INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Organization of American States

OEA/Ser.L/V/II.77 rev.1
doc. 7
17 May 1990
Original: **Spanish**

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 1989-1990

RESOLUTION NO. 23/89

CASE 10.031
UNITED STATES
September 28, 1989

I. INTRODUCTION

A. Summary of the facts and the petitioner's complaint

1. The petitioner Willie L. Celestine, an impoverished young black man was convicted, sentenced to death, and electrocuted by the State of Louisiana in the United States, for the rape and murder of an elderly white woman.

2. Willie L. Celestine was convicted and sentenced to death on December 10, 1982, in the Fifteenth Judicial District Court of Lafayette Parish, Louisiana. Celestine sought review of his sentence in state and federal courts, including the U.S. Supreme Court. Every court either affirmed his death sentence or denied review. Celestine was denied certiroari by the Supreme Court on three occasions. The Inter-American Commission on Human Rights (hereinafter "Commission") sent telegrams to Secretary of State Shultz and governor Edwards of Louisiana requesting a stay of execution pending the outcome of a Commission's investigation. These requests were ignored. Celestine was executed on July 20, 1987.

3. The petitioner in this case is represented by Bert B. Lockwook, Jr., a Professor of Law and Director of the Urban Morgan Institute for Human Rights at the University of Cincinnati College of Law and S. Adele Shank, an Assistant State Public Defender in Columbus, Ohio.

4. The central issue raised by the complaint, filed July 15, 1987, is whether the death penalty, when applied in a racially discriminatory fashion and in the absence of an impartial hearing and equal protection before the law, is a violation of the obligations of the United States under the American Declaration of the rights and Duties of man (hereinafter "American Declaration"). The petitioner specifically alleges violations of Articles I, II, and XXVI of the American Declaration. The United States, in its response dated January 26, 1988, denies the allegations, asserting the lack of any factual basis for the allegations and questioning the applicability of the American Declaration.

5. This decision was drawn up by the Commission in accordance with Article 53 of the Regulations of the Commission. The text of this decision was adopted on September 28, 1989, the following members being present: Oliver Jackman, President; Elsa Kelly, Vice President; Leo Valladares L., Second Vice President; Gilda M.C.M. de Russomano, Member; Marco Tulio Bruni celli, Member; and Patrick L. Robinson, Member.

II. THE FACTS

6. The facts of the present case are not in dispute between the parties. Willie L. Celestine was convicted and sentenced to death for the brutal murder of an eighty-one year old woman at her home. Celestine was under the influence of drugs and alcohol and had an I.Q. far below normal.

III. SUBMISSIONS OF THE PARTIES

A. The Petitioner

7. The petitioner alleges that the imposition of the death penalty on Willie L. Celestine by the United States violated Articles I, II, and XXVI of the American Declaration.

8. The petitioner alleges that the human rights guarantees of the American Declaration are applicable to the states of the United States through the Supremacy Clause, Article VI of the United States Constitution.

9. The petitioner claims that he was subject to arbitrary deprivation of his right to life as guaranteed under Article I of the American Declaration because the death penalty in Louisiana is imposed in a racially discriminatory manner in violation of Article II of the American Declaration and Article 3 of the OAS Charter.

10. The petitioner claims that he was denied an impartial hearing as guaranteed under Article XXVI of the American Declaration because he was sentenced by a death-qualified jury.

11. The petitioner claims that he was denied equal treatment before the law as guaranteed under Article II of the American Declaration because he was denied the opportunity to be tried by an impartial jury as a result of the death qualification process.

12. The petitioner claims that the death penalty is a cruel, infamous, and unusual punishment resulting in the arbitrary deprivation of life when it is applied in a racially discriminatory manner, in the absence of an impartial hearing and equality before the law.

13. The petitioner claims that "(I)n spite of the fact that American courts have been presented with the most sophisticated social science statistical studies ever undertaken, and in spite of the fact that all these studies demonstrate the reality of racism in American capital sentencing, the Government of the United States asks the Commission to ratify a legal doctrine that places the burden of evidentiary proof upon the defendant to prove actual, intentional discrimination in his case, recognizing that no defendant has ever been able to do so successfully." (Petitioner's brief, at 13).

