

Civil Rights/Human Rights

Compassion in the Great Republic of Texas

By Paul Harris

May 23, 2004, 18:56

May 20, 2004 -- Shock and awe: those were the two emotions I felt on March 27, 2003 after reading of an execution that took place March 26 in Texas. Yesterday, May 18, 2004, they did it again.

The thinking in Texas appears to be that if mental illness doesn't prevent you from holding the state's highest office, or the Oval Office, it shouldn't keep you away from the executioner either.

James Colburn was executed in March 2003 even though nobody doubted that he was mentally ill; evidence of his illness was manifest and most would agree that when he killed Peggy Murphy in 1994, he was suffering the effects of his illness.

There is also no doubt that Colburn committed the killing for which he was convicted. But he did not commit murder. Murder is generally considered to be the intentional and unlawful killing of another human being and there are certainly many killings that would fit that description; this isn't one of them.

Colburn was known to be mentally ill from the age of fourteen. He was diagnosed with paranoid schizophrenia and at least twice during his life had been placed in mental institutions. He had also been in and out of prison on several occasions for burglary, robbery, assault, and arson and was actually on parole when he killed Peggy Murphy. She had been hitchhiking outside the apartment where Colburn lived and had asked for a drink of water. Evidence showed that Colburn invited her inside, attempted to rape her, choked her when she resisted, and then stabbed her in the neck. She died from the knife wound.

Later on the day of the killing, Colburn confessed to police and told them he heard a voice telling him to kill Murphy because that would send him back to prison, a place he knew well and where he felt safe.

Despite many years of illness, which may sufficiently explain his anti-social behaviour, Colburn had received only sporadic treatment. After his insurance coverage ran out when he turned eighteen, he sought treatment at several facilities only to be turned away because of an inability to pay. At almost no time since his teenage years could James Colburn be said to be in control of his faculties.

In yesterday's execution, the victim was another man diagnosed with schizophrenia as far back as 1981. Kelsey Patterson, age 50, was convicted of the 1992 slaying of Louis Oates and Dorothy Harris who were employees of an oil company in the Texas town of Palestine. The court records apparently produced no motive for the killings and it is said that after the shooting stopped, Patterson stripped off all his clothes except for his socks and then walked away shouting out incoherent remarks.

During the trial, Patterson was ejected from the courtroom several times for outbursts in which he claimed that his behaviour was being controlled by implants and remote-control devices.

Ironically, this was one of those rare cases where the Texas pardons board actually made a recommendation for clemency. Since 1999, the board has made only two previous clemency recommendations while rejecting 119 applications. Despite the board's -5-1 vote to recommend life imprisonment, Texas governor Rick Perry over-ruled and allowed the execution to proceed. He said there was nothing illegal about the execution so it

should be carried out. Morals apparently don't enter into this picture.

Both men were convicted of murder and sentenced to death, the time-honoured Texas way of doing things. There are some who simply seem to derive a perverse pleasure from ordering the killing of others, but most proponents or supporters of capital punishment insist it is only reserved for the worst and most heinous crimes, committed by the most blameworthy perpetrators. How does two men who were clearly strangers to the reality shared by most of us, who suffered chronic delusions and hallucinations, become a 'most blameworthy perpetrator'?

After thirty or so years of illness, Colburn was finally receiving mental health treatments in the weeks leading up to this killing. His history includes delusions of persecution, multiple suicide attempts, hospitalizations, incoherent thinking, auditory hallucinations, psychotic episodes. And when, as he said, one of his inner voices told him to kill Peggy Murphy, he was powerless to stop himself. How does that make him guilty of murder? How does that give him the capacity to 'intentionally' kill? And it is 'intent' that is the prerequisite for murder.

The jury in Colburn's trial was never told about his mental disease even though he went through the trial in a state of heavy sedation needed to keep his symptoms under control. He actually slept through a large part of the proceedings because of the intense soporific effects of the medications. At appeal, several courts ruled that the mental illness could not be introduced because it was not raised in the original trial. In other words, it doesn't matter how sick he might be, if his lawyers didn't follow the proper protocols in the first trial he gets to pay with his life. This is a highly specious and suspect line of thought; if court officials felt he was ill enough to require sedation during his trial then the mental illness was raised and recognized, even if the jury wasn't actually told about it.

A news release from Amnesty International in 2003 has its Executive Director quoted as saying: "James Colburn was drinking a solution of his own urine and 'Bippy' cleanser last fall [2002] with the belief that it would make him a ghost after he died. Yet Texas found him competent to be executed. It is paradoxical that the US Supreme Court recently granted a hearing to determine whether a St. Louis man can be forcibly medicated in order to face minor fraud charges while James Colburn's case goes unheard even though he was forcibly medicated for his schizophrenia in order to receive a death sentence."

During the appeals process, the state argued that Colburn's mental illness was not sufficiently severe to render him legally insane. Court-appointed psychologists had advised that despite his mental illness, he did understand that his execution was imminent and the reasons for it. Assuming that is accurate, it has nothing to do with the issue; the issue was whether he was competent at the time he committed the killing. All evidence would suggest that he was not and that should mean that he did not have the requisite mental acuity to form an 'intent', or 'mens rea' as the law calls it. And if that is the case, then he was not guilty of murder and should not have suffered the death penalty. He would certainly be guilty of the killing, because he did kill; but killing isn't necessarily murder and that is why there are various possible charges related to killing and various possible sentences.

In Patterson's case, a federal judge wrote in 2000: "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 examine him agree that he is mentally ill. The most common diagnosis is paranoid schizophrenia."

Despite rulings in both cases that the men were fit to stand trial, their behaviour during the trials made clear that those rulings were simply wrong. Neither of these men was in touch with what the rest of us know as reality. Certainly one wouldn't have expected that the Republic of Texas might want to actually provide treatment for these men; it is much more satisfying to take their lives and be done with them. But we might have hoped for more compassion from the appeal courts.

Most of the world's democracies, and even many of its dictatorships, eschew capital punishment. But they are almost unanimous in their agreement that even in those countries where capital punishment is retained, it should at the very least not be imposed on the mentally ill. A United States Supreme Court decision from 1986 permits the execution of the mentally ill, provided they are able to understand why they are being put to death, while a subsequent decision (in 2002) forbids the execution of the mentally retarded. For the sick individual, it is probably a very poignant distinction between mental illness and mental retardation. In either case, it should be clear that the individual is not in control of his or her actions.

Capital punishment is wrong for any reason. It is a uniquely cruel form of societal revenge, inevitably prone to error, and most often inflicted on the most vulnerable population; the poor and the non-white. But there can be no excuse for taking the life of someone who committed a crime beyond his or her ability to control or prevent. We might just as well blame a blind man for stepping on our toes on the bus.

Paul Harris is self-employed as a consultant providing businesses with the tools and expertise to reintegrate their sick or injured employees into the workplace. He has traveled extensively in what is usually known as "the Third World" and has an abiding interest in history, social justice, morality and, well, just about everything. He lives in Canada.]

Mr. Harris also writes for Yellow Times and covers DRC for News From The Front. Members of the UN Global Security office have also subscribed to it.
