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James Colburn: mentally ill man scheduled for execution in Texas

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“You are going to hear evidence that the defendant is a paranoid schizophrenic... You will hear evidence that he’s heard voices and you are going to see him on tape. He’s shaking or fidgeting. The State is not going to contest or deny any of that...” Prosecutor, opening statement, trial of James Colburn, October 1995.

The State of Texas intends to kill James Blake Colburn in its execution chamber on 6 November 2002. It intends to do so despite the fact that the 42-year-old Colburn has an extensive history of chronic paranoid schizophrenia, a serious mental illness whose symptoms include hallucinations and delusions. His mental illness is undisputed by the state. He was displaying signs of his illness on the day of the crime, including at the time of his confession to police. In pre-trial detention, his mental health treatment was inadequate, resulting in several psychotic episodes. Finally, there is evidence that he was not competent to stand trial – not least because during that period he was receiving injections of a powerful sedative drug which apparently caused him to lose awareness of the proceedings and even to fall asleep in open court.

Texas is the main executing state of the United States of America. It accounts for a third of the executions carried out nationwide since the USA resumed executions in 1977. As of 15 October 2002, Texas had executed 285 men and women out of a national total of 805. As concern has increased in the USA about the fairness and reliability of the country’s capital justice

system, Texas appears to be immune from this concern, and its machinery of death remains as active as ever. It accounts for around half of the country's executions in 2002, 29 out of the 56 judicial killings carried out to 15 October.

Texas continues to contravene international human rights standards in its pursuit of the ultimate punishment. For example, it leads the country, and indeed the world, in the use of the death penalty against child offenders, those under 18 at the time of the crime. It has executed prisoners whose legal representation at trial or on state appeal was inadequate. Prisoners have been put to death despite serious doubts about their guilt. Texas has executed foreign nationals who were denied their consular rights after arrest. Finally, Texas has used the death penalty against people with mental retardation and mental illness.

James Colburn's execution would fly in the face of repeated resolutions at the United Nations calling on the diminishing list of countries that still retain the death penalty not to impose it or carry it out against people with mental disorders. Past cases suggest that the Texas authorities care little about such resolutions or international human rights treaties and other standards. In which case, Texas is part of a problem that its former governor, George W. Bush, cited in a recent address to the UN General Assembly. Seeking a resolution on Iraq, President Bush spoke of UN resolutions being "unilaterally subverted", and proclaimed the US Government's desire to see a United Nations that is "effective, and respected, and successful". For consistency's sake, not to mention for the sake of compassion, the President should make a personal appeal to the Texas Board of Pardons and Paroles and to his successor in the governor's mansion in Austin, in favour of commutation of James Colburn's death sentence.

Amnesty International members in the USA and around the world continue to appeal to the Texas Board of Pardons and Paroles to recommend that Governor Rick Perry commute James Colburn's death sentence in the interest of justice and decency and the reputation of Texas and the country as a whole (see Urgent Action 300/02, AMR 51/157/2002, 3 October 2002).

The crime and confession

On 26 June 1994, Montgomery County police in eastern Texas received a phone call from a neighbour of James Colburn who said that Colburn had told him that he had just killed a woman and that her body was in his apartment. James Colburn waited for the police to arrive, and was arrested after the body of 55-year-old Peggy Louise Murphy was found in his home. She had been strangled and stabbed.

At the police station, on the same day as the murder, James Colburn gave a videotaped confession. He told the interrogating officer that he suffered from paranoid schizophrenia. The recording indicates that Colburn was struggling with his mental illness. He rocked back and forth in the chair when sitting and paced to and fro when standing. He lost control of his bladder, and had to be provided with dry clothing. The interrogating officer noticed that James Colburn was shaking uncontrollably.

In his confession, James Colburn said that he had seen Peggy Murphy on the highway and had invited her into his apartment. He stated that he had "this flash that he was going to hurt her". He said that he tried to have sex with her, but that she did not want it, and he abandoned his attempt. He said that "this one impulse came over me said to kill her... I couldn't stop myself". After the murder he said that he had considered leaving the area, but had instead decided to go to his neighbour's home and tell him to call the police.

