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Executing the Insane: A Look at Death Penalty Schemes in Arkansas, Georgia and Texas

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EXECUTING THE INSANE: A LOOK AT DEATH PENALTY SCHEMES IN ARKANSAS, GEORGIA AND TEXAS

Faced with such widespread evidence of a restriction upon sovereign power, this Court is compelled to conclude that the Eighth Amendment prohibits a State from carrying out a sentence of death upon a prisoner who is insane. Whether its aim be to protect the condemned from fear and pain without comfort of understanding, or to protect the dignity of society itself from the barbarity of exacting mindless vengeance, the restriction finds enforcement in the Eighth Amendment.¹

I. INTRODUCTION

On January 6, 2004 Charles Singleton ("Singleton"), a man treated often for schizophrenia and psychotic delusions, was executed by the State of Arkansas.² Three months prior, on November 4, 2003, the State of Georgia executed James Willie Brown ("Brown"), a man long diagnosed as a paranoid schizophrenic.³ A third man, Kelsey Patterson ("Patterson"),

who struggled with paranoid schizophrenia for more than twenty years, was executed by the State of Texas on May 18, 2004.  

Despite the fact that these men all struggled with severe mental disorders, they were nonetheless found competent to be executed under their respective state statutory schemes. In 1986, the Supreme Court handed down *Ford v. Wainwright*, holding it unconstitutional under the Eighth Amendment to inflict the death penalty upon an insane prisoner. It is up to the states, however, to build or adjust statutory schemes that fall in line with the Court’s holding.

This note, guided by stories of three mentally ill defendants, will explore statutory death penalty and habeas corpus schemes in Arkansas, Georgia and Texas and their respective application to individuals with severe mental illness. Part II will examine the history of the death penalty, the habeas corpus process and mental illness, looking specifically at the Eighth Amendment as well as the landmark decisions *Ford v. Wainwright* and *Atkins v. Virginia*. Part III will discuss in further detail the current statutes in Arkansas, Georgia and Texas. Part IV will take a closer look at these three specific cases involving mentally ill defendants. Part V will analyze the implications of applying *Atkins* to defendants suffering from severe mental illness and, more specifically, how such an application would affect current death penalty statutes in Arkansas, Georgia and Texas. Finally, Part VI will conclude this note emphasizing the pressing need for the exclusion of mentally ill offenders from death penalty eligibility.

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7 *Id.*
The idea of a penalty of death as punishment for criminal behavior has existed since the earliest periods of North American history and is currently statutorily recognized by thirty-eight states as well as by the United States Government and Military. While its purpose is continuously debated, the most pervasive justification for the death penalty is the idea of retribution. Retribution is most often referred to as a notion of "justice," but is better defined by the legendary philosophy, "an eye for an eye." Regardless of its justification, the death penalty is well established in the United States and is consistently used in our criminal justice system.

Since 1976 more than one thousand people have been executed, many of them mentally ill.

Despite the fact that mentally ill defendants can be incapable of comprehending reality, they continue to be executed for their crimes. One reason for this is that until the 1980's, mental illness itself was ill-defined and often misunderstood. These misconceptions have been somewhat corrected due to strides in the field of psychology, and recognition of mental illness by the Supreme Court. Today, mental illness is
defined as "any of various conditions characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic or other factors."\textsuperscript{16}

The most common mental illnesses experienced by defendants include: bipolar disorder, schizoaffective disorder, schizophrenia, post-traumatic stress disorder, depression and borderline personality disorder.\textsuperscript{17}

Historically, mentally ill defendants were not protected from a sentence of death.\textsuperscript{18} As written in the Constitution, the Eighth Amendment prohibits cruel and unusual punishment.\textsuperscript{19} What constitutes "cruel and unusual" has been hotly contested for decades.\textsuperscript{20} Interpretations of the Eighth Amendment in landmark Supreme Court decisions, however, seek to protect those who cannot comprehend the punishment they face.\textsuperscript{21} One of these decisions was \textit{Ford v. Wainwright}, handed down by the Court in 1986.\textsuperscript{22} In 1974, petitioner Ford was convicted of murder in Florida and sentenced to death.\textsuperscript{23} While he indicated no signs of mental illness throughout the trial, in early 1982 Ford's behavior began to change drastically.\textsuperscript{24} He became confused, paranoid and suffered from delusions of grandeur.\textsuperscript{25} In 1983, a psychologist diagnosed Ford with "a severe, uncontrollable, mental disease which closely resembles 'Paranoid Schizophrenia Movement, http://www1.nmha.org/about/history.cfm (last visited Feb. 8, 2007); see also Ford v. Wainwright, 477 U.S. 399, 409 (1986) (holding it unconstitutional to execute a prisoner suffering from mental illness).


\textsuperscript{18} See Emily Fabrycki Reed, \textit{The Penry Penalty} 159-61 (University Press of America 1993) (describing a study regarding mentally ill defendants and the death penalty); see also Dan Malone, \textit{Cruel and Inhumane: Executing the Mentally Ill}, \textit{Amnesty Magazine}, Fall 2005.

\textsuperscript{19} U.S. CONST. amend. VIII. ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted").


\textsuperscript{22} Id. at 399.

\textsuperscript{23} Id. After reading about a Ku Klux Klan rally, Ford developed an obsession with the Klan. \textit{Id.} He became increasingly convinced he had become the target of a complex conspiracy. \textit{Id.} Later, he began to believe his female relatives were being held hostage and tortured. \textit{Id.} at 399. This delusion expanded until Ford was reporting that 135 of his friends and family as well as senators and other leaders were being held hostage in prison. \textit{Id.} In a letter from 1983, Ford claimed to have ended the hostage crises by firing prison officials. \textit{Id.} He began referring to himself as "Pope John Paul III" and reported having appointed nine new justices to the Florida Supreme Court. \textit{Id.} at 399.

\textsuperscript{24} See Ford, 477 U.S. at 402.

\textsuperscript{25} Id.
EXECUTING THE INSANE

With Suicide Potential." When asked if he would be executed, Ford stated, "I can't be executed because of the landmark case. I won. Ford v. State will prevent executions all over." Based on Ford's rapidly declining mental state, counsel invoked procedures of Florida law governing the determination of competency of a condemned inmate. Following the procedures set forth by Florida law, the Governor appointed three psychologists to determine whether Ford had "the mental capacity to understand the nature of the death penalty and the reasons why it was imposed upon him." While the psychologists were in accord on the question of Ford's sanity, their diagnoses differed. Despite this evidence, the Governor proceeded to sign a death warrant without explanation or statement. Following an unsuccessful attempt to schedule a state court hearing to determine anew Ford's competency to be executed, Ford's counsel filed a habeas corpus petition in the United States District Court for the Southern District of Florida. The district court denied the petition without a hearing. After a divided court of appeals affirmed the district court's decision, the Supreme Court granted Ford's petition for certiorari in order to resolve an important issue: whether the Eighth Amendment prohibits the execution of the insane and, if so, whether the district court should have held a hearing on petitioner's claim.

