

Baumgartner, POLI 203 Fall 2014

RJA 1: the 2009 Law

Reading: RJA 2009, O'Brien
And Grosso

Nov 3, 2014

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

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

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: legislative passage
- 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

Timing is everything

- Exonerations
- Exonerees happened to be black
- Lobbying by exonerees, including Darryl Hunt

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

