

Ferguson v. Florida: Rationally Understanding Competence to be Executed?

Christopher S. Wadsworth, MD, William J. Newman, MD, and Paul R. S. Burton, MD

The U.S. Supreme Court addressed competency to be executed in *Ford v. Wainwright*, holding that execution of the insane violates the Eighth Amendment. More than 20 years later, the Court defined this standard in its landmark decision in *Panetti v. Quarterman*. The *Panetti* ruling held that an inmate's factual awareness of the reasons for his execution was not sufficient to determine his competence. The Court advised that a prisoner must have a rational understanding of the reasons for his death sentence. The *Panetti* Court declined to establish specific competency criteria and acknowledged that rational understanding is difficult to define. Following *Ford* and *Panetti*, lower courts have struggled to apply the standards articulated in these two landmark cases. This struggle was recently highlighted in *Ferguson v. Florida* (2013), a case that received substantial attention and was decided by the Florida Supreme Court and the Eleventh Circuit Court. *Ferguson* featured majority and concurring opinions that, although consistent in their ultimate conclusions, expressed differing interpretations of their application of the *Panetti* standard. Although the *Panetti* Court declined to set a national standard for competency to be executed, *Ferguson v. Florida* is a cautionary reminder that more tangible guidelines are necessary for consistent application of a conclusion that cannot be revised.

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Capital punishment in the United States was temporarily halted by the U.S. Supreme Court's decision in *Furman v. Georgia* (1972),¹ when the Court held that the death penalty's arbitrary application violated the Eighth Amendment's bar against cruel and unusual punishment. However, the Court reaffirmed its acceptance of capital punishment in *Gregg v. Georgia* (1976) after the state developed a sentencing scheme outlining statutorily defined aggravating and mitigating factors.² The Court later identified specific populations that were ineligible for execution. The rulings in *Atkins v. Virginia* (2002)³ and *Roper v. Simmons* (2005)⁴ prohibited the execution of individuals with mental retardation and those under the

age of 18 years, respectively. Before the Supreme Court ever recognized a constitutional bar on executing the mentally incompetent, Florida had a statutory bar on executing those who lacked the "mental capacity to understand the nature of the death penalty and the reasons why it was imposed. . . ."⁵ Florida's application of this statute would become the focal point for the U.S. Supreme Court's first articulation that the execution of the incompetent violates an inmate's protection against cruel and unusual punishment.

Ford v. Wainwright: Execution of the Insane Is Unconstitutional

In 1974, Alvin Bernard Ford was convicted of murdering a police officer in Fort Lauderdale, Florida. By December 1983, Mr. Ford's attorneys reported that he had "regressed into nearly complete incomprehensibility, speaking only in a code . . ." (Ref. 6, p 403). Mr. Ford's legal counsel invoked Florida Statute § 922.07 (1985), which mandated Florida's Governor to appoint three psychiatrists to determine whether an inmate is competent to be executed. At the time, an inmate was competent to be

Dr. Wadsworth is Chief Psychiatrist at San Quentin State Prison, California Department of Corrections and Rehabilitation, San Quentin, CA. Dr. Newman is Assistant Professor of Psychiatry and Associate Training Director of the Forensic Psychiatry Fellowship Program, Department of Psychiatry and Behavioral Sciences, University of California-Davis School of Medicine, Sacramento, CA. Dr. Burton is Senior Psychiatrist at San Quentin State Prison, California Department of Corrections and Rehabilitation and Assistant Clinical Professor of Psychiatry, University of California San Francisco, CA. Address correspondence to: Christopher Wadsworth, MD, P.O. Box 305, San Quentin, CA 94964. E-mail: christopher.wadsworth@forensicmd.net.

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executed if he understood “the nature and effect of the death penalty and why it was being imposed upon him.” (Ref. 6, p 39) A single, 30-minute panel interview yielded different diagnoses from each of the appointed psychiatrists. However, the evaluators agreed that Mr. Ford was competent to be executed. Florida’s Governor, without commenting on these differing clinical opinions, signed a death warrant for Mr. Ford’s execution on April 30, 1984. Fourteen hours before his scheduled execution, the United States Court of Appeals for the Eleventh Circuit ordered a delay. The U.S. Supreme Court granted a writ of *certiorari* to resolve the issue of whether the Eighth Amendment prohibits the execution of the insane.

