



a symposium

**Pursuing Racial Fairness
in Criminal Justice:**

Twenty Years After *McCleskey v. Kemp*

Sponsored by

**NAACP LEGAL DEFENSE
AND EDUCATIONAL FUND**

March 2-3, 2007

Columbia Law School

Jerome Greene Hall
435 West 116th Street
(at Amsterdam Avenue)
New York, NY 10027

**All panels
are free
to the public.**

and
**COLUMBIA LAW
SCHOOL**

LDEF
DEFEND EDUCATE EMPOWER



Columbia Law School



PURSUING RACIAL FAIRNESS IN CRIMINAL JUSTICE: TWENTY YEARS AFTER *McCLESKEY V. KEMP*

In the past quarter century, few cases on criminal law and procedure have had the reach and impact of *McCleskey v. Kemp*, 481 U.S. 279 (1987). In *McCleskey*, the NAACP Legal Defense and Educational Fund, Inc. (LDF) presented the United States Supreme Court with strong statistical evidence showing that race played a pivotal role in the Georgia capital punishment system. Specifically, LDF introduced the landmark *Baldus Study*, which showed that in the life and death calculus of capital cases, blacks were treated differently than similarly situated whites. Although this evidence gave the Court the opportunity to acknowledge and repudiate the arbitrary influence of race in the administration of the death penalty, the Court found no constitutional error in a system where blacks and whites were treated unequally.

The *McCleskey* decision reached far beyond the confines of capital punishment. It all but completely insulated criminal justice laws and policies from racially disparate impact challenges and ultimately set the stage for 20 years of increasing racial disproportionality within the criminal justice system. Numerous studies conducted in the 20 years that followed *McCleskey* have shown that race now plays a critical role in virtually all aspects of the criminal justice process. African Americans are stopped, ticketed, searched and/or arrested by the police at far higher rates than whites. Relative to their rates of arrest and participation in crime, African Americans are disproportionately represented within U.S. jails and prisons. Indeed, within a decade of *McCleskey* the number of minority citizens in prison exceeded the total number of persons incarcerated in the U.S. in the year preceding the decision.

Today, one in three African-American males will enter state or federal prison at some point in their lifetimes; and while African Americans make up only 12 percent of the U.S. population, they constitute 44 percent of sentenced inmates—the largest group behind bars. Legal mobilizations such as the “War on Drugs” worsened racial disparity by mandating harsher sentences for drugs whose impacts were disproportionately felt in communities of color. And race continues to influence the decision between who lives and who dies at the hands of the criminal justice system: race of defendant and/or race of victim are dominant factors in the decision to seek death in numerous jurisdictions including Pennsylvania, Maryland, Indiana, Kentucky, New Jersey, and North Carolina.

The 20th anniversary of the *McCleskey* decision presents a unique opportunity for the racial justice community to renew and reinvigorate the struggle to achieve balance and fairness in the administration of justice in the United States. With the “Pursuing Racial Fairness in Criminal Justice” Symposium, LDF and Columbia Law School are bringing together leading scholars on race, crime and law, as well as activists and practitioners to discuss new ways of challenging, and ultimately reversing, *McCleskey*’s reach through legislative advocacy, institutional reform, and litigation.

symposium program

PURSUING RACIAL FAIRNESS IN CRIMINAL JUSTICE TWENTY YEARS AFTER *McCLESKEY V. KEMP*

FRIDAY, MARCH 2, 2007

OPENING EVENT

11:00 am—2:00 pm

Screening: “The Trials of Darryl Hunt”

Sponsored by Clifford Chance, LLP

Following the screening, there will be a discussion with the Filmmakers, Darryl Hunt, and his attorney, Mark Rabil.

