

EXTERNAL (for general distribution)

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EXTRA 61/92

Death Penalty

8 July 1992

USA (Nebraska):

Harold Lamont "Wili" OTEY

Harold "Wili" Otey is scheduled to be executed in Nebraska on 6 August 1992. He would be the first prisoner executed in that state for 33 years. The last prisoner executed in Nebraska was Charles Starkweather in June 1959. Otey, who is black and now aged 40, was convicted of the 1977 murder of Jane McManus, white. The victim, aged 25, was raped and stabbed to death during a robbery at her home in Omaha. Otey was convicted of the crime and sentenced to death in June 1978.

According to Otey's 1991 petition for clemency, "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. It is argued that the balance of aggravating and mitigating factors, together with Otey's substantial efforts toward rehabilitation, are strong grounds for granting executive clemency.

Otey was born into poverty in New Jersey, the third of 13 children. His mother often left her small children unattended. 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.

Otey came within six hours of execution in 1991. On 29 June 1991 the Nebraska Board of Pardons denied clemency by two votes to one (with the Secretary of State, Allen Beerman, casting the one vote in favour of clemency). Wili Otey subsequently won a stay of execution from a federal appeals court on the grounds that his June 1991 clemency hearing was unfair (see below).

[Previous actions, TLX 41/91 of 18 June 1991 and follow-ups of 3 July 1991 and 14 August 1991, have been issued on this case.]

BACKGROUND INFORMATION:

Nebraska is one of only four states in which the jury does not participate in the capital sentencing decision. Its 1972 revised death penalty statute the trial judge is wholly responsible for determining whether the death penalty is appropriate, based on a balancing of "aggravating" and "mitigating" factors. Concern has been expressed that this may result in subjective decisions.

There have been moves in Nebraska in recent years to repeal its death penalty law. In 1978, the Nebraska legislature voted to repeal the death penalty completely but the bill was vetoed by the state Governor. The 1978 legislature then enacted Legislative Bill 711 which sought to set a policy of uniform sentencing. This required the reversal of any death sentence where a life sentence had been imposed in any other "similar" case. However, the Nebraska Supreme Court held that the provision created a judicially unenforceable standard and refused

to implement it.

There were legislative initiatives in 1991 and 1992 to abolish the death penalty, replacing it with a maximum sentence of life without parole. They did not pass but there is thought to be substantial support for abolition within Nebraska's unicameral legislature. If Otey is executed, the chances of repealing Nebraska's death penalty law will become negligible. Nebraska's method of execution is electrocution.

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In April 1992, 12 prisoners were under sentence of death in Nebraska. All but one were reportedly convicted of the murder of white victims. Numerous studies (surveyed by the US Government's own General Accounting Office -GAO- in February 1990) confirm that the race of the murder victim influences the likelihood of a defendant being charged with capital murder and receiving the death penalty. The GAO survey found that 82 percent of the most reputable studies on the subject suggested that those who murdered white victims were more likely to be sentenced to death than those who murdered black victims. In addition, a 1981 study by the National Center for State Courts in Nebraska concluded that black offenders were treated more harshly by the Nebraska courts than non-black offenders. Being black was found "to affect significantly both the likelihood and the length of his or her incarceration."

The power to grant clemency in Nebraska rests with the state Board of Pardons. The Board comprises three members: Nebraska's Governor, Secretary of State and its Attorney General. Nebraska is one of only three states in the USA which permit its Attorney General to vote in the clemency decision-making process. This has been criticized on the grounds that the Attorney General is not an objective party. During the June 1991 clemency hearing for Wili Otey, members of the Attorney General's staff appeared before the Board to argue the case against clemency.

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 or degrading punishment, as enshrined in the Universal Declaration of Human Rights.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express and airmail letters:

TO THE BOARD OF PARDONS:

- urging the Board of Pardons to reconsider Wili Otey's 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 decision to sentence Wili Otey to death;

TO NEWSPAPERS:

- urging the state of Nebraska not to resume executions and that, instead, this is the moment to abolish the death penalty;
- suggesting that the death penalty undermines respect for human rights, and is not in keeping with the standards and values of a civilized society;
- urging that the death penalty should not be on the statute books of any country as we approach the 21st century, and encouraging Nebraska to lead the country away from killing

its own citizens.

APPEALS TO: any of the following members of the Nebraska Board of Pardons.

1) The Honorable E Benjamin Nelson, Governor

Salutation: Dear Governor

2) The Honorable Allen Beermann, Secretary of State

Salutation: Dear Secretary of State

3) The Honorable Don Stenberg, Attorney General

Salutation: Dear Attorney General

All at the following address:

Nebraska Board of Pardons

PO Box 94754

Lincoln, NE 68509-4754, USA

Tel: +1 (402) 471 2156

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

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 in your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 5 August 1992.