

PUBLIC

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EXTRA 86/02

Death penalty/Legal concern

22 November 2002

USA (Oklahoma) Jay Wesley Neill (m), white, aged 37

Jay Wesley Neill is scheduled to be executed in Oklahoma on 12 December 2002. He was sentenced to death for the murder of four people committed during a bank robbery in Geronimo, in southwest Oklahoma, in 1984. He was aged 19 at the time.

In 1983 Jay Neill joined the US Army. He was discharged in the summer of 1984 after disclosing that he was homosexual. He and his partner, 21-year-old Robert Johnson began to have financial difficulties and by December 1984, they were thousands of dollars in debt. They decided to rob the Geronimo bank on 14 December. During the robbery, three bank employees - Kay Bruno, Jerri Bowles, and Joyce Mullenix - were stabbed to death. Four customers were shot, one of whom - Ralph Zeller - died. Jay Neill and Robert Johnson were arrested in San Francisco three days later with proceeds from the robbery.

Johnson and Neill were tried together in 1985 and both sentenced to death. In 1992, the Oklahoma Court of Criminal Appeals reversed their convictions, finding that they should have been tried separately. On retrial, Robert Johnson received a sentence of life imprisonment without parole.

At the sentencing phase of his own 1992 retrial, Jay Neill told the jury that he did not expect any sympathy and that he, not Johnson, had been in the bank at the time of the robbery. He expressed his remorse, telling the victims' families: "I am sorry. I am sorry. It's eating me and I believe that's part of my punishment. I'm sorry. I don't know what to say to you. I wish there was something I could say to make it better but there's not." He also related the abuse he had suffered at the hands of his father, and later his stepfather, when he was a child.

For his part, the prosecutor told the jury: "I want you to think briefly about the man you're sitting in judgment on and determining what the appropriate punishment should be... I'd like to go through some things that to me depict the true person, what kind of person he is. He is a homosexual. The person you're sitting in judgment on - disregard Jay Neill. You're deciding life or death on a person that's a vowed [sic] homosexual... But these are areas you consider whenever you determine the type of person you're sitting in judgment on...The individual's homosexual." The jury returned a death verdict.

In August 2001, the 10th Circuit Court of Appeals upheld the death sentence.

One of the three judges, Judge Carlos Lucero, dissented, arguing that "the prosecutor's blatant homophobic hatemongering at sentencing has no place in the courtrooms of a civilized society". Judge Lucero wrote that the comments were "susceptible of only one possible interpretation: among other factors, Neill should be put to death because he is gay... I cannot sanction - because I have no confidence in - a proceeding tainted by a prosecutor's request that jurors impose a death sentence based, even in part, on who the defendant is rather than what he has done".

The 10th Circuit panel agreed to reconsider its decision, but in December 2001 again upheld the death sentence by two votes to one. This time the two in the

majority acknowledged that the prosecutor's comments had been "improper" and without "any legitimate justification", but decided that the outcome of the trial had not been affected. Judge Lucero again dissented, asking "what is it that makes the comments more than merely improper? As prosecutors know, gays and lesbians are routinely subject to invidious bias in all corners of society...The openly gay defendant thus finds himself at a disadvantage from the outset of his prosecution. When a prosecutor directs the jury to make its guilt-innocence or life-death determination on the basis of anti-homosexual bias, that disadvantage is magnified exponentially and raises constitutional concerns. This is so because prosecutors occupy a position of trust, and their exhortations carry significant weight with juries... Justification for these remarks was unquestionably illegitimate. Exploiting his position of trust and spinning the reality of anti-gay prejudice to a pivotal position in the capital-sentencing phase, the prosecutor undermined the possibility that petitioner's sentence would be based on reason rather than emotion".

The United Nations Guidelines on the Role of Prosecutors requires that prosecutors "perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights", and "carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination". The right to freedom from discrimination on the basis of sex, which includes sexual orientation, is recognized in international treaties, including the International Covenant on Civil and Political Rights.

Amnesty International opposes the death penalty in all cases. Today, 111 countries have abolished judicial killing in law or practice. Since the USA resumed executions in 1977, 810 prisoners have been put to death nationwide, 52 of them in Oklahoma. Prosecutorial conduct is one of the issues highlighted in Amnesty International's April 2001 report on the death penalty in Oklahoma, *Old Habits Die Hard* (AMR 51/055/2001).

Jay Neill has chosen not to have a clemency hearing before the Pardon and Parole Board. Amnesty International understands that this is in order to spare the murder victims' families more suffering. In the absence of a recommendation from the Board, the Governor of Oklahoma has the authority to grant temporary reprieves. He should do so here, and use his power and influence to achieve commutation of Jay Neill's death sentence.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- explaining that you are not seeking to minimize the seriousness of the crime, or the suffering it will have caused to many people;
- expressing concern at the prosecutor's blatant misconduct in raising Jay Neill's homosexuality when arguing for a death sentence against him;
- arguing that the prosecutor's homophobic conduct must surely undermine confidence in the jury's decision, even for advocates of the death penalty, and also violated international standards for prosecutorial behaviour;
- calling on the governor to do all in his power and influence to stop this execution in the interests of fairness, equality, decency and the reputation of Oklahoma and the USA.

APPEALS TO:

Frank Keating
Governor of Oklahoma

Room 212, State Capitol Building
Oklahoma City, OK 73105, USA
Fax: +1 405-521-3353
Email: governor@gov.state.ok.us
Salutation: Dear Governor

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.