of his home, killed the devil, saw blood coming out of the walls, and washed the walls.

When the divorce came through, Scott Panetti became very unstable and moved back to Texas. There he married again, in April 1989, this time to Sonja Alvarado.

Scott Panetti was hospitalized on numerous occasions in Texas and Wisconsin:

1981 – Involuntarily committed to Kerrville State Hospital, Texas. He was diagnosed as paranoid and hostile to his family.

1986 – Admitted to Starlite Village Hospital, Texas. He was diagnosed with schizophrenia. By now he had a history of speaking incoherently and paranoia.

1986 – Transferred to Kerrville Hospital. Diagnosed with paranoia and schizophrenia.

1986 – Transferred to Waco Veteran's Administration Hospital, Texas. Diagnosed with schizophrenia and treated with anti-psychotic medications.

⁴ Letter to Tipper Gore, 27 October 1999.

⁵ Id.

1986 – After he moved back to Wisconsin, he was admitted to Tomah Veteran's Hospital, where he was diagnosed with schizophrenia.

1986 – Hospitalized in Northern Pines Unified Services Center, where he was diagnosed with depression and suicidal ideation.

1986 – Transferred to Cumberland Memorial Hospital, and diagnosed with depression, brain dysfunction, delusions, auditory hallucinations, and homicidal ideation toward his family.

1986 – Admitted to Starlight Village Hospital on his return to Texas. Again diagnosed with schizophrenia.

1986 – Transferred to Kerrville State Hospital, and diagnosed with schizoaffective disorder, a combination of schizophrenia and manic depression (bipolar disorder).

1990 – Involuntarily committed to Kerrville Hospital due to homicidal behaviour, threatening to kill his wife, his baby, his father-in-law and himself. Around this time he apparently had come to believe that there was a plot against him by the citizens of Fredericksburg, the area where he, his wife and his parents-in-laws lived.

1992 – Admitted to Kerrville Hospital, and diagnosed with schizoaffective disorder. He had again threatened his family. Records from this time reveal that Scott Panetti had a series of different personalities or aspects of himself that he gave names to.

The crime was committed two months after this last hospitalization.

The crime

Scott Panetti and Sonja Alvarado separated in August 1992 because of his drinking and threatening behaviour. Sonja Alvarado took their three-year-old daughter and went to stay with her parents, Amanda and Joe Alvarado. She obtained a restraining order against her husband. However, on the morning of 8 September 1992, Scott Panetti shaved his head, sawed off a shotgun, dressed in military fatigues and drove to the Alvarados' home, taking the shotgun and a rifle with him. He broke into the house and shot his parents-in-law at close range with the rifle. He allowed Sonja and their daughter to leave. Later that day he changed into a suit and gave himself up to the police.

At his trial, Scott Panetti testified that on the day of the crime he had been under the control of "Sarge", later identified as an auditory hallucination. Scott Panetti also said that demons were cackling at him at the time of his crime:

Panetti: ... Sarge woke up. Cut off Scott's hair. Sarge suited up. Shells, canteen, pouch, 3006, tropical hat, tropical top, bunkhouse, fast, haircut fast, suited up fast, boom, ready fast, fast, haircut, webgear, top, brush hat, boots, out the door, in the jeep, driving, wife, the bridge. Why is it taking so long? In front of Joe and Amanda's house...

Sarge, everything fast. Everything fast. Everything slow. Tapped on the window, shattered window. Sonja screams, runs, follow her. She runs out, out the front, knife, Birdie, Birdie [Scott and Sonja's daughter]. Where's Birdie? Pick her up, she's in bed...

Scott, what? Scott, what did you see Sarge do?

Fall. Sonja, Joe, Amanda, kitchen. Joe bayonet, not attacking. Sarge not afraid, not threatened. Sarge not angry, not mad. Sarge, boom, boom. Sarge, boom, boom, boom. Sarge, boom, boom.

