

EXTRA 38/01

Death penUSA (Missouri) Jerome Mallett, black, aged 42

Jerome Mallett is scheduled to be executed in Missouri on 11 July 2001. He was sentenced to death in 1986 for the 1985 murder of a police officer.

State Highway Patrol Trooper James Froemsdorf was shot with his own revolver on 2 March 1985 after he had stopped Jerome Mallett for speeding in Perry County, in eastern Missouri. The officer discovered that Mallett was wanted in Texas for parole violations and robbery. After his arrest, Mallett claimed that the shooting had occurred during a struggle after the officer struck him and accused him of lying about his identity. The state claimed that it was a premeditated killing in order to avoid arrest.

The defence requested a change of trial venue due to prejudicial pretrial publicity in Perry County. The defence and prosecution suggested possible locations. The defence asked that the county chosen be one in which there were African American residents, so that there would be a possibility that blacks would serve on the jury. Jerome Mallett is black; James Froemsdorf was white. All the proposed counties had some African American residents.

The judge selected Schuyler County in the north of the state, which neither side had suggested, and which had no black residents at the time (compared to about seven per cent in Perry County and around 10 per cent statewide). In addition, prior to being assigned to the case, the judge had presented a plaque to the State Highway Patrol, bearing a message composed by the judge under a pseudonym, in memory of Trooper Froemsdorf. The judge rejected a defence motion that he should withdraw from the case on account of this.

The trial took place in Lancaster, a rural community with a population of less than 1,000. Many members of the State Highway Patrol attended, including 11 of its 12 highest-ranking officers. Pretrial publicity and security measures during the proceedings were extensive, arguably creating an atmosphere highly prejudicial to the defendant. The all-white jury convicted Jerome Mallett of first-degree murder and sentenced him to death.

During post-conviction proceedings, another judge assigned to examine the trial judge's actions said that Mallett must receive a new trial. He ruled that the transfer decision, by denying the defendant any chance to have members of his own race on the jury, had given rise to the appearance of having been racially motivated. However, the Missouri Supreme Court set aside his ruling, and this was upheld by the US Supreme Court. Three US Supreme Court Justices dissented, saying that the case gave rise to a *prima facie* showing of racial discrimination, in violation of Jerome Mallett's fundamental right to equal protection before the law.

In subsequent appeals against the conviction and sentence, three of the seven Missouri Supreme Court judges dissented from the court's decision to uphold the death sentence. Given the circumstances of the case, they said that Mallett's sentence was disproportionate and should be reduced to life imprisonment. The dissent pointed to the "impulsive" nature of the Froemsdorf murder and compared it to the case of David Tate, a white supremacist involved in preparing an armed rebellion against the US and Missouri governments, who was convicted of killing a Missouri trooper in April 1985. After he was stopped in a van transporting a number of automatic weapons and hand grenades, Tate shot the

trooper 11 times and also seriously injured another officer. He received a life sentence.

BACKGROUND INFORMATION

The history of the US death penalty is one of racist use, and to this day race remains an element in the application of this punishment. In 1994, a US Supreme Court Justice said: "Even under the most sophisticated death penalty statutes, race continues to play a major role in determining who shall live and who shall die." Research over the past two decades has consistently shown a pattern of sentencing anomalies which cannot be explained without reference to racial factors, particularly in relation to the race of the murder victim. In 1990, the General Accounting Office (an independent agency of the US government) issued a report on death penalty sentencing patterns. After reviewing and evaluating 28 major studies, the report concluded that 82 per cent of the surveys found a correlation between the race of the victim and the likelihood of a death sentence. The finding was "remarkably consistent across data sets, states, data collection methods and analytic techniques. . . [T]he race of victim effect was found at all stages of the criminal justice system process...".

The population of the USA is about 75 per cent white and 12 per cent black. Since 1976, blacks have been six to seven times more likely to be murdered than whites, with the result that blacks and whites are the victims of murder in about equal numbers. As of 20 June 2001, 720 people had been put to death in the USA since executions resumed in 1977. In over 80 per cent of the cases, the crimes involved white victims. Missouri has executed 50 prisoners. In 38 cases (76 per cent) the murder victims were white.

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

- expressing sympathy for the friends and family of James Froemsdorf, explaining that you are not seeking to condone the manner of his death;
- expressing concern that the trial judge in effect denied Jerome Mallett the possibility of having members of his own race on his jury, and noting the judge's presentation of the memorial plaque;
- without accusing the judge of racism or impropriety in so doing, note that his actions gave rise to the appearance of bias and discrimination;
- noting the large number of dissenting opinions from senior judges in this case, and noting the case of David Tate;
- noting that studies in the USA have consistently shown that murders involving white victims are far more likely to attract a death sentence, and that this has often been shown to be more so if the defendant is black;
- pointing out that the power of executive clemency exists to compensate for the rigidity of the courts and to promote public confidence in the fairness and consistency of the justice system;
- calling on the governor to commute the death sentence of Jerome Mallett.

APPEALS TO:

The Honourable Bob Holden
 Governor of Missouri
 Missouri Capitol Building, Room 216
 PO Box 720
 Jefferson City, MO 65102-0720, USA
Tel: + 1 573 751 3222
Fax: + 1 573 751 1495

Email: constituentaffairs@mail.gov.state.mo.us
Telegrams: Governor Holden, Jefferson City, Missouri, USA
Salutation: Dear Governor

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

You may also write (not more than 250 words) to *Letters to the Editor* at:

St. Louis Post-Dispatch, 900 E. Tucker Boulevard, St Louis, MO 63101, USA

Fax: + 1 314 340 3050. E-mail: letters@post-dispatch.com

Kansas City Star, 1729 Grand Avenue, Kansas City, MO 64108, USA

Fax: + 1 816 234 4926. E-mail: letters@kcstar.com

News Tribune, 210 Monroe St, Jefferson City, MO 65101, USA

Fax: + 1 573 636 7035. E-mail: editor@newstribune.com

PLEASE SEND APPEALS IMMEDIATELY.