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# *amnesty international*

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## UNITED STATES OF AMERICA

### @Imminent execution of juvenile offenders

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Amnesty International is deeply concerned that two juvenile offenders face imminent execution in the USA. Curtis Harris is scheduled to be executed in Texas on 1 July 1993. In Missouri, where execution warrants are issued at short notice, attorneys for juvenile offender Frederick Lashley fear that an execution date in his case could be issued at any time, although no date has yet been given.

Both Curtis Harris and Frederick Lashley are black and were convicted and sentenced to death by all-white juries. They were 17 years old at the time of the crimes and their execution would flout international standards which prohibit imposition of the death penalty on offenders under 18. If carried out, Curtis Harris' execution will be the sixth execution of a juvenile offender in the USA since the death penalty was reinstated in the late 1970s, and the fourth in Texas under its present death penalty laws. Frederick Lashley would be the first juvenile offender to be executed in Missouri for more than 60 years.

Curtis Harris' case was highlighted in an Amnesty International report *United States of America: The Death Penalty and Juvenile Offenders* (AI Index No. AMR 51/23/91, October 1991). The report presented Amnesty International's findings in the cases of 23 juvenile offenders sentenced to death, and suggested that safeguards in US capital punishment law had not been met in many cases. The majority of juvenile offenders on death row came from acutely deprived backgrounds. Many had been seriously physically or sexually abused. Most were of below-average intelligence, and many also suffered from mental illness or brain damage.

Amnesty International is particularly disturbed by the fact that most juvenile offenders on death row in Texas were sentenced under a statute which gave no opportunity for the defendant's youth to be considered as a separate mitigating factor at the sentencing hearing

- despite US Supreme Court pronouncements in key cases since the 1970s that youth is a factor which **must** be considered in capital cases. The Texas statute - which had severely restricted the consideration of any mitigating circumstances - was changed in 1991 and is no longer in force. However, prisoners sentenced under the old statute remain on death row.

The Supreme Court has recently agreed to hear an appeal in the case of a 19-year-old offender on death row in Texas (Dorsie Johnson), who claims that the pre-1991 Texas capital sentencing statute was unconstitutional in not allowing consideration of his youth. The Supreme Court's ruling on this case - expected later this month - could have a vital impact on the cases of juveniles and other young offenders on death row in Texas. Amnesty International finds it shocking that Curtis Harris faces imminent execution while the Dorsie Johnson appeal is still pending, and believes that this demands at least a stay of execution. Gary Graham, a Texas juvenile offender, also under sentence of death, who was scheduled to be executed on 3 June 1993 was granted a stay of execution pending the Supreme Court's ruling in Johnson.

Texas has more juvenile offenders under sentence of death than any other state (at least 12 as of May 1993, according to Amnesty International's information), most of whom are black or Hispanic and a number of whom, like Harris, were convicted by all-white juries.

### **Curtis Harris**

Curtis Harris was convicted of the murder of Timothy Merka, white, in December 1978, and first sentenced to death in June 1979. His first conviction was reversed on appeal, but he was reconvicted and again sentenced to death at a second trial in August 1983. Merka was beaten to death after his truck was stopped by Curtis and three others: his older brother Danny Harris, James Manuel and Valarie Rencher. The four then stole the truck. Danny Harris was also convicted of murder and sentenced to death at a separate trial. James Manuel received a 25 year prison sentence. Harris was convicted entirely on the testimony of Valarie Rencher, who was fifteen years old at the time of the crime, and who gave her testimony in return for a maximum 10 year sentence. Valarie Rencher was in fact placed on probation for "truancy" after Harris' conviction, and was never prosecuted in connection with the murder.

Curtis Harris was tried and sentenced to death by an all-white jury after the prosecutor had used his peremptory challenges to exclude three prospective black jurors from the jury panel. The prosecutor had also changed the trial venue from an area with a 17% minority population to one with only 6%, which meant that there were fewer black people on the jury panel than would originally have been the case. Harris' trial lawyer failed to object to the change of trial venue. No evidence was presented at either the guilt or sentencing phase of the trial regarding Curtis Harris' upbringing or mental health or the fact that he had an

IQ of only 77. Later psychiatric evaluations found evidence of brain damage resulting from severe head injuries Harris had sustained as a child, and there is evidence that the pre-trial psychological examination of Harris was wholly inadequate.

