

# URGENT ACTION

## TEXAS EXECUTION LOOMS IN JURY BIBLE CASE

**Khristian Oliver, a 32-year old man, is due to be executed in Texas on 5 November. He was sentenced to death in 1999 for a murder committed during a burglary. While deciding whether he should live or die, jurors at his trial consulted copies of the Bible, including text supporting the death penalty, calling into serious question their impartiality.**

On 17 March 1998, 64-year-old Joe Collins returned to his home in Nacogdoches County in rural eastern Texas to find a burglary in progress. As the two burglars in the house tried to escape (two others had stayed in their car), he shot one of them, a 15-year-old boy, in the leg. The other burglar, 20-year-old Khristian Oliver, shot Joe Collins before striking him on the head with a rifle butt, according to accomplice testimony at Oliver's April 1999 trial.

After the trial, evidence emerged that jurors had consulted the Bible during their sentencing deliberations. At a hearing in the trial court in June 1999, the defence lawyer called four of the jurors to the witness stand, although the judge precluded any testimony about the effect of the use of the Bible on the jury. The jurors recalled there having been several Bibles present, that highlighted passages had been passed around, that a juror had read aloud from the Bible to a group of fellow jurors, and that the text included the passage, "And if he smite him with an instrument of iron, so that he die, he is a murderer: the murderer shall surely be put to death". The judge ruled that the jury had not acted improperly and this was upheld by the Texas Court of Criminal Appeals.

In 2002, a Danish journalist interviewed a fifth juror. The latter said that "about 80 per cent" of the jurors had "brought scripture into the deliberation", and that the jurors had consulted the Bible "long before we ever reached a verdict". He told the journalist that he believed "the Bible is truth from page 1 to the last page", and that if civil law and biblical law were in conflict, the latter should prevail. He said that if he had been told he could not consult the Bible, "I would have left the courtroom". He described himself as a death penalty supporter and life imprisonment as a "burden" on the taxpayer.

In 2008, the US Court of Appeals for the Fifth Circuit found that the jurors had "crossed an important line" by consulting specific passages in the Bible that described the very facts at issue in the case. This amounted to an "external influence" on the jury prohibited under the US Constitution, and was a more "egregious" case than had occurred in other Circuits, according to the Fifth Circuit. However, it concluded that under the "highly deferential standard" by which federal courts should review state court decisions, Oliver had failed to prove that he had been prejudiced by this unconstitutional juror conduct. In April 2009, the US Supreme Court refused to take the case.

### **PLEASE WRITE IMMEDIATELY in English or your own language, citing the inmate number 999301 in your appeals:**

- expressing concern that jurors at Khristian Oliver's trial consulted the Bible during their sentencing deliberations;
- urging the Board to recommend that the Governor commute Khristian Oliver's death sentence;
- calling on Governor Perry to accept such a recommendation, or if such a recommendation is not forthcoming, to issue a stay of execution and a request to the Board to reconsider;
- explaining that you are not seeking to excuse violent crime or to downplay the suffering caused to its victims.

### **PLEASE SEND APPEALS BEFORE 05 NOVEMBER 2009 TO:**

Rissie L. Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section  
8610 Shoal Creek Boulevard, Austin, TX 78757, USA  
Fax: + 1 512 467 0945  
Salutation: Dear Ms Owens

Governor Rick Perry  
Office of the Governor, P.O. Box 12428  
Austin, Texas 78711-2428, USA  
Fax: + 1 512 463 1849  
Salutation: Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country. Please check with your section office if sending appeals after the above date.

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### ADDITIONAL INFORMATION

Under international and US law, a criminal defendant has the right to be tried before an impartial court. The principle of impartiality demands that each of the decision-makers, whether judge or juror, be unbiased. Actual impartiality and the appearance of impartiality are both fundamental for maintaining respect for the administration of justice.

This is not the only time that US federal courts have considered a case in which jurors consulted the Bible during deliberations. The decisions emanating from these cases in the various federal circuits have been inconsistent, including on how to evaluate potential prejudice to the defendant. In a brief in 2009, 46 former federal and state prosecutors urged the US Supreme Court to take the Oliver case to resolve such issues. The brief argued: "A jury that consults the Bible during sentencing deliberations is exposed to an outside influence in violation of the Sixth Amendment's guarantee of a fair trial by an impartial jury... Even under ordinary circumstances, deprivation of a constitutional right is of the utmost concern. Such concern is all greater here, where the constitutional violation occurs in the context of jurors' decision to impose the ultimate punishment". Guidance of the Supreme Court was urgently needed, the former prosecutors argued, not least because the "lack of consensus among the US Courts of Appeals regarding juror consultation of the Bible in the capital context not only generates inconsistent outcomes, but creates the appearance of arbitrariness in an area that demands consistency and fairness". The Supreme Court declined to take the case.

An issue on appeal has also been the state's use of testimony from two accomplices in the burglary – the 15-year-old who was shot in the leg and his 16-year-old brother who had waited outside – who were promised 10- and five-year prison sentences respectively in return for their testimony. In 2002, the brothers signed affidavits stating that they had been coached by the prosecutor in how to make their testimony match each other's. Khristian Oliver's trial lawyer then also signed an affidavit in which he stated that at the time of the trial he had been "unaware of the prosecutor's role in promoting the presentation of consistent stories" by the brothers. If he had been, he said, he would have sought a mistrial, and at least to have brought the matter to the attention of the jury to raise questions about the reliability of testimony upon which the state was seeking to rely.

Race has been another issue, a sensitive topic in rural east Texas (see, for example, USA: Death in black and white, 9 August 2001, <http://www.amnesty.org/en/library/info/AMR51/117/2001>). Khristian Oliver is African American (he has light skin colour and is listed by the prison authorities as white). In an affidavit signed in 2002, his mother stated that among the "psychological burdens" borne by her son was that "some people who had been friendly when they believed him to be a Caucasian had spurned him when they found out he was from an African-American family". Oliver's lawyer had sought to have the trial judge question prospective jurors during jury selection to elicit any possible racial bias they might harbour, especially given the fact that the murder victim was white. The lawyer was concerned that he should not ask the questions himself as it might be perceived by jurors as an illegitimate injection of race into proceedings, whereas they would view the trial judge as neutral. The judge refused the request.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of the crime, the offender, or the method chosen to kill the condemned prisoner. The death penalty is inherently cruel and degrading, incompatible with human dignity. To end the death penalty is to abandon a destructive, diversionary and divisive public policy that is not consistent with widely held values. It not only runs the risk of irrevocable error, it is also costly, to the public purse as well as in social and psychological terms. It has not been proved to have a special deterrent effect. It tends to be applied in a discriminatory way, on grounds of race and class. It denies the possibility of reconciliation and rehabilitation. It prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It diverts resources that could be better used to work against violent crime and assist those affected by it. Today, 139 countries are abolitionist in law or practice. The USA, in contrast, has carried out 1,175 executions since resuming judicial killing in 1977. Texas accounts for 441 of these executions. There have been 39 executions in the USA this year, 18 of them in Texas.

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