

Robert Owen: To explain how the United States breached human rights law when it failed to protect Mr. Hall's right to an individualized determination of his sentence; we would like to present the expert testimony of Professor Michael Tigar. He will analyze the applicable international legal standards and the errors and omissions of Mr. Hall's trial counsel in failing to prepare for the sentencing phase. As we noted in our pre-hearing letter, Professor Tigar was due to testify in Mr. Hall's post-conviction appeals. He submitted the affidavits that we have attached to our petition here as Exhibits 6 and 7. The domestic courts refused to hear from Professor Tigar, and we welcome the opportunity to present his views to the Commission this morning.

Professor Tigar, are there international standards for effective assistance of counsel that can be brought to bear to interpret the relevant articles of the American Declaration that are at issue in this petition?

**Professor Tigar:** Yes, I believe so. These standards have been elaborated in *opinio juris* in state practice going back 2000 years. However, within the last...

**Felipe González:** Wait one second please, I would like to ask a procedural question.

(whispering)

**Felipe González:** It was just to make sure that the fact that the state has already been notified about the fact that you were declared as an expert and the State can send you questions later. Go ahead please.

**Professor Tigar:** Thank you very much...to continue, within the last 60 years we have seen these rights enshrined in a number of treaties and other international instruments...of course when the Soviet Union and former Eastern Europe they have established defense standards. If you look at the European Convention on Human Rights and the instruments establishing every single one of the *ad hoc* and permanent international tribunals, you find this. I have seen these developments. I've taught in the Americas, in Europe, Asia and Africa and the Commission, I think, has recognized them already in the *Castillo, Ramos* and *Medellín* cases. Now this international consensus that I have found has drawn on and has been reinforced by reference to the ABA guidelines that are cited throughout our papers. And I think the Commission has recognized in *Medellín* and *Ramos*, this fact. And thus the guidelines, I think, provide an appropriate

means for interpreting the defense rights that are vouchsafed by the American Declaration.

**Robert Owen:** Is there any special responsibility on defense counsel, Professor, when the client is a member of a racial, economic, ethnic, religious or political group that has historically been the victim of discrimination?

**Professor Tigar:** Oh yes, I think this is reflected in the American Declaration but particularly with respect to African-Americans who were brought to the Americas as slaves. And I ally this in this case with the fact that the Commission has already expressed its concern about the system of capital punishment in Texas. The federal system in Texas at the time of Hall's case showed many of the faults that existed in the state system. Defense counsel were appointed from the group of lawyers who had been doing capital cases in state court. But the federal death penalty law was very different from the Texas state law. And even a Texas lawyer with prior capital experience would not be prepared to accept a federal death penalty case. The federal law allows for the widest presentation of mitigation evidence, but counsel has to seek it and present it. The failure in this case is exacerbated by the fact that Kevin McNally, who was the resource counsel appointed right as the federal law came into being, called up the lawyers in this case and told them that they needed to start a mitigation investigation and even with that warning, they failed to take action.

**Robert Owen:** Are there other particular ways in which these concerns manifest themselves in Mr. Hall's case?

**Professor Tigar:** I speak from experience as an advocate as well as a professor. The prosecutor in a capital case says to the jury: take this life. This person is the other, unworthy of being in human society. Now a juror will not vote for that unless they truly believe that this is the other, unfit to live. And, when a defendant is already separated from the deciders, the all white jury, in this case, by the fact of his being African-American and their being white, he is at a systematic disadvantage. And, these lawyers come to the case and they too are members of the dominant culture. This separates them from their client who grew up in a turbulent household, born into poverty in a racially striated community. His opportunities for self-transformation constrained by a culture marked by generations of loss and hopelessness and yet these lawyers did virtually nothing to overcome the barrier between themselves and him. They had a duty, but especially because they were going to present their material to this all white jury who was going to

be as different from Mr. Hall as counsel themselves. After all, Mr. Hall's involvement in the events that lead to the death here were not in dispute. He had surrendered and confessed without counsel. He had already begun to show remorse. Defense counsel were appointed more than six months before the trial began and didn't even begin to investigate mitigation until two and a half weeks before the trial. They didn't begin to speak to friends and family and acquaintances who would actually feel a sense of reluctance to reveal all that they knew. They spent so little time visiting Mr. Hall's community; they could not possibly have gained the knowledge that they needed. Despite the fact that the ABA guidelines tell us that there is this pivotal importance of using the investigation to develop the case. And they did nothing in the trial phase also, to lay out the basis for their later mitigation case.

**Robert Owen:** Could you list just a few of the specific ways in which counsel failed to meet these standards of performance that you have identified?

**Professor Tigar:** Very quickly. Five. First, the jury heard that Mr. Hall as a youngster was simply a witness to family violence, and yet the fact was that his father beat and raped his mother with the children waiting in the adjacent room to hear it. His father beat the children and told them that he'd brought them into the world and could take them out. The jury never heard this. A trauma specialist, Jill Miller showed that a full and proper investigation would have shown the jury that Mr. Hall was a victim of serious physical and mental abuse and yet trial counsel never saw the importance of getting an expert like Ms. Miller.

Second, trial counsel ignored the indications that Mr. Hall had neuro-psychological deficits. They asked for appointment of an expert and then when the expert wasn't available they abandoned the plan. Post-trial counsel showed that Mr. Hall suffers from neuro-psychological deficits, that they affect his judgment and problem solving ability. This could have helped jurors to understand how he could have come to commit this crime.

Third, counsel failed to investigate aspects of his upbringing and culture. They had a reverend that knew him, a preacher, come to the trial, but didn't even put him on the stand. This preacher would have explained how an African-American without economic opportunities could drift into the drug trade. How Mr. Hall perceived the need to support his siblings. The preacher could have talked about Mr. Hall's remorse.

Fourth, counsel did nothing to take steps to find positive character evidence. Now defects three and four provide jurors, who in a federal death penalty case need only one mitigator to vote to spare the life of a defendant, could have provided any given juror with a narrative to vote to spare Mr. Hall's life.

And finally counsel did nothing to deal with available evidence of Mr. Hall's good conduct during previous incarcerations.

**Robert Owen:** Could it be claimed that any of these decisions by counsel constituted reasonable tactical or strategic choices?

**Professor Tigar:** Absolutely not. After all, no reasonable professional decision can be made by a professional who has not explored all the available options. It would be rather like your Excellencies deciding cases without hearing any evidence simply based on instinct and intuition and therefore objectively unreasonable, is what I would term the performance here.

**Robert Owen:** Thank you, Professor Tigar. Of course, Professor Tigar will be available to answer any questions directly from your Excellencies during the question and answer portion of this morning's proceedings. The question remains how the state can