

Baumgartner, POLI 203

Spring 2016

“Life in Prison with a Remote
Possibility of Death”

April 25, 2016

Catching Up

- Prison visit this Friday, 8am
 - Last Friday, 22 of 32 came
 - Last Friday: tour went on forever (1pm), very unusual.
 - Guard indicated that 36 inmates are “ready” for execution and they have been instructed to be ready to do one per week when the time comes.
 - Hospital is being re-organized in order to find space to create a 100-bed unit for geriatric, hospice, and dementia care.
 - This article appeared on 4/22 in the News and Observer:
 - <http://www.newsobserver.com/news/local/counties/wake-county/article73393092.html>

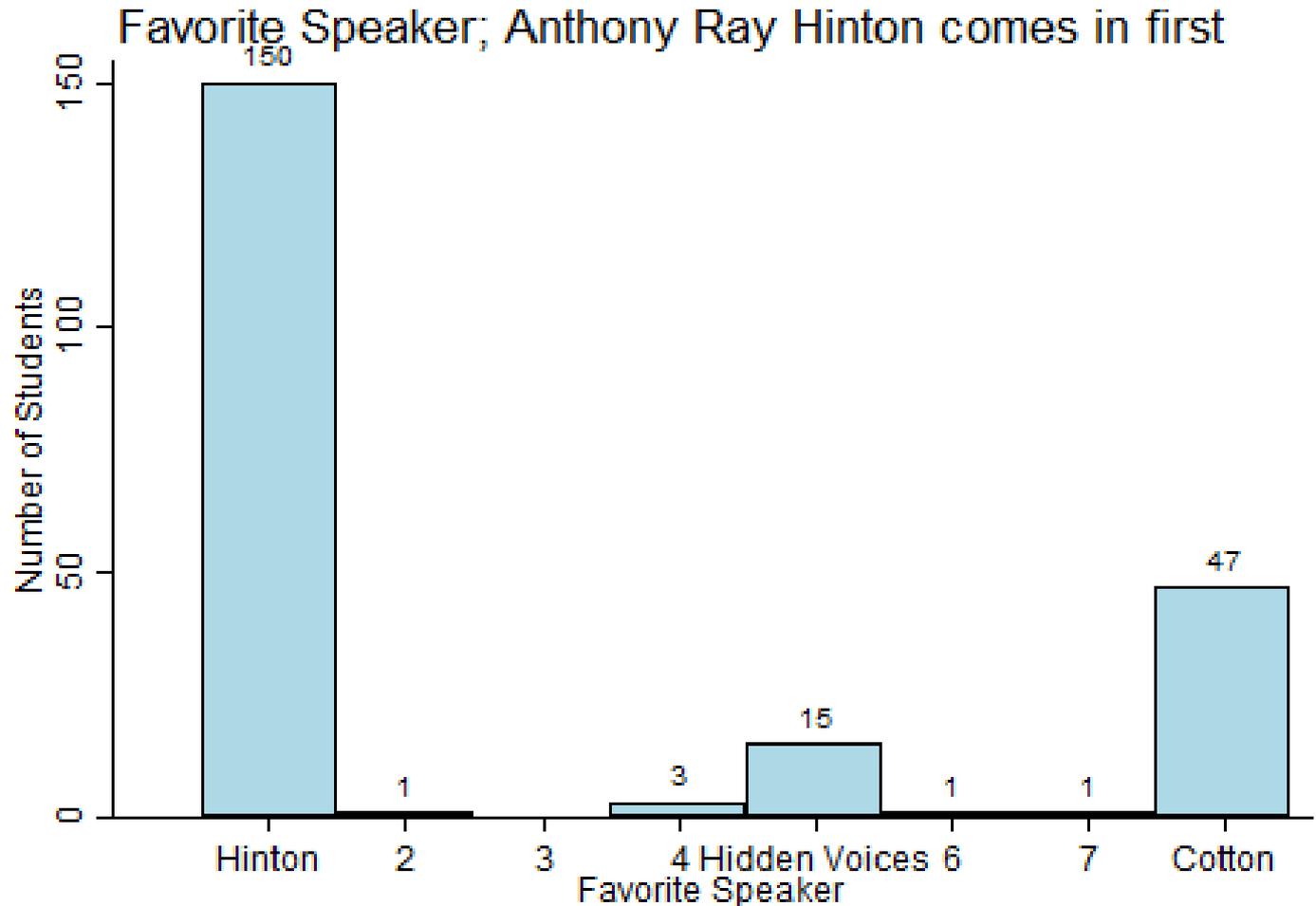
Wednesday: Exam review

- Come with your questions
- Remember, 3 parts:
 - I. Identical format to quizzes you have taken
 - II. Identifications
 - Define the term
 - Indicate its significance or relevance to this course
 - III. Multiple choice (BRING A SCANTRON)
- Note: on last scantron assignment, 8 of you did not have a name or PID in your scantron, so if that had been the final exam, you would have lost all credit...