The U.S. Supreme Court, in *Ford v. Wainwright*, eventually held that the Eighth Amendment prohibits the execution of inmates who are “insane.” (Ref. 6, p 399). Justice Marshall outlined in his majority opinion that the U.S. Constitution forbids “the execution of the insane” (Ref. 6, p 405) as a violation of the Eighth Amendment’s bar against cruel and unusual punishment. The *Ford* Court’s decision prohibited the states from executing mentally incompetent defendants and outlined three requirements for determining an inmate’s competency to be executed: the condemned inmate must be permitted to present relevant information to allow the fact finder to make an informed decision; the condemned inmate should have the “opportunity to challenge or impeach the state-appointed psychiatrists’ opinion” (Ref. 6, p 400); and the final decision regarding competency must not rest solely with the executive branch.

The Court’s majority opinion did not define insanity or provide details about the substantive standard to be applied in assessing whether a prisoner is competent to be executed. Justice Marshall wrote, “We may seriously question the retributive value of executing a person who has no comprehension of why he has been singled out and stripped of his fundamental right to life” (Ref. 6, p 409), which seemingly implied a simple comprehension standard.

Justice Powell, in his concurring opinion, offered his view regarding the standard for competency to be executed: defendants must be aware of the punishment that they are about to undergo and why they are being executed. Justice Powell’s test was informally adopted as the constitutional minimum required of the states to avoid a violation of the Eighth

Amendment; however, states were free to adopt a broader view of incompetence.⁷

Provenzano v. State: Florida’s Reaction to Ford

The *Ford* Court found fault with Florida’s procedures for determining an inmate’s competency to be executed. In light of *Ford*, the state adopted new procedures for establishing this competency. Florida codified these procedures into the Florida Rules of Criminal Procedure 3.811 and 3.812 in 1986.⁸ Florida Rule 3.811 established a substantive standard, which was virtually identical with Florida’s statutory definition: “[a] person under sentence of death is insane for purposes of execution if the person lacks the mental capacity to understand the fact of the impending execution and the reason for it.”⁸

After the *Ford* decision, the Florida Supreme Court (FSC) addressed the state’s competency standard in two decisions involving the impending execution of Thomas Provenzano. In *Provenzano v. State (Provenzano I)*,⁹ the Florida court, eight years before the U.S. Supreme Court’s holding in *Panetti*, rejected a claim that the standard articulated in Florida Rule 3.811 is unconstitutional because it does not require a “rational appreciation of the connection between the crime and the punishment” (Ref. 9, p 603). The court explained that the Florida standard includes a “rationality element” (Ref. 9, p 602) that requires a “rational appreciation of the connection between his crime and the punishment he is to receive” (Ref. 9, p 603). It remanded the case for further proceedings to assess Mr. Provenzano’s competency, using the rational-appreciation standard.

When the case returned to the FSC the following year (*Provenzano II*),¹⁰ the court affirmed the trial court’s determination that Mr. Provenzano, despite harboring a delusional belief that he was Jesus Christ, was competent to be executed because he had “a factual and rational understanding” (Ref. 10, p 140) that he had been sentenced to death for murdering a woman and that he would die when he was executed.⁹ Florida’s highest court explained that “Florida ha[d] adopted the Eighth Amendment standard announced by Justice Powell in *Ford*” (Ref. 10, p 140) and that Mr. Provenzano met this standard because he possessed “the mental capacity to understand the fact of his pending execution and the reason for it” (Ref. 10, p 140).

Panetti v. Quarterman: Rationally Understanding the Competency Standard?

