

# 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 20<sup>th</sup> 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/north-carolina/2009/Chapter\\_15A/Chapter\\_15A.html](http://law.justia.com/codes/north-carolina/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.



10,000,000,000,000,000,000,000,000,000,000,  
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