14. The petitioner bases his claims on a recent multiple-regression analysis of the capital punishment system in North Carolina, which demonstrates that the race of the defendant is a significant factor in virtually all stages of the criminal justice system, from the prosecutor's decision to file a first-degree murder charge to the decision to submit the case to a jury trial. The study also reveals that at the verdict stage, it is the race of the victim rather than that of the defendant that is the most significant factor in determining whether or not the death penalty will be imposed. According to the study, a defendant charged with murdering a white victim is six times more likely to be convicted than a defendant charged with murdering a black victim:

> All other factors being equal, including the quality of the evidence and the seriousness of the offense, defendants in cases with white victims were six times more likely to be found guilty of first degree murder than defendants in cases with non-white victims.

The petitioner notes that these conclusions support the findings of the Baldus study presented by the plaintiffs in McCleskey v. Kemp, (107 S.Ct. 1756). Although the Supreme Court held that the study, even assuming its validity, did not amount to a constitutional violation, the petitioners contend that the racially discriminatory imposition of the death penalty in the United States, as evidenced by sound statistical analysis, is nevertheless a violation of the American Declaration.

15. The petitioner also cites two independent studies of capital sentencing in Louisiana to demonstrate that they reveal similar patterns to those in North Carolina. In the Louisiana studies it is shown that "capital defendants who kill white rather than black victims are three times a likely to receive a death sentence. More pointedly, whites who kill blacks never receive the death penalty in Louisiana. Both studies concluded that the factor that most determines whether a death sentence will be returned is the victim's race. The Times-Picayune study involved a computer analysis of Louisiana defendants eligible to receive the death penalty, and it took into account a number of non-racial factors. It concluded that all other things being equal, the victim's race proved the most influential factor in determining who did and did not receive the death penalty." (Petitioner's brief, at 28).

16. The petitioner alleges that "the information compiled illustrates that across the U.S., blacks become increasingly disadvantaged as the discretion within the judicial system increases." (Petitioner's brief, at 37-38). Petitioner argues that "the supreme Court's categorical exclusion of statistical evidence from the constitutional framework has placed an intolerable burden on those who have suffered discrimination in criminal justice institutions, because discriminatory intent in the individual case is usually undocumented and may even be unconscious." (Petitioner's brief, at 28 et. seq.).

17. Based on these studies the Petitioner argues that the use of statistical evidence alone demonstrates racial discrimination in capital sentencing and should shift the burden of proving racial discrimination from the petitioner to the United States when these statistics are presented by the defendant. Petitioner maintains that the present U.S. rule of law requiring the defendant to prove racial discrimination in his trial is an unrealistic standard of review because no capital defendant has ever met that burden. Subtle, system-wide racial discrimination is most often evident only through large statistical studies. Petitioner concludes, therefore, that if reliable statistical studies demonstrate the likelihood of racial discrimination within the criminal justice system, the burden must shift to the Government to prove that the capital hearing was free of racial discrimination. To presume otherwise, would allow the United States to arbitrarily deprive black defendants of their right to life without meaningful review which is a violation of Articles I and II of the American Declaration.

18. In addition to violating the American Declaration, the petitioner argues that as recognized in section 702 of the Third Restatement of the Foreign Relations Law of the United States, a state violates international law if, as a matter of state policy, it practices, encourages the racial discrimination prohibition as a peremptory norm (jus cogens). Petitioner argues that this peremptory norm places "a heavy burden of justification … upon the United States for the continuation of existing legal doctrines and policies that have permitted this state of affairs." (Petitioner's brief, at 39).