After the *Ford* decision, U.S. courts had difficulty applying the Supreme Court's existing parameters for an inmate's competence to be executed. In *Panetti v. Quarterman*,¹¹ the Court again addressed the question of executing a mentally ill inmate. However, the Supreme Court appeared reluctant to issue a holding that would govern the complexities of competence to be executed.¹²

Scott Louis Panetti understood that he had committed two murders, recognized that he had been sentenced to death, and acknowledged the state's assertion that his execution was punishment for his murder convictions. However, Mr. Panetti maintained that the state was, in fact, executing him for his Christian religious beliefs, not as a punishment for murder. The claim on appeal was that his mental illness generated an irrational understanding of the reasons for his death sentence.

After his case progressed through the lower courts, Mr. Panetti asked the U.S. Supreme Court to determine whether a prisoner is competent to be executed if he has a factual awareness of the reasons for execution but does not, as a result of a mental illness, rationally understand those reasons. The Court held that the awareness-only requirement was too restrictive. It stated that its decision in *Ford* indicated that delusions are not irrelevant in determining whether a prisoner has a rational understanding of his impending execution. The Court did not, however, establish a definitive standard for determining an inmate's competency to be executed.¹³

The narrow holding in *Panetti* instructs lower courts to consider whether a prisoner rationally understands his punishment and the reasons for its imposition. The decision provides neither a definition of rational understanding, nor references to decisions concerning competency in other contexts. By implementing a vaguely outlined concept, the U.S. Supreme Court leaves substantial discretion to lower courts in determining which inmates are eligible for execution. This discretion has led to disagreement in judicial definitions of this standard.¹⁴ In May 2013, the case of *Ferguson v. Florida*¹⁷ highlighted lower courts' struggles to apply a consistent standard to determine a defendant's competency to be executed.

Ferguson v. Florida

Case Summary

John Errol Ferguson was charged with committing eight execution-style murders. On July 27, 1977, in Carol City, Florida, Mr. Ferguson, armed with a concealed gun and posing as a utility employee, gained entry to the home of Margaret Wooden. After drawing his weapon, Mr. Ferguson bound and blindfolded Ms. Wooden. Over the next several hours, with the assistance of two additional accomplices, Mr. Ferguson restrained seven additional victims who arrived at the home. The three men eventually shot all eight victims in the back of the head. Six died.

On January 8, 1978, Brian Glenfeld and Belinda Worley, two 17-year-old high school students intended to join their friends at a local ice cream shop. However, their plans were interrupted when they encountered Mr. Ferguson. Mr. Ferguson shot Mr. Glenfeld through the car window, while the teenagers were seated inside the parked car. He raped Ms. Worley before shooting her in the head while she knelt. After murdering her, Mr. Ferguson returned to the car and again shot Mr. Glenfeld through the head.^{15,16}

During his trial for the 1977 crimes, Mr. Ferguson was convicted on all counts, except for one count of robbery.¹⁶ The presiding judge imposed six death sentences, two consecutive 30-year prison sentences, and three sentences of life imprisonment. In his subsequent trial for the 1978 murders, Mr. Ferguson was convicted of two counts of first-degree murder. The judge imposed two additional death sentences.¹⁶

During the ensuing 30 years, Mr. Ferguson introduced mental health symptoms into the following phases of his legal proceedings: an insanity defense that he raised in his trial for the 1978 murders; a request to stay legal proceedings related to his petitions for postconviction relief due to alleged mental incompetence; and his movement to stay his federal *habeas* proceedings due to his alleged inability to assist counsel. Each of these claims was denied. Florida's Governor signed a death warrant on September 5, 2012, authorizing Mr. Ferguson's execution. Prison officials scheduled the execution for October 16, 2012. Mr. Ferguson requested a hearing on his competency to be executed and, as required by Fla. Stat. § 922.07,¹⁷ the governor temporarily stayed the

execution and appointed a commission of three psychiatrists to perform an evaluation.

The three psychiatrists outlined that Mr. Ferguson did not, at the time of the evaluation, show symptoms of a mental illness. The psychiatrists specified that Mr. Ferguson's belief that he was the Prince-of-God who would be resurrected as God's right hand was not consistent with a psychotic delusion, but represented an atypical belief. The psychiatrists concluded that, although Mr. Ferguson had been diagnosed with paranoid schizophrenia, he had been free of signs and symptoms of mental illness for years. The commission noted that for the 11 years preceding their evaluation, Mr. Ferguson had not been treated with antipsychotic medications and that he had been administratively classified as an inmate without identifiable psychiatric symptoms that affected his ability to function properly within the prison.