26 Id. After being diagnosed, Ford subsequently refused to be seen again, believing the doctor to have joined the conspiracy against him. Id. at 403. Ford's counsel was forced to seek assistance from a new doctor. Id.

27 Id. at 403. After hearing Ford's statements, a doctor concluded that "there was no reasonable possibility that Mr. Ford was dissembling, malingering or otherwise putting on a performance..." Id. One month later, Ford regressed further, speaking only in an incomprehensible code. Id.

28 Id.

29 Id. at 404. At one meeting, Ford met with three psychiatrists who interviewed him for approximately thirty minutes. Id. Following the meeting, each doctor was to file a separate two or three page report with the Governor. Id.

30 Id. at 404. "One doctor concluded that Ford suffered from 'psychosis with paranoia' but had 'enough cognitive functioning to understand the nature and effects of the death penalty, and why it is to be imposed on him.'" Id. Another described Ford as "psychotic," however, he stated that Ford "did 'know fully what can happen to him.'" Id. The third doctor found that Ford had "a 'severe adaptational disorder,' but did 'comprehend his total situation including being sentenced to death, and all of the implications of that penalty.'" Id. at 404.

31 Id.

32 Id.

33 Id. at 404.

34 Id. at 405. The panel majority for the Court of Appeals decided that Ford's contention was foreclosed by the Supreme Court's decision in Solesbee v. Balkcom, a case that examined a state statute which was, in the court's opinion, "virtually identical" to the Florida statute. Ford v. Wainwright, 752 F.2d 526, 528 (11th Cir. 1985), rev'd, 477 U.S. 399 (1986). The majority quoted the Court in Solesbee, stating, "We are unable to say that it offends due process for a state to deem its Governor an 'apt and special tribunal' to pass upon a question so closely related to powers that from the beginning have been entrusted to
In 1986, Justice Marshall delivered the Court’s opinion holding it unconstitutional “to exact in penance the life of one whose mental illness prevents him from comprehending the reasons for the penalty or its implications.” Additionally, the Court found the Florida statute failed to provide adequate assurances of accuracy in determining a person’s competency. While the Court found a full trial on the issue of sanity unnecessary, it suggested that the State should develop appropriate ways to enforce the constitutional restriction upon its execution of sentences.

Fifteen years following the *Ford* decision, in 2002, the Court handed down *Atkins v. Virginia*. Petitioner Atkins was convicted of abduction, armed robbery and capital murder in the State of Virginia. Despite testimony presented by a forensic psychologist concluding Atkins was “mildly mentally retarded,” he was nonetheless sentenced to death because of two aggravating circumstances. Additionally, the State presented a rebuttal witness who testified that Atkins was not mentally retarded but was of “average intelligence, at least” and diagnosed him as having antisocial personality disorder. On appeal, the Supreme Court of Virginia affirmed the imposition of the death penalty, rejecting Atkins’ contention “that he is mentally retarded and thus cannot be sentenced to death.” Based on the concerns presented by the dissenters on appeal, the Supreme Court granted certiorari.

Justice Stevens delivered the Court’s opinion, concluding that under the Eighth Amendment, in light of “evolving standards of decency,” it would be excessive to punish a mentally retarded offender with a penalty...
of death. Through its opinion, the Court created a categorical exception for mentally retarded individuals, stating that while their mental deficiencies did not warrant an exception from criminal sanctions, they diminished their personal culpability. Further, the Court stated that the imposition of the death penalty on a mentally retarded person failed to serve two main purposes of capital punishment: retribution and deterrence of capital crimes.

Following the Ford and Atkins decisions, scholars in both the legal and psychology fields began to advocate for a similar categorical exemption for mentally ill individuals. Many states, as well as the Model Penal Code, already permit defendants to offer evidence that an offense was committed "under the influence of extreme mental or emotional disturbance." Additionally, several states allow mental illness to be considered by the jury as a mitigating factor that could reduce a defendant's culpability. Several of the provisions specify that the impairment must be due to

44 Id. at 321.
45 See generally Atkins, 536 U.S. 304.
46 Id. at 321.
48 See, e.g., ARK. CODE ANN. § 5-4-605(1) (2004) (stating that “[m]itigating circumstance shall include...the capital murder was committed while the defendant was under extreme mental or emotional disturbance”); CONN. GEN. STAT. ANN. § 53a-54a (West 2004) (stating that “…it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance”); DEL. CODE ANN. tit. 11, § 641 (2005) (stating that “[t]he fact that the accused intentionally caused the death of another person under the influence of extreme emotional distress is a mitigating circumstance”); HAW. REV. STAT § 707-702 (2005) (stating that “[i]n a prosecution for murder or attempted murder in the first and second degree it is an affirmative defense, which reduces the offense to manslaughter or attempted manslaughter, that the defendant was...under the influence of extreme mental or emotional disturbance”); OR. REV. STAT. ANN. § 163.135 (West 2006) (stating that “[i]t is an affirmative defense to murder...that the homicide was committed under the influence of extreme emotional disturbance”); see also MODEL PENAL CODE § 210.6 (2001) (stating that “[t]he murder was committed while the defendant was under the influence of extreme mental or emotional disturbance”).
49 See supra note 48 (providing several examples of states that allow mental or emotional distress to be considered as a mitigating circumstance).
“mental disease or defect” or “mental illness.”\(^{50}\) Even further, state death penalty statutes currently include mental illness as a mitigating factor with respect to execution, allowing a defendant to request competency hearings prior to being executed.\(^{51}\)

The fact that both mental illness and incompetence have been codified in state death penalty statutes reflects the increasingly widespread agreement that defendants with several mental illnesses should be excluded from capital punishment.\(^{52}\) This notion has been supported by the professional, religious and legal communities.\(^{53}\) Both the American Psychological Association (“APA”) and the National Mental Health Association (“NMHA”) have taken positions opposing capital punishment for persons with mental illness.\(^{54}\) Similarly, several churches, as well as Amnesty International, have spoken out against the death penalty.\(^{55}\)

Despite the prohibitions set forth by the Eighth Amendment and \textit{Ford}, hundreds of mentally ill defendants still remain on death row.\(^{56}\)

\(^{50}\) See, \textit{e.g.}, TEX. [PENAL] CODE ANN. § 8.01 (Vernon 2005) (stating that “[i]t is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong”).

