



## Case Study: Monty Delk

While some inmates have been diagnosed with mental illness long before committing the crimes for which they were sentenced to death, others exhibit symptoms of mental illness only after their arrival on death row. This is particularly true in the case of inmates sentenced to

death for crimes committed in their late teens or early 20s, which is typically the age of onset for such illnesses as bipolar disorder and schizophrenia. These cases present particular challenges for the prison medical staff, for attorneys, and for the courts.

### “Crazy as a Loon”

Monty Delk was convicted and sentenced to death in 1988 for a crime committed at the age of 19. Though his first two years on death row appeared to be uneventful, on March 4, 1990, he experienced his first psychotic breakdown. The prison medical authorities diagnosed Delk with bipolar disorder with psychotic features; they also raised the possibility that he was suffering from schizoaffective disorder. For the next three and a half years, at least 13 mental health professionals in the prison system diagnosed Delk as having a serious mental disorder and prescribed various medications. His mental illness was not easily managed, however, as Delk was found to have Neuroleptic Malignant Syndrome, a rare reaction to Haldol and other anti-psychotic drugs that can cause muscular rigidity, hypertension, and hyperthermia; in some cases it can be fatal. To make matters worse, Delk often refused to have blood drawn, which prevented the doctors from adjusting his medications appropriately. For the most part, he was treated with lithium, though he often refused to take any medication at all.<sup>i</sup>

Delk displayed a pattern of disturbed behavior during his years on death row, including covering himself in feces and incoherent jabbering. He repeatedly expressed delusional beliefs - that he was a submarine captain, a CIA or FBI agent, or a member of the military, among many others. He was known by the other prisoners to be “crazy as a loon.” At a court hearing in 1993, he responded to the judge in prolonged streams of unbroken gibberish. At another hearing in 1997, Delk was so disruptive that the judge ordered him to be gagged and later had him removed from the courtroom after he interrupted the court repeatedly with nonsensical utterances.

### “If he is totally fooling us, he is the best that I ever saw.”<sup>ii</sup>

In 1994, however, Delk’s treatment plan changed abruptly. A prison “psych tech” claimed to have overheard Delk say to another (severely mentally ill) inmate that he had duped the psych team by “playing the crazy fool” and that he would not be executed. Delk’s diagnosis subsequently was changed to “malingering to avoid the death penalty,” though no official evaluation or test was ever administered. This was accompanied by a recommendation that Delk receive no further medication or treatment. Other prison medical staff completely reversed their previous diagnoses, but made no effort to watch Delk in situations where he was unaware he was being observed so as to test the allegations of malingering.<sup>iii</sup>

#### **Key Issues in This Case:**

- Diagnosed with bipolar disorder with psychotic features while on death row
- Determined competent to be executed four years before his execution date was actually set; no further hearing or mental health evaluation was conducted to assess his competency
- Unable to communicate with/assist his attorney or participate in the proceedings against him

Prison staff never seriously reevaluated the 1994 allegation that Delk was a malingerer, though they continued to debate his condition. Their charts reflected conflicting diagnoses – some were “vehement in their conclusion that Delk was malingering, while others recorded that he was ‘very psychotic.’” In 1999, Delk’s medical chart showed that he was again diagnosed with bipolar disorder. It later was changed back to “malingering.”<sup>iv</sup> New staff members were told to refer to the single diagnosis of malingering, despite their own observations that Delk appeared psychotic and delusional.<sup>v</sup>

In 1996 the Texas Court of Criminal Appeals appointed John Wright to act as Delk’s attorney. He recalled that in the entire time he represented Delk, he was unable to communicate rationally with him. Wright was deemed a “next friend” in proceedings, since Delk’s mental illness rendered him unable to request counsel. In his *Clemency Petition to the Texas Board of Pardons and Paroles*, Wright reported that “Mr. Delk has never requested, agreed to, or acquiesced in, the 1996 and later appointment of counsel. All post-conviction proceedings were undertaken in his name, but without his consent.” He went on to say that “Though I have requested it, I have not received any assistance or cooperation from Mr. Delk or his family over the five or more years I have been attempting to represent him.”<sup>vi</sup>

