

To: Health Professionals
From: Medical Office
Date: 19 March 2004

MEDICAL ACTION: USA: Another Texas Injustice – the case of Kelsey Patterson, mentally ill man facing imminent execution

“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”.

Federal Judge during evidentiary hearing on Patterson’s competence to be executed, August 1999.

“[this] would be an open invitation for death row inmates to delay the execution of their sentences”

The same judge’s response to two mental health experts’ testifying at the evidentiary hearing 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, as they were prevented from reaching a conclusion on his mental health status due to his constant refusal to meet with them.

“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.”

Kelsey Patterson’s trial lawyer.

Summary

AI’s report, “Another case of Texas injustice: the case of Kelsey Patterson” examines the case of a 49 year-old African-American man suffering from paranoid schizophrenia, who is scheduled to be executed in Texas on 18 May 2004.

The report looks at Kelsey Patterson’s background : his long term history of mental health problems; the unsuccessful attempts by his family to obtain help for him from the state authorities; and describes how Patterson was found competent to stand trial and sentenced to death despite his bizarre behaviour during, pre-trial and post-trial proceedings which represented compelling evidence that he did not have a rational understanding of what was going on and that he was effectively unable to communicate with his lawyers.

An appeal challenging Patterson’s competency to be executed is currently pending. However, constitutional protections in this area in the USA are minimal and other prisoners have gone to their deaths despite suffering from serious mental illness. AI is deeply concerned that there is a very real risk of execution, which 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.

Goals

- To urge the Texas authorities to grant clemency to Kelsey Patterson.
- To raise awareness of the case and the wider issue of mentally ill prisoners under sentence of death in the USA with US, national and international mental health and medical associations and urge them to make approaches to the Texas authorities on Kelsey Patterson's behalf.

Timing

Please organize action as soon as possible, Kelsey Patterson's execution is scheduled for 18 May.

Background Information

This information is a summary of relevant points from the report. For further details on any of the points, please refer to the report where indicated.

- Kelsey Patterson shot and killed Louis Oates and Dorothy Harris in 1992, for no apparent reason. He was undoubtedly mentally ill at the time. Patterson had first been diagnosed as a paranoid schizophrenic in 1981 and hospitalized on numerous occasions. It was the third motiveless shooting Patterson had carried out (the other two victims survived the shootings – carried out in 1980 and 1983 - and Patterson was found incompetent to stand trial because of his mental illness);
- During legal proceedings, Patterson consistently refused to cooperate with his lawyers or be examined by mental health experts, believing them to be part of a conspiracy of outside forces controlling him through implants in his brain and body;
- At all stages of the legal proceedings - during jury selection, a competency hearing, at his trial and during the post-conviction process, Patterson continually interrupted with bizarre and incoherent ramblings (see pages 6-11, 13 and 16 of report), leading to him being taken out of the courtroom on a number of occasions and being ordered by one judge during the guilt phase of the trial, to be gagged¹;
- Patterson was declared competent to stand trial by clinical psychologist Dr Walter Quijano and forensic psychiatrist, Dr James Grigson, at a competency hearing in 1993 despite the fact that they did not examine him. They based their diagnosis on records relating to Patterson's commitment to a state hospital in 1984, omitting to look at records relating to his earlier and later commitments. Dr Quijano later recanted his testimony (see page 7 of report) and Dr Grigson was later expelled from the American Psychiatric Association because of his unethical, unscientific testimony in such cases (see page 7 of report);
- At a later state post-conviction 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 state hospitals in 1981, 1984, 1987 and 1988 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 (see page 8 of report);

¹ In the end, Patterson reportedly spent less than half of the trial in the courtroom.

- The state mental health care system failed to provide adequate care for Patterson's illness.² 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.³ 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."⁴ On February 24 2004 Texas restricted access to certain types of more expensive medications, including medications used to treat serious mental illnesses in order to save money. The move has been criticised by the MHAT who reportedly said: "It is a misguided attempt to contain prescription costs for people with mental illness. This action will actually cost the state more money in the long run, while guaranteeing poorer outcomes for persons with mental illnesses"⁵

Ample warning signs before the crime showed that Patterson was capable of committing acts of potentially lethal violence during periods when his schizophrenia was left untreated – as mentioned above, Patterson had previously carried out two shootings. Over the years, Patterson's family sought 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. In the days before the crime for which he was sentenced to death, Kelsey Patterson's half-brother had tried to get him help because of his obviously deteriorating mental state;

- During a hearing in federal court in 1999 to consider Patterson's competency to be executed, mental health experts for the defense and the prosecution testified that Patterson's refusal to be examined was itself a product of his psychosis (page 16 of report). However, the presiding judge found Patterson competent.
- 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, Patterson refers to his "amnesty" and to the permanent stay of execution that he believes he has received on grounds of innocence. The letters, examples of which are given in the report, are written in the same incoherent rambling style of his court room outbursts;
- 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. 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

² Indeed, during oral arguments in federal court in August 2002, one of the judges 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.² Nevertheless, the court upheld the death sentence in May 2003.

