

# Baumgartner, POLI 203 Fall 2014

Ken Rose and Bo Jones, part 1: what's  
it like to be a capital defender?

Reading: Beginning of *Last Lawyer*,  
NYT article from class web site

October 20, 2014

# Catching up

- Two more exonerations since last Wednesday's class, no kidding
- Law School event tomorrow evening at 5:30pm, room 5048 Law, re: McCollum and Brown
- Speaker Wed: LaMonte Armstrong and Theresa Newman (Duke Innocence Project)

# Conviction Integrity Units

- Read on class web site about Dallas, TX and Brooklyn, NY
- Consider McCollum and Brown
- Sometimes the new DA thinks the old DA made mistakes
- This is very unusual, for many reasons

# Huge predictor of exonerations

- Faced with evidence such as that in McCollum's case, the DA may:
  - Put up a fight, refuse to cooperate
    - Joe Freeman Britt: “apparently the district attorney just threw up his hands and capitulated.”
  - Or, cooperate, drop the charges, and apologize
- Apologizing is extremely rare...
- Creating a conviction integrity unit brings the DA's office out of the dynamic of confrontation, pride, and self-defense

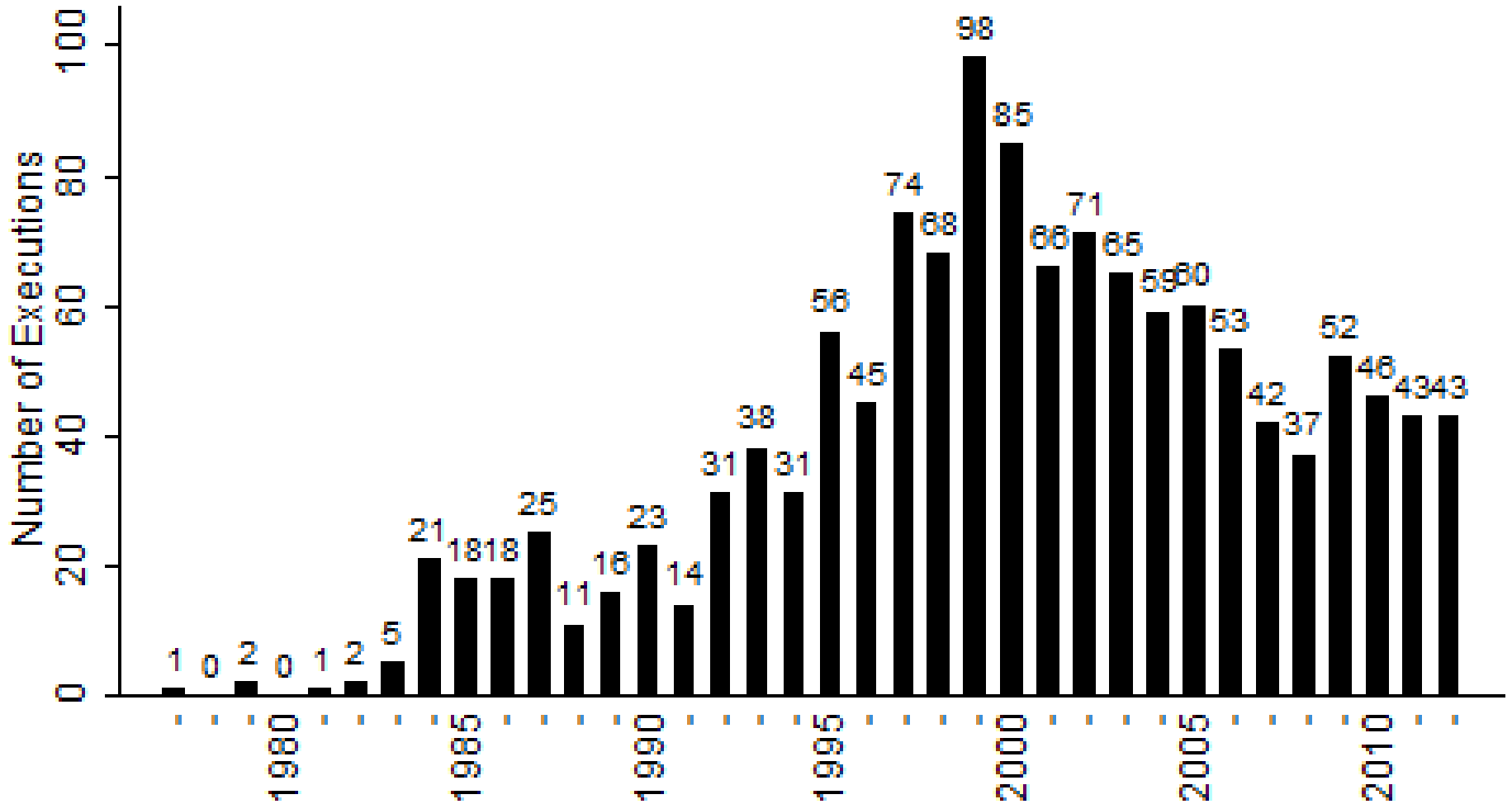
# Death Row Attorneys

- Many of the best ones nationally are right here in NC. Jack Boger argued McCleskey.
- CDPL, in Durham, is the only organization of its kind, nationally
  - They organize defense for all capital defendants, state-wide, assigning lawyers
  - They train lawyers
  - They have a lot of experience, doing nothing else but capital law.

# Two historical periods

- NYT article is from 1988.
  - Laws were expanding the use of DP
  - Inmates were reaching the end of their appeals
  - Executions were accelerating
  - Defense attorneys very commonly losing their cases, clients being put to death
  - Hard work...
  - Public opinion strongly against you
  - Especially in the towns and counties where you are doing the work: Mississippi, Texas, SC, GA, NC

## US Executions 1977 to 2012



The US has executed 1320 inmates from 1977 to 2012.

# More recent period

- Tide changed in 1990s
- More optimism
- More successes