19. Additionally, the petitioner alleges that Celestine was denied the right to an impartial hearing guaranteed by Article XXVI because he was sentenced by a death-qualified jury. Death qualification refers to the exclusion of jurors who indicate that they would automatically vote against imposition of the death penalty at the sentencing stage of the trial without regard to the evidence presented. The Supreme Court, in Witherspoon v. Illinois, (391 U.S. 510) (1968), upheld the constitutionality of this practice, noting the state's interest in having a single rather than a bifurcated trial, i.e., with respect to sentencing and guilt. The petitioner contends, however, that death-qualification leads to conviction-prone juries and cites studies in support of this argument. Petitioner also asserts that death qualification further compromises the impartiality of the jury by removing a disproportionate number of blacks and women from the jury, since these segments of the population tend to vote against the death penalty more often than other groups. Moreover, the absence of a similar procedure in non-capital cases results in the unequal treatment of the capital defendant before the law in violation of Article II of the American Declaration.

20. Petitioner requests that the Commission find that the execution of Willie L. Celestine violated Articles I, II, and XXVI of the American Declaration. Petitioner also requests that the Commission recommend a moratorium on the imposition of the death penalty in the United States, or, in the alternative, that the Commission recommend to the United States that when a capital defendant presents reliable statistical data indicating that a risk of racial

discrimination exists, the evidentiary burden should be on the Government to demonstrate that in fact racial discrimination did not affect the imposition of the death sentence.

B. The Government

21. The Government urges the Commission to declare this case inadmissible on grounds that the case does not state facts which constitute a violation of the American Declaration. According to the U.S. the petitioner does not attempt to prove that Articles I, II, and XXVI of the American Declaration were in fact violated in Celestine's particular case by showing, for example, that his sentence was disproportionate or racially motivated or that his jury was biased. Instead, states the U.S., the petitioner relies on statistical studies and makes no attempt to explain their relevance to a capital sentencing in the state of Louisiana. As per the U.S. brief: "the United states was created by the U.S. Constitution as a federal state, and the criminal justice systems of its constituent state and at one time act the same as juries in one state at another time. Quite the contrary is in fact true. In civil cases, 'jurisdiction shopping' among the courts of different state and federal jurisdictions is an important aspect of deciding where to try or defend a case." (Government's brief of February 24, 1989, at 4).

22. The United States denies that Celestine's sentence was the result of racial prejudice citing the findings of the Louisiana Supreme Court which upheld his conviction. As regards the charge of jury partiality, the jury in the Celestine case considered the statutorily-enumerated aggravating and mitigating circumstances. In mitigation, it considered that, at the time of the crime, Celestine was under the influence of disabling drugs and alcohol, however, "the jury unanimously recommended the death penalty on the grounds that three statutory aggravating circumstances were present: (1) the commission of aggravated rape in the course of the murder, (2) previous conviction of an unrelated aggravated rape, and (3) committing the murder in an especially cruel manner." (U.S. response dated January 21, 1988, at 2). The U.S. states that it is important what the petitioner does not content, for example, the petitioner does not contend that Celestine's sentence was disproportionate to his crime. Celestine brutally raped and killed an eighty-one year old woman at her home. In the course of the murder and rape, he strangles the victim, disfigured her face, and fractured seven ribs on both sides of her body. After his arrest, he voluntarily confessed to this rape as well as two previous rapes. According to the U.S.: "the Louisiana State Supreme Court, after reviewing the record and comparing it to other cases in which the death penalty was imposed, specifically concluded that the sentence was justified." In addition, the U.S. argues that the petitioner does not contend that "the jury's decision in Celestine's particular case was racially-motivated or biased. In this regard, the Louisiana Supreme Court stated:

> Defendant has made no contention that his sentence was the result of passion, prejudice or any other arbitrary factors. Although he is black and Mrs. Richard was an elderly white woman, the record does not reveal any evidence that indicates his sentence was the result of racial prejudice. Several blacks served on the jury. The record presents no reason to question the jury verdict based on (passion, prejudice or any other arbitrary) factors. (U.S. response, at 3).

23. The United States maintains that the petitioner is merely making general allegations about racial discrimination, and that "even the most sophisticated and complex models, such as models in the Baldus study containing as many as 250 variables, were found by the District Court in McCleskey v. Zant to be unreliable and unable to account sufficiently for the myriad factors influencing jurors." (Government's brief, at 6).

