

URGENT ACTION

EXECUTION SCHEDULED IN WASHINGTON STATE

Cal Brown, a 52-year-old man, is scheduled to be executed in Washington State, USA, on 10 September after over 16 years on death row. This would be the state's first execution for nine years, its first "non-consensual" execution since 1994, and only its fifth execution since 1963.

On 27 May 1991, police in Washington State found the body of 21-year-old Holly Washa in the boot of her car. They were acting on information provided by police in California, who were themselves acting on statements given to them by Cal Brown, who had been arrested in California on suspicion of abducting, raping and attempting to kill another woman. In statements given to police, Cal Brown described abducting, robbing, raping, torturing and killing Holly Washa. He subsequently pled guilty to attempted murder in the California case and was sentenced to life imprisonment there. He was transferred to Washington State, where he was tried for Holly Washa's murder and sentenced to death on 28 January 1994.

At capital jury selection in the USA, those citizens who would be "irrevocably committed" to vote against the death penalty can be excluded by the prosecution, under a 1968 US Supreme Court ruling. In 1985, the Supreme Court amended this standard to one where a prospective juror can be dismissed if his or her feelings about the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath". In 2006, the US Court of Appeals for the Ninth Circuit overturned Cal Brown's death sentence on the grounds that a prospective juror had been unlawfully excluded at jury selection. The man in question had said that he believed the death penalty was "appropriate in severe cases" and that he would take into account mitigating and aggravating factors. "Most importantly," the Ninth Circuit noted, "he promised he would 'follow the law' without reservation." However, the state had objected to the juror on the grounds that he was too reluctant to impose the death penalty and the trial judge allowed the prosecution to exclude him. His exclusion, the Ninth Circuit court said, meant that "Brown's death sentence cannot stand."

In 2007, the US Supreme Court reinstated Cal Brown's death sentence. It ruled that "deference to the trial court is appropriate" and that "by not according the required deference, the Court of Appeals failed to respect the limited role of federal habeas relief in this area prescribed by Congress and by our cases." Four of the nine Justices dissented, accusing the majority of choosing to "defer blindly" to a state court's mistake, and of upholding "the disqualification of a juror whose only failing was to harbour some slight reservation in imposing the most severe of sanctions." They continued: "The Court has fundamentally redefined – or maybe just misunderstood – the meaning of 'substantially impaired' and, in doing so, has gotten it horribly backwards. It appears to be under the impression that trial courts should be encouraging the inclusion of jurors who will impose the death penalty rather than only ensuring the exclusion of those who say that, in all circumstances, they cannot."

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Acknowledging the seriousness of the crime for which Cal Brown was sentenced to death;
- Noting the serious concerns that have been raised about the jury selection at Cal Brown's trial;
- Urging that Washington State not take the backward step of carrying out an execution after nearly a decade without one;
- Noting the concerns raised about the fairness of the death penalty in the wake of the Gary Ridgway case;
- Calling for commutation of Cal Brown's death sentence.

PLEASE SEND APPEALS BEFORE 10 SEPTEMBER 2010 TO:

Governor Chris Gregoire
Office of the Governor
PO Box 40002, Olympia, WA 98504-0002, USA

Email: <http://www.governor.wa.gov/contact/default.asp>

Fax: +1 360-753-4110

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

In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that in the USA, “while the jury system was intended to represent the community as a whole, the community can hardly be represented when those who oppose the death penalty or have reservations about it seem to be systematically excluded from sitting as jurors.” As early as 1986, the US Supreme Court had itself acknowledged evidence from numerous studies that the “death qualification” of capital jurors “produces juries somewhat more ‘conviction-prone’ than ‘non-death-qualified’ juries.” In 1998, a review of existing research indicated that a “favourable attitude towards the death penalty translates into a 44 per cent increase in the probability of a juror favouring conviction.” Another expert review in 1998 concluded that “death-qualified jurors, regardless of the standard, are more conviction-prone, less concerned with due process, and they are more inclined to believe the prosecution than are excludable jurors.” In 2008, US Supreme Court Justice John Paul Stevens, with more than 30 years experience on the Court (he retired earlier this year), said that “the process of obtaining a ‘death qualified jury’ is really a procedure that has the purpose and effect of obtaining a jury that is biased in favour of conviction.” Justice Stevens authored the dissent in the *Cal Brown* case.

The death penalty in Washington State has come under scrutiny following the case of Gary Ridgway, who in 2003 avoided the death penalty in return for his confession to murdering 48 women. The fact that he would serve a life sentence, while others would be executed for crimes with far fewer victims has, as the state Supreme Court put it in 2006, “caused many in our community to seriously question whether the death penalty can, in fairness, be proportional when applied to any other defendant.” However, the court upheld the state’s death penalty. The five judges in the majority said that while they did not “minimize the importance of this moral question...it is a question best left to the people and to their elected representatives in the legislature.” Four dissenting judges argued that “When Gary Ridgway, the worst mass murderer in this state’s history, escapes the death penalty, serious flaws become apparent... If the Ridgway case was the only case at the far end of the spectrum, perhaps his penalty of life in prison rather than death could be explained or dismissed. Ridgway, however, is not the only case in which a mass murderer escaped death.” The dissenters went on to list other such cases which they said “exemplify the arbitrariness with which the penalty of death is exacted....The death penalty is like lightning, randomly striking some defendants and not others... No rational explanation exists to explain why some individuals escape the penalty of death and others do not.”

There have been four executions in Washington State since the USA resumed judicial killing in 1977. Its first execution was in 1993, which was the first execution in the state since 1963. The last person to be executed was James Ellege in August 2001. Like three of the four men put to death in the state since 1977, Ellege had given up his appeals and “volunteered” for execution. The last “non-consensual” execution in Washington State was that of Charles Campbell, hanged in May 1994. *Cal Brown* is one of eight men on death row in Washington State.

Washington State’s current method of execution is lethal injection. Earlier this year, the Department of Corrections abandoned its three-drug method and adopted a new, one-drug protocol. Under the old method, sodium thiopental (an anaesthetic), pancuronium bromide (a paralytic agent) and potassium chloride (a heart-attack inducing agent) were used to kill the prisoner. Under the new protocol, the inmate is killed with a single large dose (five grams) of sodium thiopental. On 29 July 2010, the state Supreme Court dismissed as moot a lawsuit that had been brought by death row inmates challenging the three-drug method. *Cal Brown*’s lawyers are seeking a stay of execution in order to challenge the new lethal injection method.

Amnesty International opposes the death penalty unconditionally in all cases, regardless of the crime or the method used to kill the prisoner. The USA has carried out 1,224 executions since 1977. There have been 36 executions in the USA this year.

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