

Baumgartner, POLI 195 Spring 2013

Where the RJA came from

Reading: Grosso O'Brien, MSU Law
Review 2011

April 1, 2013

Preliminaries

- Greg Taylor and Yolanda Littlejohn
- Where: Duke Divinity School, 0016 Westbrook
- Date: April 9th
- Time: 5:30PM
- Parking: Parking is available by the Bryan Student Center, 125 Science Drive

Preliminaries

- James Holmes, Colorado gunman who killed 12 and injured 70 in the movie theater
- He offered to plead guilty and accept LWOP
- Prosecutor refused. “Justice is death” in this case, he said.

The Road to RJA

- Post-Furman, what do you do?
- Legislatures are clearly hostile, as they just recently passed laws reinstating capital punishment
- Example: NC made capital punishment **MANDATORY** for all 1st degree murder (later ruled unconstitutional)

Venue-Shopping

- NAACP-LDF is the key player in litigation
- Choose the courts, not the legislatures
- A long tradition for civil rights groups
- Legislatures are not the venue for oppressed minorities, never have been!

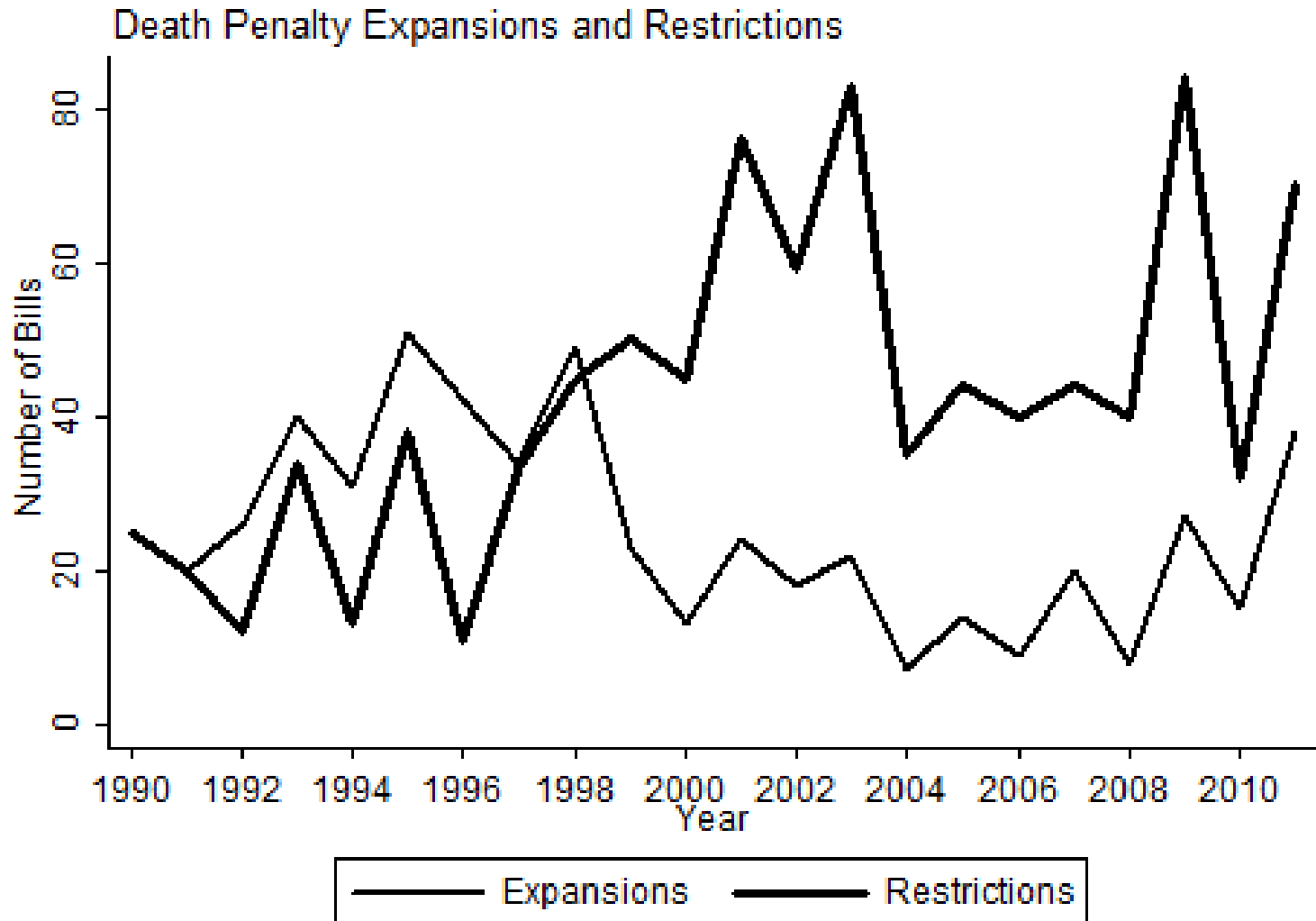
Venue-shopping today

- Clearly, the current NC legislature wants this issue back in “their court” – a clear debate about abolition v. retention
- Obviously, death penalty opponents, knowing they will lose in the current legislature, have an incentive to keep the issue in the judicial system, not the legislature.

Venue Shopping is Common

- State or federal?
- EPA or Dept of Agriculture?
- City or county responsibility?
- Family / private sector?
- Court v. legislature v. governor's prerogative?
- No clear rules of jurisdictional assignment

Things have changed in legislatures



The Litigation Strategy

- Limit the crimes eligible for death
 - Still lots of discretion; NC example of the crime being “especially heinous, atrocious, or cruel”
 - Judges have upheld:
 - Prolonged torture
 - Plead for life, knowing death was imminent, no physical torture
- This has indeed reduced the scope of the DP

Litigation strategy

- Focus on Racial disparities
 - Baldus study
 - McCleskey
- Ultimate failure of the strategy in McCleskey
