McCleskey v Kemp

US SUPREME COURT 1987

On May 13, 1978, Warren McCleskey, a black man, and three accomplices attempted to rob a furniture store in Atlanta, Georgia. One of the employees hit a silent alarm button, which was answered by a white, thirty-one-year-old police officer. As the officer entered the store, he was shot and killed. Several weeks later, when police arrested McCleskey on another charge, he confessed to the robbery. At his trial, McCleskey was identified by one of the accomplices as the individual who killed the officer. The prosecution also entered evidence indicating that McCleskey had bragged about the shooting.

Three months after the robbery, a jury of eleven whites and one black convicted McCleskey and sentenced him to death. At that point, the NAACP'S Legal Defense Fund (LDF) took over his defense and based his appeal in the federal courts on Baldus's study showing that blacks convicted of murdering whites received death sentences at disproportionately high rates. Armed with this study the LDF tried to convince the justices that the disparate application of death penalty laws led to unacceptable violations of the Equal Protection and Due Process Clauses, as well as the Eighth Amendment's prohibition against Cruel and Unusual Punishments.

JUSTICE POWELL delivered the opinion of the Court.

This case presents the question whether a complex statistical study that indicates a risk that racial considerations enter into capital sentencing determinations proves that petitioner McCleskey's capital sentence is unconstitutional under the Eighth or Fourteenth Amendment.

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In support of his claim, McCleskey [has] proffered a statistical study performed by Professors David C. Baldus, Charles Pulaski, and George Woodworth (the Baldus study) that purports to show a disparity in the imposition of the death sentence in Georgia based on the race of the murder victim and, to a lesser extent, the race of the defendant. The Baldus study is actually two sophisticated statistical studies that examine over 2,000 murder cases that occurred in Georgia during the 1970's. The raw numbers collected by Professor Baldus indicate that defendants charged with killing white persons received the death penalty in 11% of the cases, but defendants charged with killing blacks received the death penalty in only 1% of the cases. The raw numbers also indicate a reverse racial disparity according to the race of the defendant: 4% of the black defendants received the death penalty, as opposed to 7% of the white defendants.

Baldus also divided the cases according to the combination of the race of the defendant and the race of the victim. He found that the death penalty was assessed in 22% of the cases involving black defendants and white victims; 8% of the cases involving white defendants and white victims; 1% of the cases involving black defendants and black victims; and 3% of the cases involving white defendants and black victims.

Similarly, Baldus found that prosecutors sought the death penalty in 70% of the cases involving black defendants and white victims; 32% of the cases involving white defendants and white victims; 15% of the cases involving black defendants and black victims; and 19% of the cases involving white defendants and black victims.

Baldus subjected his data to an extensive analysis, taking account of 230 variables that could have explained the disparities on nonracial grounds. One of his models concludes that, even after taking account of 39 nonracial variables, defendants charged with killing white victims were 4.3 times as likely to receive a death sentence as defendants charged with killing blacks. According to this model, black defendants were 1.1 times as likely to receive a death sentence as other defendants. Thus, the Baldus study indicates that black defendants, such as McCleskey, who kill white victims have the greatest likelihood of receiving the death penalty. ...

Our analysis begins with the basic principle that a defendant who alleges an equal protection violation has the burden of proving "the existence of purposeful discrimination." A corollary to this principle is that a criminal defendant must prove that the purposeful discrimination "had a discriminate effect" on him. Thus, to prevail under the Equal Protection Clause, McCleskey must prove that the decision makers in his case acted with discriminatory pm. pose. He offers no evidence specific to his own case that would support an inference that racial considerations played a part in his sentence. instead. he relies solely on the Baldus study. McCleskey argues that the Baldus study compels an inference that his sentence rests on purposeful discrimination. McCleskey's claim that these statistics are sufficient proof of discrimination without regard to the facts of a particular case, would extend to all capital cases in Georgia. At least where the victim was white and the defendant is black.

