

UNITED STATES OF AMERICA

Adding Insult to Injury: the case of Joseph Stanley Faulder

Joseph Stanley Faulder, age 61, is a Canadian citizen facing imminent execution in Texas. After 21 years under sentence of death, Faulder has exhausted all normal avenues of appeal; he is now scheduled to die by lethal injection on 10 December, 1998 - International Human Rights Day. In a morbid irony, Faulder's execution would thus coincide precisely with the 50th anniversary of the UN Universal Declaration of Human Rights.

The case of Stanley Faulder illustrates many of Amnesty International's long-standing concerns over the administration of the death penalty in Texas, including grossly deficient trial procedures, inadequate appellate review, violations of international law and the absence of any meaningful clemency process.¹ Amnesty International is calling on authorities in the USA to reaffirm their commitment to universal human rights standards by commuting Stanley Faulder's death sentence on humanitarian grounds.

Case Summary

On 8 July 1975, Inez Phillips, age 75, was murdered during the burglary of her home in Gladewater, Texas. The crime shocked and outraged the town's residents: Mrs. Phillips was the widow of the former mayor of Gladewater and the matriarch of a wealthy and influential Texas oil family.

¹For a comprehensive summary of AI concerns, see *The Death Penalty in Texas: Lethal Injustice*, AI Index: AMR 51/10/98, March 1998.

According to the prosecution's version of the events, Stanley Faulder and Linda McCann, a former prostitute, planned to rob a floor safe in the Phillips' home. McCann later testified that, while she was struggling with the victim, Faulder subdued Inez Phillips with a cosh and then fatally stabbed her with a knife which he found in the kitchen.

The victim's son, Jack Phillips, immediately offered a \$50,000 reward for information on the crime. Linda McCann was quickly arrested and accused Faulder of planning the burglary and committing the murder. In 1977, Faulder was arrested in Colorado and returned to Texas.

Faulder was never informed after his arrest that he could seek assistance from his consulate, an essential legal right guaranteed to all detained foreigners under the Vienna Convention on Consular Relations.² Following a four-day interrogation during which his requests for an attorney were ignored, Stanley Faulder signed a "confession".

No physical evidence of any kind links Faulder to the crime, leaving the prosecution reliant on his "confession" or the testimony of his accomplice to prove he was the actual killer. However, on the strength of his statement to the police, he was speedily convicted and sentenced to death. Linda McCann was charged only with conspiracy to commit burglary and did not testify at Faulder's trial.

In 1979, the Texas Court of Criminal Appeals overturned Faulder's conviction, finding that his statement to the police was illegally obtained. Without any corroborating evidence, the local District Attorney lacked a sufficiently strong case to re-prosecute Faulder on a capital murder charge. Learning that the authorities were contemplating a plea offer of life imprisonment, Jack Phillips hired two private prosecutors for the express purpose of obtaining a new death sentence against Stanley Faulder.

The private prosecutors concluded that Linda McCann's testimony was crucial for a conviction. Prior to any recorded contact with the District Attorney's office, Phillip's attorneys offered Linda McCann immunity on the murder charge in exchange for her incriminating testimony--even though McCann was equally eligible for the death penalty under Texas law. Her cooperation was further induced when Jack Phillips offered her up to \$15,000 in "relocation expenses".

Since McCann was an admitted participant in the crime, her testimony could not be used to convict Faulder without corroboration. The Phillips family paid her husband, Ernie McCann,

²Although the USA has ratified the Convention without reservations and insists on its application to US nationals arrested abroad, foreign nationals facing the death penalty in the USA are rarely informed of their consular rights--with disastrous consequences for their trial defence. For additional information, see: *USA: Violation of the Rights of Foreign Nationals Under Sentence of Death*, AI Index: AMR 51/01/98, January 1998.

a member of a local motorcycle gang, \$2,000 in exchange for testimony supporting his wife's version of the events. This testimony simply consisted of McCann stating that his wife had told him the same version of event as the one she told the Court.

In total, Jack Phillips paid the private prosecutors approximately \$100,000 for their successful effort to obtain a new death sentence against Faulder. A month before the trial, the District Attorney formally appointed a lawyer to the prosecution team, to preserve the semblance of public control over what was, in effect, a private vendetta launched by a wealthy person against an indigent defendant.