24. Even if the petitioner's assumptions were valid, the U.S. Government maintains, and they establish that there is a greater likelihood that a first degree murder defendant who killed a white person will receive the death penalty when compared with one who killed a person of another race, these facts standing alone, do not establish that the execution of Willie Celestine constituted a violation of his rights under the Declaration. The U.S. states that this issue was examined by the U.S. Constitution, a provision substantially similar to the articles in question of the American Declaration. In McCleskey v. Kemp the Supreme Court held that the equal protection clause of the 14th Amendment was not violated because the "Baldus study was not sufficiently definitive proof to establish an inference that the jury in the defendant's case acted with discriminatory purpose, or that the Georgia legislature acted with

discriminatory purpose in enacting or maintaining the capital punishment statute under which he was sentenced." (Government's brief, at 9).

25. In conclusion, the Government states that the U.S. Supreme Court in McCleskey noted that "the very nature of the jury system, which is at the heart of the U.S. constitutional system of criminal justice, requires the exercise of discretion by human beings who are not professional judges or legal experts, and that therefore 'exceptionally high proof' of a statistical disparity would be required to support a finding that the discretion had been abused. (…) Otherwise, the principles underlying the entire criminal justice system would be jeopardized, and similar claims could be brought easily by any number of groups alleging bias on the basis of any number of factors." Consequently, the United States urges that the Commission declare the case inadmissible pursuant to Article 41 of its Regulations because the petition does not state facts that constitute a violation of the rights set forth in the American Declaration.

IV. ADMISSIBILITY

26. Petitioner received an automatic review of his death sentence by the Louisiana State Supreme Court. The Court upheld his conviction. Petitioner appealed from the judgment of conviction, petitioned for writs of habeas corpus, and petitioned for a stay of execution to the Fifteenth Judicial District Court of Lafayette Parish, Louisiana, the United States District Court, Western District of Louisiana, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court. Each court denied petitioner relief. The Supreme Court denied certiorari. Since these courts, including the United States Supreme Court, either denied or chose not to address petitioner's appeals, the Commission finds that the petitioner has no further domestic remedies to exhaust.

27. Despite the fact that the United States Supreme Court did not address petitioner's case, the Court has addressed the issues of statistically proven racial discrimination and death-qualified juries in the past. A review of recent United States court decisions is presented here:

A. U.S. Courts and statistically proven racial bias

28. McClesky v. Kemp, 107 S.Ct. 1756 (1987), is the sentinel case on statistically proven racial discrimination in capital sentencing. In McCleskey the Supreme Court rejected the Baldus study and upheld the death sentence imposed upon a black defendant convicted of killing a white police officer. The Court asked, inter alia, two questions in determining whether the sentencing procedures were racially discriminatory and, therefore, unconstitutional. First, was there bias or discrimination present in his trial? Second, was the capital sentencing system, while not discriminatory in theory, applied in an arbitrary and capricious manner?

29. First, the Court examined McCleskey's claim of bias or discrimination in his trial. Initially the Court noted that when a defendant alleges discrimination in his case, the defendant has the burden of proving that the "decision-makers in his case acted with discriminatory purpose." Id., at 1766. McCleskey offered no such evidence specific to his case. Indeed, McCleskey relied solely on the Baldus study maintaining that its conclusions are sufficient proof of discrimination without regard to the facts of a particular case. The Baldus study purported to show a disparity in the imposition of the death sentence based on the defendant's race and the victim's race. The study was based on over 2,000 murder cases, and involved data relating to the victim's race and the defendant's race, as well as numerous characteristics of each murder. The study concluded that the odds of being condemned to death are greatest for black defendants who kill white victims. The Court, however, rejected the Baldus conclusion and McCleskey's inference.