\(^{51}\) See, \textit{e.g.}, ARK. CODE ANN. § 16-86-111 (2001); GA. CODE ANN. § 17-10-68 (West 2005); TEX. CODE. CRIM. PROC. ANN. art. 46.05 (Vernon 2005).

\(^{52}\) See supra note 51.

\(^{53}\) See supra note 47.

\(^{54}\) See American Psychological Association, Resolution on the Death Penalty in the United States (Aug. 2001), available at http://www.apa.org/pi/deathpenalty.html. This resolution states:

[W]hereas death penalty prosecutions may involve persons with serious mental illness ... the American Psychological Association calls upon each jurisdiction in the United States that imposes capital punishment not to carry out the death penalty until the jurisdiction implements policies and procedures that can be shown through psychological and other social science research to ameliorate the deficiencies identified. ... Id. See also National Mental Health Association, News Release, NMHA Announces Position on Death Penalty (Apr. 2001), available at http://nmha.org/newsroom/system/news.vw.cfm?do=vw&rid=276 (stating “the NMHA Board called upon state governments ‘to suspend using the death penalty until more just, accurate and systematic ways of determining and considering a defendant’s mental status are developed.’”).

\(^{55}\) See Amnesty International, Statement Against the Death Penalty, available at http://www.deathpenaltyreligious.org/education/statements/aiusa.html (stating “Amnesty International opposes the death penalty in all cases without reservation.”); see also United Methodist Church, Capital Punishment, available at http://www.deathpenaltyreligious.org/education/statements/umd.html; United States Catholic Conference, Statement on Capital Punishment (Mar. 1978), available at http://www.deathpenaltyreligious.org/education/statements/catholicconference.html (declaring “Catholic bishops of the United States declared their opposition to capital punishment ... continue to support this position in the belief that a return to the use of the death penalty can only lead to the further erosion of respect for life in our society”).

\(^{56}\) See Amnesty International, The execution of mentally ill offenders, http://web.amnesty.org/library/print/ENGA00510032006 (last visited Feb. 8, 2007) (describing current situation as to mentally ill offenders on death row); see also NAACP De-
Usually they are left with a single option: to begin the long, and often frustrating, habeas corpus process. Generally, the purpose of a habeas corpus petition is not to determine a prisoner’s guilt, but to test whether a prisoner has been accorded due process. In order to protect individuals from wrongful imprisonment, prisoners hold the privilege of habeas corpus. Additionally, the process serves as a check on the way in which state courts pay respect to individuals’ constitutional rights.

For a defendant, the appeals process begins immediately following conviction. All avenues of direct appeal must be exhausted and finalized. At this point, an application for writ of habeas corpus must be filed in the state district court where the defendant was convicted. The case will then proceed to the state’s court of criminal appeals. If the state writ is unsuccessful, a defendant may then file the writ in federal district court. If the writ is unsuccessful in district court, a defendant may then appeal to the United States Court of Appeals as well as petition the United States Supreme Court for a writ of certiorari.

While a writ of habeas corpus serves as an important appellate right for prisoners, the process has its downfalls. The application and process for filing is complicated, and must usually be handled by an appellate attorney specializing in habeas corpus appeals. In addition, the habeas corpus process can take months, and even years, as defendants must exhaust all direct appeals before they can even begin habeas corpus appeals. Despite its disadvantages, a writ of habeas corpus is usually a defendant’s only option.

Prisoners whose competency to stand execution is questionable, like the individuals discussed in this note, generally appeal on the basis of

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57 See generally, Brent Newton, A Primer on Post-Conviction Habeas Corpus Review, 29 CHAMPION 16 (JUNE 2005) (explaining the habeas corpus process).
59 See generally, Newton, supra note 57.
60 Id.
61 Id.
62 See generally, Newton, supra note 57.
63 Id.
64 Id.
65 Id.
66 See generally, Newton, supra note 57.
67 Id.
68 Id.
69 See generally, Newton, supra note 57.
70 Id.
competency claims.\textsuperscript{71} Competency hearings, regulated by the Court's decision in \emph{Ford} as well as by state statutes, are held in order to make a determination about the defendant's mental competency.\textsuperscript{72} Unless a state's statutory requirement for incompetence is met, a sentence of death is likely to be carried out.\textsuperscript{73}

III. CURRENT STATUTORY SCHEMES

As previously mentioned, each state utilizing the death penalty has developed its own competency statute within the habeas corpus process in compliance with the Court's decision in \emph{Ford}.\textsuperscript{74} Therefore, when a convicted defendant alleges that he is insane or incompetent to stand execution, he must proceed through the state's statutory scheme.\textsuperscript{75} While each state's process is similar in framework, the definitions and language used to define competency differ greatly.\textsuperscript{76}

In Arkansas, a competency hearing is held when the insanity of the convicted defendant is alleged as a ground for postponing or not carrying out execution of any sentence.\textsuperscript{77} If a defendant is determined to be incompetent, he or she cannot be executed under Arkansas law.\textsuperscript{78}