The Court has accepted statistics as proof of intent to discriminate in certain limited contexts. First, this Court has accepted statistical disparities as proof of an equal protection violation in the selection of the jury venire in a particular district. Although statistical proof normally must present a "stark" pattern to be accepted as the sole proof of discriminatory intent under the Constitution, "because of the nature of the jury-selection task, . . . we have permitted a finding of constitutional violation even when the statistical pattern does not approach [such] extremes." Second, this Court has accepted statistics to prove statutory violations under Title VII [of the Civil Rights Act of 1964. which generally prohibits employment discrimination based on race, color, religion, sex or national origin].

But the nature of the capital sentencing decision, and the relationship of the statistics to that decision, are fundamentally different from the corresponding elements in the venire-selection or Title VII cases. Most importantly. each particular decision to impose the death penalty is made by a petit jury selected from a properly constituted venire. Each jury is unique in its composition and the Constitution requires that its decision rest on consideration of innumerable factors that vary according to the characteristics of the individual defendant and the facts of the particular capital offense. Thus, the application of an inference drawn from the general statistics to a specific decision in a trial and sentencing simply is not comparable to the application of an inference drawn from general statistics to a specific venire selection or Title VII case. In those cases the statistics relate to fewer entities, and fewer variables are relevant to the challenged decisions.

Another important difference between the cases in which we have accepted statistics as proof of discriminatory intent and this case is that in the venire selection and Title VII contexts, the decision maker has an opportunity to explain the statistical disparity. Here, the State has no practical opportunity to rebut the Baldus study.

Finally, McClesky's statistical proffer must be viewed in the context of his challenge. McCleskey challenges decisions at the heart of the State's criminal justice system. "[O]ne of society's most basic tasks is that of protecting the lives of its citizens and one of the most basic ways in which it achieves the task is through criminal laws against murder." Implementation of these laws

necessarily requires discretionary judgments. Because discretion is essential to the criminal justice process, we would demand exceptionally clear proof before we would infer that the discretion has been abused. The unique nature of the decisions at issue in this case also counsel against adopting such an inference from the disparities indicated by the Baldus study. Accordingly, we hold that the Baldus study is clearly insufficient to support an inference that any of the decision makers in McCleskey's case acted with discriminatory purpose. . . .

McCleskey also argues that the Baldus study demonstrates that the Georgia capital sentencing system violates the Eighth Amendment. . . .

Two principal decisions guide our resolution of McCleskey's Eighth Amendment claim. In Furman v Georgia (1972), the Court concluded that the death penalty was so irrationally imposed that any particular death sentence could be presumed excessive.

In Gregg v. Georgia (1976), the Court specifically addressed the question left open in Furman-whether the punishment of death for murder is "under all Circumstances, 'cruel and unusual' in violation of the Eighth and Fourteenth Amendments of the Constitution." . . . We noted that any punishment might be unconstitutionally severe if inflicted without penological justification, but concluded that the infliction of death as a punishment for murder is not without justification and thus is not unconstitutionally severe. . . .

[McCleskey] contends that the Georgia capital punishment system is arbitrary and capricious in application, and therefore his sentence is excessive, because racial considerations may influence capital sentencing decisions in Georgia. We now address this claim.

To evaluate McCleskey's challenge, we must examine exactly what the Baldus study may show. Even Professor Baldus does not contend that his statistics prove that race enters into any capital sentencing decisions or that race Was a factor in McCleskey's particular case. Statistics at most may show only a likelihood that a particular factor entered into some decisions. There is of course some risk of racial prejudice influencing a jury's decision in a criminal case. There are similar risks that other kinds of prejudice will influence other criminal trials. The question "is at what point that risk becomes constitutionally unacceptable." McCleskey asks us to accept the likelihood allegedly shown by the Baldus study as the constitutional measure of an unacceptable risk of racial prejudice influencing capital sentencing decisions. This we decline to do.

Because of the risk that the factor of race may enter the criminal justice process, we have engaged in "unceasing efforts" to eradicate racial prejudice from our criminal justice system. Our efforts have been guided by our recognition that "the inestimable privilege of trial by jury . . . is a vital principle, underlying the whole administration of criminal justice," specifically, a capital sentencing jury representative of a criminal defendant's community assures a "diffused impartiality" in the jury's task of "expressing the conscience of the community on the ultimate question of life or death."