SYMPOSIUM

2:00 pm—2:30 pm

Introduction and Welcome

Jeffrey Fagan, Columbia Law School

Theodore M. Shaw, NAACP Legal Defense and Educational Fund

2:30 pm—3:15 pm

The Harold Leventhal Memorial Lecture: Setting the Stage: Race and the Death Penalty Before *McCleskey*

Anthony Amsterdam, New York University School of Law

3:15 pm—3:30 pm

Break

3:30 pm—5:00 pm

THE LEGAL, POLITICAL AND SOCIAL CONTEXT OF *McCLESKEY*

Moderator

Christina Swarns, NAACP Legal Defense and Educational Fund

McCleskey in Historical Context

Richard Banks, Stanford Law School

Reflections on Litigating the Case

John Charles Boger, University of North Carolina Law School
Counsel of Record for Warren *McCleskey* in the Supreme Court

The *McCleskey* Decision: Justice Brennan’s Dissent

Lawrence C. Marshall, Stanford Law School

Commentary

Richard Burr, Burr and Welch

5:15 pm—8:00 pm

RECEPTION AND DINNER (By Invitation Only)

Hosted by David Schizer, Dean
Columbia Law School

Keynote Speaker

Bob Herbert, Columnist
The New York Times

SATURDAY, MARCH 3, 2007

9:00 am—10:30 am

THE IMPACT OF *McCLESKEY* ON THE ADMINISTRATION OF CRIMINAL JUSTICE AND CAPITAL PUNISHMENT BETWEEN 1987 AND 2007

Moderator

George Kendall, Holland & Knight, LLP

Race and Proportionality After *McCleskey*: Did Anything Change?

David Baldus, University of Iowa, College of Law

The Trial Process: How *McCleskey* Impacted Representation and Jury Decisionmaking

Sheri Lynn Johnson, Cornell Law School

Access to Justice: How *McCleskey* Affected Policing Policies and Criminal Justice Outcomes

Jeffrey Fagan, Columbia University Law School

Commentary

Cathleen Price, Equal Justice Initiative of Alabama

10:30 am—11:00 am

Break

Continued on next page

symposium program

SATURDAY, MARCH 3, 2007 - CONTINUED

11:00 am–12:30 pm

WHERE DO WE GO FROM HERE I: A THEORETICAL MODEL FOR GETTING PAST *McCLESKEY*

Moderator

Charles Ogletree, Harvard Law School

Transforming the Popular Discourse on Crime, Race and Rights

Kendall Thomas, Columbia Law School

Constructing a Criminal Justice System Free of Racial Bias

Dorothy E. Roberts, Northwestern University School of Law

Civil and Human Rights Advocacy as a Vehicle for Reforming the Criminal Justice System

David Rudovsky, University of Pennsylvania, School of Law

Commentary

Miriam Gohara, Resource Counsel

Federal Capital Habeas Project

12:30 pm–2:00 pm

LUNCH (By Invitation Only)

Keynote Speaker

Theodore M. Shaw

NAACP Legal Defense and Educational Fund

2:00 pm–3:30 pm

WHERE DO WE GO FROM HERE II: THE NEW FRONT LINES OF RACE AND CRIMINAL JUSTICE REFORM LITIGATION, LEGISLATION AND PROSECUTION

Moderator

Charles Ogletree, Harvard Law School

What is the Future of Litigation in Race and Criminal Justice Reform?

Bryan Stevenson, Equal Justice Initiative of Alabama

How Can Legislation Effect Change?

Olati Johnson, Columbia Law School

How Should the Prosecutor Address Problems of Race and Discretion?

Angela J. Davis, American University, Washington College of Law

Commentary

Christina Swarns, NAACP Legal Defense and Educational Fund

3:30 pm–4:30 pm

MOVING FORWARD: WHAT ARE THE NEXT STEPS?

Moderator

Steven Hawkins, JEHT Foundation

The Role of the Prosecutor

Wayne McKenzie, Vera Institute of Justice

The Role of the Legislature

Rodney Ellis, Texas State Senate

The Role of Advocates for Racial Justice

David Singleton, Ohio Justice and Policy Center

4:30 pm–5:00 pm

Closing Remarks

Gara LaMarche

Open Society Institute

