

Baumgartner, POLI 203 Fall 2014

Our two new exonerees

Reading: press articles about Henry
McCollum and Leon Brown

Wed: the two articles about race

September 8, 2014

Catching up

- Judicializing a political decision?
- Traditional Values / Culture Wars of the 1960s
- Elimination of the Democratic Party in the South (aka Nixon's Southern Strategy)
- Increase in crime in the 1960s, great fear of crime > very popular political stance to be "tough on crime", unlike 1940s or 1950s.
- The response was massive and lasted 30 years

“Judicialization”

- Other countries: straightforward decisions **by the political leadership** to abolish.
- US, unelected judges rule state laws in a large majority of states to be unconstitutional, using an “evolving standards” argument
- Results
 - political backlash
 - issue is very convoluted in terms of constitutional rules, arcane, frustrating for next many years.
 - Supreme Court itself becomes the continuing battle ground for arcane arguments about federalism

Political Context of *Furman* (1972)

- 1954 Brown v. Board
- 1964 “Freedom Summer” (voter mobilization in Mississippi)
- 1965 Voting Rights Act, Malcolm X assassinated
- 1966 Miranda
- 1966-1968 riots in LA, Detroit, many cities, “hot summers”
- 1968 MLK, Robert Kennedy assassinated
- 1969 Woodstock
- 1970 Earth Day
- 1972 Equal Rights Amendment passes House and Senate, goes to State legislatures
- Vietnam war protests on college campuses: throughout
- All these trends and events seen as a threat to traditional values, in particular the “Southern Way of Life”

State legislatures

- “Southern Way of Life”
- But also frustration that the Court and the national government were on the side of rioters, criminals, etc.
- Coded messages
 - States’ Rights
 - Original intent
 - Tough on crime

Partisan consequences

- Democrats portrayed as the party of criminals, rioters, defense attorneys, murderers
- “Southern Strategy” of Pres. Nixon
- Huge consequences:
 - South goes Republican, eventually
 - Democrats get tough on crime, eventually

The Resurgence

- Death penalty laws re-enacted in 37 states within 4 years
- NC not uncommon: law here was that if Furman ruled it was capricious and rare, then they would simply make it mandatory for all cases of first degree murder

The Irony

- Subsequent debate about arcane issues of constitutional law, federal oversight of states, judicial oversight of legislative branch
- What is more boring than federalism and separation of powers!?
- What is more compelling than arguments about life and death, right and wrong?
- We never had that clear argument, only the arcane, confusing, boring one.

Henry McCollum and Leon Brown

- Facts of the case
- Items to discuss / debate

Timeline (From N&O coverage)

- 9/25/83: Sabrina Buie, age 11, reported missing, body found next day
- 9/28: high school kid says it was Henry McCollum.
- 9/28: based on this, SBI and deputies “gain confessions” from Henry and Leon
- Oct 3, student says she has no information about him, just that he’s an outsider and “didn’t act right”
- Henry and Leon will never leave prison after 9/28/83

Timeline

- 10/22/83: Roscoe Artis rapes and murders another victim; he had lived across the street from where Buie's body had been found, same MO
- 8/84: Artis sentenced to death
- 10/84, McCollum and Brown sentenced to death
- 1988: new trials ordered by NC SC for McCollum and Brown. McCollum resentenced in 1991 to death; Brown "only" to life in prison

Timeline

- 2009: Brown and McCollum appeal to the NC Innocence Inquiry Commission. Another inmate on death row volunteers to write the application for McCollum. He can't remember who that was.
- 2/2010: Greg Taylor becomes the first person freed by Innocence Inquiry Commission
- 2010 Red Springs Police Department finds new evidence.
- 2014 DNA ties Artis, but neither McCollum nor Brown to the crime.

Timeline

- Rather than continue through the Innocence Commission, their attorneys ask the Innocence Commission staff to testify in court, seeking immediate relief. This was granted next week.
- Note: Innocence Commission cases get automatic pardon of innocence and compensation, but McCollum and Brown will have to seek this in the future. They walked out without a penny.

The two prosecutors

- Joe Freeman Britt, “world’s deadliest prosecutor”
 - 40+ death sentences
 - 2 executions
 - (Not a high batting average... Most are overturned)
- His response to the exoneration:
 - “It’s a tragic day for justice in Robeson County,” said Britt. “That case was fought with powerful arguments, but apparently the district attorney just threw up his hands and capitulated.”

Johnson Britt, current DA

- “Time and time again, confessions have proven to be insufficient and at times inaccurate,” Britt said.
- “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate,” Britt said. “The prosecutor’s duty is to seek justice, not merely to convict.

Questions to talk about...

- Is the death penalty for the most vicious, or the most vulnerable?
- How common are false confessions?
- Would you confess to a crime you did not do?
- Knowing you were innocent, would you talk to the police?
- Theory was that 4 teenagers raped and killed her, but only these two were willing to sign a confession. The other two were never charged, as no evidence linked them to the crime.

Discussion points

- Why was the evidence that would have led to Artis not tested by the SBI? Incompetence or malevelance? Either is possible. Who checks?
- Why keep prosecuting these two after Artis was in custody? It would have required changing their theory of the crime. They could get two more dangerous people off the street.
- Why was the Inquiry Commission able to locate evidence that Ken Rose could not do in 20+ years of trying? When the police say the evidence has been turned over, who checks?
- Joe Freeman Britt will likely pay no price. Prosecutorial immunity.
- His closing statement in the case was famous: 5 minutes of silence to simulate how long it took the victim to suffocate to death. Would you have found these men not guilty after that? In fact they were not guilty, however.

Themes

- False, coerced confessions
- Vulnerable people charged
 - Capital punishment: “If you ain’t got the capital, you going to get the punishment” – Harold Brown, exonerated from Penn. Death row, to Frank B.
- Brady violation (aka, withholding evidence favorable to the defense)
- Media interest in vicious crimes, emotional nature of the crime, “someone has to pay”
- Jury decisions would certainly be swayed by such emotional testimony
- Mentally ill or mentally deficient defendants can appear “scary” or “capable” of horrible crimes. So they are doubly vulnerable.

Race, Innocence, and the End of the Death Penalty

- Race. Check.
- Innocence. Check.
- See attached list of exonerations since 1991 on web site
 - 28 cases
 - 6 from death row
 - 390 years of wrongful incarceration

NC death row exonerees in recent years:

