



## **Reflections on *McCleskey v. Kemp***

*By John Charles Boger*

The following are excerpts from the 2018 law review article, [McCleskey v. Kemp: Field Notes from 1977 - 1991](#). UNC Law School Dean John Charles Boger argued on behalf of Warren McCleskey in the U.S. Supreme Court.

“The litigation campaign that led to *McCleskey v. Kemp* grew in soil long washed in the blood of African-Americans, lynched or executed following rude semblances of trials and hasty appeals.”

“I confess to being naïve, despite the pattern of history in this area, about the extent to which the Court might be willing to divert its eyes from, minimize, trivialize, or even acquiesce in proven patterns of racial discrimination that manifest themselves at a systemic or societal level. *McCleskey* effectively closed the book, not only on further racial challenges in capital sentencing but, far more broadly, on empirical racial challenges in other kinds of criminal cases.”

“*McCleskey* seems to me best understood as an act of Grand Racial Avoidance: a turning away from the reality of widespread racial discrimination. What we need to do now is regather strength, shine light into darkness, and set our shoulders against the burden of America’s 400-year legacy of racial injustice and subordination.”

[Read more](#) on the legacy of *McCleskey* in the Atlantic.

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