Sarge is gone. No more Sarge. Sonja and Birdie. Birdie and Sonja. Joe, Amanda lying kitchen, here, there, blood. No, leave. Scott, remember exactly what Scott did. Shot the lock walked in the kitchen. Sonja, where's Birdie? Sonja here. Joe, bayonet, door, Amanda. Boom, boom, boom, blood.

Demons. Ha, ha, ha, ha, oh, Lord, oh, you.

Judge: Mr Panetti, let's stop.

Panetti: You puppet.

In a 1999 affidavit, Sonja Alvarado recalled a number of incidents prior to the crime in which she alleged that the police had failed to act on the family's concerns about the threat that Scott Panetti posed. She recalled that after one incident only weeks before the killing of her parents: "My mother and I begged the police to take the rifles. Scott had his deer rifle, the 30.06 rifle he used to kill my parents, and the other shotgun at my parents house. Even though the police were told to take the guns, they did not. Scott had made threats against my parents."

She says that on the day of the crime, injured and traumatized and not provided medical attention or counselling, she made a statement to the police. She recalls: "About a week later, when my head and memory became more clear, I told the DA [prosecutor] I wanted to add more events as they occurred. He told me it was best to leave things as they were and they would stick to the original statement given. I told them there were more things I wanted to add in but the DA told me it wasn't important. He wanted to stay with the first statement. Too many mistakes. I feel this was wrong of him...I feel now that I was used on the stand so that I would cover up for the law enforcement mistakes and the Sheriff of knowing Scott's mental illness for years, not to mention all the other reports that were not written out."

Sonja Alvarado wrote: "I do not hate Scott. I hate what Scott did. Scott was a good person except when he changed... I know now that Scott is mentally ill and should not be put to death."⁶

Competent to stand trial and to act as own lawyer?

Scott Panetti's mental illness continued in pre-trial custody. Jail records indicate that he was evaluated in late September 1992 and prescribed anti-psychotic medication for his

⁶ Affidavit, Sonja Alvarado, 10 August 1999.

symptoms.⁷ He was on anti-psychotic and anti-depressive drugs as late as March 1995. He discontinued his medication after what he claimed was a religious experience on 1 April 1995.

His younger sister visited him in the summer of 1993 in jail. She recalls that he "was very paranoid and hyper" and was making "many irrational and bizarre statements." She said that he complained that his lawyers were part of a conspiracy against him.⁸ One of the lawyers appointed to represent him after his arrest in September 1992, has stated that:

"Scott was unable to cooperate with his attorneys or assist them in any way. I have never had a client who did not try to cooperate, who just separated themselves to where they weren't with us anymore... I never had a meaningful conversation with Scott regarding the status of the case, the facts of the case or any issue involved... Over a period of two and a half years, I never saw a change in Scott's demeanor and conversation. His talk was always bizarre. He was never able to complete a rational and meaningful conversation with his attorneys."⁹

In July 1994 a hearing to determine whether Scott Panetti was competent to stand trial – that is, whether he had sufficient mental capacity to understand his situation and to assist in his defence – was declared a mistrial after the jury was unable to reach a verdict.

A second hearing was held in September 1994. His lawyer testified that in the previous two years, he had had no useful communication with Scott Panetti because of his delusional thinking. A psychiatrist for the defence concluded that Panetti was not competent to stand trial. A psychiatrist who testified for the prosecution agreed with the previous diagnoses of schizophrenia, and that Scott Panetti's delusional thinking could interfere with his communications with his legal counsel, particularly under situations of stress such as in a courtroom. However, he concluded that the defendant was competent to stand trial. The jury agreed.

Having been found competent to stand trial, Scott Panetti then waived his right to counsel. According to his sister's affidavit, he "had a delusion that only an insane person could prove insanity... His fears of the attorneys were irrational and due to his paranoid delusions... I believe that his decision to represent himself was totally irrational. This decision was because of his mental illness." Nevertheless, the judge found that Scott Panetti had voluntarily and knowingly waived his right to counsel, and allowed him to proceed as his own lawyer.