Curtis Harris was one of nine children and was brought up in extreme poverty. According to affidavit testimony by a relative presented in the post conviction proceedings (who had not been called at trial) his father was an alcoholic who became extremely abusive towards his children when drunk. Harris was regularly severely beaten as a child with electric cords, belts, a bullwhip and his father's fists. His cranium still bears the indentation mark from being hit over the head by his father with a wooden board.

As noted above, the Texas capital statute under which Curtis Harris was tried, severely restricted the consideration of mitigating circumstances at the sentencing hearing - unlike nearly all other US death penalty states whose laws allow for consideration of any relevant factor in mitigation. Before the law was changed in September 1991, juries at the sentencing hearing were instructed to answer three questions; whether the crime was committed deliberately; 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. There was no opportunity to allow for any separate consideration of other issues such as a defendant's youth, mental illness or social background as reasons for imposing a lesser sentence than death.

The proceeding under which Curtis Harris was sentenced to death is no longer law. In September 1991 the Texas capital sentencing statute was changed completely, to allow for the consideration of any mitigating circumstances. However this has not been applied retroactively to prisoners whose crimes were committed before September 1991.

Curtis Harris has already lost one round of appeals in the state and federal courts. His latest appeal in the Fifth Circuit Court of Appeals was dismissed in late April 1993. Harris' present attorneys are currently preparing to present the case to the US Supreme Court for review.

### Frederick Lashley

Frederick Lashley, black, was convicted and sentenced to death by an all-white jury in St Louis, Missouri, in 1982 for the murder in April 1981 of Jamie Tracey, his 55 year-old cousin who was also his foster mother. Jamie Tracey had brought him up from the age of 3 after he had been abandoned by his mother. According to the trial evidence, Frederick Lashley stabbed Jamie Tracey to death and stole around \$15. He fled and was captured shortly afterwards and immediately confessed to the crime.

Frederick Lashley was 17 years and one month old at the time of the murder. If carried out, this would be the first execution in Missouri of a juvenile offender since 1930.

Frederick Lashley's death sentence was vacated by the US Court of Appeals for the Eighth Circuit in March 1992 on the ground that the trial court had acted unconstitutionally in refusing to instruct the jury on the mitigating evidence that Lashley lacked a prior criminal record: one of the statutory mitigating circumstances under Missouri state law. Although the record contained no evidence that Lashley had any previous convictions, the trial judge refused to give this instruction in the absence of specific supporting evidence from the defence. The trial judge also told Lashley's defence lawyer that the prosecution would be allowed, in response, to introduce evidence about Lashley's juvenile record: a ruling which the Court of Appeal noted was "flatly contrary to state law". (Because of the threat of introducing evidence about his juvenile record, Lashley's attorney dropped the matter, although there is no evidence that she conducted a review of his juvenile record, or that this contained any evidence of prior serious offences.)

However, a year later on 8 March 1993, the US Supreme Court granted an appeal filed by the state and **reinstated Frederick Lashley's death sentence** by a 7-2 majority. The Supreme Court disposed of the case summarily, by issuing what is known as a *per curiam* opinion in which it addressed the merits without holding any hearing on the case. Lashley's lawyers had no opportunity to file briefs on the merits or to argue orally before the Court. Justices Stevens and Blackmun issued a dissenting opinion, in which they criticized the Court for its willingness to reinstate the death sentence "without hearing argument on the merits of the ... important constitutional question that the case presents".

According to Lashley's lawyers it is very unusual for the Supreme Court to have issued a ruling reinstating the death sentence in such circumstances. Amnesty International believes that there are grave doubts about the fairness of the procedures used in this case.

After the US Supreme Court ruling, Missouri assistant attorney general Ronald L. Jurgenson is reported as saying that he hoped Lashley had reached the end of his appeals, adding that he "has been sitting in the Potosi Correctional Centre for a year now with no death sentence. That's a much better result than most inmates have" (St Louis Post Dispatch, 9 March 1993).