The question of sanity and competency

James Blake Colburn first began displaying symptoms of mental illness, including auditory and visual hallucinations, in his teens and was first diagnosed as suffering from paranoid

schizophrenia at the age of 17. This was also the age at which he was subjected to a homosexual rape by a man who had picked him up hitchhiking.

At the time of the murder of Peggy Murphy, James Colburn was being treated on an outpatient basis for paranoid schizophrenia. His treatment appears to have been irregular. For example, on 4 May 1994, eight weeks before the murder, the psychiatrist on his case wrote in Colburn's medical records: "Off meds? Several months. Needs to restart".

According to a post-conviction psychiatric assessment, in the week leading up to the murder James Colburn was allegedly experiencing increasing auditory and visual hallucinations. He said that on the evening before the murder he took an overdose of Valium, about 10-15 pills, in response to an auditory command hallucination to kill himself. When he awoke the next day, he was still experiencing auditory hallucinations. Soon afterwards he saw Peggy Murphy and invited her into his apartment. According to the confession, and his subsequent psychiatric assessments, the auditory command hallucinations continued during the time she was in his home, and according to his recollection, led directly to her murder.

In pre-trial custody in Montgomery County Jail, it seems that James Colburn's mental health care was less than adequate. Despite being an indigent defendant, the jail required Colburn to pay for his medication from the small amount of money he had in his commissary account. At times, this mentally ill man chose to spend his money on soft drinks and sweets rather than on anti-psychotic medication. Indeed, the jail records indicate that there were gaps in his pre-trial treatment. For example, the entry for 27 June 1994 reports that Colburn was on suicide watch. There is then no other entry until 11 September 1994. On 19 September, the record indicates that James Colburn "states he no longer will continue taking his medication due to the fact that he does not want to lose [sic] money from commissary to pay for it." On 9 October, he was treated on an emergency basis. He was suicidal and had been urinating and defecating on himself, and was "very agitated". He was again placed on suicide watch. A few days later, the records indicate that he was again refusing medication because "he does not want to pay for it". On 21 October, he was "very agitated and contemplating suicide". He was placed in restraints and given anti-psychotic medication. In November 1994, he told the doctor that he was hearing voices that were telling him to kill himself. The doctor apparently persuaded him to resume his medication. There are no records for the next two months. His condition deteriorated in mid 1995. An entry of 6 June, for example, stated that Colburn "stated that he wants to kill himself. He also states that he hears voices that tell him to kill himself and that his family is dead". He was again placed in restraints.

As part of the proceedings against him for the murder of Peggy Murphy, the trial court appointed psychologist Walter Quijano to evaluate James Colburn's sanity at the time of the murder and his competency to stand trial. Dr Quijano concluded that Colburn was "mentally ill with Schizophrenia, paranoid-type, chronic, and should be in an inpatient psychiatric-type setting for his and others' protection". He concluded, however, that James Colburn was competent to stand trial, that is, that he was able to consult with his lawyer and had a rational as well as a factual understanding of the proceedings against him. Dr Quijano also concluded that Colburn was sane at the time of the crime, that is, that he knew his conduct was wrong at the time he committed it.

The trial took place in October 1995, 10 months after Dr Quijano's examination. No competency hearing was requested by the defence or ordered by the court of its own accord at the time of the trial. At the trial, Dr Quijano testified as to the seriousness of James Colburn's illness, stating that his "paranoid schizophrenia is what we call intractable. It is chronic. It is not expected to disappear. He is chronically mentally ill and the onset is childhood and it is difficult to manage and difficult to treat." Dr Quijano was not asked, however, nor did he offer an opinion, as to James Colburn's present competency.

