

OPEN LETTER TO
ASSISTANT ATTORNEY
GENERAL HUMES,
OKLAHOMA, USA

AI Index: AMR 51/193/99
Distr: UA/CO

BY FAX AND MAIL

Ref.: TG AMR 51/99.184

William Humes
Assistant Attorney General
Office of the Attorney General
State Capitol
2300 North Lincoln Blvd.
Room 112, Oklahoma City
OK 73105, USA

2 December 1999

Dear Assistant Attorney General

In the first few minutes of this morning, Cornel Cooks was executed in Oklahoma State Penitentiary. As an organization dedicated to the abolition of this shameful and outdated punishment, Cornel Cooks' death at the hands of government officials is a matter of deep regret to us. We urge you, as an official involved in this case and in your state's use of the death penalty in general, to take the time to reflect upon the fact that a majority of countries have abandoned judicial execution, and to give serious thought to why Oklahoma continues to be so out of step with this global trend as we approach the 21st century.

The extent to which Oklahoma is flouting the world trend was brought into sharp focus when, at Cornel Cooks's clemency hearing in front of the Pardon and Parole Board on 16 November, you spoke of the "15-20 people" whom you expect to come up for execution next year, far more than any year since Oklahoma resumed executions in 1990. It is your comments at this hearing, including what amounted to an attack on Amnesty International's support for clemency, which is the reason behind this letter (we consider this to be an open letter, given that the clemency hearing was public).

Firstly, we are concerned that you attempted to minimize the individualized nature of Cornel Cooks' clemency hearing, by focussing the Board's attention on to future cases which they could expect to come before them. I would remind you of what you said to the Board after they had heard reasons favouring clemency in this *particular* case -- such as Cornel Cooks' remorse, his inadequate trial representation, and his mental impairment:

"But, let me tell you here and now that if you believe these are adequate reasons for clemency, you should be prepared in the next year or so to grant or at least recommend clemency over and over and over. We estimate within the next year 15 to 20 people will come before you with death sentences, asking for clemency. I guarantee you, you will hear stories much like Cornel Cooks' from each and every one of them".

Plainly, what you were attempting to do was to undermine the case for clemency for Cornel Cooks, not by focussing on the weakness of the defence's case as you saw it, but by urging Parole Board members to think about cases that have yet to come before them, and the details of which they can only guess at. In effect, you were urging the Board to view Cornel Cooks not as an individual with claims to clemency that were uniquely his own (which the Board could accept or reject on their merits), but as one of a group of people defined only by their death sentences. This is tantamount to saying that, by definition, no prisoner under sentence of death should be granted clemency. If the

Board were to recommend life for Cornel Cooks, you hinted, they would surely have to recommend life for all other condemned prisoners who come before them.

Amnesty International believes that your comments undermined the possibility of achieving a genuine clemency process, which must take account of the specific and individual claims of the particular prisoner in question. As such we believe that your statements violated the spirit of the internationally-agreed right of a condemned prisoner to seek commutation of his or her death sentence, as stated in Article 6(4) of the International Covenant on Civil and Political Rights, to which the USA is a state party. It is self-evident that for this right to have any meaning, the clemency process must provide for a genuinely individualized approach for those that make use of it. We would therefore appeal to you, in future clemency hearings in which you represent the state, to focus your arguments purely on the *individual* case before the Board.

Secondly, Amnesty International is concerned by your comments about inadequate legal representation. Again, you said:

“It is plain that he [Cornel Cooks] is remorseful and that he received ineffective assistance of counsel at his trial.... And believe me practically every person that comes before you in the next year or so will say ‘I received ineffective assistance of counsel at trial’. That is the common claim by the capital defendant these days.”

