

EXTERNAL

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EXTRA 180/96

Death Penalty / Legal concern

21 November 1996

USA (MISSOURI) Richard S. ZEITVOGEL

Richard S. Zeitvogel is scheduled to be executed in Missouri on 11 December 1996. He was sentenced to death for the murder of Gary W. Dew in 1984.

Zeitvogel and Dew were both serving prison sentences and were cell-mates at the time of the murder. Zeitvogel claims that he killed Dew as an act of self-defence.

Six months prior to the murder, Dew and several other inmates broke into the prison chapel in order to steal stereo equipment. During the burglary a prisoner in the chapel was assaulted and left in critical condition. Zeitvogel informed prison investigators that he saw Dew in the prison chapel prior to the assault. This information led to Dew being charged with burglary and first degree assault.

Dew, who had been made aware of Zeitvogel's statements linking him to the crime, was convicted of assault and burglary. While awaiting sentencing for the crime, Dew was placed in the same cell as Zeitvogel, despite Zeitvogel's protests and previous threats by Dew that he would kill Zeitvogel. After two days of sharing a cell, during which time other inmates reported loud fighting and arguing between the two men, Zeitvogel called the guards and admitted killing Dew.

Zeitvogel was charged with capital murder and was legally represented by Julian Ossman, the same lawyer who had represented Dew on the charges of assault and burglary. Ossman had been responsible for making Dew aware that Zeitvogel had linked him to the crime by showing him a copy of Zeitvogel's statement to the prison authorities. However, Ossman did not make Zeitvogel aware that he had represented Dew and failed to make the jury aware of Dew's possible motive (of vengeance) for attacking Zeitvogel. The only evidence presented to the jury to support the claim of self-defence were statements from other inmates that Dew had verbally threatened Zeitvogel's life. Under Missouri law, the charges against Dew relating to the incidents in the prison chapel were dismissed and the record "sealed" following Dew's death. The sealing of the record prevented it being used in Zeitvogel's defence.

Julian Ossman has had more clients sentenced to death than any other lawyer in the state of Missouri. Attorneys currently representing Zeitvogel are basing appeals on the grounds that he was ineffectively represented by legal counsel at his trial and that he should not have been convicted of capital murder as he had acted in self-defence. However, the appeal may not be heard by the courts because of provisions in the *Anti-terrorism and Effective Death Penalty Act* signed into law by President Clinton in April 1996. The Act prevents death row inmates from making *habeas corpus* appeals in certain circumstances and is designed to speed the time taken from conviction to execution.

BACKGROUND INFORMATION

As of 31 July 1996, there were 94 prisoners under sentence of death in Missouri. The most recent execution in Missouri was of Richard Oxford on 21 August 1996. Twenty-two prisoners have been executed in Missouri under the state's current death penalty laws. This is the joint fourth highest number in the USA (the other four are: Texas 107, Florida 37, Virginia 32 and Georgia 22).

In Missouri the Governor has sole power to commute death sentences. A board of inquiry may be appointed by the Governor to gather information relating to whether a person condemned to death should be executed, reprieved or pardoned.

RECOMMENDED ACTION: Please send telegrams/telexes/faxes/express/airmail letters in English or your own language:

- expressing concern that Richard Zeitvogel is scheduled to be executed on 11 December 1996;
- expressing concern that the jury which sentenced Richard Zeitvogel to death were unaware of all the evidence relating to the killing being self-defence; and that this evidence has never been brought before any court;
- expressing concern that the attorney representing Richard Zeitvogel failed to declare that he had previously represented Gary Dew and may have had a conflict of interest;
- urging Governor Carnahan to grant clemency to Richard Zeitvogel by commuting the death sentence.

APPEALS TO:

The Honourable Mel Carnahan
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Telegrams: Governor Carnahan, Jefferson City, Missouri, USA

Salutation: Dear Governor

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and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.