\textsuperscript{71} \textit{See} \textit{Ford v. Wainwright}, 477 U.S. 399, 399 (1986).
\textsuperscript{72} \textit{Id.}
\textsuperscript{73} \textit{Id.}
\textsuperscript{74} \textit{See, e.g., ARK. CODE ANN.} \textsection{16-86-111} (West 2001); \textit{GA. CODE ANN.} \textsection{17-10-68} (West 2005) ("Notwithstanding any other provision of this Code, this article provides the exclusive procedure for challenging mental competency to be executed when such challenge is made subsequent to the time of conviction and sentence"); \textit{TEX. CODE CRIM. PROC. ANN.} art. 46.05 (Vernon 2005) ("A motion filed under this article must identify the proceeding in which the defendant was convicted, give the date of the final judgment, set forth the fact that an execution date has been set if the date has been set, and clearly set forth alleged facts in support of the assertion that the defendant is presently incompetent to be executed").
\textsuperscript{75} \textit{See, e.g., ARK. CODE ANN.} \textsection{16-86-111} (West 2001) ("The procedure provided in this subchapter shall also be followed . . . in any case in which the insanity of the convicted defendant is alleged as a ground for postponing or not carrying out execution of any sentence imposed as part of the judgment of conviction of the defendant"); \textit{GA. CODE ANN.} \textsection{17-10-68} (West 2005); \textit{TEX. CODE CRIM. PROC. ANN.} art. 46.05 (Vernon 2005).
\textsuperscript{76} \textit{See ARK. CODE ANN.} \textsection{16-90-506(d)(1)(B)} (2001) (stating a finding of incompetence requires "reasonable grounds for believing that an individual under sentence of death is not competent to understand the nature and reasons for that punishment"); \textit{GA. CODE ANN.} \textsection{17-10-60} (West 2005) (stating that "mentally incompetent to be executed means that because of a mental condition the person is presently unable to know why he or she is being punished and understand the nature of the punishment"); \textit{TEX. CODE CRIM. PROC. ANN.} art. 46.05(h) (Vernon 2005) (stating that "a defendant is incompetent to be executed if the defendant does not understand: (1) that he or she is to be executed and that the execution is imminent; and (2) the reason he or she is being executed").
\textsuperscript{77} \textit{See ARK. CODE ANN.} \textsection{16-86-111}(2001).
\textsuperscript{78} \textit{Id.}
In Georgia, the process for determining competency is explicitly laid out in the statute. Basically, a defendant files a complaint that challenges his competency to be executed. By filing the application, the defendant specifically consents to submit to a state examination for the purpose of assessing competency. Additionally, defendants have the opportunity to request a specific expert be appointed for the examination. Under Georgia law incompetency means "that because of a mental condition the person is presently unable to know why he or she is being punished and understand the nature of the punishment." If it is determined that the inmate is incompetent to stand execution by a preponderance of the evidence, the court is to enter an appropriate order with respect to the scheduled execution. If, however, a person found mentally incompetent regains their competency, the appropriate mental health official is required to report such evidence to the court. If this happens, the court would enter an appropriate order vacating any previously entered stay of execution.

In Texas, a defendant must first file a motion that clearly sets forth the allegations of incompetence to be executed. Upon receipt of the motion, the trial court shall determine whether the defendant raised substantial doubt as to competency. If the defendant successfully does so, the trial court orders at least two mental health experts to examine the defendant to determine competency. As defined by Texas law, a defendant is incompetent to be executed if "the defendant does not understand that he or she is to be executed and the execution is imminent; and the reason he or she is being executed."

80 Id.
81 Id.
82 Id.
83 Id.
85 Id.
86 Id.
88 Id.
89 Id.
90 Id.
A. Charles Singleton – Medical History

For Singleton, symptoms of mental illness began in the early 1980's, after entering prison. The State placed him on medication to control anxiety and depression. In 1987 Singleton began to suffer delusions, claiming demons possessed his cell and that his thoughts were taken from him when he read the Bible. Singleton's psychiatrist diagnosed him as schizophrenic and prescribed antipsychotic medication. Soon after Singleton refused to take medication, his doctor ordered involuntarily medication. In 1988 the State took him off the antipsychotic drugs after his condition improved.

Over the next several years Singleton went through cycles of improvement followed by the return of delusions and involuntary medication. In 1997, a prison psychiatrist diagnosed Singleton as suffering from paranoid schizophrenia. Later in 1997, a prison medication review panel ordered him to take antipsychotic drugs after finding he posed a danger to himself and others.

In response to the order, Singleton's attorneys filed suit, arguing it was unconstitutional for the state to restore Singleton’s competency through the use of forcible medication in order to execute him. In 2001, the Eighth Circuit Court of Appeals ruled that Singleton be sentenced to life in prison without the possibility of parole. The State of Arkansas appealed, and a divided full panel of the Eighth Circuit lifted a stay of execution for Singleton. The court held that because he now voluntarily takes medication and because Arkansas has an interest in having sane in-

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91 See Singleton v. Norris, 267 F.3d 859, 862 (8th Cir. 2001) (describing Singleton's prison experience and need for medication to control anxiety and depression shortly after entering prison).
92 Id.
93 Id.
94 Id.
95 See Singleton v. Norris, 267 F.3d at 862.
96 Id.
97 Id. at 863.
98 Id. at 864.
99 Id.
100 Id.
101 Id. at 871.
102 Id.
mates, the side effect of sanity should not affect Singleton’s sentence.103 The Supreme Court declined to hear Singleton’s case without comment.104

B. Charles Singleton – Legal History

Charles Singleton’s journey toward execution began in 1979.105 He was nineteen when he stabbed Mary Lou York to death while robbing a small grocery store in Hamburg, Arkansas.106 He was convicted and sentenced to death.107

Singleton’s conviction for felony murder was affirmed in November 1981 by the Arkansas Supreme Court.108 The robbery conviction and sentence, however, were vacated on double jeopardy grounds.109 Arkansas set his execution date for June 4, 1982 and the Arkansas Supreme Court denied Singleton’s petition for a stay.110

Singleton promptly filed a petition for stay of execution in the United States District Court for the Eastern District of Arkansas.111 Among other things, Singleton claimed that he was not competent to be executed under Ford.112 On June 1, 1982 the district court granted Singleton’s petition for a writ of habeas corpus. The district court held that the sentence of death was invalid under the Eighth Amendment because of Arkansas’ reliance on an invalid aggravating factor.113 Although the court sustained the conviction, it required the State to reduce Singleton’s sentence to life in prison without parole.114

Both Singleton and the State appealed the district court’s order.115

103 Id.
104 Id.
108 Id.; see also Singleton v. State, 623 S.W.2d 180 (Ark. 1981) (holding that defendant failed to show trial court committed irreversible error in failing to excuse for cause three veniremen and murder victim’s statements related to defendant’s cutting her throat fell under excited utterance exception to hearsay rule).
109 See Singleton v. State, 623 S.W.2d at 181 (explaining how Arkansas law prohibits entry of judgment of conviction on capital felony murder and underlying specified felony).
110 See Singleton v. Norris, 267 F.3d at 860.
111 Id.
112 Id. at 866 (reiterating Ford standard that to be competent for execution a prisoner must be aware of the punishment he is about to receive and reason for it).
113 Id. (explaining that the State incorrectly relied on the theory that Ford committed the crime for pecuniary gain).
114 Id. at 861.
115 Id.
Singleton sought to raise issues decided against him, namely the *Ford* claim. The Eighth Circuit Court of Appeals affirmed the district court’s decision to uphold the conviction, but reinstated the sentence of death. On remand, Singleton challenged the reinstatement of the death sentence. In June of 1990, however, the district court dismissed his petition and dissolved the stay of execution.

