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# *amnesty international*

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## £UNITED STATES OF AMERICA

### @Imminent execution of juvenile offender (update)

**APRIL 1993**

**AI INDEX: AMR 51/28/93**

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This document updates the information contained in AMR 51/23/93.

Gary Graham, scheduled to be executed in Texas, USA, on 29 April, has gone on hunger strike to protest about his death sentence. Amnesty International has received further information about the weak evidence on which Gary Graham was convicted, as well as on racism in the sentencing of juvenile offenders in Texas.

Amnesty International has learned that Gary Graham went on hunger strike in Huntsville prison, Texas, a few days ago. He reportedly intends to fast until his execution date. According to press reports, the state authorities could seek a court order to force feed him in order to render him fit for execution. Amnesty International is seeking more information on this point.

According to recent information issued by Gary Graham's lawyers, Gary Graham's capital murder conviction was based **solely** on the identification testimony of a single witness; no other evidence linked him to the crime: the shooting of Bobby Grant Lambert, a white man, in a Houston parking lot. The eye-witness, Bernardine Skillern, testified that she had seen Lambert's killer for a "split second" while sitting in her car some 33-44 feet from the crime. About two weeks later, when 17-year-old Graham was in custody for other offences, Bernardine Skillern picked him out at a police line-up. She had earlier failed to identify him from photographs. Two other witnesses, both of whom were much nearer to Lambert's assailant, failed to identify Gary Graham. Since his conviction, four people have stated in affidavits that Gary Graham was with them at the time of the crime but the courts

have refused to consider this evidence. Texas law requires that motions for a new trial based on newly discovered evidence must be made within 30 days of sentence.

During the sentencing phase of Gary Graham's trial, the jury was instructed to answer three questions: whether the crime was deliberate; whether the defendant was likely to be a continuing danger to society; and whether the killing was unreasonable in response to a provocation. Once the jury had answered yes to all three questions, the death sentence was automatically imposed. In 1982, a three judge panel of the Fifth Circuit Court of Appeals held that Gary Graham's death sentence violated the Constitution because his jury was unable to consider youth fully in deciding whether he should be sentenced to death or life imprisonment. That decision was later overturned by the full Fifth Circuit Court of Appeals in a 7-6 decision. The US Supreme Court recently upheld his death sentence in an equally narrow 5-4 decision. (The Texas statute itself was amended in 1991 to allow the consideration of some mitigating evidence at the sentencing hearing beyond the three special questions mentioned above, but this has not affected Gary Graham's case.)

Seven of the eight juvenile offenders on death row in Texas are black or Hispanic, three of them from Harris County where Gary Graham was tried. According to Gary Graham's lawyers, Harris County is notorious for its disparate treatment of African Americans in the criminal justice system, particularly young offenders. In 1991, 1,851 blacks and only 209 whites were imprisoned per 100,000 population in each ethnic group. 56% of prisoners on death row from Harris County are black and 35% are white. Of those sentenced to death from Harris County who were under 21 at the time of the crime, 70% are black, 14% are white and 16% are Hispanic and asian. (African Americans make up only 12 per cent of the general population in Texas.) All but one of the jurors in Gary Graham's case was white, as was the prosecutor.

The above evidence suggests that racial bias may have played a part in the outcome of Gary Graham's case, adding to the concerns regarding his youth and the weaknesses in the evidence on which he was convicted. Gary Graham's case has been compared in some press articles in Texas with the recent case of an 18 year old "white supremacist", whom an all-white Texas jury sentenced to probation only after he was convicted of participating in the murder of a black man.

Safeguards guaranteeing the protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council in 1984 (Ecosoc Resolution 1984/50), provide at (4) that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." This standard has apparently not been met in Gary Graham's case.

<b>KEYWORDS:</b> DEATH SENTENCE / JUVENILES / HUNGER-STRIKE / RACIAL DISCRIMINATION / TRIALS /
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## WHAT YOU CAN DO

**FURTHER APPEALS:** In addition to the points included in the previous document, you should raise the following concerns:

To Governor Richards

- urging that Governor Richards intervene to prevent the execution of Gary Graham.

To the Board of Pardons and Paroles

- urging that the Board of Pardons and Paroles grant clemency, taking into account Gary Graham's youth at the time of the crime, poor legal representation at trial, and the weakness of the identification evidence on which he was convicted.

To All, including federal authorities:

- letters should also express concern about the evidence of racism in application of the death penalty in Texas, particularly as regards young offenders, citing some of the statistics given regarding capital sentencing in Harris County.

### APPEALS TO:

Texas Board of Pardons and Paroles  
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Austin, TX 78711-3401  
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The Honorable Ann Richards  
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### COPIES TO:

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