At the request of the defence attorneys, another psychologist, Carmen Petzold, examined James Colburn in August 1995. She concluded that “he suffers from severe chronic mental illness, paranoid schizophrenia, depression with suicidal ideation, chronic polysubstance abuse, most likely linked to attempts at self-medication, and some memory deficits. It also appeared that he may have been suffering from a chronic Post-Traumatic Stress Disorder due to having been raped at age seventeen, which could produce blackouts, or periods of dissociation”. She also concluded that he “appears...competent to stand trial”. She further stated that it was “likely that on or about the time of the alleged offense, his judgment was severely impaired, possibly due to the interactive effects of his chronic mental illness, the presence of any drugs in his system, and his emotionally labile state due to the suicidal ideation.” In her opinion, “the impact of his mental illness, including the presence of the suicidal ideation caused by living with the hallucinations, cannot be ruled out as preventing him from conforming his behavior to the law at the time of the crime”.

A few days before the trial, the defence attorneys contacted Dr Petzold, and informed her that she would not be needed to testify at the trial. Defence counsel relied solely on Dr Quijano to provide expert testimony on behalf of their client.

During the trial, James Colburn received injections of Haldol, an anti-psychotic drug which can have a strong sedative effect. A lay observer, a nurse with experience of mentally ill patients, later signed an affidavit in which she stated:

“I strongly believe that James Blake Colburn was under the influence of sedative drugs during the course of his capital murder trial. James Blake Colburn clearly experienced temporary losses of awareness while his trial was in progress and witnesses were testifying. James Colburn’s lapses into what appeared to be a sleep state were not rare. The lapses were frequent in their occurrence. At intervals approximately ten minutes to fifteen minutes apart, James would begin to lean forward to the point that his chin rested on his chest and James was directly facing the table top before him. James would remain in this position until one or the other of his attorneys prodded him awake. When James did awaken he seemed confused...”

She stated that, in her opinion, James Colburn’s “lethargic condition prevented him from participating in his defense or even paying attention to his own murder trial”.

In post-conviction affidavits, James Colburn’s trial lawyers stated that they believed that their client had been competent to stand trial. However, they acknowledged that their client had “dozed occasionally during the trial. On one occasion, Mr Colburn commenced snoring loudly and we requested a recess to permit him to wake up”. The trial record contains the following on that particular incident:

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| Defence lawyer 1: | Judge, I don’t think that it matters, but I think I need a break to walk my client around the room a little bit. He’s snoring kind of loud. |
| Defence lawyer 2: | They apparently injected him last night to calm him down and I appreciate it. But he’s sleeping right now. |
| Defence lawyer 3: | I don’t know if it’s going to matter too much, but I think it would be better if we had a minute to walk him around to wake him up. |

A widely known Texas case is that of Calvin Burdine, whose lawyer slept during parts of the trial. Burdine was finally granted a new trial, currently pending, after years on death row. Another

prisoner, Carl Johnson, was executed in Texas in 1995, despite allegations that the same lawyer had slept during parts of his trial also.

Texas now intends to execute a prisoner who slept during part of his trial as a result of medication he was taking for his mental illness. The clemency authorities should intervene and act where the courts have failed.

The question of future dangerousness

On 10 October 1995, the jury returned a death sentence, having determined that James Colburn would represent a future danger to society if allowed to live. A finding of “future dangerousness” is a prerequisite to a death sentence in Texas.

Even today, there is public fear and ignorance around the subject of mental illness. Under the Texas capital sentencing scheme, even if the defence attorneys put on a persuasive case that their client’s mental illness demands compassion, it may not be enough to overcome jurors’ fears of the individual in front of them, whom they have just convicted of a violent crime. In some cases, legal representation of mentally ill capital defendants has been inadequate, as has been suggested in this case. This may be due to lack of resources or lack of experience. In other cases, a prosecutor’s bid for a death sentence may lead such officials to play on juror fears and make a death sentence more likely under Texas’s capital sentencing scheme.

Arguing for a death sentence, the prosecutor in James Colburn’s case suggested that the jury might prevent mass murder if they voted for execution: “To save the life of an innocent person is a huge thing when it is compared with the taking of a person that voluntarily chose to kill. How many lives will it save? I submit to you, even if there’s a chance it will save one, he should be executed. But who knows, it may save one, it may save a dozen, it may save a hundred.”

