

# Tracy Housel

## Summary

On December 1 1987, UK national Tracy Housel was sentenced to death for the murder of. Since then he has been on death row in Georgia

Over 100 MPs, the law Society and Bar Council Human Rights Committee signed *amicus curiae* legal submissions on fair trial issues to the Supreme Court of Georgia which is hearing his appeal as we speak. Signatories included Vera Baird MP, Glenda Jackson MP, Adrian Fulford QC, Peter Bottomley and John Redwood

The following pages of this document set out the background to the issues relating to his case and the improprieties that cast doubt on the case and verdict.

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### **Photos of Tracy are available for publication**

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## About Tracy Housel

Tracy Housel is a British national, having been born in Bermuda in King Edwards VII Memorial Hospital, Paget, Bermuda at 11.45 am on May 7th 1958 when it was still subject to British rule.

After leaving Bermuda, his childhood was spent in impoverished circumstances in North Carolina and Columbia Heights, Rhode Island, a ruined former mill town. The mill had moved out, and when Tracy was a child, the neighbourhood was nothing more than a "white ghetto." The Housel family was among the poorest in the area. Children as young as ten were often seen out on their own late at night with no parental supervision. Tracy was no exception. Drugs and alcohol were prevalent among children and adults.

As a child, Tracy was affected by serious illness and injury. He suffered constant headaches and fevers, for which his father - who 'did not believe' in doctors - refused to seek medical help

Tracy's mother was an alcoholic throughout Tracy's childhood and his father, who was also an alcoholic, was violent toward Lula. Witnesses at Housel's appeals described how Tracy would try to end their fights, only to find both parents turn their anger on him. Tracy's father had a reputation for unpredictable violence. He frequently hit his children in the head and face with his hands, and often beat them with a belt. Tracy and his brothers often came to school with black eyes, broken noses and bruises

Despite such horrendous home circumstances, Tracy was obedient and well behaved at school. Teachers were well aware of his poverty. They describe him as a troubled child, but not a troublemaker. His sixth grade math teacher said he was an over-achiever for his social situation and was impressed by Tracy's efforts. Katherine Caroselli, who was both a teacher and a trained social worker, testified that although never disrespectful, Tracy just "wasn't there" in school. Irene Hutton testified how Tracy was unfocused and unable to concentrate on his schoolwork. She said that although he was quiet and never said much in class, "his sad eyes spoke a lot."

In the early 1980s, Housel moved to Iowa, where he formed a relationship with a widow, Robin Banks. Most of the time, he was relaxed and easy-going, and acted as a loving father to her children. But he was also prone to sudden mood swings, when he would fail to eat for days on end, drink and take drugs. Following the break-up of this relationship, Housel is reported to have embarked on a violent two-week odyssey across the United States, culminating in the beating and fatal strangling of Jean Drew in Gwinnett County, Georgia.

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## Summary of trial and case

### The charges

On February 7<sup>th</sup> 1986, Tracy Housel was sentenced to death by electrocution, convicted of the death of a woman he is alleged to have picked up from a truck stop.

This was the only crime with which he was charged. However, the jury, which had to decide if he should live or die, heard details of other alleged offences, although his guilt had not been established.

Earlier, detectives had repeatedly interrogated him about them as he awaited trial in the Gwinnett County jail. After seeking advice from the FBI, they decided to hold these interviews at night. In the jail, he was held in solitary confinement, denied showers and exercise for more than three months, and 'punished' with an electric stun gun, at least once - according to evidence from his fellow prisoners - while standing in water, in order to intensify the pain.

Tracy's trial lawyer, was recently qualified, and had never handled a murder case. In later appeal hearings, he admitted he made no attempt to ascertain the facts of Tracy's abusive background, nor his medical state. As a child Tracy sustained severe head injuries and has a medical condition that leaves him prone to black outs.

In advising him to plead guilty, he had deprived him of a possible defence of insanity; had he known the full facts, Brit said, he would never have given such advice.

There were two main grounds to Tracy's recent unsuccessful appeal to the 11th Federal Circuit Court: that he had been deprived of his constitutional right to effective legal counsel; and that, by adducing evidence of crimes which were unproved, the prosecution deprived him of a fair hearing over whether he should get life or death, rendering his execution a cruel and unusual punishment.

On 18 January, the three appeal judges, led by a keen advocate of the death penalty, rejected all Tracy's arguments. He should go to the electric chair (Georgia has since ruled the electric chair unconstitutional so Tracy now faces execution by lethal injection). Although Tracy has a final recourse to the US Supreme Court, it is extremely rare for this court to prevent an execution.

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## Defects in the case against Tracy Housel

# Tracy Housel

## Intervention by Foreign Governments in US Domestic Proceedings

We include examples of personal intervention in capital cases of members of governments beyond interventions by the relevant Consular officials. There are antecedents for such interventions and they are recognised as having had a significant impact on the clemency proceedings. Set out below are details of known interventions by States on behalf of foreign nationals.