30. First, the Court stated that statistical proof in capital sentencing cases is fundamentally different from other contexts which allow statistical studies to prove intent to discriminate because: 1) each jury is unique and 2) the capital sentencing decision rests on innumerable factors specific to each individual case. Second, jury members, unlike decision-makers in other contexts which allow statistical studies, cannot be called upon to explain the motives and influences which led to their decision. Moreover, McCleskey's sentence must be

viewed in light of the fact that he committed an act for which both the United States Constitution and Georgia's state law permit the imposition of the death penalty. The Court concluded that because discretion is essential to the capital sentencing decision, "we would demand exceptionally clear proof before we would infer that the discretion has been abused." Id., at 1769. The Court did not indicate what evidence was necessary to meet the "exceptionally clear proof" standard. However, the Court did hold that "the Baldus study is clearly insufficient to support an inference that any of the decision-makers in McCleskey's case acted with discriminatory purpose." Id., at 1769.

31. Second, the Court then examined McCleskey's claim that capital sentences, in general, are applied in an arbitrary and capricious manner because race may be a factor in the decision. Initially the Court noted that jury discretion in capital sentencing is not arbitrary and capricious in theory, because while discretion is involved in capital sentencing, it is not unlimited. There is a threshold below which the death penalty cannot be imposed. Further, the jury is allowed to consider any relevant circumstances that might cause it to decline to impose the death penalty. A jury can also decline to convict or to convict of a lesser crime. Although individual jurors bring a wide range of viewpoints to their deliberations, the jury as a whole assures the defendant a "diffused impartiality." A jury with wide but not unlimited discretion is necessary to make the uniquely human decision of whether or not to impose the death penalty.

32. In examining the application of capital sentences, the Court noted that the Baldus study only shows a likelihood that a particular factor, here it is race, entered into some decisions. This is not proof that race was a factor in any capital sentencing decisions. "Statistics at most may show only a likelihood that a particular factor entered into some decisions." While acknowledging that there is some risk that racial prejudice has influenced a jury's capital sentence decision, the Baldus study has not shown that the risk has become unacceptably high. The Court did not state what is needed to prove an unacceptably high risk of racial prejudice.

33. The Court supported its conclusion with the fact that it has "engaged in 'unceasing efforts' to eradicate racial prejudice from our criminal justice system." Id., at 1766. Again, the Court noted that the jury is actually an aid to the defendant because it can decline to impose the death penalty, decline to convict, or convict of a lesser crime.

34. The Baldus study, at most, "indicates a discrepancy that appears to be based on race. " Id., at 1777. Because discretion is involved in the decision does not mean that what is unexplained is invidious. Given the safeguards of the jury system and Georgia State law's requirement of automatic appeal of every death sentence to the state Supreme Court, the state held that the conclusions of the Baldus study do not "demonstrate a constitutionally significant risk for racial bias affecting the Georgia's criminal sentencing process." Id., at 1778.

35. McCleskey has been cited in well over 100 federal and state court decisions. Not one of these decisions has overruled or distinguished McCleskey.

B. U.S. courts and death-qualified juries

36. In Wainwright v. Witt, 469 U.S. 412 (1985), the Supreme Court held that the prosecution may exclude a potential juror only if his opposition to the death penalty would "prevent or substantially impair the performance of his duties as juror in accordance with his instructions and oath." Id., at 424. Further, potential jurors may not be excluded for general objections to the death penalty, but only when they refuse to vote for the death penalty under any circumstances. Witherspoon v. Illinois, 391 U.S. 510, 520-522, 88 S.Ct. 1770, 1776-1777 (1968). When an exclusion has been made, the Supreme Court is unconvinced that his would make the jury conviction-prone. In Witherspoon, the Court found insufficient evidence to support the claim that death-qualified juries are conviction-prone.

37. In Witherspoon, the Court was presented with two surveys and one study comparing the conviction rates of death-qualified versus non-death qualified juries. The two surveys each involved approximately 200 college students, and the study was based on interviews with 1,248 jurors in New York and Chicago. The Court found this data to be "too tentative and fragmentary to establish that jurors not opposed to the death penalty tend to

favor the prosecution in the determination of guilt. We simply cannot conclude, either on the basis of the record now before us or as a matter of judicial notice that the exclusion of jurors opposed to capital punishment results in an unrepresentative jury on the issue of guilty or substantially increases the risk of conviction." Id., at 517-8. The Court did not state the evidence needed to prove that a death qualified jury is conviction-prone.