Leading up to the trial Scott Panetti constantly sent mail to his sister and his family in Wisconsin. She has said that "his writings were irrational... He wrote many strange things that did not make any sense". She said that he called her his "legal assistant" and he mailed all his papers, documents and records for the trial – he was afraid to keep them in his cell because he thought that the guards were looking at his work. She said: "I can't understand how he was supposed to get ready for his trial when his papers were in Wisconsin." She mailed the boxes

⁷ Post-conviction report of Michael R. Arambula, psychiatrist, 11 June 1997.

⁸ Victoria Panetti, affidavit 12 June 1997.

⁹ Affidavit, Richard C. Mosty, 19 June 1997.

of material back to him for the trial, but "jury selection was over before the boxes arrived so he did not use them." This was also noted by a lawyer appointed as stand-by counsel:

"When the trial began, Scott did not have his files. The material that had been prepared was not available. Scott's family brought the files back to Texas, but Scott never used the materials. I do not think that Scott had a rational understanding of the importance of the information...

Scott was filing Motions and Subpoenas with his rambling statements and bizarre artwork. I have copies of the 200-plus subpoenas he filed. Scott wanted to subpoena Jesus Christ, JFK, actors, actresses, and people who had died."¹⁰

Scott Panetti filed several pre-trial motions, including to disqualify the judge and for a change of venue, his central argument being that he would not get a fair trial. He believed that the people in Fredericksburg were plotting against him. For example, according to Michael Arambula, a psychiatrist who has reviewed the records, a 10-page letter that Panetti sent to the trial judge at this time "contained numerous Biblical passages, idiosyncratic expressions, flight of ideas (sudden changes in his thought processes), loose associations (communication that was not coherently connected together), and incoherent, illogical thought processes."¹¹

Scott Panetti displayed the same symptoms of mental illness during the trial itself.

The trial

Jury selection for the case began in August 1995, and the trial itself began on 12 September 1995. When Scott Panetti's sister arrived in Texas for the trial, she visited him in the jail. She recalled in her affidavit: "I had never seen Scott so sick. I got to visit with him in a cell since I was his so-called legal assistant. Scott was acting all strung out and weird. He started screaming at the guards and acting like a mad man. Scott was laying on the floor so he could scream under the door at the guards. I was scared. I had never seen Scott act so crazy."

Scott Panetti was appointed stand-by counsel for his trial. This lawyer has said that his attempts to help Panetti were impossible due to Panetti's mental illness:

"Scott did not have a factual and rational understanding of the capital murder proceedings. Scott was not able to assist me and I was not able to assist him due to his mental illness. Scott was paranoid of a big conspiracy that everyone was out to get him. He had to represent himself to prove insanity. Scott was not on any psychotropic medication during the trial.

Scott did not use the information I prepared for him. I tried to outline the theory of the defense, but Scott was only interested in his own show... At a meeting during jury

¹⁰ Affidavit, Scott Monroe, 17 June 1997. At the trial, questioning a witness, Scott Panetti said: "We , we subpoenaed Dr Hal and I mean, I didn't want to go subpoena crazy and I turned the Pope loose and JFK and I never subpoenaed them but Jesus Christ, he didn't need a subpoena. He's right here with me, and we'll get into that".

¹¹ Post-conviction report of Michael R. Arambula, psychiatrist, 11 June 1997.

selection, I advised Scott on several important issues...This was all way above Scott's head. It did not appear to make any sense to him... Every time I tried to talk about [jury selection] or discuss any of things that I brought him, he instantly changed the subject until eventually we ran out of time"¹²

"How can this be just?"

In post-conviction affidavits, numerous witnesses, including doctors, lawyers and relatives who appeared at the trial said that they concluded, from their prior knowledge of Panetti and their observations of him during the proceedings, that he was incompetent to stand trial.

