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## Gary Graham Rerieved

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# Who will stop Texas death penalty binge?

by Anita Gallagher

Something is rotten in the State of Texas, and within its altogether *criminal* justice system. On Aug. 16, only six hours before Gary Graham's scheduled execution, the state's highest court halted the execution and rebuked Texas Attorney General Dan Morales for placing bloodlust over his constitutional duties. Morales had made repeated attempts to overturn a lower court's stay of Graham's execution, and the possibility that Graham would be allowed to present his stunning evidence of innocence. Whether Graham will get an executive clemency hearing will be taken up at a Sept. 29 hearing.

Graham, who is black, was 17 years old in 1981 when Bobby Lambert was shot in a grocery store parking lot. Graham was convicted of the killing despite the fact that 1) the bullet that killed the victim did not match Graham's gun; 2) six eyewitnesses say that Graham was not the person who shot Lambert; and 3) five alibi witnesses say they were with Graham at a birthday party at the time. The only evidence for Graham's conviction is one eyewitness, who saw Graham for perhaps one second, from 40 feet away, at night. None of the witnesses that would have exonerated Graham were called at his trial because his government-paid defense lawyer thought he was guilty. Under Texas law, as in some 35 other states, the "new evidence" — the ballistics report and the witness testimony which was never followed up or used during the trial — had to be introduced within a short time after the verdict (30 days in Texas) or be barred forever.

Lyndon LaRouche commented on the Graham case in the "EIR Talks" radio program on Aug. 19: "All the evidence now is that Gary Graham was innocent all along. And Texas Attorney General Morales — or perhaps we prefer to call him im-Morales — has blocked every effort to hear that evidence. So this is unspeakable.

"Also, remember, in connection with the earlier execution in Texas, the *Herrera* case; the Supreme Court, in support of Texas authorities, said in effect that even provable innocence of a convicted person is not a reason to stop his execution.

"Just think of that. Any citizens who would vote for any law which would give these jokers in the federal government or the state governments the authority to carry out a death penalty, are actually murderers. Because we already know that at least 10% of the death row cases nationally are innocent of

the crimes for which they are convicted. The point is, there is no longer any *truth-seeking* in the U.S. judicial process."

Texas has already executed 10 people this year, including two in an eight-day period in August. All other states together have executed 14 persons since January. Texas plans to execute 18 more by November, according to the State Board of Corrections, despite the fact that the state has come within hours of executing men later proven innocent in at least two instances. In 1980, Randall Dale Adams, whose story is depicted in the film *The Thin Blue Line*, was rerieved by an 8-1 U.S. Supreme Court ruling that the selection of his jury was unconstitutional, and he was later fully exonerated. Adams told *EIR* on Aug. 16, "The makeup of the Supreme Court and the lower courts have completely changed. If I were still locked up today, I would not have gotten my stay. In 1980, we had some justices who would stand by their opinions. I would not want to go before the Supreme Court today. These [derogatory] won't stand by their own decisions."

### Executive clemency not 'fail-safe'

In its infamous *Herrera* decision, the U.S. Supreme Court said that *Herrera's* evidence of innocence was not strong enough to evoke a constitutional right not to be executed, but it failed to set a standard. Instead, the court pointed to the remedy of "executive clemency."

In Texas, the Board of Pardons and Paroles, which hears clemency cases, has never granted a commutation in a capital case since the death penalty was reinstated in the United States in 1976. Except in the rarest instances, it refuses even to meet and hold hearings on requests.

Graham's attorneys sued in civil court to obtain the executive clemency remedy enunciated in the *Herrera* case. On Aug. 9, Travis County Civil Judge Pete Lowry stayed the execution and set a Sept. 29 hearing on whether the board had to meet and hear evidence in Graham's case. The ruling was a clear attack on the vote the board had already taken in April to deny Graham clemency.

Repeated attempts by Morales to overturn that order — each attempt by Morales lifted the stay of Graham's execution — were defeated when the Texas Court of Criminal Appeals voted 5-4, only six hours before the scheduled execution, to uphold the stay and the Sept. 29 hearing.

Judge Sam Houston Clinton, writing for the 5-4 majority, rebuked the state officials for asking the court "to rescue them from judicial orders relating to discharging their constitutional duties and responsibilities. . . . Due course of law certainly requires that such a condemned person desperately seeking executive clemency not be executed on the simple expediency that the state officials responsible for fairly considering his plea have refused to hear it."

This small step, won through mobilization of significant black and white political forces on the national level, will have to be quickly enlarged to stop Texas' "execution express" in the coming weeks.