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SUPREME COURT TO HEAR ARGUMENTS IN TEXAS DEATH PENALTY CASE ON RACIALLY BIASED JURY SELECTION

Miller-El alleges systematic removal of black jurors in Dallas County

WASHINGTON, DC -- On Wednesday, October 16, the U.S. Supreme Court will hear arguments in the case of Thomas Miller-El, a black Texas death row inmate who claims that Dallas County prosecutors engaged in a racially biased jury selection process at the time of his trial in 1986. *Miller-El v. Cockrell* will require the Court to clarify the rules for demonstrating racial discrimination in jury selection and determine what evidence a lower court should consider when reviewing such a claim.

Miller-El asserts that Dallas County prosecutors systematically excluded African-American jurors during his trial. Ten of the 11 potential black jurors were eliminated by the prosecution. In their final analysis, the lower courts discounted evidence that, at least until the mid-1980s, prosecutors employed a policy of removing as many black jurors as possible from trials of black defendants.

Such evidence included a manual for prosecutors that recommended excluding blacks and other minority jurors. Studies conducted by the *Dallas Morning News* in 1986 revealed that such jury selection practices continued in the 1980s. In 100 trials studied, prosecutors eliminated 92% of African-Americans by peremptory strikes.

An amicus curiae brief submitted by the NAACP Legal Defense and Educational Fund and the League of Women Voters noted, "[The lower court judges] acted as if the history of jury discrimination documented in scores of opinions from this Court, did not exist, as if behavior was not evidence of intent, as if no action had any relationship to any other -- as if they had walked into what was plainly a forest and saw only leaves. Like others throughout the sordid history of race-based exclusions of African-American citizens from jury service, they were apparently incapable of looking behind the mask of racial neutrality worn by those of a mind to discriminate."

"A racist death penalty that results in black jurors being systematically barred from service is an affront to the very principles on which this country stands," said George Kendall, who serves as Assistant Counsel to the Criminal Justice Project of the NAACP Legal Defense and Educational Fund.

In its 1986 ruling in *Batson v. Kentucky*, the U.S. Supreme Court reaffirmed that it is unconstitutional to strike jurors solely on the basis of race and put a greater burden on the state to show that it was not engaging in such behavior. Prior to this decision, prosecutors did not have to provide a reason for striking potential jurors. This opinion was issued one month after Thomas Miller-El was convicted and sentenced to death, but applied retroactively to his case because his sentence was still on direct appeal. In *Miller-El v. Cockrell*, the Justices will examine whether the lower courts' failure to examine Dallas County's history of racial discrimination in conjunction with the prosecutorial strikes in Miller-El's case was proper.

Miller-El v. Cockrell is one of four death penalty related cases the Court has agreed to hear this term. Additional questions regarding this case may be posed to Miller-El's attorney, Jim Marcus, at (713) 222-7788 or to George Kendall at (212) 965-2200.

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