

EXTERNAL

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Death penalty / Legal concern

13 May 1997

USA (TEXAS) Joseph Stanley FAULDER, aged 59, Canadian national

Joseph Stanley Faulder is scheduled to be executed in Texas on 13 June 1997.

Faulder was sentenced to death in 1977 for the 1975 murder of Inez Phillips.

His original conviction and sentence were overturned when an appeal court ruled that his initial statement to the police was obtained illegally. He was retried and sentenced to death a second time in 1981.

Following the reversal of Faulder's original conviction, the District Attorney for the case announced that to re-prosecute might not be possible due to lack of evidence. In reaction to this, Inez Phillips' son hired a prominent Dallas attorney and the District Attorney (who was about to leave his post) for the express purpose of obtaining a new conviction and death sentence. These two private attorneys planned all pre-trial strategy and negotiated the plea-bargain with Faulder's accomplice without any recorded contact with the District Attorney's office. Shortly before the second trial, the new District Attorney appointed the two private attorneys to the case as "special prosecutors". Although the District Attorney's office did appoint a staff lawyer to the prosecution, almost the entire trial was prosecuted by the two private prosecutors. Although equally eligible for the death penalty, Faulder's accomplice was granted immunity from prosecution and offered financial inducements by Phillips' family in return for her testimony against Faulder in the second trial.

The private prosecutors were paid \$100,000 for their services. This would normally be in contravention of the statutory provisions for appointing special prosecutors. However, the appeal courts accepted the District Attorney's argument that it was his office that controlled the trial and therefore denied the appeal based on this issue.

Faulder was reportedly represented at the second trial by an attorney hired by the court. This attorney called no witnesses and offered little defence against the charges. The attorney later testified that he was unaware of his responsibility to present mitigating evidence to the jury in the event of Faulder being found guilty (the decision whether to impose a death sentence - known as the "penalty phase" - is made by the jury after hearing mitigating and aggravating evidence concerning the defendant); no mitigating evidence was presented to the jury and Faulder was sentenced to death.

Mitigating evidence that could have been presented included the fact that Faulder suffered a severe head injury as a three-year-old which resulted in damage to the part of his brain regulating appropriate behavioural decisions. At a later appeal hearing, family members and friends of Faulder testified to his non-violent nature and positive character.

During the penalty phase the prosecution presented evidence that Faulder would pose a "future danger" to society and was a sociopath. The psychiatric testimony, presented by Dr James Grigson, was based entirely on hypothetical questions and not on any clinical examination. In 1995, Dr Grigson was expelled from the American Psychiatric Association for unethical behaviour stemming from his grossly unscientific testimony in death penalty trials.

The state of Texas violated an international treaty when officials failed to notify Faulder, a Canadian national, of his right to contact and ask for assistance from the Canadian authorities. According to Article 36 of the Vienna Convention of Consular Relations, any foreign national detained by the authorities must be informed of their right to contact the embassy of their nationality. Faulder was not informed of this right and Canadian officials remained unaware of his death sentence for 15 years. Since learning of Faulder's death sentence, the Canadian authorities have repeatedly expressed their concern to the US authorities over this breach of international law.

Prior to his arrest for this offence, Faulder had no history of violent behaviour and has expressed his remorse for the crime for which he was sentenced to death. In 1981 he became a prison chaplain.

BACKGROUND INFORMATION

Amnesty International is deeply concerned at the number of executions being carried out in the USA in general, and in Texas in particular. Of the 379 executions carried out in the USA since the death penalty was resumed in the mid 1970s, 116 have been carried out in Texas. The method of execution is lethal injection.

In Texas the governor may commute a sentence of death only if he receives a favourable recommendation from the Board of Pardons and Paroles. The Board consistently refuses to hold full clemency hearings in death penalty cases, and apart from a number of commutations granted in the 1980s as the result of two key court rulings, the Board has never recommended clemency in any death penalty case in recent years. Amnesty International remains deeply concerned over the lack of any meaningful clemency review for death row inmates prior to their execution.

There are currently over 400 prisoners under sentence of death in Texas. The most recent person to be executed in Texas was Terry Washington on 6 May 1997.

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

- expressing deep concern over the scheduled execution of Joseph Faulder on 13 June 1997;
- expressing concern that Faulder was sentenced to death by a jury that had not heard any mitigating evidence;
- noting the reluctance of the Texas Board of Pardons and Paroles to convene formal clemency hearings in death penalty cases;
- urging the governor to do everything in his power to ensure that a full and fair hearing is convened to review Faulder's clemency petition, as requested by the Canadian authorities;
- expressing sympathy for the victims of violent crimes and their families.

APPEALS TO:

The Honorable George W. Bush
 Governor of Texas
 State Capital
 PO Box 12428
 Austin, TX 78711, USA

Fax: +1 512 463 1849

Telegrams: Governor Bush, Austin, Texas, USA

Telephone: +1 512 463 1762

Salutation: Dear Governor

COPIES TO:

Texas Board of Pardons and Paroles
c/o Victor Rodriguez, Chairman
209, W.14th Street, Suite 500
Austin, TX 78701
USA

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and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.