At trial, Faulder was represented by a court-appointed attorney who called no witnesses and who failed to investigate his client's background. The defence strategy consisted of challenging the credibility of Linda McCann--who deliberately misled the jury by denying that she had been offered money in exchange for her incriminating testimony.

During the sentencing phase of the trial, the jury heard from Dr. James Grigson, a Dallas psychiatrist notorious for providing testimony for the prosecution in Texas death penalty trials. In response to hypothetical questions about the nature of the crime, Grigson stated that Faulder was an untreatable sociopath "of the severest kind", who would certainly kill again, even if imprisoned. Grigson's testimony was crucial: under Texas law, jurors must unanimously decide that the defendant represents a continuing danger to society before they can impose a death sentence.

Confronted with this devastating testimony from a medical "expert", the jury heard no rebuttal from the defence. Faulder's attorney presented no mitigating evidence of any kind, even though readily-available medical records and character testimony could have completely discredited Grigson's diagnosis. In July 1981, Stanley Faulder was once again convicted and sentenced to death.

The Faulder case languished in the state appeal courts for nearly a decade before an attorney from the Texas Resource Center was appointed to file his first state *habeas corpus* petition. Learning of her client's nationality, the attorney contacted the Canadian Consulate in Dallas. Consular officials informed her that they had no record of Faulder. His name had never appeared on the annual list of imprisoned foreigners provided by state officials to facilitate consular visits.

Upon contacting the Faulder family in Canada, the attorney learned that they had been unaware of his whereabouts for many years and were deeply distressed when informed of his death sentence. Family members and friends remembered Stan Faulder as a kind and non-violent person and would gladly have testified on his behalf at the trial. They also informed the attorney

of a severe childhood head injury Faulder sustained, which resulted in periodic 'blackouts' and impulsive behaviour throughout his youth.³

Armed with this new information which the trial lawyer had failed to obtain, Faulder's appellate attorney filed a comprehensive *habeas corpus* petition alleging serious irregularities in the trial procedures. During 1992, Faulder survived six consecutive execution dates obtained by Texas officials while the lower courts reviewed his claim.

At a 1992 evidentiary hearing, a completely different picture of Stanley Faulder emerged than the one presented to the jury, based on information from medical experts, family members and friends. Two clinical psychologists who conducted extensive evaluation and testing of Faulder concluded that he suffered brain damage as a child, impairing his ability to make appropriate behavioural decisions in stressful situations.

Numerous family members and friends testified that Stanley Faulder was a generous person with no history of violent behaviour, as well as a loyal friend and a loving father. The court agreed that Faulder's defence attorney was deficient for failing to present this mitigating evidence, but concluded that this positive testimony would not have altered the outcome of the trial.

A subsequent hearing in 1993 revealed new evidence of misconduct by the prosecution. Buried in their files was a hand-written note prepared by one of the private prosecutors. The note revealed that, according to Linda McCann, her husband Ernie was involved in the planning of the crime. If true, Ernie McCann would thus be an accomplice, making his trial testimony both inadmissible and false. Both McCanns testified that Ernie was not involved and only learned of the crime after it occurred.

The prosecutor's note was never revealed to the defence. Faulder's trial attorney was thus unable to properly challenge the truthfulness and credibility of both of the prosecution's key witnesses. Without the testimony of Linda and Ernie McCann, the case against Faulder would have collapsed. With that testimony, Stanley Faulder was convicted and sentenced to death; Linda McCann was given a suspended sentence for her participation in the burglary and walked out of court a free woman.

In 1996, the US Fifth Circuit Court of Appeals dismissed Faulder's *habeas corpus* petition on all grounds. The Court found that the hiring of private prosecutors by the victim's family was permissible, because the District Attorney had retained "control" of the case. The

³Faulder assumed that his family were aware of the murder charge and had simply disowned him. He has also stated that he had no knowledge of the presence of Canadian consular representatives in Texas or of his right to seek their crucial assistance after his arrest.

failings of Faulder's court-appointed attorney were likewise excused; the Court was "not persuaded" that the testimony of more than a dozen available defence witnesses would have resulted in a single juror voting against the death sentence.

The Fifth Circuit concluded that the admitted breach of Faulder's consular rights was "harmless error", because the defence had access to all of the information that could have been obtained from the Canadian government. The mere fact that Faulder's attorney "could have obtained" crucial mitigating evidence (which he did not) was deemed sufficient to excuse a grave violation of human rights under a binding international treaty.