## **GENERAL BACKGROUND INFORMATION**

Amnesty International has mounting concerns regarding the use of the death penalty in Texas, which has the largest number of people under sentence of death than any other state, and which leads the nation in scheduling and carrying out executions. Fifty-nine of the 203 executions carried out in the USA since the 1970s have occurred in the state. There are currently at least 12 juvenile offenders under sentence of death in Texas; 6 of these are black, four are Hispanic, and one is white. Amnesty International has no information on the race of the twelfth juvenile offender. A major study on racial discrimination conducted in the 1970s found that, in Texas, black offenders who killed white victims were six times more likely to be sentenced to death than white offenders in white-victim cases. Studies conducted nationwide have shown that murders involving white victims are far more likely to result in death sentences than those with black victims.

The last juvenile offender to be executed in the USA was Johnny Garrett in February 1992 - also in Texas. The Texas Board of Pardons and Paroles denied clemency in his case despite his history of severe physical and sexual abuse and widespread appeals from church leaders, human rights bodies and others in the USA and around the world.

Under Texas clemency rules, the governor may commute a death sentence only if she receives a favourable recommendation from a majority of the Board. The Texas Board of Pardons and Paroles has never granted clemency in any case since the death penalty was reinstated in the 1970s.

The execution of juvenile offenders is extremely rare worldwide. The USA is one of only seven countries known to have executed juvenile offenders in the last decade (the other countries are Barbados, which has since raised its minimum age to 18; Iran, Iraq, Nigeria, Pakistan and Bangladesh).

Treaties and standards exempting people under 18 from the death penalty were developed in recognition of the fact that the death penalty is wholly inappropriate for individuals who have not attained full maturity. However serious the crime, the imposition on a young person of a sentence of such finality, denying any possibility of rehabilitation or reform, is contrary to contemporary standards of justice and humane treatment. International human rights treaties and standards prohibiting these executions include the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the United Nations (UN) Convention on the Rights of the Child, and Safeguards guaranteeing protection of the rights of those facing the death penalty adopted by the UN Economic and Social Council in 1984. The US signed the ICCPR and ACHR in 1977 and ratified the ICCPR in April 1992. However, in ratifying the ICCPR, the US government reserved its rights "subject to its Constitutional constraints" to impose capital punishment on persons below 18 years of age.

General Comment 6 adopted by the Human Rights Committee (the body that supervises the implementation of the ICCPR) says, among other things, that the right to life "... is the supreme right from which no derogation is permitted" and that States "ought to consider reviewing their criminal laws" in order to "limit its use and in particular to abolish it for other than the 'most serious' crime" - and that "the expression 'most serious crime' must be read restrictively to mean that the death penalty should be quite an exceptional measure". Amnesty International believes that all jurisdictions within the USA have an obligation to adhere to recognized international standards.

The cases of Curtis Harris and Frederick Lashley - like many other of the juvenile cases on death row in the USA - reinforce Amnesty International's concern that the death penalty is both arbitrary and discriminatory in its application. Less than 3% of offenders arrested for homicide in the USA receive the death sentence. Amnesty International's research shows that factors such as race, poverty, adequacy of trial counsel and location may be more important in determining who is sentenced to death than the crime itself. Given the relative rarity of death sentences overall in the USA, it is particularly disturbing that this sentence should be imposed upon young offenders such as these.

As of 20 April 1993, there were 2,793 people under sentence of death in the USA.

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 and degrading treatment or punishment, as enshrined in the Universal Declaration of Human Rights.

## WHAT YOU CAN DO

**Appeal to the following officials in your own private capacity or in AI's name**

**Appeals on behalf of Curtis Harris and Frederick Lashley:**

\* Letters to President Clinton and the US Attorney General, Janet Reno

- expressing Amnesty International's unconditional opposition to the death penalty;

- expressing concern that individual states in the USA continue to permit the execution of juvenile offenders, contrary to both international standards and practice, citing Curtis Harris' and Frederick Lashley's cases as examples.

- expressing concern that, in ratifying the ICCPR in 1992, the US entered a reservation to the treaty provision against the execution of juvenile offenders and urging that this reservation be withdrawn.