The commission concluded that, even if a subsequent evaluator would have deemed his atypical beliefs consistent with psychotic delusions, these beliefs did not affect Mr. Ferguson's "factual and rational understanding of his impending execution" (Ref. 16, p 1323). Their report specified that Mr. Ferguson acknowledged that he was going to be executed because of the murders he had committed and acknowledged that he would die as a result of the execution. The panel indicated that Mr. Ferguson understood the nature and effect of the death penalty and why it was imposed on him. Upon receiving the commission's final report on October 2, 2012, the governor lifted the stay of execution. On October 3, 2012, Mr. Ferguson petitioned the state trial court to review the governor's conclusions, contending that his execution would violate the Eighth Amendment.

State Trial Court Decision

On October 8, 2012, the trial court issued a stay of execution. After a two-day evidentiary hearing, the court concluded that, although Mr. Ferguson had once been diagnosed with paranoid schizophrenia, there was no evidence that a mental illness interfered with his rational understanding of the execution and the reason for its imposition. The court emphasized that Mr. Ferguson was aware that he would physically die as a result of the execution. It did not identify evidence that he believed that he was being executed for any reason other than the murder convictions, and it noted that his atypical beliefs re-

garding the afterlife were not substantially different from mainstream religious concepts.

Florida Supreme Court Decision

Mr. Ferguson appealed the trial court's decision to the Florida Supreme Court (FSC), contending that the lower court had failed to apply the standard articulated in *Panetti* and that the FSC's *Provenzano* decision is legally invalid. He asserted that his prior diagnosis of paranoid schizophrenia and his Prince-of-God belief were evidence that he was ineligible for execution.

The FSC affirmed the trial court's decision,¹⁸ noting that Mr. Ferguson's alleged psychosis did not interfere with his rational understanding of his pending execution and the reason for it. The FSC's opinion neither held that his history of psychotic thoughts was irrelevant to his competency nor suggested that Mr. Ferguson was competent to be executed merely because he was able to identify the state's articulated rationale for his punishment. The FSC, citing its decision in *Provenzano II* and Justice Powell's concurring opinion in *Ford*, variously articulated the competency standard as whether an inmate lacks "the capacity to understand the nature of the death penalty and why it was imposed" (Ref. 18, p 1155); whether he is "aware of the punishment [he is] about to receive and the reason [he is] to receive it" (Ref. 18, p 1157); and whether he "understand[s] the connection between his crime and the punishment he is to receive for it" (Ref. 18, p 1157).

The FSC rejected Mr. Ferguson's contention that *Panetti* imposes a more stringent standard for competency to be executed than *Provenzano*. The court explained that *Panetti* is a narrowly tailored decision and that the *Provenzano* ruling requires that a prisoner understand the connection between his conviction and the punishment to which he had been sentenced.

Final Federal Habeas Proceeding

Less than one hour before Mr. Ferguson's scheduled execution on October 23, 2012, the district court denied the *habeas* petition, but granted him a certificate of appealability (COA) to address an alleged unreasonable application of *Panetti* and whether the FSC's affirmation of the state trial court was based on an unreasonable determination in light of his alleged history of chronic, severe psychosis.

The Eleventh Circuit granted a temporary stay of execution.

Eleventh Circuit's Analysis of Ford, Provenzano, and Panetti

The Eleventh Circuit Court considered whether the FSC, by applying the competency standard laid down in *Provenzano*, failed to apply the rational-understanding inquiry in *Panetti*.¹⁶ Mr. Ferguson noted that the *Provenzano* ruling had adopted the test articulated by Justice Powell in *Ford*, which he believed to be insufficient because it investigated only whether a prisoner was aware of the punishment that would be imposed and the reason for its imposition. He contended that, by failing to apply a test of rational understanding, the FSC's holding was legally impermissible.

The Eleventh Circuit Court noted that, despite considering Mr. Ferguson's psychiatric history, the FSC found substantial evidence to support the trial court's determination that Mr. Ferguson's history of paranoid schizophrenia and Prince-of-God delusion did not interfere with his rational understanding of his pending execution and the reason for it.