Individual jurors bring to their deliberations “qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable." The capital sentencing decision requires the individual jurors to focus their collective judgment on the unique characteristics of a particular criminal defendant. It is not surprising that such collective judgments often are difficult to explain. But the inherent lack of predictability of jury decisions does not justify their condemnation.

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McCleskey’s argument that the Constitution condemns the discretion allowed decision makers in the Georgia capital sentencing system is antithetical to the fundamental role of discretion in our criminal justice system. Discretion in the criminal justice system offers substantial benefits to the criminal defendant. Not only can a jury decline to impose the death sentence, it can decline to convict, or choose to convict of a lesser offense. Whereas decisions against a defendant's interest may be reversed by the trial judge or on appeal, these discretionary exercises of leniency are final and unreviewable. Similarly, the capacity of prosecutorial discretion to provide individualized justice is “firmly entrenched in American law.” As we have noted, a prosecutor can decline to charge, offer a plea bargain, or decline to seek a death sentence in any particular case. Of course, “the power to be lenient [also] is the power to discriminate," but a capital-punishment system that did not allow for discretionary acts of leniency ” would be totally alien to our notions of criminal justice."

At most, the Baldus study indicates a discrepancy that appears to correlate with race. Apparent disparities in sentencing are an inevitable part of our criminal justice system. Despite these imperfections, our consistent rule has been that constitutional guarantees are met when “the mode [for determining guilt or punishment] itself has been surrounded with safeguards to make it as fair as possible.” Where the discretion that is fundamental to our criminal process is involved, we decline to assume that what is unexplained is invidious. In light of the safeguards designed to minimize racial bias in the process, the fundamental value of jury trial in our criminal justice system, and the benefits that discretion provides to criminal defendants, we hold that the Baldus study does not demonstrate a constitutionally significant risk of racial bias affecting the Georgia capital-sentencing process.

Two additional concerns inform our decision in this case. First, McCleskey’5 claim, taken to its logical conclusion, throws into serious question the principles that underlie our entire criminal justice system. The Eighth Amendment is not limited in application to capital punishment, but applies to all penalties. Thus if we accepted McCleskey's claim that racial bias has impermissibly tainted the capital sentencing decision, we could soon be faced with similar claims as to other types of penalty. Moreover, the claim that his sentence rests on the irrelevant factor of race easily could be extended to apply to claims based on unexplained discrepancies that correlate to membership in other minority groups and even to gender. Similarly, since McCleskey’s claim relates to the race of his victim, other claims could apply with equally logical force to statistical disparities that correlate with the race or sex of other actors in the criminal justice system such as defense attorneys, or judges.

Also there is no logical reason that such a claim need be limited to racial or sexual bias. If arbitrary and capricious punishment is the touchstone under the Eighth Amendment, such a claim could-at least in theory-be based upon any arbitrary variable, such as the defendant’s facial characteristics, or the physical attractiveness of the defendant or the victim, that some statistical study indicates may be influential in jury decision making. As these examples illustrate, there is no limiting principle to the type of challenge brought by McCleskey. The

Constitution does not require that a State eliminate any demonstrable disparity that correlates with a potentially irrelevant factor in order to operate a criminal justice system that includes capital punishment. As we have stated specifically in the context of capital punishment, the Constitution does not "place totally unrealistic conditions on its use" Second, McCleskey's arguments are best presented to the legislative bodies. It is not the responsibility-or indeed even the right-of this Court to determine the appropriate punishment for particular crimes. Legislatures also are better qualified to weigh and "evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts." Capital punishment is now the law in more than two thirds of our States. It is the ultimate duty of courts to determine on a case-by-case basis whether these laws are applied consistently with the

Constitution. Despite McCleskey's wide ranging arguments that basically challenge the validity of capital punishment in our multiracial society, the only question before us is whether in his case the law of Georgia was properly applied. We agree with the District Court and the Court of Appeals for the Eleventh Circuit that this was carefully and correctly done in this case. Accordingly, we affirm the judgment of the Court of Appeals for the Eleventh Circuit.

It is so ordered.

JUSIICE BRENNAN, with whom JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join, dissenting.