▶ "In my opinion, Scott was not competent to stand trial because he was unable to assist himself in his own defense and he did not have a factual and rational understanding of the proceeding... There is no doubt in my mind that he was mentally ill and that he was incompetent to stand trial."¹³

▶ "My main impression was why was the Judge allowing this crazy man to defend himself. I thought to myself 'My God. How in the world can our legal system allow an insane man to defend himself? How can this be just?' I not only thought that Scott was incompetent, but that it was not moral to have him stand trial. It was terribly wrong. I did not know that our legal system would allow an insane man to represent himself in his own trial."¹⁴

▶ "There is no question in my mind that Scott was incompetent at his trial... Scott's questions and conduct were bizarre and represented a break from reality... Scott's conduct was bizarre in part due to his unusual dress which I can only call a costume. Scott was more concerned with his dress and appearance than the reality of his capital murder trial. The courtroom had the atmosphere of a circus"¹⁵

▶ "At the trial Scott dressed in a 1920s era cowboy style. It looked idiotic. He wore a large hat and a huge bandana. He wore weird boots with stirrups, the pants were tucked in at the calf... I had a feeling that Scott had no perception how he was coming across...He was totally unable to see the effect...His questions were completely without thought. The questions were irrelevant. I felt like that Scott was digging his own grave... The trial was a joke. It was a big fiasco."¹⁶

▶ "When I watched Scott in court, he was very bizarre... When I saw him on the first day of the trial I thought the judge should stop the trial and commit him to the

¹² Affidavit, Scott Monroe, 17 June 1997.

¹³ Affidavit, Wolfgang Selck, 9 June 1997. Dr Selck had treated Panetti at Starlite Hospital in Texas.

¹⁴ Affidavit, F.E. Seale, 9 June 1997. He treated Panetti in 1986, diagnosing him with schizophrenia.

¹⁵ Affidavit, Meridel Solbrig, 2 June 1997. Ms Solbrig is a lawyer who represented Scott Panetti in his divorce from his first wife. She has noted that she had continued to receive letters from Panetti since his trial: "The letters have become more rambling and more irrational with time."

¹⁶ Affidavit, Jessica McBride. She is a friend of Scott's sister, Victoria Panetti. The latter has explained: "I asked my friend, Jessica McBride, to try to talk [Scott] out of [representing himself] because she is a crime reporter and understands courtroom procedures. She tried and he wouldn't listen."

hospital. Scott was not competent to stand trial. My wife had written the judge a letter, but it didn't seem to make any difference.¹⁷ I wanted to tell the judge to stop the trial because my son was sick and incompetent."¹⁸

► "I think that justice broke down in my brother's trial. It was not fair to let a mentally ill man be his own attorney when he did not know what he was doing. I am sorry to say that the trial was a farce. It was a circus-like atmosphere. I never expected justice to allow this."¹⁹

Sonja Alvarado, the daughter of the victims, who had been injured and traumatized in the attack, signed an affidavit in 1999 in which she said that the trial was "a big joke" and "a circus". She said that "there was lots the jury did not know about Scott and his mental illness."²⁰

"A mockery of self-representation"

For the trial, at which he pleaded not guilty by reason of insanity, a notoriously difficult plea on which to win, even for an experienced capital lawyer, Scott Panetti dressed as a cowboy and proceeded to defend himself with an often rambling and irrational narrative:

"Mr Panetti's direct examination testimony essentially began with his birth. He discussed a near drowning episode, falling off a horse, and messing in his pants when he was a child. He later described his school in Wisconsin, the carpeting there, and how he wanted to look up his teacher's skirt. At one point, he showed the jury a tattoo on his arm (wounded sunbird) and went into excessive detail about it. After the court redirected him, Mr Panetti talked at length about his high school sweetheart in a loosely connected manner. The judge redirected him for a second time to relevant evidence. After Mr Panetti discussed bull riding, high school interactions, and that his father looked like Colonel Sanders, the court redirected him time and time again to the relevance of the guilt/innocence phase of his trial... Despite continued redirection, Mr Panetti described working with his father on a Texas ranch... The district attorney [prosecutor] even asked the court to instruct Mr Panetti to talk about his guilt or innocence and not about his life story."²¹