The court concluded that the competency standard articulated and applied by the FSC is not inconsistent with either *Ford* or *Panetti*. It agreed with the FSC's conclusion that the *Panetti* ruling does not materially alter the competency standard that it had announced in *Provenzano II*. The circuit court outlined the following opinions in its consideration: the *Provenzano II* court had adopted the formulation endorsed by Justice Powell in *Ford*; the U.S. Supreme Court's decision in *Panetti* does not negate the awareness standard articulated by Justice Powell in *Ford*; and *Panetti* does not impose a more rigorous standard for assessing competency to be executed.

The Eleventh Circuit's Application of the Standard

The Eleventh Circuit Court noted that the FSC's opinion used awareness and understanding interchangeably, and often used both terms without the modifier rational. The court noted that the FSC's word choice is not necessarily an indication of its failure to apply the standard articulated in *Panetti*. It noted that, absent a "conspicuous misapplication of Supreme Court precedent . . . we will not presume that a state court misapplied federal law" (Ref. 16, p 1337) or failed to comprehend Supreme Court

precedent. The Eleventh Circuit added, "Imprecision in language is not confined to state court opinions" (Ref. 16, p 1337), which likely echoed the lower court's frustration with an ambiguous standard.

The Eleventh Circuit recapped that rational understanding is difficult to define, and highlighted that *Panetti* demonstrates this difficulty by not providing a clarifying definition. *Panetti* indicates that normal or rational are not synonymous with a layperson's understanding of these terms. The Eleventh Circuit noted that the insistence in *Panetti* that the terms cannot be readily understood is further evidence that the standard remains undefined. It held that, because the *Panetti* Court refrained from establishing a clear definition of rational understanding, state courts should not be faulted for not defining it clearly themselves.

The Eleventh Circuit Court of Appeals noted that the FSC concluded, after consideration of the available evidence, that Mr. Ferguson had the requisite rational understanding and was competent to be executed. The court noted that the FSC's decision was not a misapplication of an existing Supreme Court precedent or an "error well understood and comprehended in existing law beyond any possibility for fairminded disagreement" (Ref. 16, p 1338). The Eleventh Circuit concluded that the standard applied by the FSC was not inconsistent with clearly established federal law.

Eleventh Circuit's Consideration of Rational Understanding

In its conclusion, the Eleventh Circuit indicated that, although most people could characterize Mr. Ferguson's Prince-of-God belief as "crazy" (Ref. 16, p 1342), this characterization may be insufficient to determine competency to be executed. The court reiterated that competence refers to a petitioner's rational understanding that his execution is a result of his capital conviction. The court noted that Mr. Ferguson's Prince-of-God belief did not preclude his rational understanding that he would die when he was executed.

The Eleventh Circuit addressed Mr. Ferguson's assertion that his belief that he would be resurrected as the Prince-of-God implied that he lacked a rational understanding of his execution. However, the court held that *Panetti* does not mean that a belief in life after death is inconsistent with the rational un-

derstanding of death. The court noted that, if such a belief were a barrier to execution, millions of Americans, holding both traditional and idiosyncratic views of the afterlife, would not qualify for the death penalty.

The Eleventh Circuit advised that courts should be reluctant to treat anyone's belief in the afterlife as a symptom of mental illness. It noted that the measurement of the rationality of religious beliefs is beyond the ken of the courts: "what will happen to us after we pass through the dark curtain of death is the ultimate non-justiciable question" (Ref. 16, p 1343).

Concurring Opinion

In his concurring opinion, Judge Charles Wilson concluded that the FSC's articulation of the competency standard was "patently incorrect" in the wake of *Panetti*, which explicitly holds that "[a] prisoner's awareness of the State's rationale for an execution is not the same as a rational understanding of it" (Ref. 11, p 959). Judge Wilson noted, "insofar as the Florida Supreme Court continues to believe that 'the Eighth Amendment requires only that defendants be aware of the punishment they are about to receive and the reason they are to receive it,' it is not correct; *Panetti* requires more" (Ref. 16, p 1344). Nevertheless, Judge Wilson concurred that, in light of the presented evidence, Mr. Ferguson was competent to be executed.