In 1992 Singleton filed a *Ford* claim in both state and federal courts arguing he was incompetent to be executed. In accordance with *Ford*, Singleton sought an order that the State cease administration of antipsychotic drugs and conduct a psychiatric examination. The state court held that Singleton had properly sought a mental examination, but denied his motion. On appeal, the Arkansas Supreme Court held that Singleton had been unconstitutionally denied a competency examination. Meanwhile, the district court held Singleton’s federal petition in abeyance until the Arkansas Supreme Court ruled on the appeal. After the Arkansas Supreme Court issued its ruling, and following two hearings on the matter, the district court dismissed Singleton’s petition. It held that Singleton, who was at that time voluntarily taking antipsychotic medications, was only competent to be executed. On appeal, Singleton conceded that he had no competency claim at that time, because he was voluntarily taking medication and was competent while medicated. A divided panel of the Eighth Circuit reversed and directed the district court to grant Singleton’s habeas corpus petition, enter a permanent stay of execution and reduce Singleton’s sentence to life in prison without parole.

Following the panel’s holding, the State petitioned for a rehearing en banc. Unfortunately for Singleton, the en banc court held that the Eighth Amendment is not violated when a state “executes a prisoner who became incompetent during his long stay on death row but who subsequently regained competency through appropriate medical care.” The court affirmed the district court’s original denial of Singleton’s habeas

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116 *Id.* at 861.
117 *Id.*
118 *Singleton v. Norris*, 267 F.3d at 861.
119 *Id.*
120 *See Singleton v. Norris*, 267 F.3d at 861.
121 *Id.*
122 *Singleton v. Norris*, 267 F.3d at 861.
123 *Id.*
124 *Id.* at 862.
125 *Id.*
126 *Singleton v. Norris*, 267 F.3d at 862.
127 *Id.*
128 *Id.* at 871.
129 *Singleton v. Norris*, 319 F.3d 1018, 1027 (8th Cir. 2003).
corpus petition and vacated the stay of execution. Almost twenty-five years after being convicted and sentenced to death, Charles Singleton was executed by lethal injection on January 6, 2004.

C. James Willie Brown — Medical History

At fifteen years old, in 1963, doctors diagnosed Brown as suffering from convulsive disorder and prescribed medication to control Brown’s seizures. He joined the Marine Corps when he was just eighteen years old, but after sixteen months and two hospitalizations the military discharged him. He was arrested for the first time in 1968, but pled guilty and was later committed to a state mental hospital. Brown was placed on parole in 1972 and he voluntarily re-admitted himself into a state mental hospital. He spent two years in state care and was released in January of 1974. Following his arrest for murder in 1975, doctors diagnosed Brown for the first time with paranoid schizophrenia.

Between the years 1975 and 1989, James Willie Brown was diagnosed with paranoid schizophrenia more than seventeen times. He suffered psychosis, believing someone was trying to kill him through poisoning or germs. Brown also had hallucinations of God and the devil. Reports from 1977 describe him as “deranged, preaching the gospel and signing his name as Jesus Christ.” Up until the time of his 2003 execu-

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130 Id.
133 Id.
134 See Brown v. State, 295 S.E.2d 727, 730 (Ga. 1982). Brown was arrested and charged with assault with intent to rape, robbery, and two counts of assault with intent to murder. Id. He was diagnosed with “Psychoneurotic Disorder, Dissociative Reaction,” but doctors nonetheless recommended he be returned to court for disposition of the charges. Id. In December of 1968, Brown pled guilty and was sentenced to ten years for each count. Id.
135 See Brown v. State, 295 S.E.2d at 730. “This time doctors found Brown to be suffering from ‘mild to moderate’ degree of psychiatric impairment.” Id.
136 Id.
137 Brown v. State, 295 S.E.2d at 730. An examining psychiatrist concluded that Brown had severely deteriorated since his previous diagnosis and was now “overtly psychotic.” Id. He was diagnosed this time with “Schizophrenia, paranoid type.” Id. It was based upon this diagnosis that a special plea of insanity was sustained for Brown. Id.
139 Id.
140 Id.
141 Id.

D. James Willie Brown – Legal History

In 1975, James Willie Brown was charged with the rape and murder of Brenda Watson.\footnote{See Brown v. State, 401 S.E.2d 492, 493 (Ga. 1991).} He was found incompetent to stand trial, but was eventually tried, convicted and sentenced to death for Watson’s murder in 1981.\footnote{Id.} His conviction and death sentence were affirmed by the Georgia Supreme Court in 1982.\footnote{Id.} In 1988, Brown succeeded on a habeas petition in a federal district court.\footnote{Id. at n.1.} The district court ordered a retrial as well as a “reliable determination” of Brown’s competence.\footnote{Id. at 495.}

Unfortunately for Brown, two evaluating physicians and a special jury found him competent to stand trial once again.\footnote{Brown v. State, 401 S.E.2d at 493-94.} In 1991, for a second time, he was tried, convicted and sentenced to death.\footnote{Id. at 493-94.} In a final appeal to the Georgia Supreme Court, Brown’s conviction and sentence were affirmed and on November 4, 2003, James Willie Brown was executed by lethal injection.\footnote{Death Penalty Information Center, Executions in the United States in 2003, http://www.deathpenaltyinfo.org/article.php?scid=8&did=464 (last visited Feb. 10, 2007).}

E. Kelsey Patterson – Medical History

Kelsey Patterson’s journey toward execution began in 1980 when he was charged with shooting Richard Noel Lane in Dallas, Texas.\footnote{International Justice Project, Kelsey Patterson Case Overview, http://www.internationaljusticeproject.org/illnessKPatterson.cfm (last visited Feb. 10, 2007).} He
was charged with attempted murder, but was found incompetent to stand trial. Psychiatrists first diagnosed Patterson with paranoid schizophrenia in 1971 at the Dallas County Jail. After being charged again with attempted murder and assault years later, Patterson spent several months in the Terrell State Hospital. Psychiatrists at the hospital again diagnosed Patterson as paranoid schizophrenic, and discharged him a month later.

Patterson consistently suffered from delusions, usually involving authority figures in his life, including prison officials and his lawyers. He often described detailed conspiracies against him, he believed devices were implanted in his body and believed the state gave him a permanent stay of execution. After being convicted, Patterson refused all medical treatment and any further attempts to diagnose him. Additionally, while on death row, Patterson refused to cooperate with his lawyers or even acknowledge their representation on his behalf. Because of Patterson's refusal to be treated, his uncontrolled symptoms made it nearly impossible for him to communicate with the outside world. Eventually, prison officials no longer attempted to treat him, believing he did not pose a threat to himself or others.