V. OPINION OF THE COMMISSION

A. Points at issue

38. First, is the death penalty imposed in a racially discriminatory manner in the Unite States such that black defendants are arbitrarily deprived of their right to life in violation of Article 1 of the American Declaration? More specifically, are statistics alone sufficient to prove racial discrimination in the capital sentencing context?

39. Petitioner maintains that the results of statistical studies alone are proof of invidious racial discrimination in the capital sentencing context. These studies have concluded, and many experts agree, that a black defendant who kills a white victim in the United States is many times more likely to receive the death penalty than any other racial combination of defendant and victim. Consequently, petitioner argues that the U.S. capital sentencing procedures violate the American declaration.

40. In response, the United States maintains that this issue has been fully and fairly litigated in the U.S. courts and the courts have concluded that statistical studies alone are not sufficient to prove that racial discrimination was the dominant factor in the jury's decision-making process. Consequently the Government argues that the petitioner has provided no evidence to prove racial discrimination in this particular case and, therefore, the case should be dismissed.

41. Petitioner has failed to persuade the Commission that the United States courts violated the American Declaration in their rejection of statistical studies as sole proof of intent to discriminate in the Willie Celestine case. Petitioner does not present sufficient evidence that Celestine's sentence resulted from racial discrimination. The crime is sufficiently heinous and several blacks were members of the jury which unanimously voted to convict and sentence the defendant petitioner and, on review, the Louisiana Supreme Court found no evidence of racial discrimination in petitioner's trial.

42. A second issue presented for the Commission's consideration is whether exclusion from juries of potential jurors who will not impose the death penalty creates a conviction-prone jury violating the defendant's right to an impartial hearing under the American Declaration?

43. Petitioner maintains that Celestine was denied the right to an impartial hearing guaranteed by Article XXVI because he was sentenced by a death-qualified jury. He contends, on the basis of studies, that disqualifying a juror on the basis that he would never sentence a defendant to the death penalty leads to conviction-prone juries and compromises the impartiality of the jury by removing a disproportionate number of blacks and women who tend to vote against the death penalty more often than other groups in the population, resulting the in the unequal treatment of Celestine in violation of Article II of the American Declaration.

44. In response, the United States maintains that petitioner's allegation that the system of disqualifying a juror who is irrevocably opposed to the death penalty is a violation of the principles contained in Articles II and XXVI of the Declaration, suffers from the same infirmities as his first: he presents no evidence to establish the facts he alleges, and makes no showing of the relevance of the studies to which he refers; those studies have already have already been found inconclusive by the U.S. Supreme Court. (Government's brief, at 10).

45. Capital punishment has not yet been abolished by the federal government of the United States or by the states of the United States as a whole. The Commission is persuaded by the U.S. Government's argument that "An entire criminal justice system cannot be proved invalid by mere citations to statistical studies without more." (Government's brief, at

4). In the opinion of the Commission, the petitioner has not provided sufficient evidence that the statistical studies presented make a prima facie case to prove the allegations of racial discrimination and partiality in the imposition of the death penalty such as to shift the burden of proof to the United States Government. In addition, the Commission finds that this a poor case upon which to recommend a reversal of the U.S. criminal justice practice. Willie Celestine brutally raped and murdered an elderly woman, a crime punishable by death in the state of Louisiana. This was a particularly heinous crime and the jury which unanimously convicted and sentenced him contained several black members. His case was specifically reviewed for prejudice by the Louisiana Supreme Court. None was found and the conviction and sentence were affirmed. Based on the evidence presented by the petitioner, the Commission finds no violations of the American Declaration of the Rights and Duties of Man. In conformity with Articles 52 and 41 of the Commission's Regulations this case is declared inadmissible for failure to state facts that constitute a violation of the rights set forth in the American Declaration.

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