Pursuing Racial Fairness in Criminal Justice:

Twenty Years After *McCleskey v. Kemp*

Sponsored by

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND

and

COLUMBIA LAW SCHOOL

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.

LDF
DEFEND EDUCATE EMPOWER

Columbia Law School
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.
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

Continued on next page
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)

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