F. Kelsey Patterson – Legal History

In 1992, Kelsey Patterson was charged with the murders of Louis Oates and Dorothy Harris. At the time of his arrest, Texas' standard for incompetency was more stringent than today's, making it a more difficult evidentiary standard for defendants to meet. While psychiatrists did not dispute Patterson's mental illness, they nonetheless concluded he was competent under the standard. He was eventually found competent to stand trial, and on July 1, 1993 Patterson was convicted and sentenced to
death.\textsuperscript{165} In May 1997, Patterson filed for state habeas corpus relief claiming incompetence to stand trial and ineffective assistance of counsel.\textsuperscript{166} The state court conducted an evidentiary hearing regarding Patterson’s claims, and recommended that relief be denied.\textsuperscript{167} The Texas Court of Criminal Appeals affirmed that denial in 1998.\textsuperscript{168} Patterson next filed for federal habeas relief in August 1998.\textsuperscript{169} The district court stayed Patterson’s execution, originally scheduled for August 31, 1998, pending the federal habeas proceedings.\textsuperscript{170} After evidentiary hearings, a magistrate judge recommended that habeas relief be denied.\textsuperscript{171} In 2001, the district court adopted the magistrate judge’s findings and denied federal habeas relief.\textsuperscript{172} The district court did, however, grant Patterson a certificate of appealability ("COA") on the issues of his competence to stand trial and ineffectiveness of counsel at the guilt-innocent and sentencing phases of the trial.\textsuperscript{173} The Fifth Circuit concluded that Patterson failed to demonstrate "that the state court’s adjudication of his claim of incompetence was based on an unreasonable determination of the facts in light of evidence presented."\textsuperscript{174} The court based its determination on the fact that every psychiatric expert who worked with Patterson prior to trial concluded that he was competent.\textsuperscript{175} Additionally, it found that Patterson’s ramblings and outbursts in court during the trial were not evidence of his delusions or mental illness.\textsuperscript{176} The Fifth Circuit also addressed Patterson’s competence to be executed under \textit{Ford}.\textsuperscript{177} The court held that Patterson was competent to be executed at the time of the state habeas hearing based on his knowledge that he would be executed and the reason for it.\textsuperscript{178} The court held that state courts should have the opportunity to revisit the issue of Patterson’s competency to be executed because more than three years time had passed since the state proceedings, and because of evidence that Patterson’s delu-

\textsuperscript{165} Id.; see also Patterson v. Cockrell, No. 01-40447, 2003 WL 21355999 (5th Cir. May 23, 2003).
\textsuperscript{166} Id.
\textsuperscript{167} Id.
\textsuperscript{168} Id.
\textsuperscript{169} Id.
\textsuperscript{170} Patterson v. Cockrell, No. 01-40447, 2003 WL 21355999 (5th Cir. May 23, 2003).
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Patterson v. Cockrell, No. 01-40447, 2003 WL 21355999 (5th Cir. May 23, 2003).
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Patterson v. Cockrell, No. 01-40447, 2003 WL 21355999 (5th Cir. May 23, 2003).
sions had progressed. Following another unsuccessful round of appeals in state court, and again in both the district court and the Fifth Circuit, Patterson’s claims of incompetence to stand execution were again denied. Using transcripts from the lower court hearings as well as documents from pro se claims made by Patterson, the court held that he was competent to stand execution under Texas law. The State of Texas executed Kelsey Patterson by lethal injection on May 18, 2004.

V. ANALYSIS

A. A Closer Look at Atkins v. Virginia

In Atkins v. Virginia the Supreme Court created a blanket protection for mentally retarded defendants, holding it cruel and unusual to execute such individuals. The Court discussed Eighth Amendment claims and the standards by which such claims should be analyzed. Quoting Trop v. Dulles, the Court stated “the basic concept of the Eighth Amendment is nothing less than the dignity of man...The Amendment must draw its meaning from the evolving standards of decency that mark the profess of a maturing society.” In deciding the case, the Court looked at two basic factors: judgment of legislatures and whether death penalty justification could apply to mentally retarded defendants.

Beginning in 1990, following the execution of Jerome Bowden in Georgia and the Penry case, many state legislatures began to confront the issue of executing mentally retarded individuals. Georgia was the first to

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179 Id.
180 Patterson v. Dretke, 370 F.3d 480 (5th Cir. 2004).
181 See Patterson v. Dretke, 370 F.3d at 480.
184 Id. at 311-12. In analyzing Eighth Amendment claims, the Court explained that a punishment should be graduated and proportioned to the offense. Id. at 311. The Court emphasized the importance of analyzing “objective factors” when engaged in a proportionality review. Id. at 312. It noted that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.” Id. (citing Penry v. Lynaugh, 492 U.S. 302, 331 (1989)).
185 Atkins, 536 U.S. at 311-12.
186 Id. at 313.
enact such a statute in 1988. Congress followed in 1988 by prohibiting executions of mentally retarded individuals under the federal death penalty. Over the next ten years, eighteen states followed suit.

While the number of statutes prohibiting the execution of mentally retarded individuals was significant, even more persuasive was the progression in legislation as well as an obvious change in national consensus. The Court noted official positions of several professional organizations as well as religious groups.

In addition to looking at national consensus on the issue, the Court analyzed the relationship between mental retardation and the penological purposes served by the death penalty. The Court noted that mentally retarded individuals often know the difference between right and wrong. However, because of their diminished capacities, they may be incapable of processing information, communicating, learning from experiences, controlling impulses and understanding the reactions of others. The Court stated that while “their deficiencies do not warrant an exemption from criminal sanctions, they do diminish their personal culpability.” The Court went on to articulate two reasons why the death penalty jurisprudence was consistent with national consensus on the execution of mentally retarded individuals. First, was whether justifications for the death penalty even apply to mentally retarded defendants. Second, the Court stated that the risk “that the death penalty will be imposed in spite of fac-

187 See Ga. Ann. Code § 17-7-131 (West 1988) (“In all cases in which the defense of insanity is interposed, the jury, or the court if tried by it, shall find whether the defendant is: (E) Guilty, but mentally retarded.”).
188 See 21 U.S.C.A. § 848(l) (West 1994) (“A sentence of death shall not be carried out upon a person who is mentally retarded”).
190 See Atkins, 536 U.S. at 316.
191 Id. The Court noted several organizations that adopted official positions opposing the death penalty for mentally retarded offenders. Id. at n.21. These organizations included the American Psychological Association, the American Association of Mental Retardation, representatives of several religious communities and United States Catholic Conference. Id.
192 Id. at 317.
193 Id. at 318.
194 Id.
195 Id.
196 Id.
197 Id. at 318-19.
tors which may call for a less severe penalty," is enhanced, not only by the possibility of false confessions, but also by the lesser ability of mentally retarded defendants to make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors."