- This may have ended the litigation strategy and led to a more grass-roots strategy.
- If the courts uphold statistical patterns like that, perhaps there is a more favorable venue.

A Legislative Strategy

- Many social movement actors coalesce
- Black Caucus in the NC Legislature
- NAACP-NC
- NC Coalition for a Moratorium
 - Broad range of progressive actors there, mostly surrounding death penalty reform
- So “insiders” and “outsiders” (legislators)
- Race-focused and death-penalty-focused

First RJA proposal: 2001

- Indefinitely postponed, 2002
- New bill, 2007, died in committee
- Same bill again, 2009, passed

Two types of advocates

- NAACP, voting rights, RJA reform
- NCCM, never discusses abolition
- Both focus on “cooling off” “studying” “investigating” the death penalty for a time
- RJA as a reform, not an end, to the death penalty

Changes on the ground make success possible

- Exonerations
- Six exonerations in the 10 years before RJA
- Ron Cotton (not death row), Alfred Rivera (1999), Darryl Hunt (2003), Alan Gell (2004), Jonathan Hoffman (2007), Ed Chapman (2008), Levon Jones (2008)

A picture is worth a thousand words



NC Actual Innocence Commission

- Official state commission, within the justice system
- So real recognition that exonerations indicate a problem.
- 2002 creation; 2003 eyewitness ID reform; Innocence Inquiry Commission, 2006, Greg Taylor exonerated Feb 2010

Greg Taylor and SBI

- Greg Taylor released Feb 2010
- Blood spatter experts, exonerating evidence withheld...
- Aug 2010 opportunity to call for reforms
- (Note these are just AFTER RJA passed in 2009, but part of the same narrative)

The New Narrative

- A broken, race-ridden system.
- So the RJA passes in 2009
- Note that it was part of a very unusual historical development. Nothing new, but then again a climate of reform and concern with flaws in the administration of the system

Post-RJA

- Responses against it of course are now very powerful
- Again, we may be into a game of venue-shopping
- Courts may not overturn their own decisions so easily; the legislature can do so by simple vote.