Yet, there is every indication that the timely intervention of Canadian consular officials could well have altered the entire course of the trial and its outcome. In a series of *amicus curiae*⁴ briefs submitted in support of Faulder's appeals, Canada has stated that the consulate would have assisted in pre-trial plea negotiations, found competent legal representation for Faulder and facilitated the presentation of extensive mitigating evidence (including medical records) available only from Canadian sources.

Far from being harmless, Canada has submitted to the US courts that the violation of the Vienna Convention "deprived Mr. Faulder of a right under international law which may have prejudiced his ability to receive a fair trial and sentencing hearing". Canada's position was recently supported by the findings of a United Nations report. In a 1998 survey of death penalty procedures in the USA, the UN Special Rapporteur on extrajudicial, arbitrary and summary executions made specific reference to the Faulder case and the appellate courts' finding of "harmless error". The report determined that "not informing the defendant of the right to contact his/her consulate for assistance may curtail the right to an adequate defence", as provided for by the International Covenant on Civil and Political Rights.⁵

Stanley Faulder was scheduled to be executed on June 13, 1997, following the dismissal of his appeal by the US Supreme Court. Well in advance of the date, his attorney filed a substantive clemency application with the Texas Board of Pardons and Paroles. The petition contained more than 20 exhibits and affidavits in support of the commutation of his death sentence.

⁴A "friend of the court" brief which may be filed (with the court's permission) by parties interested in the outcome of the case but not directly involved.

⁵Report to the UN Commission on Human Rights (document E/CN.4/1998/68/Add.3), Findings of the Special Rapporteur, 117- 121.

Among the many statements of support was one from a woman who believes that she owes her life to Faulder. In 1965, the woman was seriously injured in an automobile accident. Arriving on the scene moments later, Faulder rescued her from the wrecked car. At considerable personal risk, he drove her through a blinding blizzard to the nearest hospital in time for life-saving medical treatment--hardly the actions of a remorseless sociopath.

The clemency application also addressed the testimony of Dr. Grigson, pointing out that his self-proclaimed total accuracy in predicting defendants' future behaviour was completely false. In 1995, James Grigson was expelled from the American and Texas psychiatric associations for unethical behaviour, resulting from his grossly misleading and unscientific testimony in death penalty trials.

Four days before his 1997 execution date, Faulder was granted a stay of execution to permit further review of evidence indicating that the prosecution permitted its key witnesses to lie under oath at the trial. The Board of Pardons did not respond to Faulder's application for executive clemency.

In September 1998, the Texas Court of Criminal Appeals lifted the stay of execution, paving the way for the setting of Joseph Stanley Faulder's ninth--and possibly final--execution date. The government of Canada continues to support his efforts to obtain a new trial or the commutation of his sentence.

Conclusion

Despite inadequate legal representation, prosecutorial irregularities and a glaring violation of treaty law, the US courts of appeal have consistently failed to grant Faulder a new trial or sentencing hearing. Two decades after the trial, serious doubts have emerged over the credibility of the evidence used to convict and sentence him to death.

Since 1992, when Faulder first raised his Vienna Convention claim, seven foreign nationals have been executed in the USA. None were informed after arrest of their international legal right to consular assistance. The US government continues to assert that the protection of the consular rights of its nationals abroad is a matter of the highest importance; domestic violations of those selfsame rights which contributed to death sentences are minimized or ignored.⁶ To date, the US Department of State has declined to intervene in the Faulder case, failing even to apologize to Canada for the violation of its sovereign treaty rights.

⁶ For a summary of recent developments, see: *USA: The Execution of Angel Breard: Apologies Are Not Enough*, AI Index: AMR 51/27/98, May 1998.

For the citizens and governments of many nations worldwide, the fiftieth anniversary of the Universal Declaration of Human Rights will be a cause for celebration and an opportunity for rededication to the stirring principles enshrined in the Declaration. But in Texas, barring a last-minute intervention to halt Stanley Faulder's execution, December tenth will be just another day of state sanctioned killing.

On 26 October 1998, Amnesty International issued an "urgent action" calling for the Texas authorities to spare the life of Joseph Stanley Faulder. To take part in this action please contact your countries' Amnesty International section and request UA index number AMR 51/85/98.