

Editorial/Opinion

A Competence Question

According to a recent story in *The Washington Post*, Thomas Lee "Sonny" Hays of Oklahoma may become the first man in the world to be legally executed by a lethal injection of drugs. That that method of execution is at present untried and therefore uncertain is the reason so much is being said and written about the case.

But another aspect of the Sonny Hays case has gone relatively unnoticed, and that overlooked aspect raises a serious question of competency. Ironically, the state of Oklahoma is being challenged to grant a plea of mental incompetency to the convicted killer; before the trial is history, however, it may be the state and its judicial system which proves to be mentally incompetent.

According to the story in the *Post*, Hays was convicted of a murder some three months after he allegedly committed it on March 9, 1977, and was sentenced to death. The incident all started simply enough, and ended in a baffling trail of circumstantial evidence which led to Hays' eventual apprehension.

Briefly, here's what happened on that March evening, as reported in the *Post*: Everett Leonard Vance, 45, was found shot to death in his Muskogee shoe store. His wife testified that he was still alive at 5:10 p.m. when he called home to say he would be working late. Sonny Hays, who had lived in the town all his life and shopped at the shoe store, had been paid the day before and planned to use the money to buy groceries and a new pair of boots, his friends said. Witnesses placed Hays, who has a life-long drinking problem, downtown at about 5:15 p.m. being turned away from two bars, one of them 180 feet from the shoe store. By 5:30 Hays, appearing intoxicated and carrying a brown paper bag, staggered across an intersection into the path of a car. The three teen-aged boys in the car testified that Hays had reached into the bag, pulled out a gun and waved it at them after they shouted insulting remarks at him. They sped away, ignoring the red light. A policeman at the same intersection did not see the gun, but followed Hays from the intersection. Trying to elude the police officer, Hays crossed along the edge of a service station about the same time as the owner looked out the window and saw a man toss a dark object into the back of a truck parked on his lot. A short distance away, Hays was arrested on a charge of public drunkenness, and police found that his bag contained a pair of old cowboy boots and \$110 in loose bills. In his pockets police discovered two packs of cigarettes and two lighters.

As Hays was being arrested, the service station owner told the police that Hays had thrown something--he believed it might have been a liquor bottle--into the back of the truck. But when they retrieved the object, it was a .38 caliber Llama revolver containing one empty chamber, two spent cartridges and three live rounds. Vance's body was discovered at 7:30 p.m., and about an hour later, as suspicion turned toward Hays, police returned to the service station and in the top of a trash can, about 20 feet from where the gun was found, they found two more pairs of boots with the price tags still on them. Later they learned that one of the lighters and one package of cigarettes in Hays' possession had belonged to Vance. Just over three months later, Hays, who still says he is innocent, was convicted of the murder and sentenced to death.

Despite the mountains of circumstantial evidence, there are many problems with Hays' case, many of which serve to illustrate the incompetence of the Oklahoma judicial system.

For one, Hays was never given a blood test although he had been drinking heavily before the murder and had been picked up for public drunkenness; his drunkenness was never brought up as a mitigating circumstance in the murder. Also, Hays was never given a paraffin test to determine whether he had recently fired a gun, and the prosecutor failed to produce the fingerprint evidence from the store's cash drawer.

Hays' court-appointed lawyer, William Settle of Muskogee, has also been accused of doing an inadequate job in Hays' defense. Settle raised no objection to the fact that every member of the jury had no philosophical problem with the death penalty, and there was no effort at an insanity defense even though he had been involuntarily committed to mental hospitals four times before the murder and was later diagnosed in prison in 1978 as a paranoid schizophrenic.

Hays' only way out now appears to be through two young lawyers, Kent Eldridge and Charles F. Cox, who obtained a last-minute postponement on a September 14 execution date when they entered the case two months ago for a \$1 fee on behalf of Hays' mother. They are asking a federal appeals court to declare Hays mentally incompetent so that they can officially take over the case. And if that succeeds, they will appeal his conviction not only on grounds of competency but also on the basis that he received an unfair trial because his court-appointed lawyer (Settle) did not do an adequate job. If they fail to convince the court that Hays is mentally incompetent, he is expected to be executed quickly. And since he is not actively fighting the execution--further evidence of his lack of awareness--there is nothing to stand in the way.

