

EXTERNAL (for general distribution)

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*Please bring this action to the attention of the person responsible for outreach work in your section. Letters from politicians, church leaders, judges, lawyers and other professional groups would be especially useful. These groups should also be encouraged to contact their counterparts in California to urge that they speak out against the execution of Robert Harris.*

Further information on UA 63/90 (AMR 51/01/90, 23 February 1990) and follow-up AMR 51/09/90, 3 April 1990 - Death Penalty

USA (California): Robert Alton HARRIS

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Robert Alton Harris is scheduled to be executed in California on 21 April 1992. If carried out, this would be the first execution in the state since 1967. Robert Harris has been under sentence of death for thirteen years. He was convicted of the kidnap, robbery and murder of two teenage boys in July 1978 and was sentenced to death on 6 March 1979. Harris came within 12 hours of being executed in April 1990.

New evidence not available to the jury at Robert Harris' trial indicates strong grounds for granting clemency. Tests performed on Robert Harris after he was sentenced to death revealed organic brain damage of a severity likely to have affected his ability to reflect on actions, weigh consequences, plan or organize, or reason rationally at the time of the crime.

There is evidence that Robert Harris' mother drank heavily throughout her pregnancy, and that he shows some of the physical and cognitive characteristics of Fetal Alcohol Syndrome (FAS). Both parents were alcoholics. Robert Harris was born more than two months prematurely after his mother was kicked in the stomach by her husband. At the age of two he was beaten unconscious by his father and required hospital treatment. He was beaten throughout his early childhood by his father and a step-father.

At the age of 14, Robert Harris was abandoned by his mother. He lived rough for a while near his brother's house, then tried to settle with a sister in Oklahoma. When he was 15 he was caught with others driving a stolen car. The others were claimed by their families but he was not. He was sentenced to four years at a federal youth center. There he was diagnosed pre-psychotic, schizophrenic, suicidal and self-destructive. At 19 he was released with a recommendation that he seek treatment for mental health problems. There is no evidence that he received treatment.

In addition to FAS, and the physical beatings he received as a child, Robert Harris is known to have sniffed gasoline, glue and paint fumes from the age of eight or nine.

While evidence of mental impairment and physical abuse does not excuse the crime of murder, it does provide some explanation as to why such a crime occurred. The jury at Robert Harris' trial did not learn the full extent of his ill-treatment as a child or his mental disabilities. These are strong reasons not to impose society's ultimate penalty and Amnesty International believes that the interests of justice would best be served by commuting Robert Harris'

death sentence on humanitarian grounds.

In December 1991, the Court of Appeals for the Ninth Circuit was split by a 13 to 13 tie vote over whether to grant Robert Harris a court hearing to determine whether he was deprived of effective psychiatric assistance at his original trial. The tied vote meant, in effect, a refusal to grant the full evidentiary hearing Harris' lawyers had sought.

Commenting on the tied vote, Judge Stephen Reinhardt, a member of the Ninth Circuit Court of Appeals, wrote in dissent: "Can we really justify the taking of a human life in a case in which, for example... up to half the members of this court of twenty-eight may believe that the law prohibits us from doing so? Should life or death depend on the **Page 2 of 2FU 63/** vote of one judge among many, when there are legitimate arguments on both sides and the decision could as easily go the other way?"

Robert Harris will appeal to Governor Pete Wilson for clemency. There are no clear criteria by which the California authorities consider clemency applications. Governor Wilson is being urged to convene a panel of experts and to hear testimony from all interested parties. Governor Wilson would require approval to commute Harris' death sentence from a majority of the seven-member California Supreme Court. This is because Harris has two prior felony convictions.

#### **BACKGROUND INFORMATION, INTERNATIONAL LAW CONCERNS**

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

California's death penalty law was enacted in 1977 and 1978. At the beginning of 1992 there were 308 prisoners under sentence of death. The method of execution is lethal gas.

Amnesty International believes that Robert Harris' execution would be inconsistent with internationally recognized minimum standards safeguarding the rights of those facing the death penalty. In May 1989, the United Nations Economic and Social Council (EcoSoc) adopted Resolution 1989/64 which advocates "eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution."

International treaties and standards encourage governments to restrict the use of the death penalty with a view to its ultimate abolition. United Nations General Assembly Resolution 2857 (XXVI), adopted in December 1971, affirms that: "...in order fully to guarantee the right to life, as provided for in article 3 of the Universal Declaration of Human Rights, the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries." Nearly half the countries of the world have now abolished the death penalty in law or practice: a trend particularly marked in both Western and Eastern Europe.

Amnesty International believes that California's move to resume executions after 25 years would be a retrograde step for human rights. It would be contrary to the spirit of article 4 of the American Convention on Human Rights (ACHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), which encourage progress towards abolition of the death penalty. In 1977 the USA signed both the ACHR and the ICCPR, but neither has been ratified.

**RECOMMENDED ACTION: Please send telegrams/faxes/telephone calls/express and airmail letters (in ENGLISH, if possible):**

- urging Governor Wilson to convene a panel of experts to consider all aspects of Robert

Harris' petition for clemency, and to hear testimony from all interested parties. Urging that clemency be granted;

- expressing concern at the evidence that Robert Harris has suffered from severe mental health problems, including fetal alcohol syndrome and organic brain damage and was badly physically abused as a child. While these factors do not excuse the crime, they present strong grounds for commuting Harris' death sentence;

- citing United Nations EcoSoc Resolution 1989/64 which urges "Eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution";

- mentioning the deep division of opinion within the Ninth Circuit Court of Appeals, which denied Robert Harris a full evidentiary hearing, reportedly by a tied vote of 13 to 13 in December 1991. Express alarm that California would consider executing Robert Harris in the face of such divergence of opinion within California's most senior federal judiciary;

- expressing concern and dismay at California's retention of the death penalty, and at the move to resume executions after 25 years. Urging California not to take this retrograde step. Citing international treaties and standards which encourage governments to restrict the use of the death penalty with a view to its ultimate abolition.

Page 3 of 2FU 63/90

**APPEALS TO**

1) The Hon Pete Wilson  
Governor of California  
State Capitol  
Sacramento, CA 95814, USA  
**Telegrams: Governor Wilson, Sacramento,  
CA 95814, USA**  
**Telephone: +1 (916) 445 2841**  
**Faxes: +1 (916) 445 4633**  
**Salutation: Dear Governor**  
**COPIES OF YOUR APPEALS TO:**

2) The Hon Daniel E Lungren  
Attorney General of California  
1515 K Street, Suite 511  
Sacramento, CA 95814, USA  
**Telegrams: Attorney General Lungren,  
Sacramento, CA 95814, USA**  
**Telephone: +1 (916) 324 5437**  
**Faxes: +1 (916) 324 5205**  
**Salutation: Dear Attorney General**

the following newspapers - letters and articles should go to The Editor, marked 'For Publication'

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Times Mirror Square  
Los Angeles, CA 90053  
USA  
**FAX: +1 (213) 237 7190**

San Francisco Chronicle  
925 Mission Street  
San Francisco, CA 94103  
USA  
**FAX: +1 (415) 781 1542**

Sacramento Bee  
21st and Q streets  
Sacramento, CA 95816  
USA  
**FAX: +1 (916) 321 1306**

and to diplomatic representatives of the USA in your country.

**PLEASE SEND APPEALS IMMEDIATELY.** Check with the International Secretariat, or your section office, if sending appeals after 20 April 1992.