Amnesty International has long-standing concerns about the many cases of inadequate legal representation which have occurred in US capital trials, and is therefore concerned that as a state official you would seek to belittle this deficiency in the criminal justice system. We believe that the threshold for a successful appeal on this issue, as set by *Strickland v Washington*, does not meet international standards for capital trials, leaving executive clemency as the final hope of relief on this issue for many prisoners. Among these international standards is the 15-year-old Safeguard 5 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, which states that all capital defendants have the right “to adequate legal assistance at all stages of proceedings”. Cornel Cooks is the latest person to go to his death in a US execution chamber after being inadequately defended at trial. Amnesty International agrees with you -- many other prisoners *will* make similar claims -- precisely because of the low standard of capital defence representation that has prevailed in many US jurisdictions. We urge you in future to do all in your power and influence to encourage your state to ensure that capital defendants have access to adequate defence representation at all stages of proceedings, rather than attempting to belittle the issue as you did at Cornel Cooks’ clemency hearing.

Thirdly, Amnesty International is concerned by the antagonism you displayed towards this organization’s support for clemency for Cornel Cooks. This followed your similar intervention at the hearing for Scotty Moore on 18 May 1999, and which explains our instruction (which you pointedly indicated to the Board on 16 November) for people to write on behalf of Cornel Cooks in their own personal capacities rather than in the name of Amnesty International. We did not want official antagonism brought on by these two words to be used to sidetrack the attention of the clemency hearing. We regret that, in the event, you chose to take such a path. On the issue of international appeals, you said to the Board on 16 November:

“I imagine that you members of the Board have received letters from supporters, perhaps from around the United States, perhaps from around the world. The last time I appeared before this Board was in conjunction with Scotty Moore’s clemency hearing. I told you then I had a feeling that these letters were something more than expressions of direct concern for Scotty Moore. I told you that probably most of the people that wrote those letters wouldn’t know Scotty Moore if they saw him... What is evident is that most of these

letters are more about a political viewpoint and the general opposition to the death penalty than they are about Cornel Cooks.”

We do not deny that many of the people who wrote on behalf of Cornel Cooks or Scotty Moore had met neither individual, although some no doubt had (it is unclear to us whether you yourself had met either one of the prisoners). However, we can assure you that every single appeal was written out of “direct concern” for the prisoner. After all, how more direct can concern be than to put pen to paper in an attempt to stop the killing of a fellow human being one has never met? One would hope that all human beings would feel such motivation.

What you call a “political” viewpoint, Amnesty International would call a “human rights” perspective. In addition to a deeply held concern for a fellow human being in a dire situation, it is the principle of the universality of human rights that motivates people to write to Board members -- not to excuse or condone a violent crime, but to encourage those involved in the state’s pursuit of an execution to find a more constructive response than to add to the death toll. We make no apologies for our abolitionist standpoint, which as noted at the top of this letter is now reflected in a majority rejection, among the countries of the world, of this ultimate cruel, inhuman and degrading punishment.

You told the Board that, while you do not oppose freedom of expression, the clemency board is not an appropriate target for such letters, which should be aimed at lawmakers instead. In the longer term, Amnesty International does, of course, lobby legislators about the death penalty. But when faced with an individual death sentence, given that we do not organize letter-writing to judges, out of deference to the independence to the judiciary, what better authority than the clemency body to receive expressions of national and international concern on this fundamental human rights issue? In some states the Governor alone has the power of executive clemency, and we would note that we have yet to receive a complaint that Amnesty International’s appeals for clemency inappropriately interfere in a Governor’s deliberations. In Oklahoma, the Pardon and Parole Board is the authority with the power to recommend life for a condemned prisoner. The clemency hearing is precisely the moment when individual human minds must be focussed on what is being carried out in the name of the state, and thereby in all our names; namely, the planned killing of a human being. We hope that letters of concern sent prior to the hearing -- not to the hearing, as you suggest -- can play a small, but helpful part in focussing minds in this way.

There will, regrettably, be future occasions when international and national letters of appeal for clemency arrive in Oklahoma. We urge you, in the name of human rights, to treat them with the respect that they deserve.

Yours sincerely

Javier Zuñiga
Program Director - America