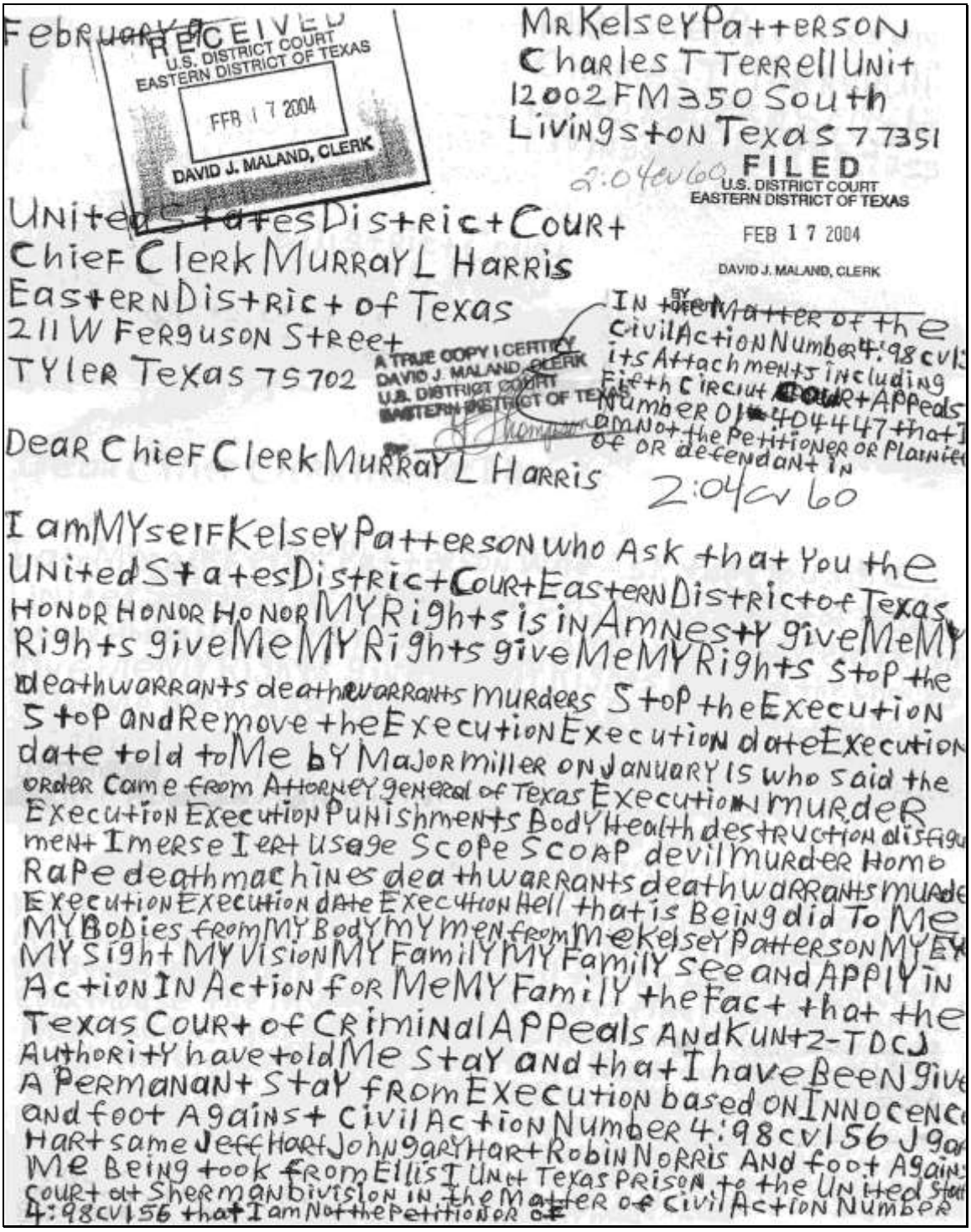



**First page of a 13-page letter to a federal court from Kelsey Patterson, February 2004**

# UNITED STATES OF AMERICA
## Another Texas injustice: The case of Kelsey Patterson, mentally ill man facing execution

"*[The expert witness] has said right up front that Kelsey Patterson is suffering from paranoid schizophrenia. No doubt about it, he does, according to the mental health experts*." Prosecutor, final argument at Kelsey Patterson's capital trial, 1993.

On 10 November 2003, the United States Supreme Court dismissed Kelsey Patterson's appeal against the death sentence imposed on him over a decade ago for a double murder committed in Texas in 1992. This cleared the way for the state to seek an execution date. Unless Kelsey Patterson is granted relief by the courts or clemency by the executive, he will be killed in the Texas lethal injection chamber on 18 May 2004.[1]

Forty-nine-year-old Kelsey Patterson has long suffered from paranoid schizophrenia, a serious mental illness whose symptoms can include hallucinations, delusions, confused thinking, and altered senses, emotions or behaviour.[2] Kelsey Patterson was first diagnosed with this brain disorder in 1981. His execution would fly in the face of repeated resolutions at the United Nations Commission on Human Rights calling on all states not to pursue the death penalty against anyone suffering from a mental disorder. In the USA, the grassroots organization NAMI, formerly the National Alliance for the Mentally Ill, is among those that consider that the death penalty can never be an appropriate response for a defendant suffering from schizophrenia or other serious brain disorders.

There is no doubt that Kelsey Patterson shot Louis Oates and Dorothy Harris, and there would appear to be little doubt that mental illness lay behind this tragic crime. He made no attempt to avoid arrest – after shooting the victims, he put down the gun, undressed and was pacing up and down the street in his socks, shouting incomprehensibly, when the police arrived.

