

# URGENT ACTION

## FIRST OREGON EXECUTION IN 14 YEARS LOOMING

**The first execution in Oregon since 1997, and only the third in this US state since 1962, looks set to be scheduled for 6 December. Questions remain about the mental competence of the condemned prisoner, who has chosen to give up his appeals against his death sentence.**

Oregon has carried out two executions since judicial killing resumed in the USA in 1977 – one in 1996 and one in 1997. Both were of inmates who had given up appeals against their death sentences. Now **Gary Haugen**, a 49-year-old man, is expected to receive an execution date of 6 December after waiving his appeals. He and Jason Van Brumwell were sentenced to death in 2007 for the murder of fellow inmate David Polin in Oregon State Penitentiary in 2003. At the time of the murder, Gary Haugen was serving a life sentence after being convicted in 1981 of the murder earlier that year of his former girlfriend's mother. On automatic appeal in 2010, the state Supreme Court affirmed his conviction and death sentence. Since then Gary Haugen has said he wants to drop any further appeals.

Earlier this year, a neuropsychologist retained by Gary Haugen's then lawyers assessed the prisoner as suffering from a "delusional disorder that makes him incompetent to be executed". Dr Muriel Lezak said that in her opinion, although Gary Haugen has "factual awareness" of his impending execution and the reason for it, he lacks a rational understanding of the crime and his punishment. She assessed Gary Haugen as displaying a significant attention-deficit disorder and impaired cognitive functioning, and noted that he has a history of head injuries and blackouts.

However, at a hearing in trial court in May, the judge granted Gary Haugen's request to fire his lawyers, and they were not allowed to present evidence relating to Haugen's competence. At a subsequent hearing ordered by the state Supreme Court, the same judge granted Gary Haugen's motion to preclude Dr Lezak's assessment of him. Instead the only witness to testify was a doctor retained by the state, whose written opinion has not been made public. The judge found Gary Haugen competent to waive his appeals and to be executed. Although the judge has not yet signed the death warrant, he is expected to do so in mid-November and to set a 6 December execution date. Lawyers for the non-governmental Oregon Capital Resource Center have appealed to the state Supreme Court to order another competency hearing, arguing that to allow "a defendant to choose his own sentence introduces an unconscionable arbitrariness into the capital punishment system" and allowing "an arguably incompetent capital defendant to suppress evidence that he is incompetent" risks Oregon carrying out an execution prohibited by the constitution.

### **PLEASE WRITE IMMEDIATELY in your own language:**

- Express concern that the State of Oregon looks set to conduct its first execution in 14 years;
- Express concern that Gary Haugen has been found competent for execution by a judge who did not hear testimony from a neuropsychologist who has come to the opposite conclusion;
- Note the growing concern in the USA about the death penalty, the isolation of the USA on this punishment, and the international calls for a worldwide moratorium on executions;
- Urge the governor to oppose his state taking this negative step, to support a moratorium on executions in Oregon, and to do all he can to prevent any executions, including that of Gary Haugen.

### **PLEASE SEND APPEALS BEFORE 6 DECEMBER 2011 TO:**

Governor John Kitzhaber, 160 State Capitol, 900 Court Street, Salem, Oregon 97301-4047, USA

**Fax: +1 503-378-6827**

**Email: <http://governor.oregon.gov/Gov/contact.shtml>**

**Salutation: Dear Governor**

**Also send copies to diplomatic representatives accredited to your country.**

Please check with your section office if sending appeals after the above date.

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INTERNATIONAL**



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### ADDITIONAL INFORMATION

At Gary Haugen's trial in 2007, his sister testified about their childhood, which she described as having been marked by alcoholism, mental instability and violence on the part of their parents. Their mother, and later their father, abandoned the children, who were divided up and placed in various foster homes. As an adult, Gary Haugen was diagnosed with mood and seizure disorders. At the sentencing phase of his trial, a psychiatrist testified that he had diagnosed the defendant with intermittent explosive personality disorder and partial complex seizures. He reached the latter diagnosis partly on account of the fact that the medical authorities at Oregon State Penitentiary had treated Gary Haugen with an anti-seizure drug, Neurontin, which apparently was successful in alleviating his mental condition. The murder of David Polin is reported to have taken place at a time when Gary Haugen had been taken off this drug. A second mental health expert also provided his opinion that it was likely that Gary Haugen suffered from partial complex seizures and had committed an "explosive act" when taken off Neurontin. Prior to the trial, the defence lawyers had sought to have quantitative electroencephalography (QEEG) testing of Gary Haugen to assess the extent of his mental dysfunction, but this type of brain mapping was not available at the time in Oregon.

One in 10 of the people put to death in the USA since judicial killing resumed there in 1977 had given up their appeals (see <http://www.amnesty.org/en/library/info/AMR51/087/2007>). Any number of factors may contribute to a condemned inmate's decision not to pursue appeals, including mental disorder, physical illness, remorse, bravado, religious belief, a quest for notoriety, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, or pessimism about appeal prospects. In some cases it appears that the detainee may have committed the crime in order to receive a death sentence. Pre-trial or post-conviction suicidal ideation seems to motivate the decision-making of some such inmates, including some whose backgrounds had left them suffering mental health problems. With such cases in mind, the execution of "volunteers" is often compared to state-assisted suicide. However, "prisoner-assisted homicide" may be a more appropriate description. Given the rate of error found in capital cases on appeal, if the approximately 140 "volunteers" executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms. To look at it another way, the phenomenon of "volunteers" contributes to the arbitrariness that is a part of the death penalty in the USA.

In the past four years, three states – New Jersey, New Mexico and Illinois – have legislated to abolish the death penalty. Signing these bills into law, the three state governors pointed to the death penalty's flaws, such as the risk of irrevocable error and unfairness, its discriminatory application, its costs and diversion of resources from crime prevention and victim-assistance, the lack of any proven special deterrent effect, and its potentially brutalizing effect on society. In 2008, the then most senior member of the US Supreme Court, Justice John Paul Stevens, revealed that his 33 years on the Court had persuaded him that the "imposition of the death penalty represents the pointless and needless extinction of life". In the 14 years since Oregon last carried out an execution, some three dozen more countries have abolished the death penalty, and today 139 countries are abolitionist in law or practice. During scrutiny of the USA's human rights record under the UN Human Rights Council's Universal Periodic Review Process in late 2010, numerous countries called on the USA to end its use of the death penalty. The UN General Assembly has called on all retentionist countries to impose a moratorium on executions. While it is true that international human rights law, including article 6 of the International Covenant on Civil and Political Rights (ICCPR), recognizes that some countries retain the death penalty, this acknowledgment of present reality should not be invoked "to delay or to prevent the abolition of capital punishment", in the words of article 6.6 of the ICCPR. The USA ratified the ICCPR nearly 20 years ago. The UN Human Rights Committee, the expert body established under the ICCPR to monitor the treaty's implementation, has said that article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life". Amnesty International opposes the death penalty in all cases, regardless of the crime, the offender or the method of execution. There have been 1271 executions in the USA since judicial killing resumed there in 1977, including 37 so far this year.

Name: Gary Haugen

Gender: m

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