

PUBLIC

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UA 06/04 Death penalty / Legal concern

USA (Texas) Scott Louis Panetti (m), white, aged 45

Scott Panetti is scheduled to be executed in Texas on 5 February 2004. He was sentenced to death in 1995 for killing his parents-in-law in 1992. He has a long history of serious mental illness, including schizophrenia. He was hospitalized more than a dozen times in numerous facilities before the crime.

Scott Panetti and his second wife, Sonja Alvarado, separated in August 1992 because of his drinking and abusive behaviour. Sonja Alvarado took their three-year-old daughter and went to stay with her parents, Amanda and Joe Alvarado. She obtained a restraining order against her husband. However, on the morning of 8 September 1992, Scott Panetti shaved his head, dressed in military fatigues and drove to the Alvarados' home, taking a sawn-off shotgun and a rifle with him. He broke into the house and shot his parents-in-law at close range with the rifle. He allowed Sonja and their daughter to leave. Later that day he changed into a suit and gave himself up to the police. He subsequently said that "Sarge" (an auditory hallucination) controlled him at the time of the crime, that divine intervention had meant that the victims did not suffer, and that demons had been laughing at him as he left the house.

In July 1994 a hearing to determine whether Scott Panetti was competent to stand trial – that is, whether he had sufficient mental capacity to understand his situation and to assist in his defence – was declared a mistrial after the jury was unable to reach a verdict. A second hearing was held in September. His lawyer testified that in the previous two years, he had had no useful communication with Scott Panetti because of his delusional thinking. A psychiatrist for the defence concluded that Panetti was not competent to stand trial. A psychiatrist who testified for the prosecution agreed with the previous diagnoses of schizophrenia, and that Scott Panetti's delusional thinking could interfere with his communications with his legal counsel, particularly under situations of stress such as in a courtroom. However, he concluded that the defendant was competent to stand trial. The jury agreed.

Scott Panetti then waived his right to counsel, and the case went to trial in September 1995 with the defendant acting as his own lawyer. Scott Panetti dressed as a cowboy during the proceedings, and gave a rambling presentation in his defence. Numerous people who attended the trial as witnesses have variously described the trial as a "farce", a "joke", a "circus", and a "mockery". In post-conviction affidavits they concluded, from their prior knowledge of Panetti and their observations of him during the proceedings, that he was incompetent to stand trial. For example, a doctor who had previously treated Panetti for his mental illness stated: "I thought to myself 'My God. How in the world can our legal system allow an insane man to defend himself? How can this be just?'" Another doctor who had treated Scott Panetti for schizophrenia in 1986 concluded that Panetti was "acting out a role of an attorney as a facet of the mental illness, not a rational decision to represent himself". An attorney called by Scott Panetti as a witness later stated: "The courtroom had the atmosphere of a circus. The judge just seemed to let Scott run free with his irrational questions and courtroom antics."

Another lawyer, who was appointed as Panetti's stand-by counsel, wrote in an affidavit: "This was not a case for the death penalty. Scott's life history and long term mental problems made an excellent case for mitigating evidence. Scott did not present any mitigating evidence because he could not understand the proceeding." He recalled that Panetti had dressed in a costume "like an old TV western", including cowboy hat, trousers tucked into his cowboy boots, and cowboy shirt. The lawyer added that Scott Panetti had "wanted to subpoena Jesus Christ, JFK, actors, actresses, and people who had died... His trial was truly a judicial farce, and a mockery of self-representation. It should never have been allowed to happen". The lawyer said that he spoke to two jurors who "told me that Scott probably would not have received the death

penalty if the case had been handled differently". Another lawyer spoke to two other jurors. They "said that if Scott had been represented by attorneys that he would not have received the death penalty". One of them said that the jurors had voted for death out of their fear of his irrational behaviour at the trial. In Texas a jury can only vote for death if they decide that the defendant will pose a future danger to society if allowed to live.

Scott Panetti's father recalled in an affidavit that his son's behaviour at the trial had been "very bizarre": "I wanted to tell the judge to stop the trial because my son was sick and incompetent". Scott Panetti's sister said in her affidavit: "I think that justice broke down in my brother's trial. It was not fair to let a mentally ill man be his own attorney when he did not know what he was doing. I am sorry to say that the trial was a farce. It was a circus-like atmosphere. I never expected justice to allow this." Sonja Alvarado, the victims' daughter, has also described the trial as a "circus" and "a big joke". In a 1999 affidavit she said: "I know now that Scott is mentally ill and should not be put to death".

A psychiatrist who evaluated Scott Panetti in 1997 concluded that he suffers from schizoaffective disorder (a combination of schizophrenia and manic depression). This expert added that Panetti's "decision to waive his own counsel was under the influence of persecutory delusions, and his ability to represent himself in court was substantially impaired by disturbances in his thought processes". The psychiatrist further concluded that Panetti had not been competent to stand trial.

The United Nations Commission for Human Rights has repeatedly called on countries which still use the death penalty not to use it against anyone suffering from a mental disorder. The execution of the insane – those who do not understand the reason for, or reality of their impending punishment – is unconstitutional in the USA, under the 1986 US Supreme Court decision, *Ford v Wainwright*. This has not prevented numerous mentally ill prisoners from being executed. Scott Panetti's lawyer has initiated a *Ford* claim, but the trial-level court has dismissed it without holding a hearing. The issue is now on appeal to the higher courts. Since executions resumed in the USA in 1977, 887 prisoners have been put to death nationwide, 314 of them in Texas.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, opposing the execution of Scott Panetti and seeking clemency, in your own words, using the above information as you see fit. In appeals to the Board of Pardons please include Scott Panetti's prisoner number #999164. If possible, please organize appeals from health professionals and lawyers.

APPEALS TO:

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA

Fax: + 1 512 463 8120

Salutation: Dear Mr Chairperson

The Honorable Rick Perry, Governor of Texas, State Capitol, PO Box 12428, Austin, TX 78711, USA

Fax: +1 512 463 1849 / 0039 / 1932

Salutation: Dear Governor

COPIES TO: Diplomatic representatives of the USA accredited to your country.

If you can send a copy of your appeal to arrive with the defence lawyer before 16 January, please do so, to: Michael Gross, 106 South Saint Mary's Street, Suite 260, San Antonio, Texas 78205, USA. Fax: +1 210 354 1920. Copies of appeals from health and legal professionals particularly welcome.

You may also write brief letters (not more than 250 words) to: Letters to the Editor, *Austin-American Statesman*, PO Box 670, Austin, Texas 78767, USA. **Fax:** +1 512 912 5927. **Email:** <http://www.statesman.com/search/content/standing/letters.html>

PLEASE SEND APPEALS IMMEDIATELY.