In 2000, a federal magistrate judge wrote that "Patterson had no motive for the killings – he claims he commits acts involuntarily and outside forces control him through implants in his brain and body. Patterson has consistently maintained he is a victim of an elaborate conspiracy, and his lawyers and his doctors are part of that conspiracy. He refuses to cooperate with either; he has refused to be examined by mental health professionals since 1984, he refuses dental treatment, and he refuses to acknowledge that his lawyers represent him. Because of his lack of cooperation, it has been difficult for mental health professionals to determine with certainty whether he is exaggerating the extent of his delusions, or to determine whether he is incompetent or insane. All of the professionals who have tried to

[1] The district judge signed the order setting the execution date on 23 December 2003, and the death warrant was served on Kelsey Patterson in early January 2004. Not surprisingly, Kelsey Patterson, who considers his lawyer to be a part of the conspiracy against him, did not inform his lawyer that the date had been set. The state did not inform the lawyer either, however, and he did not learn of the execution date for over a month.

[2] Kelsey Patterson will be 50 years old on 24 March 2004.

examine him agree that he is mentally ill. The most common diagnosis is paranoid schizophrenia."[3] Nevertheless, the magistrate judge recommended that Kelsey Patterson's death sentence stand.

A jury found Kelsey Patterson competent to stand trial. Yet his behaviour at his competency hearing, and at the trial itself – when he repeatedly interrupted proceedings to offer rambling narrative about his implanted devices and other aspects of the conspiracy against him – provided compelling evidence that his delusions did not allow him a rational understanding of what was going on or the ability to consult with his lawyers. At a post-conviction hearing in 1997, his state-level appeal lawyer, who had attended part of the trial, recalled that Patterson "didn't seem able to discriminate between those individuals that were advocating for him in the courtroom and those who weren't. He seemed to perceive everyone in the courtroom as an enemy, as someone who was involved in this – this plan or this conspiracy, this collaboration to do him harm." He continued: "Thinking about it from the perspective of the [trial] attorneys, it would have been an insurmountable obstacle to do anything in effect for him. There would have been no way that he could have helped them if he – if they had the same experience as I did with him" (that is, his later experiences as Patterson's appeal lawyer).

In early February 2004, Kelsey Patterson's lawyer filed a motion in a Texas trial-level court raising a claim, under the US Supreme Court decision *Ford v Wainwright* (1986), that Patterson is not competent for execution, that is, that he does not understand the reality of, or reason for, his impending punishment. The constitutional protections in this area are minimal, however, and other prisoners have gone to their deaths despite suffering from serious mental illness. Patterson's *Ford* claim was still before the courts at the time of writing.

Since learning of his execution date, Kelsey Patterson has written various letters, including to the Texas Board of Pardons and Paroles, the Texas Court of Criminal Appeals, and the US District Court for the Eastern District of Texas. In these letters, as he has done previously, he refers to his "amnesty" and to the permanent stay of execution that he has received on grounds of innocence.

There were ample warning signs before Kelsey Patterson's crime that he was capable of committing acts of potentially lethal violence during periods when his schizophrenia was left untreated. If the same resources had been put into his long-term treatment as were expended on securing and pursuing a death sentence against him, his crime could perhaps have been prevented and the spectre of his looming execution averted.

Amnesty International opposes the death penalty in all cases, regardless of the gravity of the crime, the guilt or innocence of the condemned, or the method used to kill the prisoner. This is a punishment that should have no place in modern society. It consumes resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. In addition, the capital justice system in the USA is

[3] *Patterson v Johnson*. Magistrate Judge's proposed findings and recommended disposition. US District Court for the Eastern District of Texas, Sherman Division, 27 October 2000.

marked by arbitrariness, error and discrimination.[4] It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. The death penalty is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

## Denying society's failure

The crime and punishment of Kelsey Patterson raises 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.[5] 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 [the] 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."[6]

In the days before the crime, Kelsey Patterson's half-brother had tried to get him help because of his obviously deteriorating mental state. This had happened over the years – the family would seek help, only to be told that there was nothing the authorities could do unless Patterson turned violent and became a threat to himself or others. Kelsey Patterson's half-sister related to Amnesty International in October 2003 how helpless she feels about his plight, how she thinks about his "heartbreaking" situation much of the time – the shared fate of relatives of condemned prisoners who become the "collateral damage" of this cruel and degrading punishment. She described how his mental health had begun to deteriorate after the grandmother who raised him died, how he became withdrawn, how he would talk and laugh to himself, how he used to tape up his windows as part of his paranoia, and how he

[4] Kelsey Patterson is African American. His two victims were white. In Texas, by 4 March 2004, 255 of the 321 executions (79 per cent) carried out in the state since 1982 had been of people convicted of killing whites. Studies have consistently shown that race, particularly race of the murder victim, plays a role in who is sentenced to death in the USA. Blacks and whites are the victims of murder in almost equal numbers, but 81 per cent of the executions since 1977 have been of people convicted of crimes involving white victims, suggesting that the (overwhelmingly white) system places a higher value on white life. Most murders in the USA are intra-racial, that is the victim and perpetrator are of the same race. The most common murder is black-on-black. Yet only one in 10 executions (one in 12 in Texas) were for black-on-black crimes, whereas one in five executions are of African Americans convicted of killing whites. By 4 March 2004, 70 African Americans had been executed in Texas for killing white victims. In September 2003, Larry Hayes became the first and so far only white person to be executed in Texas for killing an African American. In addition to his black victim, he was also convicted of killing a white person, and he had refused to appeal against his death sentence. See *USA: Death by discrimination – the continuing role of race in capital cases*, AMR 51/046/2003, July 2003. http://web.amnesty.org/library/Index/ENGAMR510462003

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

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

came to believe that he had had electronic devices implanted in him. She recalled how his mental health would improve when he received treatment, and how it would begin to deteriorate again when he stopped taking medication. She spoke of the delusional letters that he sends her from death row, letters she has become reluctant to open, and sometimes waits for a few days until she does, because they make "no sense", and compound her distress. Finally, she spoke of her wish that no other family, worried that a relative was descending towards violence, would be denied mental health care before it was too late.

**Kelsey Patterson, as a teenager © Private (AI use)**

During oral arguments on the case in August 2002, a federal judge on the US Court of Appeals for the Fifth Circuit reportedly asked the state prosecutor, "What are we doing here? This is a very sick man", and wondered how the state would respond when Kelsey Patterson was brought into the lethal injection chamber "screaming about Satan". Another of the judges at the hearing was reported to have suggested that the ultimate responsibility for this tragic situation lay with the state mental health care system's failure to provide a long-term solution in Patterson's case.[7] Nevertheless, the Fifth Circuit upheld the death sentence in May 2003.