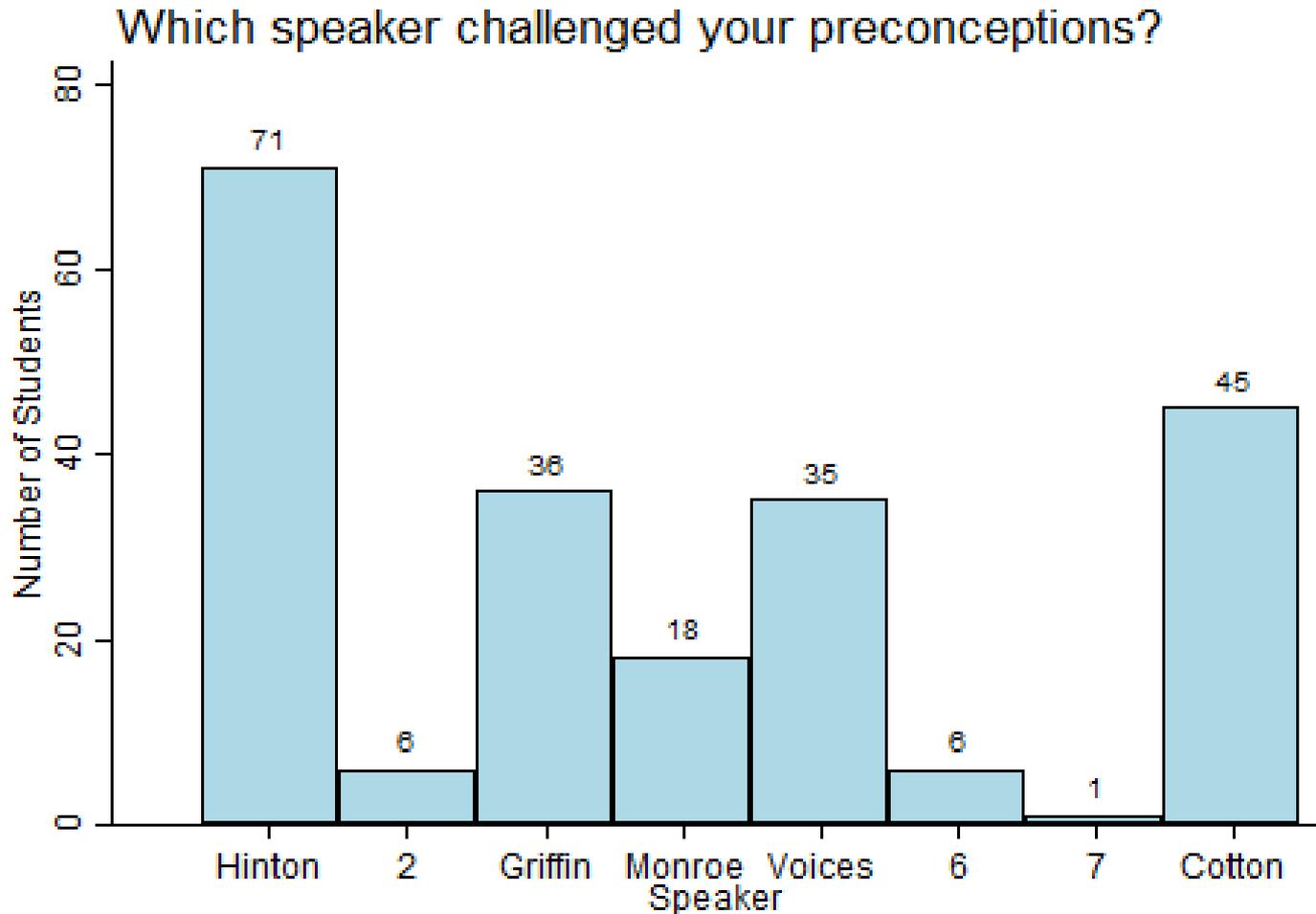
Course evaluations

- So far (this morning), just 54% completed.
- You have until Wed night to do them. Do them today!
- Also remember to do them for your sections, separately from the lecture
- We use these for two main purposes
 - Improve / revise the class next time, so give comments
 - Assess / evaluate / document quality of teaching. It really does get used in salary decision and for the TAs in their job applications when they want to become professors. So, it does indeed get used.