In their task of proving mental incompetency, the lawyers should have little trouble; Hays' acquaintances--dare we call them friends?--will support them, and his track record speaks rather well for itself.

Family members say they first noticed that something was wrong with Hays in the mid-1950s when he came home after serving with the Army in Germany. He had begun to drink heavily and was getting into fights, even becoming violent with his family and girlfriends. He complained of odd pains and sometimes coughed up blood. But the one time his parents borrowed the money to send him to a specialist in Tulsa, Hays instead took the money and went drinking. And there was a plethora of violent incidents. One day he attacked and demolished his mother's sewing machine, claiming that it was trying to kill his father. Court records show that between 1967 and 1974 Hays was committed to mental hospitals four times because of delusions and violent behavior generally related to his alcoholism. Although he has a high school education, Hays has refused to read or write anything since he went to prison, and there have been reports of suicide attempts and long periods when he would remain mute. By January of this year, a prison doctor discovered that Hays was apparently trying to starve himself to death; he had stopped eating, shaving and showering. More recently, Hays has insisted to anyone willing to listen to him that he is God. And Hays has been married six times.

Alton Franks, a fellow inmate of Hays' for about three and one-half years, says Hays is "nutty as a fruit cake. Sonny Hays has been crazy since I've been here. Sometimes he won't talk to you for six months. Sometimes he'll go out to the yard and cuss God. Sometimes he throws his clothes out, and stands there in his cell naked with a blindfold around his eyes. He can't see anybody, so he figures they can't see him. He has his good days and his bad days. But when he goes into one of them moods, it might last a month, two months, one time it lasted a year," he was quoted in the *Post* story. "I don't mean he's a blathering idiot. But the man's just not right." Franks also tells of the times when he and the others on death row would try to feed Hays, and when they tried to convince him to appeal to the Supreme Court, but without much success.

The Oklahoma court system, once again holding its competency up to question, has never given Hays any systematic psychiatric care at the prison, and he has never been given a formal psychiatric evaluation. Only a few weeks ago, Hays agreed to speak to an outside psychologist, Richard Sternoff, arranged for by Cox and Eldridge. After his examination, Sternoff concluded, "My clinical impression would be of a chronic schizophrenic process associated with an organic brain disfunction secondary to alcoholism. In a word, he is not competent."

While it is not the purpose of this editorial to determine whether Thomas Lee "Sonny" Hays is guilty or innocent, after learning the above facts it should become obvious to the judiciary of Oklahoma that Hays is definitely not "playing with a full deck." Unless, that is, they consider attacking a sewing machine, calling oneself God, being married six times before reaching the ripe old age of 45, or any of the other bizarre antics stated above normal behavior out there in Oklahoma.

Indeed, there is something dreadfully wrong with a court system that assembles a jury which is unanimously in favor of the death penalty, does not conduct paraffin tests or require fingerprints when it should be standard procedure, and does not administer psychiatric aid to patients in dire need of such treatment. Add to this an obviously incompetent state-appointed lawyer, who later remarked about the decision to execute Hays, "It doesn't bother me," and one gets the impression that perhaps lawlessness is soon to be a way of life in Oklahoma. Why, it is already beginning to get out of hand, judging by the comments of Muskogee District Attorney Mike Turpen, who prosecuted the case. Turpen said that death "might be better" for Hays than spending his life at McAlester, the state's most dangerous prison. It is a place of cold metal bars, murders and homosexual rapes, which Turpen himself calls "The McAlester Museum of Horrors." When a district attorney openly admits the terrible inadequacies of the system, and outright says the prisoner(s) would be better off dead, things can't get much worse. Or can they?

The criminal justice system of Oklahoma has proven itself incompetent in its handling of the Hays case thus far. Let's only hope and pray that if Hays is eventually condemned to die, this erstwhile inept band of bunglers will have the decency to execute him in a conventional, painless and humane fashion.

--William J. Neil

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