Background on the Death Penalty Process

January 25, 2016

Readings: catch-up on Jost, then Just Mercy
Catch-up from last week

• NC reforms reducing use of DP
• NC methods of execution

• Issues Pro and Con
Big reforms reducing the DP in NC

- 1994: LWOP is the alternative to DP
- 2000: creation of Indigent Defense Services
- 2001: Prosecutors have discretion to seek DP
- 2005: US SC rules in *Roper* against DP for juveniles
- 2006: Physicians oppose lethal injection, no more executions since then.
NC methods of execution

• Before 1910: hangings in front of local court house

• 1910: Executions centralized in Raleigh
  – Electric chair, no longer hangings
  – Gas chamber later
  – Lethal injections later

  – Each innovation an attempt to create a safer, calmer, more humane method
  – Similar to trends nationally.
Issues (CQ researcher)

• Indigent Defense Resources
  – Last priority of a state legislature: pay for lawyers for guilty people. We are already paying for the prosecution!

• Vulnerable populations targeted
  – Mentally Ill
  – Mentally Incapacitated (e.g., low IQ)

• Innocence / Errors
Issues (continued), Pro-DP Arguments

• Retribution is a legitimate goal of justice
  – Retributivist argument is “just desserts” – some crimes are so terrible the perpetrators deserve death

• Incapacitation
  – Remove the perpetrator, permanently, the only way to ensure no further crimes

• Deterrence
  – Conflicting studies on this topic, National Academy of Science review in 2012 said we should draw no conclusions
Issues (continued)

• Local variation
  – State by state, but also within states
  – DA’s decide whether to prosecute
  – Juries cannot be monitored
  – Strong tradition of “local control” but when does this veer into “arbitrary” or “capricious” if the same crime sometimes does and sometimes does not lead to death?

• Recent Chapel Hill killings were in Durham County, just across the border. Death is on the table. Orange County has never had a death sentence...
Issues (continued)

• Torture, delays, cancelled, stayed executions
  – Most death sentences are overturned
  – Most scheduled execution dates are cancelled, often at the last minute
  – Is that torture? Schedule your death, then say “oops”?
  – Many would say this is a positive, who cares if one of these individuals suffers? Justice Scalia: What an enviable death compared to what he inflicted...
  – On the other hand, do we want the government to do this, on purpose, by design, to torture someone?

• Race, Gender of inmate, victim
  – Female offenders: 10 percent of homicides, but only 15 women have been executed...
Furman, Gregg, and the Constitution

• The safeguards in *Gregg v. Georgia* were supposed to eliminate the deficiencies recognized in *Furman*. Our question for the semester: has this occurred.

• So these questions of “equal protection of the law”, “cruel and unusual” punishments”, and “evolving standards of decency” are key.
“...them without the capital get the punishment...” (p. 6)

Why is the life of a public defender (or prosecutor) so different than that of a mergers and acquisitions attorney?

– Law school saying from way back: “Two kinds of lawyers: social engineers, and ... parasites” (ouch!)
Proximity

• 1980s to about 2010 or so
  – Three strikes you’re out
  – President Clinton, campaigning for office in 1992, suspended his campaign for a day to return to Little Rock for the execution of Ricky Ray Rector, who was so brain damaged by a gun shot wound to the head that he asked to save his pecan pie from his last meal so he could eat it the next day.

• You must dehumanize to do these things.
What Defines You?

• Think of the best three things you have ever done, things you would like people to about know you, or for your mom maybe to know, to make her proud.

• Think of the three worst things you may have ever been involved in.

• Now think of the single worst of those.

• Are you defined by that single act, forever?
Venue-Shopping and Jury Bleaching

• Venue-changing at the discretion of the judge.

• Many southern counties are high in Af-Am populations, particularly rural Alabama. Stevenson’s client, Walter McMillan, moved from Monroe County (40% Af-Am) to Baldwin County (on the coast, 9% Af-Am, not to other neighboring counties 40-75% Af-Am) (pp. 59ff)

• Judge: Robert E Lee Key...

• If the judge believes you to be a “drug kingpin” and he is a crusader in the “war on drugs” then his goal is clear...
Peremptory Strikes and Batson

• NC: Each side gets 12 strikes for no cause
• However, in *Batson v. Kentucky* (1986) the USSC said that strikes for purely racial reasons are not allowed.
• But what is the standard?
• The striking side must proffer a “racially neutral” reason.
  – Note, it does not have to be reasonable.
  – The decision has almost never led to a successful challenge
  – Jury bleaching is currently in front of the USSC, as it is so rampant. All for NC RJA cases won when statistical patterns were considered.