Despite such exhortations, the jury evidently wished to consider a life sentence for this mentally ill man. During its deliberations, the jury foreman wrote a note to the trial judge asking if the defendant would be eligible for parole if he received a life sentence. The judge replied that the jurors were not to concern themselves with the issue of parole.

In 1999, the foreman from the Colburn jury signed an affidavit. In it, he stated that, in his opinion, “the lack of information regarding when Mr Colburn could be released was a significant factor in some jurors’ decisions at the punishment phase”. This would appear to be confirmed by the affidavit of another member of the jury who said that her “central concern was with protecting society, and the only way I thought I could do that was to make sure that Mr Colburn did not receive parole... [Th]e Judge’s reply only increased our frustration. We still had no idea if Mr Colburn would be released in ten, fifteen, twenty or forty years... Consequently, jurors continued to discuss the possibility that Mr Colburn would be released early”. This juror said that the “primary reason” that she had voted for a death sentence was because of her “fear that Mr Colburn would be released early. Mr Colburn was 34 years old at trial. Had I realized that he would not finish serving his prison time until he was over 70 years of age, I sincerely believe that I would have voted to give him a life sentence”.

The death sentence is upheld on appeal

The appeal courts have upheld the death sentence. This has been despite a number of affidavits and other additional information supporting the claim that James Colburn may not have been competent to stand trial. The power of executive clemency exists precisely to compensate for the rigidities of the judiciary, and are able to give full consideration to the fact of James Colburn’s undisputed mental illness. The Texas clemency authorities should do the decent thing and recommend commutation of his death sentence.

A forensic psychiatrist, David Axelrad, was retained by James Colburn's appeal lawyers to review the prisoner's medical records and examine him for the purpose of his state-level appeals. He conducted the assessment in 1997, and undertook an additional review in November 1999. In a report in 1999, Dr Axelrad stated that, in his opinion, Dr Quijano's original psychological evaluation of James Coburn was sufficient for the purpose of arriving at an opinion regarding the defendant's competency to stand trial, but only at the time of his examination and report, 10 and eight months before the trial respectively. However, Dr Axelrad continued:

"Based upon my review of the medical records, during the time that he was incarcerated in the Montgomery County Jail at the time of the trial as well as my review of his records preceding his trial raises serious questions and concerns regarding his competency to stand trial at that time."

Dr Axelrad said that there should have been a competency determination at the time of the trial. He also said that, in his opinion, James Colburn was "actively psychotic" at the time of his confession, and that he had been "seriously sedated during the time of his trial". He also concluded that Montgomery County Jail had mismanaged James Colburn's treatment in pre-trial detention, and that the jail authorities should have continued to provide him medication when Colburn refused to pay for it himself. Finally, he suggested that James Colburn's trial attorneys had misunderstood their client's mental condition at the time of the trial.

In September 2000, Dr Walter Quijano signed an affidavit in which he stated, that based on the information about the apparent sedative effect of Colburn's Haldol injections, it was his opinion that "during the trial itself, as opposed to the date on which I examined him, it is not reasonably probable that Mr Colburn....was legally competent to stand trial". Dr Quijano further offered his opinion that based on the sedative evidence, "in order to assess Mr Colburn's competency at the time of the trial, it would have been necessary to halt proceedings temporarily and adjust Mr Colburn's medication so that he was oriented and aware."

In the following month, Dr David Axelrad signed an affidavit, in which he agreed with Dr Quijano on the competency issue, stating:

"it is my forensic psychiatric opinion that the presumption that Mr Colburn was competent during trial is not reasonable. Based on the fact that the court did not conduct a competency hearing or inquire in any fashion into whether Colburn was competent at the time of the trial, it is my forensic psychiatric opinion that it is not possible to retrospectively rebut evidence in the record indicating Mr Colburn was incompetent at trial with any forensic scientific confidence or professional integrity. Based upon my review of information available to the trial court, it is my forensic psychiatric opinion that evidence that Mr Colburn was actually incompetent during trial is clear and convincing."