If Kelsey Patterson is put to death, it would not be the first time that the Texas system had, in effect, buried its own failure in its execution chamber. Larry Robison, who was executed in January 2000, had suffered from paranoid schizophrenia long before committing the crime for which he was sentenced to die. His family had tried to obtain help for him, but were turned away because he had not yet turned violent.[8] James Colburn was also a diagnosed paranoid schizophrenic whose family had tried, unsuccessfully, to get appropriate health care before the murder for which he was sent to death row.[9] He was executed on 26 March 2003. In another recent case, Scott Panetti received a 60-day stay of execution shortly before he was

[7] *Mentally ill killer's life on the line*. Houston Chronicle, 11 August 2002.
[8] *Time for humanitarian intervention: The imminent execution of Larry Robison*, AMR 51/107/99, July 1999. http://web.amnesty.org/library/Index/ENGAMR511071999
[9] *James Colburn: mentally ill man scheduled for execution in Texas*, AMR 51/158/2002, October 2002, http://web.amnesty.org/library/Index/ENGAMR511582002 and *Texas: In a world of its own as 300th execution looms*, AMR 51/010/2003, January 2003 http://web.amnesty.org/library/Index/ENGAMR510102003

scheduled to be executed in Texas on 5 February 2004. He had been hospitalized for mental illness many times before the crime.[10]

Kelsey Patterson's trial lawyer later recalled that when Patterson was condemned to die, "it was the darkest moment of my professional life. This is a case that should never have happened. He should have been institutionalized a long time ago. The system failed him. But they don't indict the system".[11]

## A motiveless crime

On the afternoon of 25 September 1992, Kelsey Patterson walked up behind Louis Oates on the loading dock of his oil supply company in Palestine, Texas, and shot the businessman in the head. When company employee Dorothy Harris came out of the office, Kelsey Patterson grabbed her, repeatedly told her that "you ain't going to get away with it", and shot her too. Both victims died.

After the shootings, Kelsey Patterson took off all his clothes except his socks and began to pace up and down the street, gesticulating and yelling incomprehensibly until the police arrived.

The crime against Louis Oates and Dorothy Harris was not the first time that Kelsey Patterson had shot people in apparently motiveless acts of violence. In 1980, he shot a fellow worker in a Dallas hospital where he worked. Three years later, he shot another co-worker, this time at a pizza restaurant in Palestine. In both cases, the victims survived. In each case, Kelsey Patterson was found incompetent to stand trial because of his mental illness. After he received treatment and was restored to competency, he was not prosecuted because he was considered to have been unable to conform his behaviour to the law, in other words that he was legally insane at the time of the offence under Texas law in force at the time.

In a high-profile US case in 1982, John Hinkley was sent to mental hospital after being found not guilty by reason of insanity for his attempted assassination of President Ronald Reagan. The case led to several states amending their laws to limit the insanity defence. They included Texas. Previously, to be found not guilty by reason of insanity in Texas, defendants had to show that because of mental disease or defect at the time of the crime, they were (1) unable to conform their behaviour to the law; or (2) did not know that their conduct was wrong. In other words, a defendant could be found insane if they had an understanding that their action was wrong, but were unable to control their behaviour in conformity with the law because of their mental illness.

By the time Kelsey Patterson shot Louis Oates and Dorothy Harris, an inability to conform one's conduct to the law was no longer a defence against conviction in Texas. Instead, the

[10] *"Where is the compassion?" The imminent execution of Scott Panetti, mentally ill offender*, AMR 51/011/2004, January 2004. http://web.amnesty.org/library/Index/ENGAMR510112004
[11] *Is mentally ill death row inmate sane enough to die?* Houston Chronicle, 14 November 1999.

insanity defence was simply that at the time of the crime, due to mental disease or defect, the defendant did not know that his or her conduct was wrong, a much tougher standard to meet.

In 1992, the Anderson County District Attorney apparently felt confident that he could obtain a death sentence against Kelsey Patterson under this revised statute, and charged Patterson with capital murder.

## The competency hearing

Kelsey Patterson was provided with legal counsel, who filed motions to have a psychiatric expert appointed for the defence, and a hearing to determine whether their client was competent to stand trial.[12] The judge granted both motions, but set a cap of $750 on the sum that could be paid for the expert. The lawyers chose Dr Tynus McNeel, who determined that Patterson was competent to stand trial and had been sane at the time of his crime.

A competency hearing in front of a jury was held on 3 May 1993. At jury selection for the hearing, the prosecutor asked Patterson to stand up so that it could be ascertained if any of the potential jurors knew the defendant. Kelsey Patterson stood and said: "I have an implant in me. I heard you in Dallas County in '86. Ask you how much you are going to invest. You said one percent." He was immediately removed from the courtroom.

Later at the hearing, against the advice of his lawyers, Kelsey Patterson took the witness stand. He described in rambling fashion the persecution that he was facing, including his food being poisoned and his body implanted with devices. He accused his lawyers of being part of the conspiracy. For example, the following exchanges took place when questioned by one of his lawyers:

> **Patterson**: Purposely you have been part of it, then you come in here and play crazy with me, just as straight faced as ever.
> **Lawyer**: What kinds of things have I done to you?
> **Patterson**: You have talked on the speaker system. Even nasty in my food. I have put a spoon of mashed potatoes in my mouth and had to spit them out, after he had said that he did something to the food.

His subsequent testimony included the following interchange:

> **Patterson**: They have some type of implant devices that they used on me in the military, which I receive. Like the device that they put in the inner ear in which they

[12] The constitutional test for competency to stand trial is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding - and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v United States*, 362 U.S. 402 (1960).

> can send subliminal message and make a person act beyond their controllability to know you have taken an action.
> **Lawyer**: Kelsey, do you believe those implants are still in your body?
> **Patterson**: I know for a fact. Y'all play with it all of the time.

