

Week 6

# **DUE PROCESS PROTECTION**

**Section B**  
**(Feb 15, 2008)**

# **MCCLESKEY V. KEMP**

## **481 U.S. 279 (1987)**

- **FACTS**

- In 1978, McCleskey, a black, was convicted of two counts of armed robbery and one count of murder, killing a white police officer, in the Superior Court, Georgia.
- Over the next eight years McCleskey filed numerous petitions in state courts, as well in federal courts, complaining that the Georgia's criminal justice system violated his Eighth (cruel and unusual) and Fourteenth Amendment rights (equal protection).
- McCleskey appealed to the Supreme Court of the United States.

- **Eighth Amendment**

- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

- **Fourteenth Amendment**

- No state shall “deprive any person of life, liberty. . .without due process of law;
- “Nor deny to any person. . .the equal protection of the laws.”

# • QUESTION BEFORE THE COURT

- Whether Georgia's capital punishment system is arbitrary and capricious in application;
- Whether the administration of the Georgia's capital punishment system violates the Equal Protection Clause—that is, whether the decision-makers (state assembly, prosecutors, juries, etc) in his case acted with discriminatory purpose.

## ● **OPINION OF THE COURT**

- Justice Powell delivered the 5-4 majority opinion, holding that the Baldus study on which the complaint was based does not establish that the Georgia's capital punishment system violates the Equal Protection Clause or the Eighth Amendment.

# Justice Lewis Powell



Lee (Feb 15, 2008)

# **McCleskey's Argument on the Equal Protection Ground**

- The Baldus study shows that defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks;
- McCleskey is a black defendant.
- Therefore, McCleskey's sentence was disproportionate in violation of the Equal Protection Clause.

# Justice Powell's Counterargument

- Baldus' statistics do not demonstrate that other defendants who are similarly situated did not receive the death penalty.
- McCleskey offers no evidence that the legislature enacted the death penalty statute with an intent to discriminate against a particular race.
- Therefore, McCleskey cannot establish a prima facie discrimination on the ground of his race.

# **McCleskey's Argument on the Due Process Ground**

- The Baldus data demonstrate that the Georgia's capital punishment system is arbitrary and capricious in application;
- Therefore, his sentence is excessive in violation of the Eighth Amendment.

# Justice Powell's Counterargument

- To demonstrate that the Georgia's system violated his due process right, McCleskey must show an individualized inquiry, which shows that his sentence was imposed “wantonly and freakishly.”
- The Baldus' statistics does not prove that race entered into any capital sentencing decisions or that race was the factor in McCleskey's case.

# Reading for Next Class

- Craig v. Boren