- **MEXICO: GERARDO VALDEZ** Maltos was sentenced to death in Oklahoma in 1990 on a single count of first-degree murder. The Mexican consulate did not learn of the case until April of 2001, just two months before his scheduled execution contrary to Article 36 of the Vienna Convention on Consular Right. The Mexican government immediately retained a team of lawyers and investigators to assist in preparing a clemency petition. On 6 June 2001, the Oklahoma Pardon and Parole Board voted 3 to 1 in favour of recommending the commutation of Valdez's death sentence to life imprisonment without parole. The decision marked only the second such recommendation by the Board in the past 35 years. The Board heard newly-discovered facts concerning Valdez's background and medical history discovered due to Mexico's intervention, including evidence that he sustained brain damage from a life-threatening head injury as a teenager in Mexico and a succession of other head injuries as a child. The Mexican government submitted a letter to the Board expressing its grave concerns over the death sentence. At the request of the Mexican government, the US Department of State also sent a letter to the Board, asking it to give careful consideration during its clemency deliberations to Mexico's concerns. Other diplomatic initiatives by Mexico resulted in formal appeals for clemency from the European Union and a number of individual nations. Had Mexico not intervened to support his clemency petition, there is no question that Gerardo Valdez would have been quietly executed on schedule.
- **GERMANY: KARL AND WALTER LAGRAN**d were sentenced to death in 1984 for the murder of a bank employee during a robbery attempt in Arizona. German authorities remained unaware of their plight until ten years after their arrest. By the time that the German Consulate was finally contacted, it was too late in the appeals process for Germany to provide effective legal assistance. After all appeals were exhausted, Karl and Walter LaGrand were scheduled for execution in February and March of 2000 respectively. The German authorities repeatedly conveyed their government's principled opposition to the death penalty and its concerns over the deficient trial representation its nationals received. Both the President and the Chancellor of the Federal Republic of Germany appealed directly to the President of the United States; the latter also appealed to the Governor of Arizona. Foreign Minister Fischer and Minister of Justice Döubler-Gmelin raised the cases with their respective counterparts in the United States Administration and with the Governor of the State of Arizona. Demarches were undertaken by the German Ambassador to the United States. A further demarche followed on behalf of the European Union. Both the German Ambassador and the German Consul-General in Los Angeles testified before the Arizona Board of Executive Clemency during clemency hearings in the days prior to the execution of the brothers. Karl LaGrand was executed on 24 February, 1999. However, as a result of the interventions by the German Ambassador and Consul-General, the state clemency board then voted to recommend a reprieve for Walter LaGrand, in order to provide Germany with the time to file an application for provisional measures with the International Court of Justice. Although the state governor declined to follow that recommendation, the pardons board members were obviously influenced by the testimony they heard from senior German representatives.

- THAILAND: JATURUN SIRIPONGS**, was convicted of capital murder and sentenced to death by the State of California in 1983, as an accomplice in the murder of two robbery victims. Siripongs' trial attorney failed to conduct any investigation into his client's background and upbringing in Thailand. As a result, the jury heard none of the compelling mitigating evidence in the case. With the belated assistance of Thai authorities, fifty witnesses were located years after the trial who could and would have provided compelling testimony about Siripongs' life and good character. Both the Thai foreign ministry and Thailand's ambassador to the United States wrote to the Governor of California, seeking the commutation of the death sentence. The Royal Thai government officially requested that Governor Pete Wilson commute Siripongs' sentence to life without the possibility of parole. In addition, the Thai government stated its intention to seek immediate repatriation of Siripongs in the event of a commutation, so that he would serve his life sentence in a Thai prison. Although clemency was denied and Siripongs was eventually executed, the publicity generated by the case had a lasting impact on consular notification procedures in California. Largely in response to Thailand's interventions in the case, draft legislation was introduced in the California Senate codifying the consular obligations of state and local police when arresting foreign citizens. California enacted the law in September of 1999, which requires police to inform all known or suspected foreign nationals of their consular rights within two hours of arrest. The law also requires that police policy and training manuals incorporate language based on the provisions of Article 36 of the VCCR. No other US state has passed comparable legislation.
- CANADA: STANLEY FAULDER** was sentenced to death in Texas in 1977 for a murder during a burglary attempt. Canadian consular authorities did not learn of the case for more than 12 years, by which time Faulder was in the latter stages of appeal. The Canadian government immediately undertook a series of high-level interventions, including appeals for clemency to the Governor of Texas and the state pardons board, personal meetings between the Consul-General and state officials, delegations of Canadian MPs to Texas and diplomatic overtures to the State Department and Secretary of State. Canada also retained counsel to represent its sovereign interests, filed a series of amicus briefs in the appellate courts and facilitated the presence of previously unheard witnesses at an evidentiary hearing. As a direct result of personal interventions by the Canadian Minister of Foreign Affairs, Secretary of State Albright took the unprecedented step of sending lengthy letters to Governor George W. Bush and the state clemency board, urging serious consideration of Faulder's clemency petition. Along with appeals from the Government of Canada and the State Department, a host of non-governmental bodies petitioned Texas authorities for clemency, including the UN Commissioner for Human Rights and the American Bar Association. While these efforts were ultimately unsuccessful in preventing Faulder's execution, the sustained intervention by the Canadian government extended his life by several years, resulting in his reconciliation with family and friends in Canada
- Spain: Joaquin Martinez's** case was resolved through the courts but did involve Spanish Government representations. Martinez was sentenced to death in 1998 for a double homicide on Florida, based largely on the testimony of two witnesses who alleged that he had confessed to the crime; no physical evidence linked him to the murders. A four-member delegation from the Spanish Parliament travelled to Florida in January 1998 to express its concerns prior to the trial and Spanish consular officials attended throughout the proceedings. Both the King of Spain and the Pope reportedly appealed to US authorities, urging that his life be spared. The European Parliament passed a resolution urging that Martinez be granted a new trial. On direct appeal to the Florida Supreme Court in June of 2000, a new trial was ordered for Martinez, citing improper testimony by the investigating detective.