³ *Mental illness: Current mental health care not meeting needs*. News 8 Austin, 21 April 2003.

⁴ *State budget balanced on the backs of Texas' most needy citizens*. The Mental Health Advocate, Summer 2003. Mental Health Association in Texas.

subsequently adopted by a majority of the Court.⁶ The *Ford* decision left the determination of sanity up to each state.

- In 2002, the US Supreme Court outlawed the execution of people with mental retardation.⁷ Numerous such prisoners had been executed in the USA since the Court ruled in *Penry v Lynaugh* in 1989 that such killing was constitutional. 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.

However, there is as yet no similar protection for the mentally ill.

Recommended Actions

Letter writing

Please send appeals immediately. In all appeals please include Kelsey Patterson’s prison number: #999065.

Write your letters on headed paper if your professional association uses this, in English if possible and in your own words, using the following points as guidelines:

1 To the American Psychiatric Association, American Psychological Association, American Medical Association, Texas Medical Association, Texas Society of Psychiatric Physicians, World Psychiatric Association

- Explain that you are writing, as a concerned health professional about the case of Kelsey Patterson, a mentally ill man who is scheduled to be executed in Texas on 18th May (refer to AI’s report)⁸;
- Give some brief information on the background to the case (in particular see bullet points 4 and 5 on page 2);
- Urge them to call on the Texas Board of Pardons and Paroles to recommend that Governor Perry grants clemency to Kelsey Patterson.

2 To the Texas Board of Pardons and Paroles⁹

- Explain that you are writing, as a concerned health professional about the execution scheduled for 18th May of Kelsey Patterson, who has a long history of serious mental illness;

⁶ “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).

⁷ *Atkins v Virginia*, 000 U.S. 00-8452 (2002)

⁸ AI’s report will be sent to these organizations by the medical team at the International Secretariat.

⁹ In Texas, the Board of Pardons and Paroles has the power to recommend clemency for death row prisoners. Their recommendation is made to the state Governor. The Governor can accept or reject a recommendation for clemency. If the Board votes against recommending clemency, the Governor cannot overrule it. The Governor can ask the Board to consider clemency in any case, before they make their decision. According to the Texas Administrative Code, “The board shall investigate and consider a recommendation of commutation of sentence in any case, upon the written request of the governor.” The Board of Pardons and Paroles has recommended one commutation of a death sentence in a period that has seen more than 320 executions in Texas; that was after intervention from the Governor. The Governor can also issue one 30-day reprieve without the Board’s recommendation, and can use this to ask the Board to reconsider a decision to deny clemency.”

- Express sympathy for the families and friends of Louis Oates and Dorothy Harris, explaining that you are not seeking to minimize the suffering that their deaths will have caused;
- Welcome the recent recommendation for clemency the Board made to Governor Perry on behalf of Robert Smith¹⁰.
- Refer to the US Supreme Court ruling in *Atkins v Virginia* that execution of people with mental retardation is unconstitutional on the grounds that their deficiencies, while not warranting an exemption from criminal sanctions, diminish their personal culpability. Suggest that Kelsey Patterson's mental illness also diminishes his culpability in the crime for which he is facing execution;
- Express particular concern that Kelsey Patterson was found competent to stand trial despite never having been examined by a doctor, but instead only after a review of records relating to his admission to hospital in 1984 and not on those relating to previous or later admissions. Refer to the fact that Kelsey Patterson was previously found incompetent to stand trial because of his mental illness after two earlier shooting incidents. Refer to the recantation of expert trial witness Dr Quijano and the subsequent criticism of Dr Grigson's credibility as a witness by the American Psychiatric Association who disciplined him.. Refer to the findings also of Dr Childs during state post-conviction proceedings that he was in no doubt that Patterson had been incompetent to stand trial;
- Urge them to recommend that Governor Perry grants clemency to Kelsey Patterson.

COPIES

- Send copies of the letters you write to the Board of Pardons and Paroles to Governor Perry with a covering letter including the following points:
 - Welcoming the recent commutation he granted to Robert Smith;
 - Urging him to do everything within his power and influence to stop Kelsey Patterson's execution.
- Send a copy of one of the letters you write to the organizations listed under target 1, above, to:
 - the National Alliance for the Mentally Ill
 - the Texas Mental Health Association
 - Advocacy Incorporated

Outreach

To national mental health organisations in your own countries and national Medical Associations:

- Send them a copy of AI's report;
- Outline briefly the background to the case;

¹⁰ On 12 March 2004 Reuters reported that Governor Rick Perry, following the recommendation of the state's Pardon and parole board, commuted the death sentence for Robert Smith to Life after testing revealed Smith's IQ was below 65. This is the first death sentence commuted by Governor Perry.

