

Texas, Georgia execute intellectually disabled death row inmates

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The US Supreme Court ruled in 2002 that US states could not execute the “mentally retarded.” That court precedent, however, did not stop Georgia and Texas from carrying out the executions this week of two inmates with clearly demonstrated intellectual disabilities. The high court allowed the executions to proceed, refusing to issue a stay in both cases.

Robert Ladd died at the Walls Unit in Huntsville, Texas after receiving a single lethal dose of pentobarbital just after 6 p.m. local time on Thursday. Ladd, 57, was convicted of the 1996 beating death of Vicki Ann Garner in east Texas. Ladd was on parole at the time after serving 17 years of a 40-year sentence for the murder of a Dallas woman and her two children.

Ladd’s attorney argued before the Supreme Court that he was ineligible for the death penalty because he was mentally disabled. “Ladd’s deficits are well documented, debilitating and significant,” Brian Stuff, a senior staff lawyer with the American Civil Liberties Union Capital Punishment Project, told the high court.

Ladd’s lawyers cited a psychiatrist’s 1970 determination that Ladd, 13 years old at the time and in the custody of the Texas Youth Commission, had an IQ of 67, below the threshold for impairment generally recognized by courts and psychiatric professionals, including the American Psychological Association. The attorneys also pointed to Ladd’s difficulties with social skills and functioning over a long period.

While the US Supreme Court ruling held that executing the intellectually disabled constitutes “cruel and unusual punishment,” which is prohibited by the Eighth Amendment to the US Constitution, it left it up to the states to determine what constitutes such a disability. In Texas, this determination is based on what are known as the “Briseño Factors,” named after a state court decision in which the determining criteria were

outlined.

In a 2004 opinion, Texas Court of Criminal Appeals Judge Cathy Cochran attempted to reconcile accepted definitions of intellectual disability with state law. In doing so, she made a strange reference to a character in John Steinbeck’s *Of Mice and Men*. In the 1936 book, Lennie, a mentally disabled character, accidentally kills a woman near the end of the story.

Cochran wrote, “Most Texas citizens might agree that Steinbeck’s Lennie should, by virtue of his lack of reasoning ability and adaptive skills, be exempt” from execution. But she argued that not everyone who meets the social services definition of “retardation” should be exempt from the ultimate punishment.

She then outlined other factors that should be taken into account: “Things like: Is this someone who’s a leader or a follower?” Cochran asked. “Is this someone who can lie effectively and spin a good story and keep things straight? You can’t spin a good lie and keep it going if you can’t remember things for very long, if you’re not coherent, if you can’t tell a clear story.”

Cochran’s ruling was subsequently denounced by Steinbeck’s son, Thomas Steinbeck, who said he was “deeply troubled” at the judge’s use of the book “as a benchmark to identify whether defendants with intellectual disabilities should live or die.”

On the basis of these unscientific criteria, the Texas Court of Criminal Appeals ruled that Robert Ladd failed to meet the state’s standard for intellectual disability and the US Supreme Court’s denial of a stay in his case cleared the way for his execution.

In Georgia, another man with a long history of mental disability was executed on Tuesday. Warren Hill, 54, was pronounced dead at 7:55 p.m. local time after being administered a lethal injection of pentobarbital at the state prison in Jackson.

Hill was sentenced to death for the murder of a fellow prison inmate, Joseph Handspike, while serving a life sentence for the 1985 murder of his girlfriend Myra Wright. The state of Georgia carried out a relentless campaign for Hill's execution, serving him four death sentences over the last four years.

Hill's mental disability was first recognized at the age of seven, when he scored abnormally low on an IQ test. All seven medical experts who examined him in the course of his legal appeal, including three appointed by the state of Georgia, concluded that he was mentally impaired by a "preponderance of the evidence."

However, this was not enough to spare Hill from the death chamber. According to Georgia's standards, a condemned prisoner must prove his disability "beyond a reasonable doubt." This reasoning takes the legal benchmark used for proving guilt at a criminal trial, and twists it to place the high burden of proof on the prisoner to demonstrate his mental disability. No other state in the US requires such a standard, and it is virtually impossible to prove.

Hill's lawyer, Brian Kammer, denounced the execution as "a grotesque miscarriage of justice" and an "abomination." He said, "Georgia has been allowed to execute an unquestionably intellectually disabled man, in direct contravention of the Supreme Court's clear precedent prohibiting such cruelty."

Two weeks ago, Georgia executed Andrew Brannon, a Vietnam veteran suffering from post-traumatic stress disorder who killed a deputy sheriff during a traffic stop. Kammer also represented Brannon, who was denied a stay by the Supreme Court as well.

Warren Hill and Robert Ladd became the fifth and sixth prisoners executed in the US in 2015. While their executions as intellectually disabled individuals are particularly abhorrent, the drive by the state authorities to kill them—and the Supreme Court's refusal to spare them—speaks to the character of the death penalty itself.

While the overwhelming majority of industrialized nations have outlawed the practice, the US political establishment at all levels, including the Obama White House, continues to sanction the barbaric practice.



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