

# UNITED STATES OF AMERICA

## Imminent execution of juvenile offender

25 March 1993

AI INDEX: AMR 51/23/93

DISTRIB.:

SC/CO/GR

Gary Graham, black, is scheduled to be executed in Texas on 29 April. He was convicted and sentenced to death in November 1981 for the murder of Bobby Lambert, a white man, in May 1981 when he was aged 17 and still a minor. 17-year-olds are treated as adults in the Texas criminal justice system. If carried out, this would 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 laws - contrary to international law and practice.

Bobby Lambert was shot dead during an attempted robbery in the parking lot of a Houston grocery store on 13 May 1981. Gary Graham was charged with his murder after he was arrested, at the end of an alleged week-long crime spree, at the home of a woman who said that he had raped her. Although Gary Graham pled guilty to a series of offences during the week in question, including the alleged rape, he denied involvement in the murder of Bobby Lambert. He was convicted mainly on the identification evidence of an eye-witness who picked him out at a police line-up and who had a fleeting glance of Bobby Lambert's assailant. According to information supplied by Graham's present lawyers, the evidence against Graham was weak; several other people present at the scene had not been able to identify him. Gary Graham's trial lawyers depicted the week of crime itself as an aberration, not in keeping with his past behaviour.

It was argued on appeal that Gary Graham was inadequately represented by his trial lawyers who failed to fully explore or present alibi evidence. It was also argued that his trial counsel had failed to order a full range of psychological tests but relied only on a simple competency test conducted by the state. (A later psychiatric examination found possible brain damage caused by a number of childhood head injuries.) Although these appeals were rejected, his present lawyers are continuing to investigate alleged discrepancies in the evidence on which he was convicted, in support of a possible innocence claim.

An appeal to the US Supreme Court in the case was dismissed in January 1993. By a narrow majority of five votes to four, the Court rejected the claim that the Texas death

penalty law was unconstitutional in not allowing the jury to consider youth as a separate mitigating circumstance in the sentencing proceeding. The Court did not consider the merits of the claim, however, holding instead that Graham was seeking a "new rule of law" which could not be retroactively applied to his case. The dissenting opinion vigorously disputed this ruling.

Testimony was presented at the trial about Gary Graham's unstable upbringing and his mother's repeated hospitalization for mental illness.

Since his imprisonment, Gary Graham has obtained educational certificates. He also edits a prison magazine called Endeavour, which argues against the death penalty and describes the cases of inmates on death row.

## **BACKGROUND INFORMATION**

As of January 1993, there were 2,676 people on death row in the United States. Texas has the largest number of people under sentence of death with 367 people on death row. At the end of 1992, there were 34 juvenile offenders under sentence of death in 13 states in the USA, eight of them in Texas. Five juveniles have been executed in the USA since 1976, three of them in Texas.

Seven of the eight juvenile offenders on death row in Texas are black or Hispanic. 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.

In a report published in October 1992 United States of America: The Death Penalty and Juvenile Offenders Amnesty International examined the cases of some 23 juvenile offenders sentenced to death in recent years, and concluded that safeguards in capital punishment law had not been met in many cases. Most came from acutely deprived backgrounds, were of below-average intelligence and many also suffered from mental illness or brain damage.

Gary Graham's case - like many other of the juvenile cases on death row in the USA - reinforces 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 such a young offender.

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**

**\* 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 Gary Graham's case as an example.
- 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.

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

- urging the Board to recommend that Governor Richards grant clemency to Gary Graham 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;
- expressing concern also at the fact that seven of the eight juvenile offenders 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

Bill Clinton  
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

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  
**Fax:** +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  
**Fax:** +1 512 463 1849  
**Telegrams:** Governor Richards  
Austin, Texas 78711, USA  
**Telex:** 910 874 1849  
**Telephone:** +1 (512) 463 2000

The Letters Editor  
Austin-American Statesman  
Box 670  
Austin, TX 78767  
USA  
**Fax:** +1 512 445 3679

The Letters Editor  
Houston Chronicle  
801 Texas Avenue  
Houston, TX 77002  
USA  
**Fax:** +1 713 220 7868