- Urge them to approach the Texas Board of Pardons and Paroles to recommend that Governor Perry grants clemency to Kelsey Patterson. Ask them to send copies of their letters to Governor Perry.

Publicity

- Alert the health professional media in your country to AI's report; write articles for journals etc.

Petition

- Try organizing a petition of health professionals and send it to the Texas Board of Pardons and Paroles, with a copy to Governor Perry.

ADDRESSES

1 Board of Pardons and Paroles *(If you can only send one appeal, please do so to the Presiding Officer of the Board):*

Rissie Owens, Presiding Officer
Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA
Fax: +1 512 406 5482

If you can send multiple appeals, please do so to the Board's regional offices, as this will increase the chance that individual Board members, who do not meet to consider clemency applications, will be made aware of the depth of concern on the case.

Amarillo Board Office

Charles Aycock
Texas Board of Pardons and Paroles
5809 S. Western, Suite 237
Amarillo, TX 79110, USA
Fax: +1 806 358 6455
Salutation: Dear Mr Aycock

Angleton Board Office

Linda Garcia
Texas Board of Pardons and Paroles
1212 N. Velasco, Suite 201
Angleton, TX 77515, USA
Fax: +1 979-849-8741
Salutation: Dear Ms Garcia

Gatesville Board Office

Juanita Gonzalez
Texas Board of Pardons and Paroles
3408 S. State Hwy. 36
Gatesville, TX 76528, USA
Fax: +1 254-865-2629
Salutation: Dear Ms Gonzalez

Huntsville Board Office

Rissie Owens, Presiding Officer

Texas Board of Pardons and Paroles
1300 11th St., Suite 520, P.O. Box 599
Huntsville, TX 77342-0599, USA
Fax: +1 936-291-8367
Salutation: Dear Ms Owens

Palestine Board Office

Jose L. Aliseda
Texas Board of Pardons and Paroles
1111 West Lacy St.
Palestine, TX 75801, USA
Fax: +1 903-723-1441
Salutation: Dear Mr Aliseda

San Antonio Board Office

LaFayette Collins
Texas Board of Pardons and Paroles
420 S. Main
San Antonio, TX 78204, USA
Fax: +1 210-226-1114
Salutation: Dear Mr Collins

2. Appeals to Governor Perry

The Honorable Rick Perry, Governor of Texas,
State Capitol, PO Box 12428
Austin, TX 78711, USA
Fax: +1 512 463-1849
Email via webpage: <http://www.governor.state.tx.us/contact#contactinfo>
Salutation: Dear Governor

3. Others

American Psychological Association
750 First Street, NE,
Washington, DC 20002-4242
Email: ethics@apa.org
Fax: +1 202 336 5997

American Psychiatric Association
1000 Wilson Boulevard, Suite 1825,
Arlington, VA. 22209-3901
Email: apa@psych.org
Fax: +1 703 907 1085

American Medical Association
515 N. State Street
Chicago, IL 60610

Fax: +1 312 464 4184

World Psychiatric Association
Dept of Psychiatry and Behavioural Science
Metropolitan Hospital Centre
New York Medical College
1901 First Avenue, Suite 4M-3
New York, NY 10029
USA

Fax: +1 212 423 7001

Email: wpasecretariat@wpanet.org

Texas Mental Health Association
8401 Shoal Creek Boulevard
Austin, TX 78757
USA

Fax: + 512 454 3725

Email: mhainfo@mhatexas.org

Texas Medical Association
401 West 15th Street
Austin, TX 78701
USA

Fax: +1 512 370 1632

Email: knowledge@texmed.org

Texas Society of Psychiatric Physicians
John Bush, Executive Director
401 West 15th Street, #675
Austin, TX 78701

Fax: 512-478-5223

E-Mail: tsppofc@aol.com

National Alliance for the Mentally Ill

Mike Fitzpatrick, Acting Director

Colonial Place Three
2107 Wilson Blvd., Suite 300
Arlington, VA 22201-3042

Email: mftizpatrick@nami.org

Fax: +1 (703) 524-9094

Advocacy Incorporated¹¹

7800 Shoal Creek Boulevard, Suite 171-E
Austin, TX 78757

Fax: +1 512 323 0902

Email: infoai@advocacyinc.org

THANK YOU FOR ANY ACTION YOU ARE ABLE TO ORGANISE.

¹¹ Advocacy Incorporated is a state protection and advocacy agency for the rights of people with mental illness, funded by the Federal Center for Mental Health Services.