

EXTERNAL (for general distribution)

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EXTRA 45/94

Death Penalty

5 August 1994

USA (Nebraska)

Harold Lamont "Wili" Otey

Harold "Wili" Otey is scheduled to be executed in Nebraska on 2 September 1994. He would be the first prisoner executed in Nebraska for 35 years.

Otey, black, was sentenced to death in 1978 for the 1977 rape and murder of Jane McManus, white, during a robbery at her home.

In a clemency petition in 1991 it was argued that *"by virtually every objective measure [Otey's case] is the least aggravated capital case to have completed the process of review in the Nebraska courts"*. Otey had no prior criminal record; the petition argued that the balance of aggravating and mitigating factors, together with Otey's substantial efforts towards rehabilitation, are strong grounds for granting executive clemency. In June 1991 the Nebraska Board of Pardons denied clemency by two votes to one. The Secretary of State, (one of the three members of Nebraska's Board of Pardons) voted in favour of clemency, saying *"There are individuals in the institution convicted of multiple murders or even more heinous crimes than Otey who are serving life sentences"*.

Otey's attorneys have since argued that his clemency hearing was unfair on the grounds that the state Attorney General, who prosecuted the case on appeal both personally and through the Attorney General's office, and who has actively sought to expedite Otey's execution, also serves on the Nebraska Board of Pardons. (During the 1991 clemency hearing, members of the Attorney General's staff appeared before the Board to argue the case against clemency). Otey's final appeal to the US Supreme Court on this issue was refused review on 27 June 1994. His attorneys subsequently filed this claim in federal courts as a civil rights action, on 30 June 1994. It claims that the Attorney General has actively sought to expedite Otey's execution by urging judges to make decisions in the case, by publicly urging Otey's execution, and by ordering a review of the existing Board of Pardons procedure in order to make the clemency process less favourable to clemency seekers. The petition also states that an assistant from the Attorney General's office instructed a witness for the defence at the 1991 clemency hearing that he should not offer any personal opinions concerning the merits of Otey's application. It further states that after this witness had given his testimony, the Attorney General forced the witness to read two letters written by former penitentiary guards which were very critical of Otey.

Otey was born into poverty in New Jersey, the third of 13 children who were often left unattended at an early age. At the age of four, Otey was sent to live with relatives where he was neglected, beaten and abused. As a teenager he began taking drugs and was permanently suspended from school when he was 15. However, in prison on death row he began to study, and passed his General Education Diploma in 1980. He studied literature, logic and philosophy, and has published three volumes of poetry.

[Note: TLX 41/91, 18 June 1991, and follow-ups (3 July and 14 August), and EXTRA 61/92 (AMR 51/86/92, 8 July 1992) and follow-up (AMR 51/94/92, 6 August) have previously been issued on this case.]

BACKGROUND INFORMATION

As of 20 April 1994 there were 10 prisoners under sentence of death in Nebraska. The last prisoner to be executed in the state was Charles Starkweather, in June 1959. The method of execution is electrocution.

Amnesty International continues to be concerned that the death penalty is imposed in a racially discriminatory manner in the USA. In February 1990 the General Accounting Office (GAO), an independent agency of the federal government, published the findings of a survey it had conducted into the effects of race on capital sentencing practices. 82% of the research studies it examined suggested that those who murdered white victims were more likely to be sentenced to death than those who murdered black victims. These racial disparities remained after all other legally relevant factors had been taken into account.

RECOMMENDED ACTION: Please send faxes, telegrams, express and airmail letters, in English if possible, or call by telephone:

- expressing deep concern that Harold "Wili" Otey is scheduled to be executed in Nebraska on 2 September 1994, and urging the Board to reconsider his case, and to grant clemency by commuting his death sentence;
- referring to mitigating factors (Otey's lack of a prior criminal record, and his neglect and abuse as a child), together with his own efforts to rehabilitate himself, as strong grounds for granting clemency;
- expressing concern at the possibility that racial factors may have influenced the decisions to sentence Wili Otey to death;
- expressing your and AI's concern at the clear conflict of interest in the role played by the Attorney General in prosecuting the case on appeal, in seeking to expedite the execution, and his role as one of the three members of the Board of Pardons;

and using some of the following:

- explain that international human rights standards and treaties encourage governments to restrict the use of the death penalty;
- state that executions are contrary to the world trend towards abolition of the death penalty and that the USA is the only western industrialized nation to carry out the death penalty;
- stressing your/AI's unconditional opposition to the death penalty;
- expressing concern that according to research studies, including those of AI, the death penalty in the USA is imposed disproportionately on the poor, on minorities, on the mentally ill or retarded, on those without adequate legal counsel, and on people from deprived backgrounds;
- noting that execution is irrevocable and, despite the most stringent safeguards may be imposed on the innocent;
- referring to the overwhelming conclusion from studies on the issue that there is no reliable evidence that the death penalty deters crimes more effectively than other punishments. If your country has abolished the death penalty it is especially important to mention any national experience demonstrating that the death penalty has no special deterrent effect against violent crime.

APPEALS TO

Nebraska Board of Pardons
PO Box 94754
Lincoln, NE 68509-4754, USA

Telegrams: Nebraska Board of Pardons, Lincoln, Nebraska, USA

Telephone: +1 402 471 2156

Faxes: +1 402 479 5119 (Mark for attention of Nebraska Board of Pardons)

Salutation: Dear Board Members

COPIES OF YOUR APPEALS TO

Lincoln Journal-Star, Box 81689, Lincoln, NE 68501, USA
FAX: +1 402 473 7291

Omaha World Herald, World Herald Square, Omaha, NE 68102, USA
FAX: +1 402 444 1299

and to diplomatic representatives of the USA accredited to your country

PLEASE SEND APPEALS IMMEDIATELY.