Baumgartner, POLI 203 Spring 2016

RJA 1: the 2009 Law

Reading: RJA 2009, '11, '15

March 7, 2016

Catching Up

- Last few slides we did not get to from last Wed.
- Talk this evening: see class web page for 20 minute radio interview with Hidden Voices leaders about the presentation we are going to hear:
 - Chronological order from youth to death row
 - A mix of stories, edited and broken into pieces but the inmate's own words
 - Actors will read the stories

Courts unresponsive to statistics

- McCleskey v. Kemp, 1987
 - Baldus study: review of all Georgia death-eligible cases, same as Donohue did for Connecticut (2,500 murders, 39 non-racial variables, killers of whites 4.3 times more likely to be sentenced to death in Georgia than killers of blacks)
 - (Attorney arguing the case before the USSC: Jack Boger, until recently the Dean of UNC Law School)
- McCleskey v. Kemp: the Dred Scott of the 20th century. Statistics don't matter. Must prove "intent to discriminate" in the individual case.
- McCleskey as the "bitter end" or a litigation strategy based on racial disparities
 - Huge legal investment in this idea, from 1940s through the 1980s, ends in complete failure

So a turn to the legislature

 If the US SC will not use statistical evidence, pass a law specifically to allow this

From lawyering to lobbying...

Feb 2001 RJA proposed

Rep. Ronnie Sutton (D-Pembroke)

Passed through committees, postponed indefinitely in Oct 2002

April 2007

Larry Womble, Earline Parmon, (D-Forsyth)

Died in committee

March 2009

- Floyd McKissick Jr (D-Durham)
 - (Note: his dad was the first Black student at UNC Law)
- Legislative Black Caucus pushes hard

Outside actors

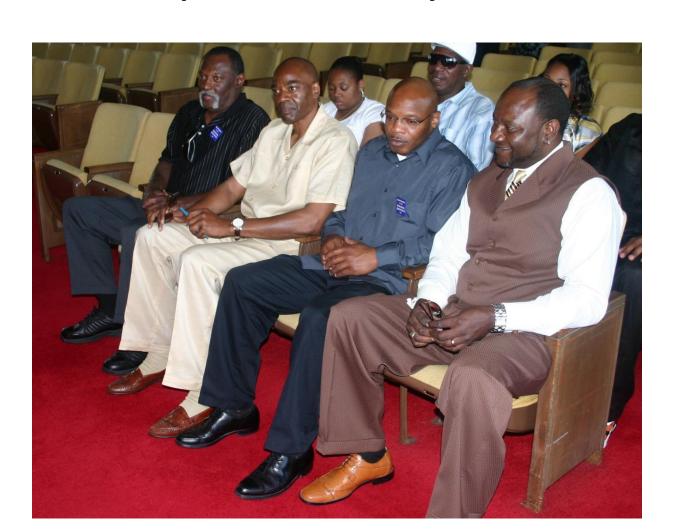
- NAACP, Rev. Barber, much more aggressive, public tone of pressure than previous president of NAACP
- Death penalty reform advocates
 - Had already had lots of successes restricting use, as we have reviewed in class
- Democratic caucus has a closed session, people come out unanimously in favor.
 - Black caucus within the democratic party: Don't think representation does not matter; it does.

Timing is everything

- NC as a leader in reforms from 2000 through 2009, eyewitness ID, many other reforms
- Exonerations: lots of them here in NC

Lobbying by exonerees, including Bo Jones,
 Darryl Hunt, Jonathan Hoffman, Ed Chapman

Lobbying the General Assembly: Bo Jones, Jonathan Hoffman, Ed Chapman, Darryl Hunt



2009 RJA

- Read the law, it is only 3 pages long...
- Show racial disparity in:

- Decision to seek or impose death:
 - In the county, prosecutorial district, judicial division, or state
 - At the time that death was sought or imposed

Relevant evidence to demonstrate disparities

- Statistical or other evidence including but not limited to:
 - Sworn testimony of attorneys... or other members of the criminal justice system

Any of three findings

- Inmate's race
- Victim's race
- Peremptory challenges in jury selection

Defendant has burden of proof

- State may offer rebuttal evidence, including statistical evidence
- Court may consider evidence of programs designed to eliminate race as a factor

Relief

Death sentence shall be vacated and the inmate resentenced to LWOP

Some details

- Some caveats at the end:
- "... comply with G.S. 15A-1420, 15A-1421, and 15A-1422."
 - Follow procedures for MAR
 - Court costs up to judge for indigent defendants
 - Appeals follow normal procedures
- http://law.justia.com/codes/northcarolina/2009/Chapter_15A/Chapter_15A.html

OK, what is clear and what is not clear?

- Clear:
 - Inmate
 - Victim
 - Jury selection
 - Statistical evidence can be used

Unclear, needs to be litigated...

 What if I show bias in the county, but the state rebuts that there is no bias in the district or state?

What if I show bias in a certain time frame?
 Which time frame is appropriate? Can't just be the day of my trial, obviously.

What is enough disparity?

- 40% v. 41%
- Judge has to rule on this, unclear
 - Judge Weeks: BOTH statistically significant at .05 level (1 in 20 chance of occurring by random chance), AND a 20 percent difference in value.
 This was taken from employment law.
 - (His ruling shows that for jury strikes, the actual probability level was more like 1 in 10,000,000,000,000,000,000,000,000.)

ten commas?

- 1: thousand
- 2: million
- 3: billion
- 4: trillion
- 5: quadrillion
- 6: quintillion
- 7: sextillion
- 8: octillion
- 9: nonillion
- 10: decillion

So the odds were 1 in 10 decillion, not very likely.

How to rebut?

Statistical evidence, clearly

- But also "sworn testimony" of people involved in the system
 - I did not intend to discriminate
 - We have programs in place to eliminate discrimination
- Unclear how such evidence would / should be weighed by a judge or the NC SC

How did this ever pass???

- O'Brien and Grosso article
- Our focus on Wednesday: debates, 4 cases that were heard, revision in 2011, repeal in 2013, current law (2015) designed to speed up executions: Restoring Proper Justice Act