After the direct examination by the defence lawyer had finished, the prosecutor rose to cross-examine Kelsey Patterson. The defendant refused to answer his questions. The prosecution moved to have Patterson's testimony struck from the record. The judge granted the motion and instructed the jury to disregard everything that Patterson had said.

The defence lawyers did not call Dr McNeel at the hearing, but rather limited themselves to cross-examining the state's witnesses. These included clinical psychologist Walter Quijano, and forensic psychiatrist James Grigson. Neither had examined Kelsey Patterson, but testified, from the information given to them by the state, that he was competent to stand trial. Both agreed that he was mentally ill, and suffering from paranoid schizophrenia.

Can a man whose mental illness leads him to believe that his lawyers are part of a conspiracy against him, and who therefore refuses to cooperate with them, truly be competent to stand trial? At the end of the hearing, the jury found that Kelsey Patterson was.

At a three-day post-conviction evidentiary hearing in state court in December 1997 and January 1998, Walter Quijano admitted that at the time of Patterson's competency hearing, he had been operating under the mistaken assumption that he should presume the defendant to be competent until it could be positively demonstrated that he was not. In fact, because Kelsey Patterson had previously been adjudged incompetent (following the 1980 and 1983 shootings), the burden was on the state to prove that he was competent this time. Given this error, and having learned of Kelsey Patterson's outbursts during the pre-trial and trial proceedings (see further below), Dr Quijano said that he would have recommended that the competency issue be revisited. During the post-conviction hearing, Kelsey Patterson was again disruptive, and was removed from the courtroom.

Dr Grigson's testimony at the competency hearing represented something of a turnaround. In 1980 it had been Dr Grigson who had found Kelsey Patterson incompetent to stand trial after the Dallas shooting. He subsequently found Patterson to be competent in 1981 after he had been treated. Although he had not examined Kelsey Patterson between 1981 and 1992, he suggested at the 1993 competency hearing that the defendant was by now so familiar with the criminal justice system that he had learned to manipulate it, and was currently faking his psychosis. Dr Grigson described the difference between Patterson's mental state in 1981 and 1993 as being "like night and day". Two years later, Dr Grigson, dubbed "Dr Death" because of his unswervingly pro-prosecution testimony in capital cases, was expelled from the American Psychiatric Association, for his unethical, unscientific testimony in such cases.[13]

[13] He was expelled "for arriving at a psychiatric diagnosis without first having examined the individuals in question, and for indicating, while testifying in court as an expert witness, he could predict with

Both Drs Grigson and Quijano only reviewed Kelsey Patterson's records relating to his commitment to Rusk State Hospital in 1984. They did not review his records from previous and later commitments to Rusk or other facilities over the years, and had not spoken to Patterson's family.

At the state post-conviction evidentiary hearing, Dr Allen Childs, a clinical and forensic psychiatrist, testified that he was in no doubt that Kelsey Patterson had been incompetent to stand trial in 1993. Dr Childs had conducted a comprehensive review of Patterson's psychiatric history, including his records from his commitments to Rusk State Hospital in 1981, 1984 and 1988; his commitment to Terrell State Hospital in 1987, and records from local facilities. He reviewed evidence from the family, and was also able to read the transcripts of Patterson's testimony and outbursts during proceedings. Dr Childs concluded that far from malingering, Kelsey Patterson was trying to feign mental health rather than mental illness.

In 2000, the federal magistrate who reviewed the case, wrote that: "Were this Court determining this question *de novo* (anew), it would find, based on the recantation by Dr Quijano, the impeachment of Dr Grigson's credibility, the thoroughness of Dr Childs' review and the conviction with which he expressed his opinion, that Patterson was incompetent to stand trial". However, the Court noted that "the evidence produced must be sufficiently clear and convincing to rebut the presumption of correctness accorded the jury's determination of competency." The judge wrote that, although it was "a close question", the jury's determination held. The federal district court adopted this finding, and the death sentence has been allowed to stand.

## Insanity defence rejected

During the actual trial a few months after the competency hearing, Kelsey Patterson made numerous outbursts, and on several occasions was removed from the courtroom on the order of the judge. In the end, he reportedly spent less than half of the trial in the courtroom. For example, at jury selection Patterson interrupted as a potential juror was being questioned:

> **Patterson**: What you said, the District Attorney –
> **Judge**: Mr Patterson, you cannot talk if you stay in here. I will not permit you to talk.
> **Patterson**: Implant devices placed in my body that they used to do charges beyond my control, and show of the community.

100% certainty that the individuals would engage in future violent acts" In Texas, a death sentence can only be imposed if the jury concludes that the defendant would probably commit acts of criminal violence that would constitute a future threat to society, the so-called "future dangerousness" question. Texas prosecutors seeking death sentences have frequently called upon "expert" witnesses to persuade the jury of the future dangerousness of the defendant in question. The most notorious of these "experts" has been Dr Grigson, who has testified for the state in over 140 capital trials in Texas. He repeatedly told capital juries of his absolute certainty that the defendant would commit future acts of violence. In the vast majority of the cases, the jurors voted for death.

**Judge**: Sheriff, please remove Mr Patterson
**Patterson**: For the clerk's office.

Kelsey Patterson was removed from the court. On another day of jury selection, he again interrupted as a juror was being questioned:

**Patterson**: Defendant will call that, that's play. I don't want to –
**Judge**: Mr Patterson, you cannot talk out loud and remain in here. Do you understand? [To lawyer] Please continue.
**Patterson**: Why come I can't help? They asked to resign as my lawyers on the 17th.
**Judge**: Remove the defendant from the courtroom.
**Patterson**: I asked for them to be removed as lawyers. I gave you a proper motion asking you for it.
**Judge**: Remove the defendant.
**Patterson**: Requested since October 16th. They specialize in being setup lawyers. I heard them make a deal in my room where they were the guests of Jeff Herrington [prosecutor] and Bascom Bentley and had some remote control device put in my body.