One of the doctors who attended the trial as a witness, gave his opinion on what he saw:

"I witnessed a number of incidents where the inappropriate use of language and actions show that Scott was mentally ill and incompetent. Scott literally enjoyed the

¹⁷ "I can't imagine any juror being prepared to cope with such a spectacle were he/she not knowledgeable about mental illness and aware of the possibility of utter confusion occurring within Scott. I'm trying to be objective, but I can't help but worry that Scott is unwittingly embarking on a suicidal course of action." From letter to the Honourable Stephen Ables, Judge of the 216th District, from Yvonne Panetti, 28 August 1995.

¹⁸ Affidavit, Louis J. Panetti, father of Scott Panetti, 14 June 1997.

¹⁹ Affidavit, Victoria Panetti, younger sister of Scott Panetti, 12 June 1997.

²⁰ Affidavit, Sonja Alvarado, 10 August 1999.

²¹ Post-conviction report of Michael R. Arambula, psychiatrist, 11 June 1997.

spectacle of the Courtroom where he was the center of attention. Scott enjoyed the trial since he was getting attention and was being allowed to act like an attorney... Scott was acting out a role of an attorney as a facet of the mental illness, not a rational decision to represent himself at trial... Scott was acting as his own attorney from his paranoid fear that the attorneys were out to get him... Scott gave a rambling presentation that showed he could not think clearly nor understand what information was important in his trial... The trial gave Scott the opportunity to get the attention that a paranoid person so desperately needs. Scott needed to represent himself out of the delusion that he alone could defend himself. Scott wanted recognition as an attorney and got the Judge to allow him center stage... The mental illness caused Scott to fail to recognize the importance of the Jury. In his mind the Jury was not important. What was important to Scott was the recognition of the Judge, the District Attorney, witnesses and the public that Scott was an attorney in the Courtroom."²²

The transcripts of the proceedings provide numerous illustrations of bizarre or irrelevant statements by Scott Panetti, or an inability to focus. For example, when Scott Panetti's own mother was on the witness stand, the following occurred:

Panetti: Mom, I slept good and I had a dream and woke up real confused, and the relevance of my guilt or innocence, is there anything that has to do – now, I flat ironed you. Yesterday, you sort of expected I would call you, but you didn't expect it this morning.

Judge: You need to ask a question, Mr Panetti.

Panetti: Talk about my treatment, mom, before, after, and duration of my treatment that's directly relevant to my guilt or innocence as charged, mom.

Judge: Mr Panetti, ask a specific question, I don't want a general question.

Panetti: I'm going to have to ask you just a couple of questions about that we didn't ask before, and it's safe to ask – mom, well, there's things I should of said or didn't say or didn't say and should of said.

Judge: Mr Panetti, ask a question.

Scott Panetti's closing argument at the guilt/innocence stage ended with the following:

"How long did this deliberate and that deliberate? I don't think – I think that you are all way beyond, and this ain't no show, and there ain't no body in this point, any evidence, and I proved without a preponderance of a doubt that I didn't know right from wrong and that I was insane, not lay experts or doctors, and in your hearts everybody knows. Do you honestly think any of you are going to go home after making the decision and second guess it? I think without a hesitation you won't, and God bless Texas. Thy will be done. Oh, the law sometimes sleeps, but it never dies".

²² Affidavit, Wolfgang Selck, 9 June 1997.

"Digging his own grave"

The jury rejected the plea of not guilty by reason of insanity, and on 21 September 1995, after less than two hours deliberation, found Scott Panetti of capital murder. The trial then moved into its sentencing phase, the phase of a US capital trial when the prosecution argues for execution, and the defence presents mitigating evidence in favour of a life sentence. Scott Panetti's standby lawyer has said:

"This was not a case for the death penalty. Scott's life history and long term mental problems made an excellent case for mitigating evidence. Scott did not present any mitigating evidence because he could not understand the proceeding..."²³

