

Statement to House Select Committee on Racial Discrimination in Capital Cases

February 10, 2012

Statistics and the Racial Justice Act

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I'm Elliot Cramer. I'm a retired UNC professor. I've taught and done research in quantitative methods and I've worked as an applied statistician for over 40 years in a variety of areas. I've published extensively in statistical and quantitative journals. I've done a good deal of consulting and legal testimony on statistics related to discrimination and I've been qualified as an expert in statistics in a number of court cases. I've been involved as an expert in statistics in two death penalty cases. I am neither a proponent nor an opponent of the death penalty.

It is a pleasure to be back here to give you my views on the Racial Justice Act. I appreciate not being the first speaker; when I was here last time, Reverend Barber of the NAACP compared me to Kramer on the Seinfeld show. I never watched that show but I understand that this wasn't meant as a compliment. Since I'm a liberal Democrat and longtime member of the ACLU; one would think that my views on many issues would be very different from those of Representative Stam; our friendly email correspondence confirms this. The issue of sectarian prayer is an example; I agree with the ACLU on the issue of constitutionality but also with Jesus who says in Matthew 6.6

When thou prayest, enter into thy closet, and when thou hast shut thy door, pray to thy Father which is in secret.

Notwithstanding this, I now have a number of conservative friends and supporters as a result of briefly being advisor to a conservative student group "Youth for Western Civilization. When scurrilous brochures were spread around campus with claims that I was a racist, along with my picture home address and telephone number, I received a late night Email from the group president who was concerned for my safety. I humorously wrote back saying "I have a colt 45 and I know how to use it, I used to be able to hit a quarter at 50 feet seven times out of ten". Chancellor Holden Thorp was not amused and asked me to resign as advisor. The next day my picture was on the front page of the News and Observer and the University received a great deal of unfavorable publicity. I don't think that Holden has ever forgiven me. When I later Emailed him with the heading "Is there intelligent life in the office of the UNC general counsel" and asked the UNC counsel to apologize for false accusations she made about me, Holden terminated my UNC email account and website in violation of my first amendment rights. I've been defended by a free speech group called FIRE but I haven't been able to find anyone at the UNC law school who would speak up for me. That's why I don't have a UNC website in my hand out.

With regard to the racial justice act, I agree with Representative Stam and some of you others. My ancestors wrote the old testament and in Leviticus they listed a number of abominations such as eating shellfish, lobster, and BLT sandwiches. I was corrupted at an early age by an older brother who bought me my first BLT; I've never gotten over it. If there were to be a revision to Leviticus, I would add another abomination - the racial justice act; it has nothing whatsoever to do with racial justice. There is a public perception that it has to do with African-Americans being unfairly sentenced to death. Nothing could be farther from the truth; the claim is that the murderers of African-Americans (94% of whom are African-American) are LESS Likely to get the death penalty than murderers of Whites. Is this discrimination against African-American murderers or is it discrimination against White murderers? It could be remedied by sentencing more murderers of African-Americans (mostly African-American) to death but I don't think that this is what any of us want.

Actually this is an example of lying with statistics and you can believe me because I am a statistician and a direct descendent of Solomon on my mother's side; at least that is what my mother told me. Murders involving African-American victims are very different from murders involving White victims. The White victim murders are much more likely to have serious aggravating circumstances such as robbery, rape, murder of a police officer. Murders involving an African-American murderer and a White victim are by far the most aggravated murders, and the first Racial Justice Act case to go to trial is an horrific example. It has been going on for almost two weeks.

Marcus Robinson, an 18 year old African-American, was reported to have stated that after he got out of prison he "was going to burn him a whitey." Just 10 days after getting out, he met Erik Tornblom, a 17 year old White man, who reluctantly agreed to give his African-American classmate Roderick Williams and Robinson a ride. Once Tornblom got into the car, they put a sawed-off shotgun to his head and ordered him to drive down Legion Road. Robinson and Williams made Tornblom get out of the car and lie down on the ground where he pleaded for his life. Robinson or Williams - each said the other did it - put the gun to the left side of Tornblom's face and pulled the trigger. Then they emptied his pockets of \$27 and took the car.

In this case there is a claim of racial bias in jury selection, but there were three non-white jurors - about what one would expect by chance, given the jury pool. It seems to me that the State has done an inadequate job of challenging the statistical evidence and that the State is likely to lose this case.