B. Comparing Mental Retardation with Severe Mental Illness

Before analyzing any possible application of Atkins to mentally ill defendants, it is helpful to analyze specific similarities between the two. Mental retardation is classically defined as “a mental disability characterized by significant limitations in intellectual functioning and adaptive behavior expressed in conceptual, social and practical skills.” Mental retardation often appears in childhood and, while a person’s life functioning may improve over time, it is considered a permanent disability. Treatment for mental retardation commonly includes a variety of “supports,” i.e., services and strategies that can help achieve optimum functioning. Generally, it is recommended that treatment be individualized as mental retardation manifests itself differently in each person it affects.

As previously mentioned, mental illness is defined as “any of various conditions characterized by impairment of an individual's normal cognitive, emotional, or behavioral functioning, and caused by social, psychological, biochemical, genetic or other factors.” Schizophrenia, a mental illness suffered by the defendants discussed in this note, is categorized as chronic, severe and disabling. Many schizophrenics experience symp-

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198 Id. at 320 (quoting Lockett v. Ohio, 438 U.S. 586, 605 (1978)).
201 See AAMR, supra note 199 (explaining the AAMR’s position that providing supports can improve individual functions and promote self-determination and personal well-being over time). Nine key areas are suggested: human development, teaching and education, home living, community living, employment, health and safety, behavior, social and protection and advocacy. Id.
204 See National Institute of Mental Health, Schizophrenia, http://www.nimh.nih.gov/healthinformation/schizophreniamenu.cfm (last visited Feb. 10, 2007) (hereinafter NIMH) (describing definitions of schizophrenia). Positive symptoms of schizophrenia include: thought disorder, hallucinations, delusions and movement disorder. Id. Negative symptoms include: lack of emotion and/or pleasure in everyday life, diminished ability to initiate or sustain planned activity and inability to communicate effectively. Id. Cognitive symptoms include: lack of attention, memory and the executive functions which allow us to plan and organize. Id.
toms such as hallucination, delusions, inability to communicate and lack of attention and memory. \(^{205}\) Since the cause of schizophrenia is still unknown, treatment focuses on the use of antipsychotic medications to control severe symptoms. \(^{206}\) Additionally, patients already stabilized on antipsychotic medications can benefit from psychosocial treatment consisting of illness management education, cognitive behavioral therapy, family education and self-help groups. \(^{207}\)

C. Applying the Atkins Analysis to Mentally Ill Defendants

As previously discussed, the Atkins Court held that executing mentally retarded criminals would be considered "cruel and unusual punishment" prohibited by the Eighth Amendment. \(^{208}\) In deciding the case, the Court considered two main factors: the judgment of state legislatures and death penalty justifications. \(^{209}\)

1. Judgment of Legislatures

In Atkins, the Court analyzed viewpoints of both state legislatures as well as other organizations in addressing the suitability of imposing the death penalty on mentally retarded offenders. \(^{210}\) The Court then considered reasons to agree or disagree with their judgments. \(^{211}\)

As in the case with mentally retarded offenders, there is nationwide support of state legislatures, courts and other organizations, for excluding severely mentally ill offenders from receiving the death penalty as punishment for their crimes. \(^{212}\) For instance, twenty states list a defendant's capacity to appreciate the criminality of their conduct as a statutory mitigating circumstance. \(^{213}\) Additionally, several states include "extreme men-

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\(^{205}\) See supra note 204.

\(^{206}\) See supra note 205.

\(^{207}\) See supra note 204.

\(^{208}\) Atkins, 536 U.S. at 320.

\(^{209}\) Id. at 313.

\(^{210}\) Id.

\(^{211}\) Id.

\(^{212}\) Atkins, 536 U.S. at 320.

\(^{213}\) Atkins, 536 U.S. at 320.
tal disturbance” as a mitigating factor. The Model Penal Code (“MPC”), adopted by several states, also includes provisions for considering mental illness as a mitigating factor in sentencing for capital crimes. The MPC directs the sentencing court to consider whether “the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.” The MPC also requires courts to consider whether “at the time of the murder, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect or intoxication.”

In addition to support on the state level, there are several national organizations that express strong opposition to the execution of mentally ill offenders. Most recently, Amnesty International released an extensive report on the execution of mentally ill offenders in the United States. The report urges the United States to “rid itself of one of the most shameful aspects of this indecent punishment—the execution of people with serious mental illness.” The report also details recommendations for government officials including continued state-level development of criteria that would exclude mentally ill defendants from the death penalty under an


216 Id. § 210.6(4)(b).

217 Id. § 210.6(4)(g).

218 See supra notes 54-55 and accompanying text.

"Atkins extension."\(^{221}\)

The American Bar Association ("ABA") also advocates on behalf of mentally ill offenders.\(^{222}\) In addition to establishing the Task Force on Mental Disability and the Death Penalty in 2003, several ABA members joined together in a 2005 symposium sponsored by Catholic University Law Review to examine positions regarding the death penalty and mental illness.\(^{223}\)

2. Death Penalty Justifications

In *Atkins*, the Court looked carefully at two death penalty justifications, "retribution and deterrence," and their respective application to mentally retarded offenders.\(^{224}\) Quoting *Enmund v. Florida*, the Court held

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\(^{221}\) *Id.*


Defendants should not be executed or sentenced to death if, at the time of the offense, they had a severe mental disorder or disability that significantly impaired their capacity (a) to appreciate the nature, consequences, or wrongfulness of their conduct; (b) to exercise rational judgment in relation to conduct; or (c) to conform their conduct to the requirements of the law. A sentence of death should not be carried out if the prisoner has a mental disorder or disability that significantly impairs his or her capacity (i) to make a rational decision to forgo or terminate post-conviction proceedings available to challenge the validity of the conviction or sentence; (ii) to understand or communicate pertinent information, or otherwise assist counsel, in relation to specific claims bearing on the validity of the conviction or sentence that cannot be fairly resolved without the prisoner’s participation; or (iii) to understand the nature and purpose of the punishment, or to appreciate the reasons for its imposition in the prisoner’s own case.