At Delk’s 1997 hearing to assess his competence to proceed with state habeas, Dr. Windel Dickerson, Ph.D., a psychologist and former chief mental health officer at the Texas prison system, reviewed Delk’s prison and Anderson County jail records. He found the records to show that Delk suffered from severe mental illness. Dr. Dickerson testified that Delk’s behaviors seemed to be highly consistent with the original diagnosis of bipolar disorder – manic episodes followed by periods of calm, as well as delusions. He offered the judgment that the long, continued, and persistent nature of Delk’s behavior far outweighed the 1994 incident of supposed malingering.<sup>vii</sup>

### **Competent to Be Executed... Four Years Too Soon**

Despite the expert testimony of Dr. Dickerson, the judge in the state habeas hearing announced from the bench that he found that Delk was cognizant of his surroundings, knew what he was doing, and understood the consequences of not following orders. The judge suggested that Delk was voluntarily choosing not to assist counsel<sup>viii</sup> and concluded that he was competent to proceed with state habeas review of his conviction and sentence. Even though Delk did not have an execution date at that time (1998), the judge also held that he failed “in his burden to establish a legal objection to his execution based upon his lack of mental capacity.”<sup>ix</sup>

Once Delk received an execution date – four years later – his attorneys argued that they had met the required “substantial threshold showing” to hold a hearing regarding his competency to be executed. The courts denied these motions, however, stating that there was not sufficient showing of a change in circumstances to raise a significant question as to his competency. They refused to fund the thorough mental health examination requested by counsel. Delk’s lawyers had been unable to obtain any of his prison medical records after November 1, 2001, since their client refused to sign a release for them. Another examination by Dr. Dickerson in December 2001 revealed Delk likely suffered from schizophrenia and was not competent to be executed.<sup>x</sup>

In his final statement on February 28, 2002, Delk shouted obscenities and gibberish:

“I've got one thing to say, get your Warden off this gurney and shut up. I am from the island of Barbados. I am the Warden of this unit. People are seeing you do this.”<sup>xi</sup>

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- <sup>i</sup> *Petition for Writ of Habeas Corpus Raising Ripe Claim of Incompetency to be Executed Under Ford v. Wainwright*, in the U.S. District Court, Eastern District of Texas, Beaumont Division, Civil Action No. 1;98cv1583.
- <sup>ii</sup> Dr. Windel Dickerson, testimony at 1997 competency hearing.
- <sup>iii</sup> Testimony from Dr. Roneo Yap, a member of the prison psych team. Cited in John Wright, *Clemency Petition to the Texas Board of Pardons and Paroles*, February 5, 2002.
- <sup>iv</sup> *Ibid.*
- <sup>v</sup> *Petition for Writ of Habeas Corpus Raising Ripe Claim of Incompetency to be Executed Under Ford v. Wainwright*, in the U.S. District Court, Eastern District of Texas, Beaumont Division, Civil Action No. 1;98cv1583.
- <sup>vi</sup> John Wright, *Clemency Petition to the Texas Board of Pardons and Paroles*, February 5, 2002.
- <sup>vii</sup> *Ibid.*
- <sup>viii</sup> *Petition for a Writ of Certiorari to the U.S. Supreme Court*, filed by John E. Wright, December 18, 2001.
- <sup>ix</sup> *Petition for Writ of Habeas Corpus Raising Ripe Claim of Incompetency to be Executed Under Ford v. Wainwright*, in the U.S. District Court, Eastern District of Texas, Beaumont Division, Civil Action No. 1;98cv1583.
- <sup>x</sup> *Ibid.*
- <sup>xi</sup> [www.tdcj.state.tx.us/stat/delkmontylast.htm](http://www.tdcj.state.tx.us/stat/delkmontylast.htm)