In simple terms, by representing himself, he hung himself. Scott's incompetence prevented him from asking for or using my assistance as his standby. I was not able to assist Scott in any meaningful way because he was so mentally incompetent. As a result, his trial was truly a judicial farce, and a mockery of self-representation. It should never have been allowed to happen or, at least, stopped."²⁴

It was not stopped, however, and Scott Panetti made his opening statement at the sentencing phase. It began as follows:

"Well, thank you, ladies and gentlemen of the jury. I think it's maybe odd that you didn't see more of a breakdown. It's been three years and that was two years ago that I went into the – may have heard being uncomfortable with crime, but I went into the crime that I described as something that I heard in Jacques Cousteau analogy of tears that whales would swim and I hope that you don't think it's odd that I didn't have more of a breakdown, but again I must reiterate, I had very untreated mental illness and that in my brief look over some papers that my previous law firm sent, which I should have prepared earlier, say there is culpable mental state."

His opening statement ended as follows:

Panetti: "...It wasn't saying anything about ambiguousness or a maybe confession, but that's just how they state it and that's how confessions go and in this situation, that is enough said, but you do know about the blind justice, but you do know a blind juror is not eligible, and true sheep is always acquitted, but the DA [prosecutor] mentioned the two animals. Well, if you sacrifice one sheep, two destroy the wolf, that does not make –

Judge: Thirty seconds.

²³ During questions to one juror who was subsequently selected to sit on the jury, the following dialogue occurred: **Panetti:** I despise the tragedy, details, but as far as – do you understand what even I don't? Do you know what mitigating means? **Juror:** Well, from what I gather off of him (prosecutor), it means circumstances. Is that what – something to that effect. No, no really. **Panetti:** Me neither.

²⁴ Affidavit, Scott Monroe, 17 June 1997.

Panetti: -- that sheep guilty, and that's not justice to the sheep and I pose no future dangers to anyone, including myself, and even less and less if I were given the proper medication. An untreated state, my spirituality, I pose no threat, treated, less.

Judge: Time is up.

In a Texas capital trial, a jury cannot hand down a death sentence unless it determines that the defendant poses a threat of committing acts of criminal violence in the future if allowed to live, the so-called "future dangerousness" question. Scott Panetti's jury decided that he was a future danger to society and that there was insufficient mitigating evidence to warrant a life sentence. On 22 September 1995, the day after they had convicted him, they voted for death.

One witness at the trial has recalled: "I watched as Scott questioned some of the jurors. The jurors would look scared."²⁵ One of the doctors who was at the trial has said: "In my opinion, Scott's mental illness had an effect on the jury that was visible. It was obvious from the appearance of the jury that Scott antagonized them by his verbal rambling and antics. Scott was completely unaware of the effect of his words and actions. Members of the jury had hostile stares and looked at Scott in disbelief while he rambled and made no sense."²⁶

One of the lawyers who attended the trial said that he spoke to two jurors afterwards.

"[They] told me that Scott probably would not have received the death penalty if the case had been handled differently... In short, the jury was grossly 'over-exposed' to Scott. Since Scott presented no real evidence of insanity other than his own behaviour, the jury had no trouble with a guilty verdict. Unfortunately, they were also scared to death of Scott and they were fearful that somehow, somehow, Scott might get out of prison. They gave him the death penalty to avoid this possibility."²⁷

Another lawyer spoke to two other jurors:

"They said that if Scott had been represented by attorneys that he would not have received the death penalty... They knew he had a long term mental history, but, because he scared them they voted for death."²⁸

Death sentence upheld

A psychiatrist who evaluated Scott Panetti in 1997 for his appeals concluded that he suffers from schizoaffective disorder (a combination of schizophrenia and manic depression (bipolar disorder)). This expert added that, in his opinion, Panetti's "decision to waive his own counsel was under the influence of persecutory delusions, and his ability to represent himself in court

²⁵ Affidavit, Jessica McBride. She is a friend of Scott Panetti's sister, Victoria Panetti. The latter has explained: "I asked my friend, Jessica McBride, to try to talk [Scott] out of [representing himself] because she is a crime reporter and understands courtroom procedures. She tried and he wouldn't listen. His fears of the attorneys were irrational and due to his paranoid delusions."

