

**SPARING GARY RIDGWAY: THE DEMISE OF THE
DEATH PENALTY IN WASHINGTON STATE?**

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I. INTRODUCTION

The death penalty has long occupied a controversial role in the American criminal justice system. While widely decried as a violation of human rights by many western nations, the United States has steadfastly clung to capital punishment as a viable method of punishment and deterrence.¹ All controversy aside, the Gary Ridgway case in Washington appeared to be one instance where the death penalty represented a fitting retribution for past crimes. The infamous “Green River Killer,” Ridgway murdered at least forty-nine women before finally being brought to justice in November 2001.² Yet to the sur-

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1. John Quigley, *International Attention to the Death Penalty: Texas as a Lighting Rod*, 8 TEX. F. ON C.L. & C.R. 175, 176 (2003). The United States Supreme Court has long protected the death penalty as a valid use of the states’ police power, despite arguments that such a punishment violates the Eighth Amendment prohibition against cruel and unusual punishment. See also Barry Latzer, *The Failure of Comparative Proportionality Review of Capital Cases (With Lessons From New Jersey)*, 64 ALB. L. REV. 1161, 1171 (2001). However, in Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms adopted a protocol viewing capital punishment as a violation of human rights.

2. See Tracy Johnson, *Ridgway Faces Death Sentence*, THE SEATTLE POST-INTELLIGENCER, Apr. 16, 2002 (alleging Ridgway’s connection to the murders of 49 women), at http://seattlepi.nwsourc.com/local/66690_Ridgway16.shtml (last visited Nov. 10, 2004).

prise of many, Ridgway was spared the death penalty through a prearranged agreement with prosecutors that allowed Ridgway to plead guilty in exchange for life in prison.³

The effects of the *Ridgway* plea are paramount in terms of the future of capital punishment in the State of Washington. Even before Ridgway's sentencing, criminal defense lawyers in capital cases were arguing that the propriety of the death penalty for their own clients hinged on the outcome of the *Ridgway* case.⁴ Now, the effects of the *Ridgway* plea will soon be known. On June 22, 2004, the Washington Supreme Court heard oral argument in the matter of *State v. Cross*, where criminal defense attorneys challenged the continued vitality of Washington's capital punishment scheme following the *Ridgway* plea.⁵ As argued by defense attorneys, if Ridgway could be spared the death penalty despite the unprecedented nature of his crimes, the imposition of capital punishment in subsequent cases must also be precluded.⁶ Whatever the outcome, based on the state statutory requirement of comparative proportionality review of capital punishment cases, the *Ridgway* plea establishes a dangerous precedent. In sparing Gary Ridgway, capital punishment under Washington's current statutory scheme could soon become a thing of the past.

Part II of this Note examines the background of the *Ridgway* case, the history of capital punishment in Washington, and the current capital punishment statute that requires comparative proportionality review. Part III analyzes exactly how Washington's comparative proportionality review requirement potentially ends capital punishment by addressing two previously considered capital cases and how their outcomes might differ after *Ridgway*. Part IV considers ways in which capital punishment under the current statute may still be made viable, and Part V addresses flaws in the Washington comparative

3. *Green River Killer Avoids Death in Plea Deal*, [www.CNN.com](http://www.cnn.com), (Nov. 6, 2003), at <http://www.cnn.com/2003/LAW/11/05/green.river.killings/> (last visited Nov. 10, 2004) [hereinafter CNN & Green River Killer].

4. Christopher Schwarzen, *Defense: Death-Penalty Decision Should Hinge on Ridgway Case*, THE SEATTLE TIMES, (Oct. 16, 2003), at <http://archives.seattletimes.nwsourc.com/cgi-bin/texis.cgi/web/vortex/display?slug=burkheimer16m&date=20031016> (last visited Nov. 10, 2004); see also Tracy Johnson, *Death Penalty Decision Assailed; Green River Case Cited*, THE SEATTLE POST-INTELLIGENCER, (Nov. 27, 2003), at http://seattlepi.nwsourc.com/local/150176_champion27.html (last visited Nov. 10, 2004).

5. *State v. Cross*, No. 71267-1 Oral Arguments heard on June 22, 2004, at http://www.courts.wa.gov/appellate_trial_courts/supreme/calendar/?fa=atc_supreme_calendar.display&year=2004&file=docspr04 (last visited Nov. 10, 2004).

6. Telephone interview with Todd Maybrown, Partner, Allen, Hansen & Maybrown, representing the defendant in *State v. Cross* (Oct. 13, 2004).

proportionality review legislative scheme. Finally, Part VI provides a brief conclusion.