The studies that have been cited to support the Racial Justice Act do a grossly inadequate job of accounting for differences in aggravating circumstances. The most prominent North Carolina study was by UNC Political Scientist Isaac Unah and UNC law school dean Jack Boger. It was a dreadful study and they have not been able to publish any of three versions in ten years. These versions are contradictory, one claiming that it's not the DAs who discriminate but the juries. At a 2001 news conference it was announced that critics were free to examine the data. After many emails and a statement by Jack Boger, I'm still waiting. Actually I had my hands on the data two years ago but they had it sealed by the Court. At the Cumberland County trial in progress, the authors of another study have decided not to try to have the data sealed but instead have copyrighted it. What do they have to hide?

I am not a gungho supporter of the death penalty. I do object to using bogus statistical evidence to overturn it and, it seems to me that this is the aim of most of those who support the racial justice act. If the legislature, in its wisdom, decided to abolish the death penalty, it would not offend me, now that the State has life without parole. The part of the Act that I find objectionable is that a murderer need not prove that he was discriminated against; it is evidently sufficient to show that ANYONE in the State was discriminated against.

I believe that the death penalty should be reserved for the most heinous crimes and I think that this is now the tendency in North Carolina. Executions were cut in half once life without parole became an option. There undoubtedly are some on death row who would be sentenced to life without parole, were they tried under the current statute. The governor has the power to commute any such persons and this would be preferable to action under the racial justice act. We have the example of Governor Easley commuting the sentence of Roger Bacon Jr., possibly based on the claim that he was sentenced by a racist jury.

North Carolina does have a history of discrimination in the death penalty, as shown in my handout, but I believe that it has been remedied by the change in the death penalty statute. I believe that the Racial Justice Act serves no useful purpose. It will cost the State a huge amount of money as the current two week trial shows and will not accomplish racial justice.

The State is not doing well in the Cumberland County case. I disagree strongly with the statistical claims of discrimination presented in the report by two Michigan State faculty members. I do not think that the expert for the State has effectively challenged their arguments. He has shown, however, that while the State has excluded substantially more African-Americans than Whites in the cases of those on death row, the defense excluded substantially more Whites than African-Americans; this balances out so that about one third of eligible White jurors are seated and about one third of eligible African American jurors are seated. The State has argued that their peremptory challenges are made for non-discriminatory reasons such as opposition to the death penalty and make no claim that the Defenses' peremptory challenges were made with discriminatory intent.

In the Michigan study, only the States peremptory challenges are considered and this is evidently appropriate under the Racial Justice Act. Indeed, even if the State did not remove more potential African-American jurors than White jurors, it would be sufficient to show that the Defense acted with discriminatory intent in removing potential jurors; this would be evidence of discrimination under the Racial Justice Act and would be a justification for converting death sentences to life without parole. This is absurd but is only one of the flaws in the Act. The suggestion that the legislature should let the trials take their course for several years is equally absurd.

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www.ourpaws.info/cramer/death RJA Reports

www.ourpaws.info/cramer Resume

1910-20	42 Blacks executed	8 Whites executed
1921-30	51 Blacks executed	7 Whites executed
1931-40	98 Blacks executed	32 Whites executed
1941-50	78 Blacks executed	26 Whites executed
1951-61	13 Blacks executed	2 Whites executed
1962-83	No executions	
1977	New death penalty statute enacted	

1984-2012	13 Blacks executed	28 Whites executed
	88 Whites removed from death row.	
	99 Blacks removed from death row	

White kill White	27	White kill Black	1
Black kill Black	7	Black kill White	6

On death row February 6, 2012

	Male	Female	Total
White	61	2	63
Black	81	1	82
Indian	7	1	8
Other	4	0	4
Total	153	4	157

AGENDA

February 10, 2012
Room 1027/112B, Legislative Building
10:00 AM

WELCOME AND INTRODUCTION

Rep. Tim Moore, Chair

(At the discretion of the Chair, speakers may be called in an order different than listed)

- N.C. Conference of District Attorneys
The Honorable Colon Willoughby
District Attorney, Wake County
- Ken Rose, Senior Attorney
Center For Death Penalty Litigation
- Professor (Retired) Elliott Cramer
University of North Carolina at Chapel Hill
- The Honorable Locke Bell, District Attorney
Gaston County
- Scott Bass
Murder Victim Families For Reconciliation
- The Honorable Garry Frank
District Attorney, Davidson County
- Public Comment