²⁶ Affidavit, Wolfgang Selck, 9 June 1997.

²⁷ Affidavit, Scott Monroe, 17 June 1997.

²⁸ Affidavit, Preston S. Douglas, 19 June 1997.

was substantially impaired by disturbances in his thought processes". The psychiatrist further concluded that Panetti had not been competent to stand trial.²⁹

The State of Texas has fought for the death sentence every step of the way, maintaining the position that mental illness does not necessarily equate to incompetence, either to stand trial or in self-representation. This is a harsh interpretation of what happened at Scott Panetti's trial. For example, in its brief to the US Supreme Court in 2003, the Texas Attorney General's Office claimed: "Although it was on occasion difficult, the trial court was always able to re-direct Panetti's attention whenever he digressed too far from the relevant topic or fixated too long on a particular subject. When Panetti thought that it was important for him to focus and stay on topic, he was able to do so. Thus, Panetti's apparent inability to consult with his court appointed attorney was the result of his conscious choice not to cooperate rather than a byproduct of his mental illness."³⁰

The state has been successful. The conviction and death sentence have survived the appeals process. On 1 December 2003, the US Supreme Court announced that it was refusing to consider Scott Panetti's case. Lower courts found that there was enough evidence that he was competent to stand trial and had knowingly and voluntarily waived his right to counsel. For example, in 2002, the US Court of Appeals for the Fifth Circuit wrote: "During trial, Panetti proceeded while dressed in a cowboy suit, gave the appearance of hallucinating, and carried on rambling dialogues. He did, however, formulate a trial strategy, improved his trial performance over time, and was able to effectively examine and cross-examine witnesses."³¹

The execution of the insane – those who do not understand the reason for, or reality of their impending punishment – is unconstitutional in the USA, under the 1986 US Supreme Court decision, *Ford v Wainwright*. This has not prevented numerous mentally ill prisoners from being executed. Scott Panetti's lawyer has initiated a *Ford* claim, but the trial-level court dismissed it without holding a hearing. The issue is now on appeal to the higher courts.

Amnesty International members around the world are appealing to the Texas clemency authorities not to allow the execution of Scott Panetti to go ahead.³²

Protection for the mentally ill

In June 2002, the US Supreme Court outlawed the execution of people with mental retardation.³³ Numerous such prisoners had been executed in the USA since the Court ruled in *Penry v Lynaugh* in 1989 that such killing was constitutional.³⁴ In *Atkins v Virginia*, the Court overturned the *Penry* decision, finding that "standards of decency" had evolved in the

²⁹ Report of Michael R. Arambula, 11 June 1997.

³⁰ *Panetti v State*, Respondent's brief in opposition.

³¹ *Panetti v Cockrell*, 11 June 2002.

³² See Urgent Action, <http://web.amnesty.org/library/Index/ENGAMR510062004>

³³ *Atkins v Virginia*, 000 U.S. 00-8452 (2002)

³⁴ See Table 4, in USA: *Indecent and internationally illegal: The death penalty against child offenders*. AMR 51/143/2002, September 2002. <http://web.amnesty.org/library/Index/ENGAMR511432002>

USA to the extent that the execution of people with mental retardation was now unconstitutional.

Writing the *Atkins* opinion, Justice Stevens said that "today society views mentally retarded offenders as categorically less culpable than the average criminal." What about the mentally ill? How does the execution of the mentally ill comport with evolving standards of decency? Does society view the mentally ill as categorically less culpable than the average criminal offender, or does society's fear and ignorance of mental illness render the execution of such defendants acceptable in the USA?

In *Atkins*, the Supreme Court wrote that "Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others' reactions. Their deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability".

Scott Panetti does not have mental retardation. But does not his mental illness diminish his culpability in the crime for which he is facing execution? Do his delusions not diminish his capacity to process information and to communicate, to engage in logical reasoning, to control impulses, and to understand other's reactions?