President of the USA  
The White House  
Office of the President  
1600 Pennsylvania Avenue  
Washington DC 20500  
**Tel: +1 (202) 456 1414**  
**Fax: +1 (202) 456 2461**  
**Tlx: ITT 440074**  
**Salutation: Dear Mr President**

Janet Reno  
Attorney General of the USA  
Department of Justice  
10th Street and Constitution Ave NW  
Washington DC 20530  
USA  
**Tel: +1 (202) 514 2000**  
**Fax: +1 (202) 514 4699**  
**Tlx: TWX 710 822 1907**  
**Salutation: Dear Attorney General**

**Appeals on behalf of Curtis Harris ONLY:**

\* Letters to Board of Pardons and Paroles. Send copies to Texas Governor Ann Richards

- expressing concern that Curtis Harris was sentenced to death for a crime he committed when he was 17 years of age and urging the Board to recommend that Governor Richards grant clemency to Curtis Harris on humanitarian grounds;
- expressing concern that the execution of Curtis Harris would be contrary to justice in view of the fact that (i) the Texas statute under which Curtis Harris was sentenced to death did not allow youth to be considered as a separate mitigating circumstance and that this law has now changed to allow any factors to be taken into account in mitigation and (2) that an appeal challenging the constitutionality of the pre-1991 sentencing statute on this issue is currently pending before the US Supreme Court.
- stating that the death penalty is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions, and that however heinous the crime, the imposition on a young person of a sentence which denies any possibility of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment and international human rights standards and treaties;
- urging that at the very least, a stay be granted pending the US Supreme Court's decision in Dorsie Johnson;
- expressing concern also at the fact that at least ten of the twelve juvenile offenders currently on death row in Texas are black or Hispanic and noting that, in the US, Amnesty International has found that the death penalty is both arbitrary and discriminatory in its application.

**APPEALS TO:**

Texas Board of Pardons and Paroles  
8610 Shoal Creek Boulevard, PO Box 13401  
Capitol Station  
Austin, TX 78711-3401  
USA

**Telegrams: Texas Board Pardons/Paroles, Austin, TX 78711, USA**

**Faxes: +1 512 467 0945**

**Phone: +1 512 406 5852**

**Telegrams: Texas Board Pardons/Paroles, Austin, Texas 78711, USA**

**Salutation: Dear Board Members**



**COPIES TO:**

The Honorable Ann Richards  
Governor of Texas  
Office of the Governor  
PO Box 12428, Capitol Station  
Austin, TX 78711  
USA

**Salutation: Dear Governor**

**Faxes: +1 512 463 1849**

**Telegrams: Governor Richards, Austin, Texas 78711, USA**

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Houston, TX 77002  
USA  
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**Appeals on behalf of Frederick Lashley ONLY:**

**Appeals to Governor Carnahan**

- urging that clemency be granted to Frederick Lashley, and his death sentence be commuted.

**Appeals to the Missouri Board of Pardons and Paroles:**

- urging the Missouri Board of Pardons and Paroles to recommend that Governor Carnahan commute Frederick Lashley's death sentence.

**Appeals to both:**

- expressing concern that Frederick Lashley was sentenced to death for a crime committed when he was only 17 years old and urging that clemency be granted on humanitarian grounds;  
- stating that the death penalty is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions, and that however heinous the crime, the imposition on a young person of a sentence which denies

any possibility of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment and international human rights standards and treaties;

- noting that Missouri has not executed such a young offender for more than 60 years and urging it not to take such a retrograde step.
- expressing concern that the US Supreme Court reinstated the death sentence in this case a year after the Eighth Circuit Court of Appeal had vacated it, and did so without hearing arguments on the merits of the case.
- citing other arguments against the death penalty; that it is imposed disproportionately on the poor and minorities; that it has no unique deterrent effect; noting that Lashley came from a poor background, was black and convicted by an all-white jury.

**APPEALS TO:**

1) The Honorable Mel Carnahan  
Governor of Missouri  
PO Box 720  
Jefferson City, MO 65102  
USA

**Telegrams: Governor Carnahan, Jefferson City, MO 65102, USA**

**Faxes: + 1 314 751 4458**

**Telephone: + 1 314 751 3222**

2) Mr Cranston Mitchell, Chairman  
Missouri Board of Probations and Paroles  
PO Box 267  
Jefferson City, MO 65102  
USA

**Telegrams: Chairman Mitchell, Missouri Probation and Parole Board, Jefferson City, MO 65102, USA**

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