At some point in this case, Warren McCleskey doubtless asked his lawyer whether a jury was likely to sentence him to die. A candid reply to this question would have been disturbing. First, counsel would have to tell McCleskey that few of the details of the crime or of McCleskey's past criminal conduct were more important than the fact that his victim was white. Furthermore, counsel would feel bound to tell McCleskey that defendants charged with killing white victims in Georgia are 4.3 times as likely to be sentenced to death as defendants charged with killing blacks. In addition, frankness would compel the disclosure that it was more likely than not that the race of McCleskey's victim would determine whether he received a death sentence: six of every eleven defendants convicted of killing a white person would not have received the death penalty if their victims had been black, while, among defendants with aggravating and mitigating factors comparable to McCleskey's, twenty of every thirty-four would not have been sentenced to die if their victims had been black. Finally the assessment would not be complete without the information that cases involving black defendants and white victims are more likely to result in a death sentence than cases featuring any other racial Combination of defendant and victim. The story could be told in a variety of ways, but McCleskey could not fail to grasp its essential narrative line: there was a significant chance that race would play a prominent role in determining if he lived or died.

The Court today holds that Warren McCleskey's sentence was constitutionally imposed. It finds no fault in a system in which lawyers must tell their clients that race casts a large shadow on the capital sentencing process. . . .

The Court's decision today will not change what attorneys in Georgia tell other Warren McCleskeys about their chances of execution. Nothing will soften the harsh message they must convey, nor alter the prospect that race undoubtedly will continue to be a topic of discussion.

McCleskey's evidence will not have obtained judicial acceptance, but that will not affect what is said on death row. However many criticisms of today's decision may be rendered, these painful conversations will serve as the most eloquent dissents of all.

Justice BLACKMUN, with whom JUSTICE MARSHALL, Justices STEVENS, and Justice BRENNAN join, dissenting.

The Court today sanctions the execution of a man despite his presentation of evidence that establishes a constitutionally intolerable level of racially based discrimination leading to the imposition of his death sentence. I am disappointed with the Court's action not only because of its denial of constitutional guarantees to petitioner McCleskey individually, but also because of its departure from what seems to me to be well-developed constitutional jurisprudence. Justice Brennan has thoroughly demonstrated that, if one assumes that the statistical evidence presented by petitioner McCleskey is valid, as we must in light of the Court of Appeals' assumption, there exists in the Georgia capital sentencing scheme a risk of racially based

discrimination that is so acute that it violates the Eighth Amendment. His analysis of McCleskey's case in terms of the Eighth Amendment is consistent with this Court's recognition that, because capital cases involve the State's imposition of a punishment that is unique both in kind and in degree, the decision in such cases must reflect a heightened degree of reliability under the Amendment's prohibition of the infliction of cruel and unusual pumshments. . . . 1

Yet McCleskey's ease raises concerns that are central not only to the principles underlying the Eighth Amendment, but also to the principles underlying the Fourteenth Amendment. Analysis of his case in terms of the Fourteenth Amendment is consistent with this Court's recognition that racial discrimination is fundamentally at odds with our constitutional guarantee of equal protection. The protections afforded by the Fourteenth Amendment are not left at the courtroom door. Nor is equal protection denied to persons convicted of crimes. The Court in the past has found that racial discrimination within the criminal justice system is particularly abhorrent: "Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice." Rose v. Mitchell (1979). Disparate enforcement of criminal sanctions "destroys the appearance of justice, and thereby casts doubt on the integrity of the "judicial process."

Justice STEVENS, with whom JUSTICE BLACKMUN joins, dissenting.

The Court's decision appears to be based on a fear that the acceptance of McCleskey's claim would sound the death knell for capital punishment in Georgia. If society were indeed forced to choose between a racially discriminatory death penalty (one that provides heightened protection against murder "for whites only") and no death penalty at all, the choice mandated by the Constitution would be plain. But the Court's fear is unfounded. One of the lessons of the Baldus study is that there exist certain categories of extremely serious crimes for which prosecutors consistently seek, and juries consistently impose, the death penalty without regard to the race of the victim or the race of the offender. If Georgia were to narrow the class of death- eligible defendants to those categories, the danger of arbitrary and discriminatory imposition of the death penalty would be significantly decreased, if not eradicated. . . . such a restructuring of the sentencing scheme is surely not too high a price to pay. . . .