Patterson was again removed from the courtroom. His interventions continued after he was back in the court later, as another juror was being questioned:

**Patterson**: Mr Hamilton (juror), ask Mr Stafford (prosecutor) what murder was he part of – two for sure of 1960.
**Prosecutor**: This is a –
**Patterson**: In 1960 – putting poison in me.
**Judge**: Remove the defendant from my courtroom.
**Patterson**: Ask him which one was a party to – putting electrical devices in my body, remote controls, and do charges on me. And, by the way, this man here, he'll consult me in my sleep – in the head –

He was removed from the courtroom. This happened on several other occasions during jury selection.

On the eve of the trial, after the jury had been selected, the prosecution offered a life sentence if the defendant would plead guilty as charged. Against the advice of his lawyers, Patterson rejected the offer.

At the trial, Patterson's lawyers raised an insanity defence, that is, whether because of his mental illness he had known right from wrong at the time of the crime.

The defence called Dr Walter Quijano who had testified for the state at the competency hearing. The defence lawyer then elicited from Dr Quijano that, in his opinion, Kelsey Patterson was sane at the time of the offence. He said that he could not rule out that Patterson was delusional on the day of the crime, but he said that "just because a person is delusional

does not mean he is insane". He acknowledged that a schizophrenic's delusion might be so strong that it could "distort his perception of right and wrong", but the impact of this was blunted on cross-examination by the prosecutor when Quijano state that it is possible to "fake" paranoid schizophrenic delusions.

Kelsey Patterson's half-brother David Simpson testified that he had attempted to get help for Patterson in the days before the crime. During this period, Patterson had been staying with Simpson, and the latter related how he had paced all night long, talking to imaginary people.

A clinical psychologist, a former employee of Rusk State Hospital, Dr Mary Cox, testified that Kelsey Patterson was a diagnosed paranoid schizophrenic. She said that Kelsey Patterson had refused to be interviewed by her, and she suggested that she could not offer an opinion as to whether he was legally sane or insane at the time of the crime without such an interview. Again, on cross-examination, the prosecutor elicited from Dr Cox that it was possible to "fake" the symptoms of schizophrenia.

Patterson's outbursts continued in the trial itself. For example, during the guilt phase, as a witness was being questioned, Kelsey Patterson again interrupted:

> **Patterson**: What he did to me in my sleep – Jeff Herrington [the prosecutor].
> **Judge**: Sheriff, remove the defendant from the courtroom.
> **Patterson**: He's who is also with Dick Swift, when they used remote control devices on me.

The defendant was removed from the courtroom. When he was brought back in later, the following occurred:

> **Patterson**: I would like to stay if I could.
> **Judge**: You may stay if you choose to be quiet.
> **Patterson**: You know, Stafford, the one who had the implant device in '69.
> **Judge**: Mr Patterson, you can stay as long as you're quiet.
> **Patterson**: John McDonald – I just received my –
> **Judge**: Sir, did you understand what I said?
> **Patterson**: Clerk's yesterday – and I am misrepresented, but I have got to go through this.
> **Judge**: Sheriff, take the defendant out of the courtroom. He insists on talking –
> **Patterson**: I will stay if you will let me. You know, these men don't represent me. And has got Louis Oates' son working at the jailhouse – and with the knife saying it ain't the time or place of death.

On another occasion, the jury was removed after an interruption. The following then occurred:

> **Judge**: Mr Patterson –

> **Patterson**: Like my lawyers. I can't even have communication with my lawyers. You know that they tried to resign on the 16th, the 17th of this month. How can I help them when I can't even talk to them when – and, by the way, got a bill with Jeff Herrington [prosecutor].
> **Judge**: Mr Patterson, listen to me without interrupting for a moment. Now, I'm not going to keep popping you in here and popping you out. If you persist in disrupting these proceedings, I'm going to order that your mouth be taped and that you be handcuffed to your seat. Do you understand what I've said to you?
> **Patterson**: How can I let you railroad me without a chance? These men don't represent me. There is no audience here. My people who are – other people – people who could witness very much to the fact of what was did.
> **Judge**: Mr Patterson, did you hear what I said? One more word out of you and we're going to –
> **Patterson**: Yes. John's in trouble.
> **Judge**: Do you understand that?
> **Patterson**: But how can I tell – I never have been close to – I can't even communicate with them.
> **Judge**: I do not want you interrupting these proceedings.
> **Patterson**: And you know that they have implant device where I can't – to have the control. Where I need – but I will try my best.

However, the interruptions persisted. Despite these interruptions, which suggested that the defendant was not able to participate meaningfully in his own defence, the judge did not revisit the competency issue. The US Supreme Court has held that a trial court has an obligation to ensure the competency of defendants throughout their trial.[14]

Against the advice of his lawyers, Kelsey Patterson also took the witness stand during the guilt phase of the trial. As the judge was attempting to explain to the defendant that if he choose to testify, he would be obliged not only to answer questions from his own lawyers but also the prosecution, Patterson kept interrupting with more narrative about the persecution he was suffering. This led the judge to order him to be gagged with tape.

Kelsey Patterson's subsequent testimony was more of the same. He was generally unresponsive to the questions asked, and focussed on his persecution. He was asked why he wanted his lawyers to be fired. His response included:

> "They have proceeded, misrepresenting me, these two men, and if I would be allowed a chance to tell, that's what I need because they got some electronic devices in me which works like a remote control that has – can alter your body make your mind

[14] *Drope v. Missouri* 420 U.S. 162 (1975). "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial."

> body react beyond your control conscious awareness. And there's people that they have shown this and I have documented this for over a year and a half."

The prosecution attempted to cross-examine him, but the defendant continued in the same vein while pleading that he wanted to remain silent. He was eventually taken off the stand and when he continued to interrupt, was again removed from the courtroom.

For his part, the prosecutor undercut the insanity defence with some highly questionable argumentation. For example, he argued to the jury that to find a defendant legally insane on the basis that he has been diagnosed with schizophrenia is tantamount to providing such people with "a licence to kill". He added that jurors "get to set the standards of what is acceptable conduct". He was wrong. The law sets the standards, and the jury is governed by the law. The prosecutor's statements included the following:

> "You know, if you take the defense's position with this general psychological stuff, if you take – if you ever diagnose schizophrenia in the past 15 years ago, what that is going to do is give that person a licence to kill anybody, anywhere, anytime, and they come in and say, 15 years ago some psychologist said I was schizophrenic. So, because of that I just blew holes in two people's heads. You can't hold me responsible for it. That is a licence to kill".