The appeal courts have disagreed. In May 2001, the US District Judge for the Southern District of Texas upheld the conviction and death sentence. A year later, the US Court of Appeals for the Fifth Circuit rejected an appeal against the lower court's ruling, concluding that Colburn had failed to make a "substantial showing of the denial of a constitutional right". On the question of the defendant's drowsiness during the trial, the Fifth Circuit judges said: "We need not determine the number of times Colburn fell asleep during trial because whether Colburn fell asleep once or slept through most of his trial is not dispositive of Colburn's competence".

The execution date of 6 November was set by the Montgomery County trial court. If the US Supreme Court refuses to intervene, and clemency is denied by the Texas executive, James Colburn will be killed on that date.

Conclusion

Amnesty International opposes the death penalty unconditionally, wherever it occurs. It believes that every death sentence is an affront to human dignity, and every execution a symptom of, rather than a solution to, a culture of violence. The organization has the utmost sympathy for the victims of violent crime and their families, but believes that the death penalty cannot provide a constructive response to their loss.

The execution of James Colburn looms at a time when 111 countries are abolitionist in law or practice, and when the international community has decided that the death penalty will not be an option in international tribunals prosecuting the most serious crimes in the world, including torture, genocide and crimes against humanity. James Colburn's execution would be one more reminder of how far the USA is behind much of the rest of the world on this fundamental human rights issue.

Each year since 1997, the United Nations Commission for Human Rights has passed a resolution which, among other things, calls on all retentionist countries not to impose or carry out the death penalty against anyone with any form of mental disorder. It is clear that the execution of James Colburn would directly contradict these resolutions.

The US grassroots advocacy organization, the National Alliance for the Mentally Ill, opposes the use of the death penalty against people with schizophrenia and other serious mental illness. In 1998, the organization's director wrote of "the fundamental disconnection between law and science. The legal criteria for evaluating crimes committed by persons with severe mental illnesses were developed some 200 years ago. Conversely, medical professionals are able to accurately diagnose schizophrenia and other serious brain disorders due to remarkable scientific discoveries. Scientists also have established that schizophrenia impairs mental capacity in many cases. In view of this progress, a diagnosis of schizophrenia by a qualified medical expert should serve as a reason not to execute a criminal defendant."

On 25 September 2002, US District Judge William Wayne Justice made an address to psychiatrists and others at the University of Texas-Houston Medical School. In it the District Judge, who was appointed in 1968 and has extensive experience of the Texas criminal justice system, stated that the Texas criminal justice system was operating under a "spirit of vengeance" in its dealings with the mentally ill. He referred to the case of Andrea Yates, a woman suffering from mental illness against whom Texas prosecutors recently sought the death penalty for killing her children: "Andrea Yates did a monstrous thing, but it not a monstrous human being. She is, ultimately, a pathetic and tragic figure". He said: "If we reject the moral necessity to distinguish between those who willingly do evil, and those who do dreadful acts on account of unbalanced minds, we will do injury to these people. But the ultimate injury is the one we will inflict on ourselves, and on the rule of law".

Texas should commute the death sentence of James Colburn. It is time for the state to find a compassionate response to his crime.

Please take action

Please appeal to Governor Perry to do all in his influence and power to stop this execution:

The Honourable Rick Perry
Governor of Texas
PO Box 12428, State Capitol
Austin, TX 78711, USA
Fax: +1 512 463 1849
Email from website: www.governor.state.tx.us/contact/contact_email.htm
Salutation: Dear Governor

Ask President George Bush to appeal for James Colburn's commutation, in line with UN Human Rights Commission resolutions:

George W. Bush
The President
The White House
Office of the President
1600 Pennsylvania Avenue
Washington, DC 20500, USA
Fax: +1 202 456 2461
E-mail: president@whitehouse.gov
Salutation: Dear Governor