- One success leads to another: concern about exonerations leads, naturally, to reforms that may lead to more exonerations...
  - Example: DA's creating Conviction Integrity Units...



# Conditions of work

- NYT story from 1988: not uncommon for attorneys to be paid \$1,000 to \$2,500 as a flat fee for a capital defense
  - This no longer so common, but it was at the time
  - Many people currently on death row are from that time
- Pro-bono law firms take the cases
- CDPL not such a thing; it is result of reform

# People hate what you do

- How to defend a murderer?
- Public opinion always on the other side...
- Most clients are guilty, many did awful things...
  
- But:
- Death is different
- The system does not work when one side simply folds its hands... Adversarial nature of the system requires a defense just as vigorous as the prosecution will be. Interesting paradox.

# Takes an iron stomach

- People hate you
- You may well not like your client
- Your client may want to die
- Your client may be out of his / her mind
- The state is coming at your client with intent to kill him/her, and quite likely they will succeed (at least up until the 1990s)

# Save your client on a technicality?

- Sweeping arguments that could end the death penalty:
  - Race (McCleskey): Nope.
  - Geography: Nope.
  - Arbitrary: Nope. (Furman said this, but not since then)
- So, “hand-to-hand combat” – each case its own details, look for flaws, overlooked elements in the earlier trial

# Denigrate the work of your colleagues?

- Appeals often rely on “Ineffective Assistance of Counsel”
  - Original lawyer was incompetent or worse
- Easy to do when the person was asleep or called no witnesses, or was drunk, etc.
- But what about when they did a good job but just missed a detail?
- To save your client, you may have to argue that this was an unconstitutional failure, basically one of incompetence. You have to argue it, the court can turn you down.
- Not a great way to make friends, or keep them.

# Wednesday

- Read the stories on the class web site
- We start in on the Bo Jones case