> "You know, that's the great thing about this jury system, is you get to set the standards of what is acceptable conduct. You get to make that decision. Is that the kind of standard you are going to set in this community? Well, you know, somebody can go out, shoot somebody, raises something that happened in 1980 – 'I am not responsible'. Schizophrenic, that's what this is".

Such arguments play on the fears of jurors, namely that a finding of not guilty by reason of insanity would lead to a dangerous man being released on to the streets. Given the failure of the system to guarantee long-term treatment for people with mental illness in Texas, and given Kelsey Patterson's history, perhaps such fears among jurors would not have been surprising.

Texas jurors, under state law, cannot be told what the implications are for the defendant if they return a verdict of not guilty by reason of insanity. This lack of full information will likely fuel the fear among some jurors that the defendant will walk away from the courtroom as a free person if acquitted on an insanity defence.[15]

[15] At that time, the law provided that someone found not guilty of capital murder by reason of insanity would be immediately evaluated in a maximum security mental hospital, under the continued jurisdiction of the trial court, to determine whether the defendant met the criteria for involuntary commitment. If not, he or she would be released. If the defendant met the criteria (as Kelsey Patterson undoubtedly would have), the court could order him or her committed to a mental health

Kelsey Patterson's jury took less than two hours to reject the insanity defence and find him guilty of capital murder. Even as the judge read the verdict, there were further manifestations of the defendant's mental problems:

> **Judge**: Mr Patterson, please stand. I'll read the verdict of the jury: "We the jury find the defendant, Kelsey Patterson, guilty of capital murder as charged in the indictment." You may be seated, sir.
> **Patterson**: Yeah, October 26th and on November 24th, 1992. Letter by gunpoint by James Todd 1983, November 21st.
> **Judge**: Mr Patterson, you may be seated.
> **Patterson**: [mumbling inaudibly in the background].
> **Judge**: Sheriff, cause the defendant to be seated, please. Remove him from the courtroom.
> **Patterson**: Prior to jury – and by the way – [inaudible].

Kelsey Patterson was removed from the courtroom at this point, and the court adjourned for a lunch recess after which the sentencing phase would open. At the beginning of the sentencing phase, Kelsey Patterson was again removed from the courtroom after he again interrupted.

At the end of the sentencing stage of the trial, the jury retired to decide what Kelsey Patterson's punishment should be. After a little under four hours of deliberation, during which time the jury requested a dictionary so that they could look up the meaning of "mitigating circumstances",[16] the jury voted that Kelsey Patterson was a future danger to society and that there was not sufficient mitigating evidence to warrant imposition of a life sentence rather than the death penalty.

The judge read out to the court the jury's verdict; again Kelsey Patterson interjected:

> **Patterson**: Through the nasal and passages, up through the sinuses.
> **Judge**: Mr Patterson – Sheriff, would you, please, restrain the defendant and tape his mouth? We have to continue this procedure.
> **Patterson**: I will be quiet [the defendant continues to mumble inaudibly in the background].
> **Judge**: One more word, Mr Patterson, and I'm going to have your mouth taped and you handcuffed.

facility, and then re-evaluate the need for commitment periodically, for as long as the maximum term provided by law for the crime of which he or she was acquitted – in Kelsey Patterson's case, for life.

[16] In response to the jury's request for a dictionary, the trial court brought the jury back into the courtroom, telling them that "it would be improper for you to consult a dictionary of any kind, as all the laws and definitions applicable to this case are contained in the Charge. Please, reread the Charge." The charge instructed the jury as follows: "The jury shall consider mitigating evidence to be evidence that a juror might regard as reducing the defendant's moral blameworthiness."

On 1 July 1993, the judge formally sentenced Kelsey Patterson to death. That judgment is due to be carried out in the Texas lethal injection chamber on 18 May 2004.[17]

## Competency for execution

The execution of the insane is prohibited under the US Constitution. The 1986 Supreme Court decision, *Ford v Wainwright*, held that such executions violate the Eighth Amendment ban on cruel and unusual punishments.[18] In *Ford*, the Court did not set forth the standard for determining whether a condemned prisoner is competent for execution, but Justice Powell, in his concurring opinion, stated that "the Eighth Amendment forbids the execution only of those who are unaware of the punishment they are about to suffer and why they are to suffer it". This definition was subsequently adopted by a majority of the Court.[19] The *Ford* decision left the determination of sanity up to each state.

Under current Texas law, "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". In early February 2004, Kelsey Patterson's appeal lawyer initiated a *Ford* claim, challenging Patterson's competency to be executed. In Texas, the procedure followed is that the trial-level court, if it accepts that the defence has made a "substantial showing of incompetency", will appoint two experts to evaluate the prisoner's competence and will subsequently conduct a hearing on the merits of the claim. If the court finds that, by a preponderance of the evidence, the prisoner is incompetent, the case will go to the Texas Court of Criminal Appeals (TCCA) for review. If the finding is that the prisoner is competent for execution, no such "appeal" to the TCCA is provided.

[17] The more than 320 executions carried out in Texas since it resumed judicial killing in 1982 have been by lethal injection. As in many other states, lethal injections are carried out using a combination of three chemicals: sodium thiopental, pancuronium bromide and potassium chloride. There is evidence that the pancuronium bromide, a derivative of curare which paralyses the muscles but does not affect the brain or nerves, may mask the condemned prisoner's suffering during the execution. A person injected with this chemical cannot move or speak. Lawyers continue to file claims that a "chemical veil" may be masking the reality of the lethal injection process. The use of pancuronium bromide for animal euthanasia is unacceptable under American Veterinary Medical Association guidelines, and its use has been banned in several states. In September 2003, a new law came into force in Texas prohibiting its use in the euthanasia of cats and dogs. On 12 February 2004, dissenting against the refusal by his colleagues on the Texas Court of Criminal Appeals to stay an execution pending consideration of the constitutionality of the lethal injection process, a judge wrote: "Especially poignant is our own legislature's action in banning the chemical. Clearly, the State of Texas has acted to eliminate the cruel and inhumane euthanasia of animals by limiting the procedures and chemicals that can be used to euthanize. It stands to reason that what is cruel and inhumane for use in animals is also cruel and inhumane for use in human beings."