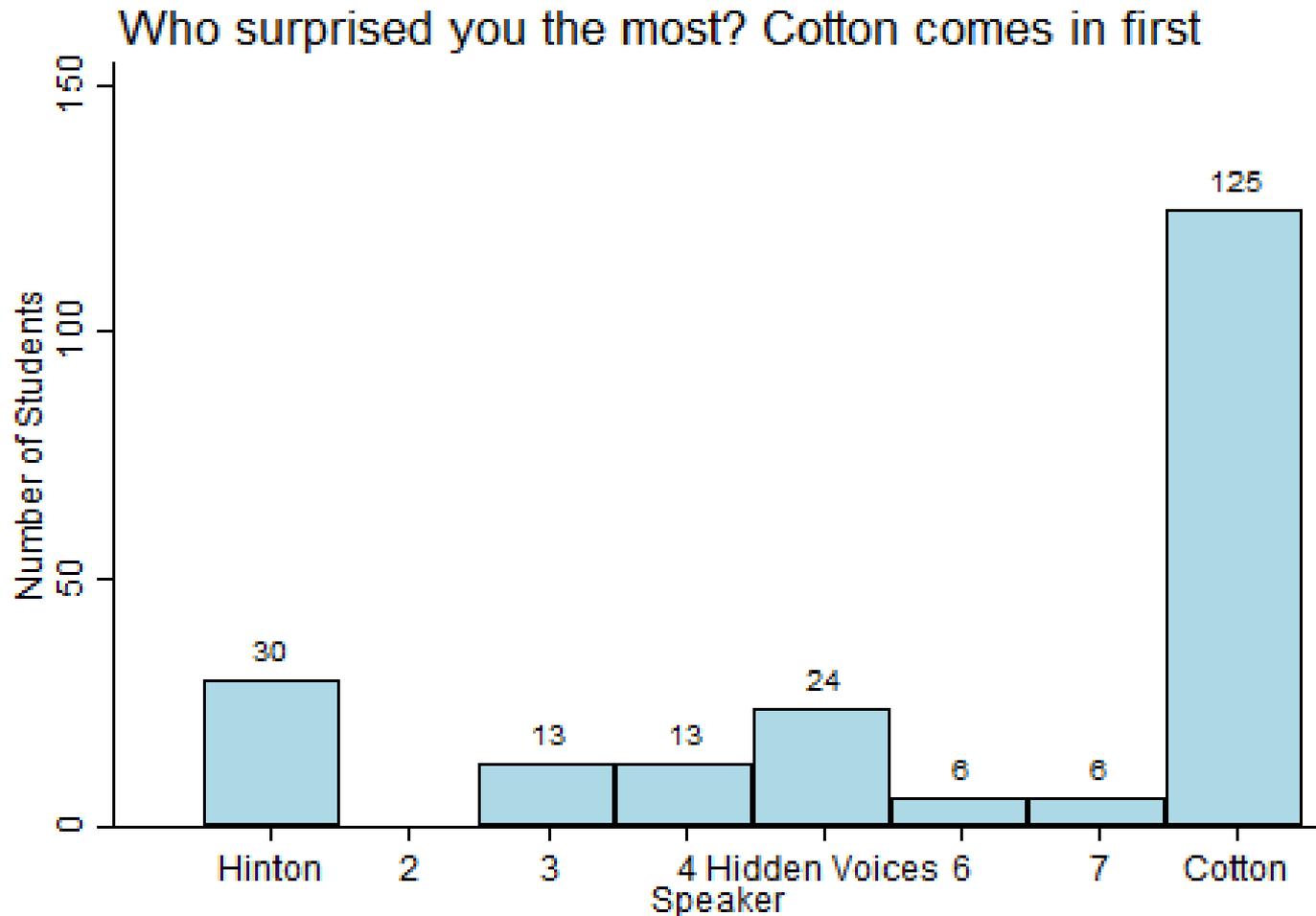
Which speaker was your favorite?



Which speaker challenged your preconceptions the most?