There are other examples that we could provide but we trust the examples herein are sufficient for your purposes.

# Tracy Housel

## Pardons and Parole Board

This is a summary of the transcripts from Byron Parker's case with regard to how the Board of Pardons and Paroles operates. Byron was executed by the State of Georgia on 11 December 2001.

The transcripts outline the conflicts that existed with three present members of the Board, one of whom is the Chairman. The Board is comprised of a total of five members

The conflicts in relation to each member that were brought to the judge's attention during the hearing to replace the members are as follows:

### 1. Board Member (Mr Walker)

Currently being sued for sexual harassment and will be represented by the office of the Attorney General in Georgia on the suit. The judge found there was no conflict.

### 2. Board Member (Mr Whitworth)

Currently the subject of a criminal investigation by the office of the Attorney General in Georgia.

### 3. The Chairman (Mr Ray)

Mr Ray is currently the subject of a serious criminal investigation by the office of the Attorney General in Georgia. Additionally, evidence was brought before the judge showing that Mr Ray had made comments to a parolee (formerly a death row inmate) that he (the parolee) would never have got parole had Mr Ray acted on his clemency petition. In addition, he also stated that no-one on death row would ever get clemency as long as he was the Chairman of the Board.

Mr Ray denied these statements in court, but acknowledged he is the subject of serious criminal proceedings. The judge said that despite the criminal investigation there was no conflict as the A-G's office has no role in the Board making its decision, nor does the A-G's office make known its position as to whether clemency should be granted.

This is the official line, but in practice, the A-G's office is advocating that the death penalty is legal and should be carried out as this is what they are fighting to do in any death penalty case- make sure an individual carries out his lawful sentence. The Board members are well aware of this, and given

the fact that there are conflicts, it is hard to see them taking a stand and voting to grant clemency. Given the fact that two of them have their political careers on the line, it is highly unlikely that they would risk upsetting the A-G's office.

Chairman Ray's conflict is especially concerning given the way in which the Board operates, ie. individually cast ballots that are forwarded to the Chairman. No member knows how the others voted, or what the Board has done until they see the result on the news. The only person who knows is the Chairman.

In making his decision, the judge said that clemency is not a judicial proceeding, but a 'gift' and that 'you do not win clemency on the law'. The A-G has no legitimate role in the procedure and so the Board cannot attempt to win favour with the A-G by voting to deny clemency.

In relation to Mr Ray's statements, whilst the judge acknowledged that it was 'troubling' that such a statement might be made, he did not find that it automatically disqualified him from serving on the Board, as the statements in question were made in November 1998. The judge said that had they been made more recently, it would have been a more difficult decision.

Finally, the judge said that in clemency proceedings, there is a minimal due process requirement, and this would not be violated here. Case law indicates that where a member of the Board has an interest adverse to the accused, there is no denial of due process. Relief was denied to Byron Parker, and he was executed 5 days later.

# Tracy Housel

## Summary of chronological legal timeline

- 1985 June 4, Housel was indicted by a Gwinnett County Grand Jury for murder
- September 23-24, trial court held a pre-trial hearing regarding the admissibility of two statements taken from Housel.
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- 1986 **February 7th**  
Tracy is sentenced to death.
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- 1987 On direct appeal, the Georgia Supreme Court affirmed Housel's sentence of death
- June 3**, reconsideration was denied.
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- 1988 **June 30** Certiorari was denied on,.
- August 25** Rehearing was denied,
- 1988 **December 15** volunteer counsel filed a Petition for Writ of Habeas Corpus in state court.
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- 1990 **August 16**, evidentiary hearing,
- December 21**the state court entered an order denying relief on all claims on the merits on,
- 1991 **March 1** The Georgia Supreme Court denied a Certificate of Probable Cause
- October 7** United States Supreme Court denied certiorari
- May 3**, , Appellant filed a federal habeas corpus petition,
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- 1994 **February 1** habeas corpus petition amended. After an evidentiary hearing on the issues of ineffective assistance and unlawful confession, the court denied the petition.
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- 2000 **January 18** Court denies 11<sup>th</sup> Circuit appeal

Tracy Housel summary of chronological legal timeline cont...

**2001**                      **September** – appeal filed in US Supreme Court

**End**