[18] *Ford v Wainwright*, 477 U.S. 399 (1986).

[19] "Moreover, under *Ford v. Wainwright*, someone who is 'unaware of the punishment they are about to suffer and why they are to suffer it' cannot be executed." *Penry v Lynaugh*, 492 U.S. 302 (1989).

In Kelsey Patterson's case, the fact that he refuses to meet with mental health professionals (or his lawyers) makes it difficult if not impossible for his competence to be assessed. If this occurs and the experts are unable to make an assessment, the court may very well hold that Patterson has failed to meet his burden to prove he is incompetent to be executed by a preponderance of the evidence. The irony is that the same mental illness that likely renders Patterson incompetent to be executed also functions to prevent his attorneys from meeting their burden of proof to show he is incompetent to be executed.

**Kelsey Patterson, as a young man © Private (AI use)**

Although there are prisoners, including in Texas, that have been found incompetent for execution, *Ford* has provided only minimal protection, and has not prevented seriously mentally ill prisoners from being put to death in the USA. For example, Thomas Provenzano, a prisoner with a long history of mental illness, was put to death in Florida in 2000. A judge ruled him competent for execution despite finding "clear and convincing evidence that Provenzano has a delusional belief that the real reason he is being executed is because he is Jesus Christ." The judge said that the present standard for determining competency is "a minimal standard", and that his ruling "should not be misinterpreted as a finding that Thomas Provenzano is a normal human being without serious mental health problems, because he most certainly is not".[20]

Like Thomas Provenzano, Kelsey Patterson may be able to make some connection between his crime and his punishment. But, if this connection takes place in an inner world that is entirely delusional and the product of profound mental illness, can he truly be said to have an understanding of what is happening to him and why?

On 9 December 1997, at his state post-conviction hearing, Kelsey Patterson was questioned about his conviction:

[20] Judge Bentley, Circuit Court, Eighth Judicial Circuit, in and for Bradford County, Florida, 8 December 1999.

**Q:** Do you understand that you were convicted of the offence of capital murder?
**A:** I understand what it means, and I'm trying – I hope I'm not trying to lead you too much, but I don't want to die. And I don't want to lose my life on the sentence of death. It means I would die to get sentenced to death.
**Q:** Do you know who you are convicted of killing?
**A:** I was convicted of killing.
**Q:** Who is that?
**A:** The alleged victims was Dorothy Harris and Louis Oates.

Given this testimony, the state court ruled that while Kelsey Patterson was mentally ill, "this mental illness does not prevent the petitioner from knowing and realizing that he is under a death sentence for actions he took in taking the lives of his victims".

During his federal proceedings, a magistrate judge appointed Dr Edward Gripon as an independent mental health expert and granted funds for the defence to hire an expert, Dr Richard Rogers. An evidentiary hearing was held on 9 August 1999 on the issue of Patterson's competence to be executed. At the hearing, both experts testified that the prisoner had refused to meet with them. In his findings of October 2000, the judge wrote:

> "Dr Rogers testified that, because he was unable to conduct a clinical interview and standardized testing on Patterson, he was unable to arrive at a definitive opinion regarding Patterson's competency to be executed, but that he was concerned because recent letters from Patterson indicated that Patterson believed that the execution could easily be stopped by the state district court if that court would only recognize and acknowledge the conspiracy against him, and that Satan was controlling the legal process and court system, and that he had received a permanent stay of execution from the board of pardons and parole. Dr Rogers also testified that Patterson's refusal to cooperate with his attorneys and the experts as itself a product of his psychosis".

Dr Gripon also could not reach a conclusion about the prisoner's current competency to be executed, but agreed that his refusal to be examined was a product of his illness.

Nevertheless, the federal judge found that Kelsey Patterson was competent to be executed. He wrote: "All that is required for legal competency is for the prisoner to understand the fact of his impending execution and connection between his crime and the execution. That the prisoner may believe that he is not morally responsible for the killing because he was being controlled by outside forces is not part of the test".

The judge expressed some concern that Kelsey Patterson believed that he had a permanent stay of execution from the clemency board. However, he wrote that "because this Court did in fact stay his execution, the fact that Patterson is mistaken about the source of the stay or its duration is insufficient to rebut the presumption that he is incompetent."

Drs Rogers and Gripon had suggested that it might be possible to get a clearer picture of Patterson's competency if he were placed in a mental health facility for long-term observation. The judge dismissed this out of hand, suggesting that such a course "would be an open invitation for death row inmates to delay the execution of their sentences".

Since learning of his 18 May 2004 execution date, Kelsey Patterson has written various letters, including to the Texas Board of Pardons and Paroles, the Texas Court of Criminal Appeals, and the US District Court for the Eastern District of Texas. In these letters, he refers to the permanent stay of execution that he has received on grounds of innocence.

In a 13-page letter to the US District Court in February 2004, Patterson writes: "I am myself Kelsey Patterson who ask that you the United States District Court Eastern District of Texas Honor Honor Honor my rights give me my rights is in amnesty give me my rights give me my rights stop the death warrants death warrants murders stop the execution stop and remove the execution execution date execution date told to me by Major Miller on January 15 who said the order came from Attorney General of Texas execution murder execution execution punishments body health destruction disfigurement… devil murder homo rape death machines death warrants death warrants murder execution execution date execution hell that is being did to me my bodies from my body my men from me Kelsey Patterson my eye my sight my vision my family my family see and apply in action in action for me my family the fact that the Texas Court of Criminal Appeals and kuntz-TDCJ authority have told me stay and that I have been give a permanant stay from execution based on innocence….".

