

Baumgartner, POLI 195 Spring 2013

The O'Brien – Grosso (MSU) Study

Reading: Iowa Law Review 2012

April 1, 2013

Batson v. Kentucky

- 1986 SC Decision
- Peremptory challenges may not be used *solely* on the basis of race
- Very low bar put in place to indicate other reasons, however – any race-neutral reason.
- RJA gives stronger support to this idea

O'Brien and Grosso's study

- 2009 RJA passed
- 12 month window for claims to be filed
- Huge research effort, very quick process
- Note the acknowledgements, lots of funding sources to get this off the ground
- Law students go out throughout NC, gathering evidence as quickly as possible

Their Study

- 173 trials
- At least one trial for each death row inmate
- (Many have more than one trial)
- List of 7,421 people eligible to serve on all these juries
- That is, it excludes the people struck for cause
- Which got kicked off? Which were allowed to serve?

7,421 people eligible to serve

- 53.3% female
- 81.6% white
- 16.3% black
- 1.1% Native American
- 0.3% Latino
- Others Mixed, Asian, Other, Pacific Islander, Unknown (7 people)

Coding for Race

- 3 step process
 - Jury questionnaire
 - Trial transcripts
 - DMV records and other electronic searches of official records for about 30% of the people
- Big effort to get this right...

Census and Sample

- Some information is based on the full list of all 7,000 venire members
- More detailed information, including codes for 65 different variables, they did only for a randomly selected sample of $\frac{1}{4}$ of the population (1,753 venire members)

State strikes

- State goes first, so it had the opportunity to strike almost everyone in the venire (99.7%)
- Whites: 25.7%
- Blacks: 56.2%
- Ratio: 2.19 times greater likelihood for blacks
- This is the basic statistic of interest...

Race of Inmate

- Inmate is Black
- Blacks struck at 60%; others 23%

- Inmate is Not Black
- Blacks struck at 51%; others 27%

Possible explanatory factors

- Based on the sample of $\frac{1}{4}$ of all cases:
- Possible explanations, one at a time:
- Death penalty reservations
- Unemployed
- Knows a trial participant
- Any of the above
- Strike ratios still 2.0 or 2.1 higher for Blacks

The Logistic Regression

- See table 5 in the paper
- Controls for 13 additional variables
- Odds ratio for being black = 2.48
- This means, controlling for all the other things, blacks are 2.48 times more likely to be struck.

The End

- Not a complicated study
- Ratios are somewhere between 2:1 and 2.5:1 based on race whether you look at the raw results or whether you do controls
 - one variable at a time
 - or in a multivariate regression

Importance of the Study

- Clearly assesses what the RJA allows: statistical patterns of bias
- This is for every death row inmate, across the state
- 2011 version requires it to be shown in their own case

Batson v. RJA

- This study would not be enough to demonstrate a Batson claim without the RJA
- In any case, under Batson, the prosecutor simply has to give a “race neutral” reason – any reason whatsoever – to strike someone
- Under RJA, a pattern of bias is grounds for “relief” - LWOP