Response to Mr. Ferguson's Pending Execution

On August 5, 2013, *The New York Times* published an editorial noting that Florida was attempting to execute a mentally ill man who was clearly ineligible, according to the U.S. Constitution.¹⁹ This article neither discussed the in-depth consideration by multiple forensic experts nor the courts' conclusion that, if Ferguson had symptoms of a mental illness, they would not have affected his rational understanding of his execution.

The National Alliance of Mental Illness (NAMI) submitted an *amicus* brief on July 30, 2013, urging the U.S. Supreme Court to grant Mr. Ferguson's petition for a writ of *certiorari*.²⁰ The brief noted that the FSC dismissed *Panetti* as a decision that left Florida jurisprudence unaffected. The brief indicated that the Eleventh Circuit did not dispute the FSC's conclusion in this regard. However, the brief did not

address the Eleventh Circuit's detailed analysis, including the criticism registered by Judge Wilson in his concurring opinion. In addition, the brief did not address that, aside from the FSC's general statements regarding the impact of *Panetti*, the state courts had comprehensively considered Mr. Ferguson's specific, rational comprehension of his impending execution. The attorneys who authored this brief did not address the conclusions of the three-psychiatrist commission that Mr. Ferguson had been without symptoms of mental illness for several years without using antipsychotic medications.

On August 5, 2013, approximately one hour before Mr. Ferguson's execution, the U.S. Supreme Court denied his application for a stay.^{16,21} Prison officials injected the lethal drugs at 6:01 p.m. John Errol Ferguson, after spending more than 30 years on Florida's death row, was pronounced dead at 6:17 p.m.

Discussion

Ferguson raises several important points that are of interest to forensic psychiatrists. In the absence of more definitive U.S. Supreme Court guidelines for establishing an inmate's competency to be executed, the possibility of inconsistent application of this standard will remain.

The Eleventh Circuit repeated the FSC's contention that *Panetti* does not materially alter the competency standards articulated in *Provenzano*. By recognizing that in *Provenzano*, the court had adopted Justice Powell's opinion in *Ford*, the court indirectly concluded that his opinion was not materially distinct from that in *Panetti*. As noted above, Justice Powell's articulated competency test in his concurring opinion in *Ford v. Wainwright* had become, at that time, the adopted constitutional minimum required to avoid a violation of the Eighth Amendment when permitting a prisoner's execution.

In *Ford*, Justice Powell noted that, to be found competent to be executed, inmates must understand why they are being executed.⁶ He did not further define how to apply this standard to an inmate whose understanding may have been impaired by a mental illness. This distinction would be defined later in *Panetti*. Thus, in contrast to the Eleventh Circuit's indirect assertion, Justice Powell's test was clearly updated by *Panetti*.

Notwithstanding that the *Panetti* Court declined to provide a better definition of rational understand-

ing, the majority opinion in *Ferguson* incorrectly asserts that *Ford* and *Panetti* are materially indistinct. In his separately authored opinion, Eleventh Circuit Judge Wilson concurred with the majority opinion that Ferguson was competent to be executed. However, he expressed his strong disagreement with the FSC's assertion that *Panetti* leaves *Ford* unchanged.

Capital punishment is a topic that understandably generates substantial controversy. Attention to the case of Mr. Ferguson was further amplified when, despite his documented history of mental illness, he was found competent to be executed. The American Civil Liberties Union (ACLU) released a statement indicating that the FSC held that Ferguson was eligible for execution "because they applied the wrong legal standard for mental competency required to be executed."²¹ However, this statement does not capture what the court documents indicate: although the FSC concluded that *Ford* is not updated by *Panetti*, this misstatement was not the reason that the FSC and Eleventh Circuit held that Mr. Ferguson was competent to be executed. As indicated in Eleventh Circuit Judge Wilson's concurring opinion, despite the FSC's misappraisal of the impact of *Panetti*, the court did not find evidence that Ferguson felt that he was being executed for any reason other than as punishment for his murder convictions. Although Mr. Panetti insisted that he was being executed to silence his religious beliefs, Mr. Ferguson realized that he was being executed for the murders he had committed. Without evidence that his understanding of his execution was irrational, Mr. Ferguson did not meet his burden of proof that he was not competent to be executed.