In a letter the same month to the Texas Court of Criminal Appeals, Kelsey Patterson wrote: "the McClennan County state district court Mclennan County has said stay and stay stay stay stay stay stay and stay stay stay always stay from execution to me my men from me Kelsey Patterson stay from murder and execution to me Kelsey Patterson…".

## Protection for the mentally ill

In 2002, the US Supreme Court outlawed the execution of people with mental retardation.[21] Numerous such prisoners had been executed in the USA since the Court ruled in *Penry v Lynaugh* in 1989 that such killing was constitutional.[22] In *Atkins v Virginia*, the Court overturned the *Penry* decision, finding that "standards of decency" had evolved in the 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?

[21] *Atkins v Virginia*, 000 U.S. 00-8452 (2002)
[22] 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

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".

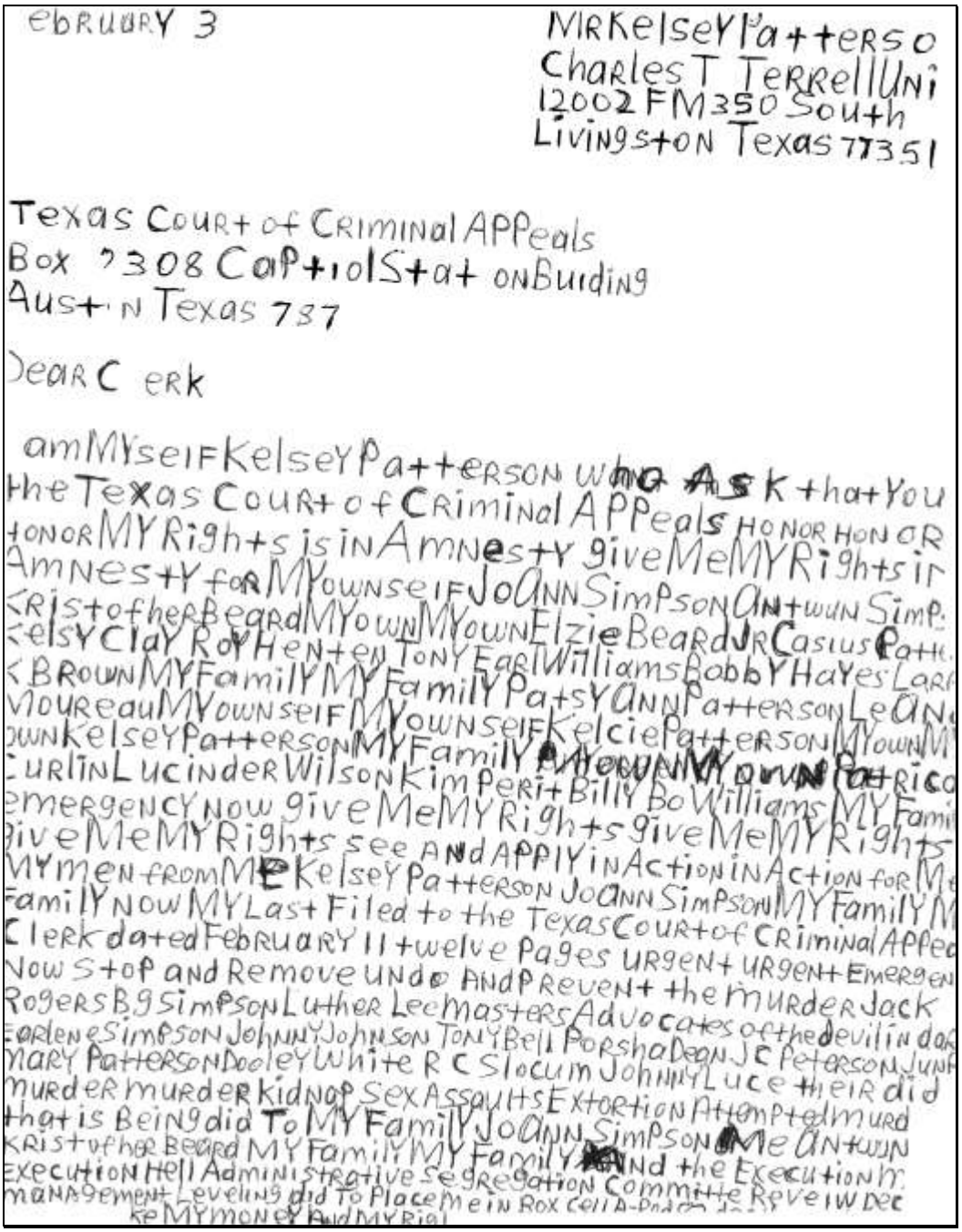
Kelsey Patterson does not have mental retardation. But does not his mental illness diminish his culpability in the crime for which he is facing execution? Do his delusions not diminish his capacity to process information and to communicate, to engage in logical reasoning, to control impulses, and to 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." It is clear that Kelsey Patterson was, in effect, his own worst enemy at his trial, unable to communicate rationally with his lawyers, and serving as a poor witness on his behalf.

In Texas, a jury cannot hand down a death sentence unless it finds that the defendant is likely to commit acts of criminal violence in the future, the so-called "future dangerousness" question. A mentally ill defendant who has committed an apparently motiveless crime may be particularly likely to be seen by jurors as a future danger, particularly if the state's mental health system is known to be under-resourced and unable to guarantee appropriate treatment.

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 a badge of shame upon a country which claims to be a progressive force for human rights. The execution of Kelsey Patterson would be another shameful episode in the USA's ugly history of judicial killing. It would be another Texas injustice.



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MR Kelsey Patterso
Charles T Terrell Uni
12002 FM 350 South
Livingston Texas 77351

Texas Court of Criminal APPeals
Box 3308 CaPitol Stat on Buiding
Austin Texas 787

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**From a letter to the Texas Court of Criminal Appeals from Kelsey Patterson, February 2004.**


Texas Court of Criminal APPeals Clerk for
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**From a letter to the Texas Court of Criminal Appeals from Kelsey Patterson, February 2004**