

**PUBLIC**

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**19 December 2003**

**Further information on EXTRA 51/03 (AMR 51/144/2003, 27 November 2003) and follow-up (AMR 51/153/2002, 12 December 2003) – Death penalty / Legal concern**

**USA (Texas) Kevin Lee Zimmerman (m), white, aged 42**

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Kevin Zimmerman has a new execution date after the US Supreme Court lifted the stay of execution it granted shortly before he was due to be killed on 10 December. Sentenced to death in 1990 for the murder of Gilbert Hooks in 1987, Kevin Zimmerman is now due to be put to death on 21 January 2004.

In late September 1987, Kevin Zimmerman was released from prison in his native Louisiana after serving a three-year sentence for possession of drugs. After he returned home to find that his wife was having an affair with his best friend, he embarked on an alcohol and drug binge with other friends. On the fifth day of this spree, 23 October, Kevin Zimmerman and two friends were drinking in a motel room in Beaumont, Texas, when they were joined by fellow motel guest, 33-year-old Gilbert Hooks. Later that night, Zimmerman and Hooks got into an argument, and Hooks stabbed Zimmerman in the arm, causing him to bleed profusely. Their fight continued and ended in Hooks being stabbed to death.

Kevin Zimmerman was charged with murder, not capital murder. He was appointed a succession of lawyers who all withdrew from the case for various reasons, having done little or no work on the case. After a year, Zimmerman wrote letters to the prosecutor and court, in effect daring them to charge him with capital murder. In his letters he falsely claimed involvement in other crimes, and claimed that he had robbed Hooks. Murder during the course of a robbery is a capital offence, unlike plain murder. He was recharged, this time with capital murder. A doctor who recently reviewed the case has stated in an affidavit that the claims in Zimmerman's letters were "patently absurd" and that the records indicate that at the time he was "psychotic", "potentially suicidal and required suicide prevention measures".

In July 1989, Kevin Zimmerman was appointed the lawyer who would represent him at his capital trial, his fifth attorney since he was first charged. She had no experience in capital cases and had never represented anyone charged with murder. She chose co-counsel who had no capital case experience. The lawyers failed to have Zimmerman evaluated for his mental competency to stand trial even though there was evidence that he might not be able to assist in his own defence. They did not investigate his family background, and did not learn that he had a history of mental problems beginning after a serious bicycle accident at the age of 11, as a result of which he had a plate put in his head. There were numerous relatives and neighbours who could have testified that his personality and behaviour changed after the accident. The lawyers failed to present expert psychiatric evidence to support the claim of self-defence or to present as mitigation evidence against the death penalty. Since the trial a number of experts have concluded that Kevin Zimmerman's brain injury had affected his behaviour, including at the time of the stabbing. In 2003, for example, a psychologist concluded that because of this, the crime "should not be considered as a predatory/premeditated crime" (see original EXTRA).

Kevin Zimmerman faces lethal injection with three chemicals: sodium thiopental, pancuronium bromide, and potassium chloride. Pancuronium bromide, a derivative of curare, paralyzes the skeletal muscles but does not affect the brain or nerves. A person injected with it remains conscious but cannot move or speak. Legal challenges are being made against its use in executions on the grounds that it may throw a "chemical veil" over the reality of lethal injections by masking suffering and giving the false appearance of a serene death. In a challenge in Tennessee, a woman testified that she had undergone surgery during which the anaesthetic failed. She testified that she was able to hear, perceive and feel everything that was going on in her surgery,

but was unable to move or speak because of an injection of pancuronium bromide. She has described the experience as "worse than death".

The use of pancuronium bromide for pet euthanasia is not acceptable under American Veterinary Medical Association guidelines, and its use has been banned in several states. On 1 September 2003, a new law came into force in Texas banning its use in the euthanasia of cats and dogs. The American Medical Association's Code of Ethics prohibits doctors from participating in executions. There are reportedly no standards for the training of these non-medical personnel who carry out Texas executions, increasing the potential for botched executions. According to Kevin Zimmerman's lawyers, a law which will come into force on 1 January 2005 "would make the lethal injection process, if performed on animals, illegal, because of the lack of training for the personnel involved, and the lack of safeguards."

Kevin Zimmerman's execution was stopped by the US Supreme Court about 20 minutes before it was due to be carried out on 10 December. Lawyers had asked for a stay of execution in a civil rights lawsuit challenging the lethal injection process. The lower courts had dismissed the appeal by recharacterizing it as a procedurally barred successive *habeas corpus* petition under a different law (see EXTRA update). In December, in the case of David Nelson, an Alabama inmate challenging his impending lethal injection on the grounds that he has collapsed veins and would have to face painful surgery before being killed, the Supreme Court agreed to consider the question of courts reconstruing civil rights suits as *habeas corpus* petitions. On 15 December, the Supreme Court lifted Kevin Zimmerman's stay of execution, however. Four of the nine Justices dissented, holding that his case should await the outcome of the Nelson case. The five Justices in the majority gave no reason for lifting the stay. On 18 December, the Court upheld a stay of execution for Virginia inmate James Reid pending its decision in the Alabama case. Reid has raised a similar complaint to David Nelson.

Prior to Kevin Zimmerman's 10 December execution date, the Texas Board of Pardons and Paroles denied clemency although, unusually, two members voted for commutation, at least one of whom did not consider the case to have warranted the death penalty. The Governor does not have the power to commute without a recommendation from the Board, but he does have the authority to issue a reprieve.

**FURTHER RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words, using the above information as you see fit:**

- explaining that you are not seeking to minimize the seriousness of Gilbert Hooks' killing, or the suffering it has caused;
- noting that the prosecution did not initially consider this to be a case of capital murder, and only upgraded it after an intervention by the defendant who was in an apparently psychotic or suicidal state; - expressing concern at the poor quality of Kevin Zimmerman's trial counsel, who failed to present expert evidence of the defendant's mental impairment;
- noting that since the trial a number of experts have concluded that this mental impairment made it unlikely that the crime was premeditated or that the defendant could conform his conduct to the law;
- expressing concern that Texas has executed more than 300 prisoners by a method which evidence suggests could be resulting in torturous deaths where the suffering is masked, and noting that animals could not be euthanized under this method under various states laws, including in Texas;
- calling on the governor to stop Kevin Zimmerman's execution and to ask the Board of Pardons and Paroles to reconsider its earlier decision against clemency.

**APPEALS TO:**

The Honorable Rick Perry, Governor of Texas, State Capitol, PO Box 12428, Austin, TX 78711, USA

**Fax: +1 512 463 1849 / 0039 / 1932**

**Salutation: Dear Governor**

**COPIES TO:** Diplomatic representatives of USA accredited to your country.

You may also write brief letters (not more than 250 words) to:

Letters to the Editor, Austin-American Statesman, P.O. Box 670, Austin, Texas 78767, USA.

**Fax: +1 512 912 5927. Email: <http://www.statesman.com/search/content/standing/letters.html>**

**PLEASE SEND APPEALS IMMEDIATELY.**