

# URGENT ACTION

## WOMAN SCHEDULED FOR EXECUTION IN TENNESSEE

**Gaile Owens, a 57-year-old woman, is due to be executed in the US state of Tennessee on 28 September. She was convicted of soliciting the murder of her husband. She has been on death row for more than 24 years and would be the first woman put to death in Tennessee since 1820.**

Ronald Owens was killed in the family home on 17 February 1985. Gaile Owens was tried jointly in early 1986 with Sidney Porterfield. The state's case was that Gaile Owens had approached a number of men, offering them money to kill her husband, and that one of them, Sidney Porterfield, had carried out the killing. He was convicted of first-degree murder, and she of being an accessory to first-degree murder. Both were sentenced to death. Sidney Porterfield remains on death row, with ongoing litigation on his case centred on the claim that he has an intellectual disability ("mental retardation") that would render his execution unconstitutional.

Before the trial, the prosecutor had offered both defendants a life prison sentence in return for a guilty plea. Gaile Owens accepted the offer. However, Sidney Porterfield did not, and the prosecution withdrew the offer, having made it contingent upon its acceptance by both defendants. Gaile Owens' lawyers have argued that her death sentence was the product of Sidney Porterfield's decision to plead not guilty and was therefore constitutionally arbitrary, and also that the trial judge was wrong not to have allowed the defence to tell the jury, as mitigating evidence, of her acceptance of the prosecution's pre-trial offer. In 2008, the case caused a sharply worded divide on the federal Court of Appeals. The dissenting judge accused his two colleagues in the majority of "slant[ing] and misconceiv[ing] relevant facts and law...in order to uphold the death penalty". This is "not a close case", he wrote (see overleaf).

At the sentencing phase of the trial, Gaile Owens's lawyers had presented only three witnesses. Two were employees of the jail who testified that Gaile Owens was a good inmate who caused no problems. The third was a psychiatrist who had examined Gaile Owens once, eight years earlier. Since the trial, evidence has emerged of Gaile Owens's abuse by her husband and of her abusive childhood. Among others, the non-governmental National Clearinghouse for the Defense of Battered Women and the Tennessee Coalition Against Domestic and Sexual Violence have called for her death sentence to be commuted. They state that "Gaile Owens was a victim of serious abuse at the hands of her husband, including brutal sexual assaults... As organizations that work with victims of abuse, we are particularly appalled by the inadequate investigation and presentation of Ms Owens' psychosocial history by her trial attorney, and throughout the case. Ms Owens was not examined by professionals with the expertise the case required, nor was relevant information presented (at all or as fully as needed) about the abuse she experienced over lifetime".

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

- √ Explaining that you are not seeking to excuse the killing of Ronald Owens;
- √ Expressing concern that the jurors who sentenced Gaile Owens to death heard none of the evidence that has emerged since the trial of the alleged abuse she suffered at the hands of her husband;
- √ Noting that the prosecutor originally offered a life sentence to Gaile Owens, and she accepted it;
- √ Noting that Gaile Owens has spent over 24 years on death row, in itself effectively a life sentence;
- √ Calling for commutation of Gaile Owens's death sentence.

### **PLEASE SEND APPEALS BEFORE 28 September 2010 TO:**

The Honorable Phil Bredesen, Governor's Office, Tennessee  
State Capitol, Nashville, TN 37243-0001, USA

**Fax: +1 615.532.9711**

**E-mail: [Phil.Bredesen@tn.gov](mailto:Phil.Bredesen@tn.gov) and/or**

**[Steve.Elkins@tn.gov](mailto:Steve.Elkins@tn.gov) (Counsel to the Governor)**

**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

Soon after Gaile Owens was arrested in February 1985, a lawyer was appointed to represent her. In an affidavit signed in 2009, this lawyer recalled that the day after the arrest, Gaile Owens was “extraordinarily remorseful for hiring someone to kill her husband. But her most immediate and profound concern was the well-being of her children. Ms Owens was clear – she wanted to plead guilty and avoid a trial because she didn’t want to put her children and the rest of her family through any more pain...Ms Owens was also immediately forthcoming with me regarding her motivations for hiring someone to kill her husband – her husband was abusive and cheated on her regularly. Based on the information she provided, I immediately recognized that the defense in this case should be that Ms Owens suffered from battered women’s syndrome. Based on that, I believe this case should never have been a death penalty case”. This lawyer soon had to withdraw from the case, however, and for her trial Gaile Owens was represented by two other attorneys.

In 2008, the US Court of Appeals for the Sixth Circuit upheld the death sentence by two votes to one. The majority rejected the argument that Gaile Owens should have been allowed to present the jury at the sentencing phase with the fact of her pre-trial willingness to plead guilty as evidence of her “acceptance of responsibility”. The two judges in the majority wrote: “She did not offer to plead guilty unconditionally, which she could have done. Instead, she agreed to plead guilty only if guaranteed a life sentence in return... Thus, she was less interested in accepting responsibility and more interested in avoiding the electric chair, a motivation that is much less persuasive as a mitigating factor”. This harsh interpretation conflicts with the first lawyer’s recollection of Gaile Owens’s state of mind when he met with her soon after the murder. The Sixth Circuit majority also rejected the claim that the pre-trial offer of a life sentence indicated that the prosecutor did not think that the crime warranted a death sentence: “This is speculation on her part because the record does not explain whether the prosecution made the offer because it saw her as unworthy of death or for some other reason such as the efficient use of prosecutorial resources”.

Prosecutorial discretion contributes to arbitrariness in application of the death penalty in the USA. In this case, the prosecutor, after consulting the District Attorney General and the family of the victim, took the view that a life sentence was an acceptable outcome. For reasons entirely within his discretion, however, he subsequently sought and obtained a death sentence. Judge Gilbert Merritt, the dissenting Sixth Circuit judge, pointed out that at the 1986 trial, the prosecutor had “argued to the jury that Owens ‘deserved’ the death penalty because she did not acknowledge and repent her murderous criminal behaviour”. Judge Merritt continued: “Owens wanted to show this was untrue because she had, in fact, offered to plead guilty and because the prosecutor’s offer of life imprisonment was itself an admission that Owens did not ‘deserve’ the death penalty... What we have here is death penalty gamesmanship on the part of the prosecution, and the jury was entitled to know what was going on...Had Owens’ proof of her offer to plead guilty and the prosecution’s offer of life been admitted, the jury might well have concluded that the prosecution’s claim that she was remorseless and deserved death was false and that Owens’ life should be spared.”

Amnesty International opposes the death penalty unconditionally. The USA has executed 1,207 men and 11 women since judicial killing resumed in 1977. Tennessee carried out its first execution in 40 years in 2000 and has carried out another five since then. There have been 30 executions in the USA this year.

UA: 158/10 AI Index: AMR 51/062/2010 Issue Date: 12 July 2010

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