"unless the imposition of the death penalty on a mentally retarded person 'measurably contributes to one or both of these goals, it is nothing more than the purposeless and needless imposition of pain and suffering' and hence an unconstitutional punishment."225

With respect to retribution, the Court held that the severity of the punishment necessarily depends on the culpability of the offender.226 Over time, Supreme Court jurisprudence has confined the imposition of the death penalty to a narrow category of serious crimes.227 Like mentally retarded offenders, mentally ill offenders should also be considered less culpable than the average murderer.228 Certainly, they are less culpable than those murderers whose crimes fall into the narrow category of capital crimes.229 Based on their inability to appreciate the severity of their crimes, an exclusion from the death penalty for mentally ill offenders is appropriate.230

With respect to deterrence, the Court held that "it seems likely that 'capital punishment can serve as a deterrent only when murder is the result of premeditation and deliberation.'"231 In theory, the increased severity of the punishment will inhibit other criminals from carrying out murders.232 Like mentally retarded offenders, mentally ill offenders often suffer severe cognitive and behavioral impairments that make them incapable of understanding and processing information, learning from social experiences, engaging in logical reasoning or controlling impulses.233 Based on these inabilities, excluding mentally ill offenders from execution will not lessen the deterrent effect for other mentally ill offenders or even those who are not mentally ill.234

According to the above analysis, the execution of mentally ill offenders serves neither social justification for the death penalty.235 Therefore, excluding such defendants from receiving the death penalty as pun-

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225 Id. (quoting Enmund v. Florida, 458 U.S. 782, 799 (1982)).
226 Id.
227 Id. (describing Godfrey v. Georgia, 446 U.S. 420 (1980), where the Court set aside a death sentence because the petitioner's crimes did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder").
228 See supra notes 225-226 and accompanying text.
229 See supra notes 215-216, 222, 225-226 and accompanying text.
230 See supra notes 215-216, 222, 225-226 and accompanying text.
231 See Atkins, 536 U.S. at 319 (quoting Enmund v. Florida, 458 U.S. 782, 799 (1982)).
232 Id.
234 See supra note 222 and accompanying text.
235 See supra notes 215-16, 222, 225-26 and accompanying text.
ishment for their crimes is appropriate.\textsuperscript{236}

3. Implications of Extending \textit{Atkins} to Mentally Ill Offenders

By creating a categorical exemption from the death penalty for severely mentally ill offenders, the fear of executing those less culpable for their crimes could be put to rest.\textsuperscript{237} Although the Court in \textit{Ford} attempted to protect mentally ill offenders, the states' legislative responses to the decision have proven to be insufficient.\textsuperscript{238} As proof, one could revisit the cases of several mentally ill defendants, aside from those discussed in this note, that have either been executed or currently await their executions on death row.\textsuperscript{239}

Creating a categorical exclusion for severely mentally ill offenders would require courts to offer alternative sentences, such as life imprisonment or a permanent commitment to an institution.\textsuperscript{240} Additionally, a finding of severe mental illness post-sentencing would require commutation of a prisoner's death sentence.\textsuperscript{241} Finally, in order to avoid wrongful execution, prisons would have to utilize mandatory evaluations for those prisoners suspected of suffering from mental illness, but who might refuse psychiatric evaluation.\textsuperscript{242}

\textbf{D. \textit{Atkins}' Effect on Statutory Schemes in Arkansas, Georgia and Texas}

If the Supreme Court were to hand down a categorical exemption from the death penalty for severely mentally ill offenders, the statutory schemes in Arkansas, Georgia and Texas would drastically change. Each state would have to develop legislation to protect mentally ill offenders at both the sentencing and post-conviction stages.

While each of the three states employs different procedures, each

\begin{itemize}
  \item \textsuperscript{236} \textit{Id.}
  \item \textsuperscript{237} \textit{See} Ronald S. Honberg, \textit{The Injustice of Imposing Death Sentences on People with Severe Mental Illnesses}, 54 \textit{CATH U. L. REV.} 1153 (2005) (explaining the inappropriateness of imposing death sentences on mentally ill offenders).
  \item \textsuperscript{238} \textit{See supra} notes 225-226 and accompanying text. \textit{See also} Treatment Advocacy Center, \textit{Criminalization of Americans with Severe Mental Illnesses}, http://www.psychl aws.org/GeneralResources/Fact3.htm (last visited Feb. 8, 2007) (describing current statistics as to mentally ill offenders in prisons).
  \item \textsuperscript{239} \textit{See supra} notes 225-226 and accompanying text. \textit{See also} Treatment Advocacy Center, \textit{Criminalization of Americans with Severe Mental Illnesses}, http://www.psychl aws.org/GeneralResources/Fact3.htm (last visited Feb. 8, 2007) (describing current statistics as to mentally ill offenders in prisons).
  \item \textsuperscript{240} \textit{See supra} notes 225-226 and accompanying text.
  \item \textsuperscript{241} \textit{Id.}
  \item \textsuperscript{242} \textit{Id.}
\end{itemize}
state legislature would have to carefully consider its scheme to make sure it would sufficiently protect mentally ill offenders. One thing that Arkansas, Georgia and Texas all have in common is vague statutory definitions of “insane” and “competent.” Each statutory definition utilizes some form of the requirement that the prisoner understand the nature of, as well as reasons for, the punishment. It is clear from the cases and the number of mentally ill inmates executed, that Courts overseeing competency hearings are struggling to develop a bright line standard for competency to be executed.

No matter the solution, be it adopting a new federal standard or utilizing a scheme similar to that created by the ABA Task Force on Mental Disability and the Death Penalty, the bottom line is that states utilizing capital punishment would have to change their laws. Despite the likely difficulty in recreating death penalty schemes to protect the mentally ill, states like Arkansas, Georgia and Texas will someday be forced to truly comply with the requirements set out more than twenty years ago in *Ford v. Wainwright*.

VI. CONCLUSION

While it is too late for Charles Singleton, James Willie Brown and Kelsey Patterson, a categorical exemption for severely mentally ill offenders would restore humanity to the administration of capital punishment. Although American society may not be quite ready for this kind of change, existing state and model statutes, as well as the views of several national organizations, suggest a movement in favor of sparing the lives of offenders with severe mental illness. While most would agree that mentally ill defendants should continue to be punished for their crimes, others will soon realize that despite the fact that executing mentally ill offenders has already been declared unconstitutional, people continue to slip through the cracks. Our justice system will only be able to protect these vulnerable individuals with a sweeping exclusion from a penalty of death.

*Stephanie Zywien*