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Death penalty/Legal concern

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USA (Ohio)

Richard Wade Cooley (m), white, aged 41

Richard Cooley is scheduled to be executed in Ohio on 14 October. He was sentenced to death on 5 December 1986 for two murders committed three months earlier. He was 19 years and two months old at the time of the crime. He has spent nearly 22 years on death row.

In August 1986, 19-year-old Richard Cooley, who had had a serious drug and alcohol problem from around the age of 12, was home on leave from army training and went on a three-week alcohol and drug binge. On 31 August he had consumed marijuana, beer, cocaine and opium, and was with two friends, Clint Dickens, aged 17, and 18-year-old Kenny Horonetz. Out in Cooley's car that evening, the three teenagers stopped on a bridge over a freeway, at which point Dickens dropped a piece of concrete over the parapet. The concrete hit a car with 21-year-old Wendy Offredo and Dawn McCreery, aged 20, in it. The two young women were forced to stop, whereupon the teenagers offered them a lift. The five went to a nearby shopping mall, where Wendy Offredo telephoned her mother and Dawn McCreery called the police. However, according to the court record, rather than being taken back to their damaged car by the teenagers, the two women were robbed and driven to a field where they were raped and murdered by Cooley and Dickens.

Richard Cooley has said that he cooperated with the police after they promised that the death penalty would not be sought against him. Nevertheless, Cooley was brought to capital trial in November 1986 in front of a three-judge panel, after waiving his right to trial by jury. A few months earlier, the same panel of judges had passed a death sentence against a defendant represented by the same lawyer who had been appointed to represent Cooley. It is not known if Cooley had been advised of this by the lawyer, or if he genuinely understood the full ramifications of waiving trial by jury.

Cooley was convicted of all charges after a two-day trial. The sentencing phase lasted one day, beginning and ending on 5 December, after which he was sentenced to death for murder, and to a total of 66 to 180 years' imprisonment on the charges of kidnapping, rape, robbery and assault. Clint Dickens, a year and a half younger than Cooley, was sentenced to life imprisonment. In line with international law, Ohio prohibited the use of the death penalty against defendants who were under 18 at the time of the crime.

The lawyer who represented Cooley at trial was then appointed to represent him for his initial appeal. According to Cooley's clemency petition, this lawyer failed to correspond with or visit him during this appeal period, or to provide him with copies of briefs filed in the appeal court. Today, the courts would not appoint the same lawyer for trial and appeal, recognising that any lawyer would be unlikely to raise a claim on appeal of his or her own ineffectiveness at trial. New lawyers appointed to Cooley's case for subsequent appeals raised claims that the original lawyer's representation at trial and on first-level appeal had been inadequate, but the Ohio Supreme Court ruled that such claims had been waived because they had not been raised earlier and could only be reviewed under a "plain error" standard, a tougher standard than would have applied under normal review.

In affirming his death sentence in 1989, the Ohio Supreme Court noted that "Cooley's youth is entitled to some weight, but his military status makes it reasonable to expect more maturity from him than one might otherwise expect from a nineteen-year-old. His history as a severely abused child is certainly relevant for whatever it may have contributed to his mental problems." At the time of the crime, Richard Cooley was emerging from a childhood marked by abuse and neglect, including severe physical abuse at the hands of his father. As a boy, he began using alcohol at the age of five, and was abusing alcohol and drugs such as

marijuana, speed and opiates on an almost daily basis from the age of 12. The state Supreme Court also noted that Cooley's lack of a criminal record was "entitled to some weight in mitigation." However, while acknowledging that "Cooley may have been less responsible for his acts than were most people," the Court concluded that the mitigating factors were outweighed by the aggravating circumstances of the crime.

According to the clemency petition, Cooley has matured during his time on death row, come off drugs and alcohol, and accepted responsibility for what happened to Wendy Offredo and Dawn McCreery (even though he has consistently maintained that he had a lesser role than Clint Dickens in the murders). His lawyers argue that he should be granted clemency not only because he is not the person he was 22 years ago, but because evolving standards support that outcome too. They note that death sentences are handed down less frequently in Ohio today than they were two decades ago. This reflects a broader pattern of US capital jurors becoming more reluctant to pass death sentences, apparently as a result of the availability of life imprisonment without parole as an alternative, as well as greater public concern about the reliability and fairness of the capital justice system. For example, 300 death sentences were passed in the USA in 1986, compared to around 110 in 2007. In Ohio, in 1986 there were 87 capital indictments, 15 of which (17 per cent) resulted in death sentences. In 2007, there were 67 capital indictments, four of which (6 per cent) resulted in death sentences. Such statistics raise the question of whether Richard Cooley would be sentenced to death if tried today, given the mitigating factors in the case.

In September 2007, the American Bar Association, which takes no position on the death penalty *per se*, released its evaluation of Ohio's capital justice system. It called for a moratorium on executions in Ohio after concluding that the state could not guarantee the "fairness and accuracy" of the capital justice system, or ensure that "the ultimate penalty of death is reserved for only the very worst of offenses and defendants." Among the problems it found were inadequate procedures to protect the innocent from the death penalty, inadequate access for capital defendants to experts and investigators, inadequate qualification standards for defence lawyers, inadequate appellate review of claims of error, lack of meaningful proportionality review of death sentences by the Ohio Supreme Court, and racial and geographic disparities in capital sentencing.

Executions resumed in the USA in 1977, and 1,123 men and women have been put to death nationwide since then, 26 of them in Ohio. There have been 24 executions in the USA this year. Amnesty International opposes the death penalty unconditionally. Today, 137 countries are abolitionist in law or practice.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the family and friends of Wendy Offredo and Dawn McCreery, and explaining that you are not seeking to condone the manner of their deaths or to downplay the suffering caused;
- noting Richard Cooley's youth at the time of the crime, his severely abusive childhood, his years of drug and alcohol abuse, and that he has spent more than half of his life on death row, during which time he has come off drugs and alcohol, and accepted responsibility for his role in the crime;
- expressing concern that Cooley was represented on initial appeal by the same lawyer who represented him at trial, and that courts have blocked full review of claims that he had inadequate legal representation;
- noting the reduction in death sentencing rates since 1986 both in Ohio and at national level, casting doubt on whether Richard Cooley would be sentenced to death today, given the mitigating factors in his case;
- calling on the Governor to grant clemency to Richard Cooley;
- noting the American Bar Association's call for a moratorium on executions in Ohio, and calling at least for a reprieve while the ABA's concerns are addressed by the Ohio authorities.

APPEALS TO:

Governor Ted Strickland

Governor's Office, Riffe Center, 30th Floor, 77 South High Street, Columbus, OH 43215-6108, USA

Fax: +1 614 466 9354

Email via: <http://www.governor.ohio.gov/Default.aspx?tabid=101>.

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.