NAMI's *amicus* brief asserted its contention that the FSC applied the wrong standard for competency to be executed.²⁰ It further noted:

Provenzano therefore flatly contradicts *Panetti*. If a prisoner sincerely believes that he is being executed because he is Jesus Christ, rather than because he murdered another human being, he is not competent to be executed despite the fact the he may understand the process by which he is going to be executed [Ref. 20].

NAMI's identification of a substantive difference between *Provenzano* and *Panetti* is accurate. However, Mr. Panetti's non-reality-based understanding of the reasons for his execution is not consistent with Mr. Ferguson's documented rational awareness of his pending execution. For example, the Florida circuit court held that there was no evidence that Mr. Ferguson thought that he was being executed for any

reason other than the murders for which he had been convicted. The FSC noted that his delusional thought content neither interfered with his rational understanding of his execution nor the reason for which he had been sentenced to death.

The critical response to Mr. Ferguson's execution also focused on the exclusion of the specific terminology used in *Panetti*'s most recent articulation of a national standard for a prisoner's competency to be executed: rational understanding. Regardless of whether these judicial and clinical opinions consistently juxtaposed the terms rational and understanding in outlining Mr. Ferguson's competency, four separate evaluating bodies articulated their determination that, at the time of their evaluation and/or review, he possessed a substantial awareness and reality-based understanding of the penalty that he faced. In the 10 months preceding his execution, Mr. Ferguson's competency was comprehensively considered in accordance with a standard that is nearly indistinguishable from that used in *Panetti*. These evaluations concluded that Mr. Ferguson had a rational, reality-based understanding of the capital sentence that he was facing and that this understanding was not affected by mental illness.

The parameters established by the U.S. Supreme Court in *Panetti* require further clarification. The Court's articulation of this standard leaves considerable room for variable interpretation. Although the existing system allows for state sovereignty, this right must be balanced with the arbitrary application of a punishment whose permanence warrants the highest degree of consistency. The 1972 holding in *Furman* demonstrated the U.S. Supreme Court's historical intolerance of the death penalty's arbitrary application. Although the Eleventh Circuit's decision in *Ferguson* outlined that Mr. Ferguson satisfied the existing federal standard for competency to be executed, the disparate rationales featured in the court's opinions highlight the difficulty with consistent interpretation and application. Given the irrevocable conclusions at stake, an ideal court system would not maintain an ill-defined standard that leaves substantial room for unreliable application.

The American Medical Association's Council on Ethical and Judicial Affairs specifies that physicians should not participate in a legally authorized execution.²² However, the Council indicates that a physician's testimony in capital cases, including testimony related to competence to be executed, does not con-

stitute the physician's participation in executions. The opinion of a forensic evaluator should represent a clear and detailed explanation of an inmate's understanding, awareness, and comprehension of a pending execution. The ongoing debate regarding the standard for competency is a reminder that forensic evaluators should not represent their medical opinion as the sole determinant of a prisoner's competence to be executed. Although it may assist in the application of this evolving standard, the physician's opinion "should be merely one aspect of the information taken into account by a legal decision maker such as a judge or hearing officer" (Ref. 22).

Although the media and organizational response to the case of John Errol Ferguson mischaracterized the impact of his mental illness on his understanding and awareness of his execution, the possibility of differently interpreting a U.S. Supreme Court precedent underscores the importance of providing concrete guidelines for a test whose determinative outcome cannot be later revised.

The execution of inmates with mental impairments is a topic that continues to capture substantial attention. For example, in *Hall v. Florida* (2014),²³ the U.S. Supreme Court held that a state cannot exclusively rely upon the results of an IQ test to determine whether a capital defendant is competent to be executed. *Hall* and *Ferguson* highlight that clarification of the current standard for competency to be executed is necessary to improve a process that remains prone to inconsistent application.

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