Which speaker... Surprised you the most? Picking Cotton



Books ranked on a 5 point scale



Jones v. Chappell: Calif. Death penalty is unconstitutional (later reversed)

- Ernest Jones sentenced to death, 7 April 1995, still on death row as of this decision, 2014.
- 900 sentenced since 1978, 13 executed
- California's death sentence has been quietly transformed into one no rational jury or legislature could ever impose: *life in prison, with the remote possibility of death.*

Judge's summary

- 900 death sentences
- 13 executions
- 94 died of other causes
- 39 got relief from federal court, not resentenced
- 748 currently on death row
- (plus six cases makes 900)
 - Of the 748 on death row, 40 percent have been there for > 19 years

Cases from 1978 to 1997

- 511 sentences
- 81 cases have completed their review process
 - 32 denied relief
 - 13 executed
 - 17 awaiting execution
 - 2 died of natural causes
 - 49 granted relief by federal courts. 60 percent
 - (This is about similar to national norms, actually. FB)
- Note that only 81 cases have had complete review, but all these cases are 18 to 37 years old!

Causes of delay: Inmate or State?

- State direct appeal.
 - 3 to 5 years delay before a lawyer is appointed for direct appeal to CSC
 - Up to 4 years to do the appeal work
 - 2-3 years to schedule the hearing
 - Total: 11.7 to 13.7 years before direct appeal
- Wow. Note that this is due to the state, and of course, the defense attorneys never attempt to speed things up

State Collateral (“Habeas”) Review

- Another attorney is appointed, similar delays
 - 2008 study: 8 to 10 years after the sentence for appointment of the habeas attorney
 - 76 inmates have had their direct appeals denied but still have no habeas attorney, having waited an average of 15.8 years...
- Prepare the habeas brief: 3 years after appointment
- Decide on the merits: 22 months
- Typical delay: 17 years before the habeas review is decided by the Calif. Supreme Court

Federal Habeas Review

- As of 2008, typical delay was 10.4 years.
- Only 81 inmates of 900 have received final determinations on federal habeas review
- (That means they are not eligible for execution.)
- In fact, only 17 of 900 inmates in California are eligible for execution, with a MINIMUM time on death row of 25 years.

Is this constitutionally acceptable?

- Who gets killed?
 - Worst murderer?
 - No, those where the habeas process happens to go most quickly, where the lawyer gets appointed more quickly, other factors totally unrelated to the crime.
 - Mr Jones: 285 other inmates have been on death row longer than him. Completely arbitrary.
- Deterrence, retribution goals reduced by delay
- Delay not the fault of the inmate, but the state
- Promise of death is an empty one, both to the inmate and to society
- No penological purpose. Arbitrary. Therefore unconstitutional

Case overturned

- The US Federal Circuit Court overturned Judge Carney
- Why?
- California had not yet completed its review of Mr. Jones' case. Therefore there is no federal role, since the federal government only gets involved AFTER the state has completed review.
- Note the irony: it takes 25 years for state review...
- In any case, no decision on the merits of the case.

The Next USSC Case?

- Jones v. Chappell and Glossip v. Gross may foreshadow what the issues will be.
- Same as in Furman, plus delay.

Furman v. Georgia: Five Justices, Five Reasonings

	Brennan	Stewart	White	Marshall	Douglas
Capricious	X	X	X	X	X
Racially Biased		X		X	X
No Deterrent Value	X		X		
Cruel / inhumane	X	X	X	X	
Retributive only	X		X	X	
Would eliminate capital punishment in the abstract	X			X	

Gregg v. Georgia (1976)

- Bifurcated trials
 - Guilt phase, Penalty Phase
- “Proportionality review” = make sure it is reserved for the “worst of the worst”
- Enumerate the aggravating and mitigating circumstances.
- Avoid the completely random and arbitrary nature of it from Furman.
- Question for the term: have we done this?

Furman and Gregg

- Now, we have 40 years of experience
- Have we “threaded the needle” between the arbitrary and capriciousness that was (narrowly) rejected in *Furman*, and benefited from the greater clarity and limitation to the worst of the worst that was the goal of *Gregg*?
- Does it even matter? Where is the constitutional threshold for acceptability?
- Some will never reject, since it is in the original intent.
- But it takes 5 votes to change the law, not 9...

Some final thoughts

- Thanks for your interest in this topic
- Our focus has been on the warts, not the beauty, in the system.
 - Only by focusing on the worst elements can we eliminate them
 - IMHO, this is the highest form of patriotism
 - No systems are perfect, but we can struggle and work to improve them
 - A focus on the worst elements of the system is not only to say the system is bad. It is to say where we can make it better.