

EXTERNAL

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Death Penalty / Legal concern

25 June 1997

USA (CALIFORNIA) Thomas Thompson

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Thomas Thompson is scheduled to be executed in California on 5 August 1997. He was sentenced to death in 1983 for the rape and murder of Ginger Fleischli in 1981.

In 1985 another man, David Leitch, was convicted of the second-degree murder of Ginger Fleischli, his ex-girlfriend, and was sentenced to a term of at least 15 years' imprisonment.

The same attorney prosecuted both men. At a pre-trial hearing for both men, the prosecutor had proceeded on a theory that it was Leitch who had the motive to kill Fleischli and had hired Thompson to do so. The prosecutor had three different jailhouse informants testify that Thompson and Leitch "confessed" to this effect while incarcerated with them. The informants also testified that Fleischli had had consensual sex with Thompson prior to her death (a rape conviction was required to qualify Thompson for the death penalty).

A decision was then taken to try the two men separately. At Thompson's trial the prosecutor presented evidence that Thompson alone raped and killed the victim and produced two different jailhouse informants who contradicted the original three. The prosecution alleged that the murder was carried out to prevent the victim reporting the rape.

These two jailhouse informants, Edward Fink and John Del Frate, who gave evidence at Thompson's trial, were known to be unreliable and appeared to be testifying to further their own ends. Fink was known to the Orange County District Attorney's office as an "unreliable operator". At the hearing as to whether his parole should be revoked, held shortly after he had given evidence in the Thompson case, Fink had listed the names of the investigators in Thompson's case as witnesses in his own favour. Del Frate, an informant since childhood, was known as unreliable by police in two states. His father and brother called him a pathological liar. At various stages of the Thompson trial, 11 other jailhouse informants stepped forward with differing versions of what Thompson had told them or stating that Fink or Del Frate had admitted lying.

At Leitch's trial the prosecutor contended that the two men were equally responsible for the murder, and did not call the two jailhouse informants who testified on behalf of the prosecution at Thompson's trial. The prosecution did use some of Thompson's defence witnesses to support his case in Leitch's trial.

According to information received by Amnesty International, Leitch had the opportunity to kill Fleischli and had previously threatened to kill her. He had a record of violence and had previously been arrested three times for assaults with a knife. Ten days before she was murdered, a police officer helped Fleischli move from her apartment where she had recently lived with Leitch. She told the officer that Leitch had threatened to kill her. Thompson had no criminal record prior to this conviction.

On 28 March 1995, a United States District Court judge overturned Thompson's rape conviction and therefore his death sentence, since it was the rape that qualified Thompson as a capital case. The judge stated that the case left him

with "an unsettling feeling". However, the prosecution appealed the decision and a higher court reinstated the rape conviction and death sentence.

In an unprecedented move, seven former California prosecutors, all supporters of the death penalty and including the author of the California death penalty statute, issued an *Amici Curiae* (friends of the court) brief in support of Thompson. The brief detailed the numerous concerns which these former prosecutors' had in the Thompson case, including the many different versions of events presented at different times by the prosecution. The brief stated: *"If certiorari (the appeal) is denied, and Thompson is executed, the message that will be conveyed is that carrying out death sentences is more important than ensuring that criminal prosecutions in the name of the People do not involve the manipulation of facts, and witnesses, and ultimately, the truth, and that defense lawyers competently represent capital clients so that the jury's verdicts are a result of a fair and reliable adversarial process. In addition, should evidence later be uncovered demonstrating Thompson's innocence or lesser culpability, it will be tragically too late for justice to prevail."*

In 1992, in its ruling in the case of *Herrera v. Collins*, the US Supreme Court ruled that Herrera had an opportunity to take his claim of innocence to the Texas Board of Pardons and Paroles stating: *"...under Texas law, petitioner may file a request for executive clemency...Clemency is deeply rooted in our Anglo-American tradition of justice, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted."*

#### **BACKGROUND INFORMATION**

As of 31 July 1996, there were 444 prisoners under sentence of death in California - the largest death row in the USA. The last person to be executed in the state was Keith Williams on 5 March 1996. Four prisoners have been put to death under the state's current death penalty laws introduced in the 1970s. The method of execution in California is lethal gas or lethal injection - prisoners have to choose by which method to die.

Lethal injection was introduced as a method of execution after a 1994 ruling by the US District Court that execution by lethal gas (then the sole method of execution) constituted "cruel and unusual punishment" and was therefore in violation of California's constitution. The judge found that prisoners suffered "excruciating pain for between 15 seconds and several minutes" and that a gas chamber execution violates "evolving standards of human decency and has no place in a civilized society." California appealed the court's ruling to the US Supreme Court, which has yet to rule.

In California, the Governor has sole authority to grant clemency. To date, California has not granted clemency to any death row prisoners.

#### **RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:**

- expressing concern that Thomas Thompson is scheduled to be executed on 5 August 1997 despite grave doubts concerning his guilt;
- expressing concern that the prosecution presented multiple versions of the events leading to the murder of Ginger Fleischli during the prosecution of the two men;
- expressing sympathy for the victims of violent crime and their families;
- pointing out that it is traditional to grant clemency to death row prisoners where there is a possible miscarriage of justice and that the vast majority

of governors who have granted clemency in the last 20 years did so on the grounds of the possible innocence of the prisoners concerned;  
- quoting from the *Amici Curiae* brief from the seven former prosecutors and the US Supreme Court decision in *Herrera v. Collins*;  
- urging Governor Wilson to grant clemency to Thomas Thompson by commuting his death sentence and thereby preventing the state of California committing a possible grievous error.

**NOTE: Please do not mention Amnesty International or your opposition to the death penalty in your appeals**

**APPEALS TO:**

The Honorable Pete Wilson  
Governor of California  
State Capitol, 1st Floor  
Sacramento, CA 95814, USA  
**Telephone: +1 916 445 2841**  
**Fax: +1 916 445 4633**  
**Telegrams: Governor Wilson, California, USA**  
**Salutation: Dear Governor**

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The Letters Editor  
San Francisco Chronicle  
925 Mission St.  
San Francisco, CA 94103, USA  
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**PLEASE SEND APPEALS IMMEDIATELY.**