The *Atkins* Court continued "[T]here is a serious question whether either justification underpinning the death penalty - retribution and deterrence of capital crimes - applies to mentally retarded offenders. As to retribution, the severity of the appropriate punishment necessarily depends on the offender's culpability. If the culpability of the average murderer is insufficient to justify imposition of death [most murders in the USA do not result in a death sentence], the lesser culpability of the mentally retarded offender surely does not merit that form of retribution. As to deterrence, the same cognitive and behavioural impairments that make mentally retarded defendants less morally culpable also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information. Nor will exempting the mentally retarded from execution lessen the death penalty's deterrent effect with respect to offenders who are not mentally retarded."

So, too, for the mentally ill?

Finally, the *Atkins* decision suggested that defendants with mental retardation may face a "special risk of wrongful execution", including because of "their lesser ability to give their counsel meaningful assistance, and the facts that they are typically poor witnesses and that their demeanour may create an unwarranted impression of lack of remorse for their crimes."

Scott Panetti, in effect, appears to have been his own worst enemy at his trial, serving to inspire fear or confusion in the jurors, rather than to offer them a clear picture of mental illness on which to base their decision-making.

Compassion and clemency

"How can this be justice? Surely my country can do better than this." Scott Panetti's sister, 15 January 2004.

In his State of the Union address on 28 January 2003, President George Bush spoke of his government's goal "to apply the compassion of America to the deepest problems of America. Americans are doing the work of compassion every day... These good works deserve our praise; they deserve our personal support". President Bush, who was Governor of Texas when Scott Panetti was sentenced to death there, should be among those raising his voice against this execution. After all, in his inaugural speech, he promised to be a president who would "speak for greater justice and compassion".

The crime and punishment of Scott Panetti raise wider questions about society's treatment of the mentally ill. Texas ranks 47th out of the 50 US states in terms of the amount of money spent per capita in the treatment of the mentally ill.³⁵ The most recent state legislative session in 2003 did not improve what many see as a public mental health crisis in the state. The Mental Health Association in Texas (MHAT) reported that "legislators heard stories of families ripped apart and lives shattered, and still the legislature reduced the budget of the public mental health system... MHAT and other advocacy organizations worry that this shift will lead to more people getting their mental health care in emergency rooms, or ending up in court rooms and morgues."³⁶

Scott Panetti's family continue to campaign for his life. His mother has said: "Maybe they can throw him away like trash. But that's not what he is. He's a human being, who was sick, but no one would help".³⁷ With her brother's execution three weeks away, Vicki Panetti said to Amnesty International: "My brother did an awful thing, but he was a mentally ill man. Judge Ables let Scott hang himself at his trial, and now the state is doing all it can to make sure it gets him to the execution chamber. How does this help anyone? I believe that Scott could not help what he did. He was sick. But the State of Texas will be committing a coldly calculated murder if it kills Scott. How can this be justice? Surely my country can do better than this."

Amnesty International believes that the death penalty should be abolished as soon as possible, and supports the imposition of a moratorium on executions pending abolition. Recognizing political reality in retentionist countries like the USA, it also supports efforts to restrict the scope of the death penalty with a view to abolition, as international human rights standards require. The UN Commission for Human Rights has repeatedly called on countries which still use the death penalty not to use it against anyone suffering from a mental disorder.

The fact that the USA is willing to execute even the mentally ill, while a majority of countries have stopped using the death penalty against anyone, is shameful.

³⁵ *Mental illness: Current mental health care not meeting needs.* News 8 Austin, 21 April 2003.

³⁶ *State budget balanced on the backs of Texas' most needy citizens.* The Mental Health Advocate, Summer 2003. Mental Health Association in Texas.

³⁷ *Madness, murder and shattered lives.* The Sunday Journal Sentinel, 28 November 1999. This article is available on the *Save Scott Panetti* website, <http://home.earthlink.net/~savescottpanetti/>