

Baumgartner, POLI 203

Spring 2016

The Last Lawyer

February 22, 2016

Speaker tonight: Ken Rose

- OK to come with questions about Bo Jones
- Gary Graham: currently an investigator for the Mississippi post-conviction capital defender (e.g., Capital appeals).
 - Homicide, but not capital homicide
 - 5 years, MS death row
 - 23 years in prison
 - Learned a lot of law in prison

Graham Phillips: Legally incompetent? Or did he miscalculate?

- It's not unconstitutional to have a bad or lazy lawyer, or one who miscalculates
- Same with Greg Taylor: defense says the DA can't prove it so puts up little defense, certainly no mitigation defense for the penalty phase...
- Presumption of innocence means sometimes defense attorneys miscalculate: state has to prove the case...

Defense plan

- Negotiate a plea
 - Not that easy when client is innocent!
- No investigator of the facts of the crime
- No experts / school / medical records...
- No expectation that the DA could prove the case, since the witness was bad and there was no physical evidence, and there were any number of people who could have killed Leamon Grady.

Conflict of Interest?

- Small town...
- Graham Phillips' wife was niece of Leamon Grady
 - Inherited part of the estate
 - Leamon was executor and took 10 percent of estate plus expenses when it was divided
 - Judge rules this is inconsequential.
 - Would you want your attorney to be related to the deceased?

Good enough reasons for a new trial?

- Have to make the case this was “ineffective assistance of counsel” not just mistakes
 - Fair trial just means your lawyer has the opportunity to argue, not that he is perfect...

Jury credence to witnesses

- Why believe Lovely Lorden?
 - Apparently they did...
- Bo Jones as the defendant
 - Previously guilty of several crimes
 - Low mental capacity
 - Drinking / crack problem
 - Very little defense presented
- Weigh those two things, with the police and the local officials having a “good suspect” in custody. So, the outcome is not a shock.

Is Bo Jones crazy?

- Does this matter?
- It could save him from death, lead to the sentence being changed to LWOP
- But it would not set him free.

- Dual track defense: get him off death row (delusional); try to get a new trial

Does Bo Jones have a “delusional belief in God”?

- God won't allow this to happen?
- Judge may not accept the idea that someone who strongly believes in God is crazy... Same with the juries.
 - Judge is known as “The Deacon” and regularly quotes the Bible from the bench...
- But what if Bo Jones' belief in this outcome is actually delusional?
- Of course, this can't be tested...

How unpleasant to save someone

- Your own attorneys have to argue that you are crazy.
- Imagine what that does to the inmate
- No wonder he did not trust anyone!

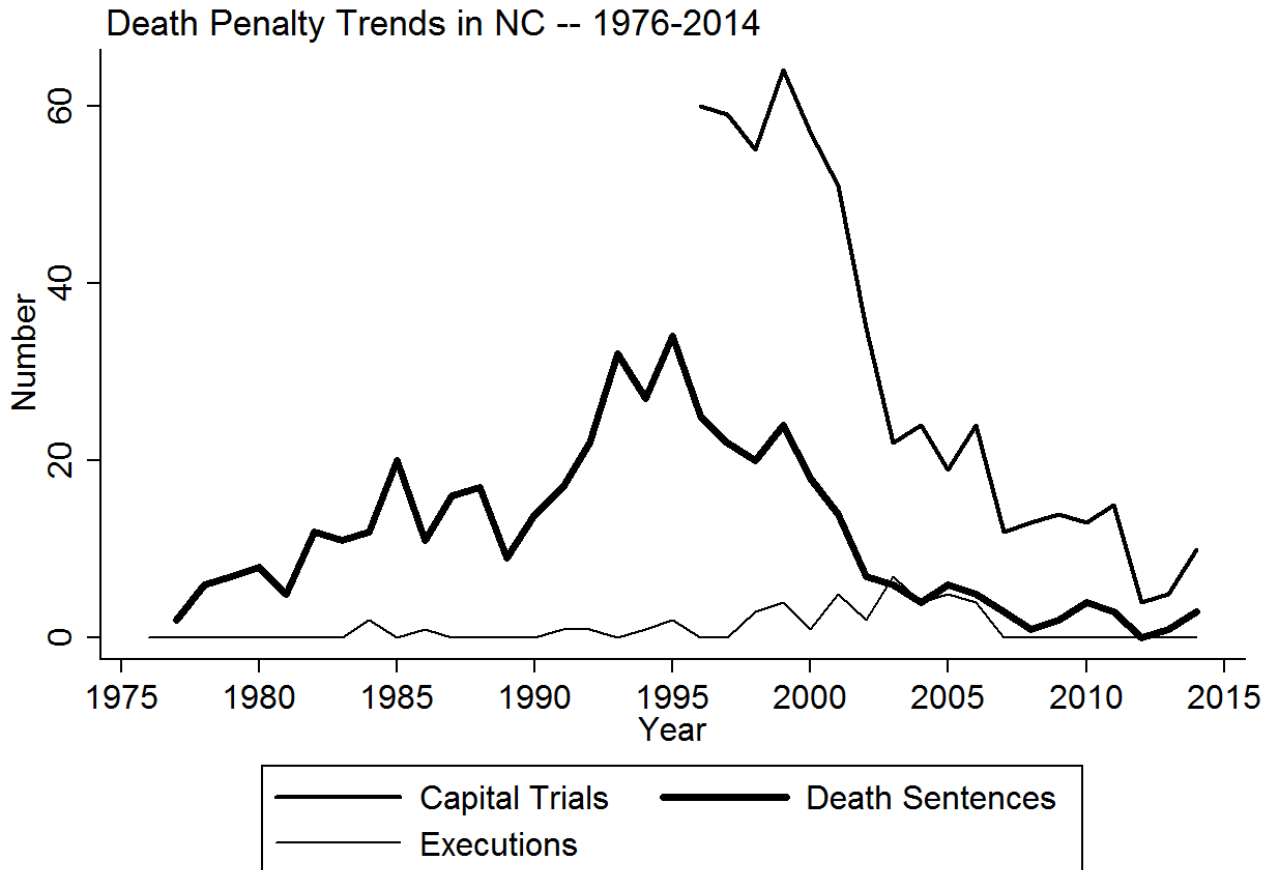
Prosecutorial Discretion

- Dewey Hudson, 1993 DA
- He had no choice, the law required that he seek death if there was an aggravating circumstance
- He had misgivings about the case, based on one person's testimony
 - Plus, that person was Lovely Lorden
- His hope, that Bo would take a plea
- Valerie Spaulding, defend the record

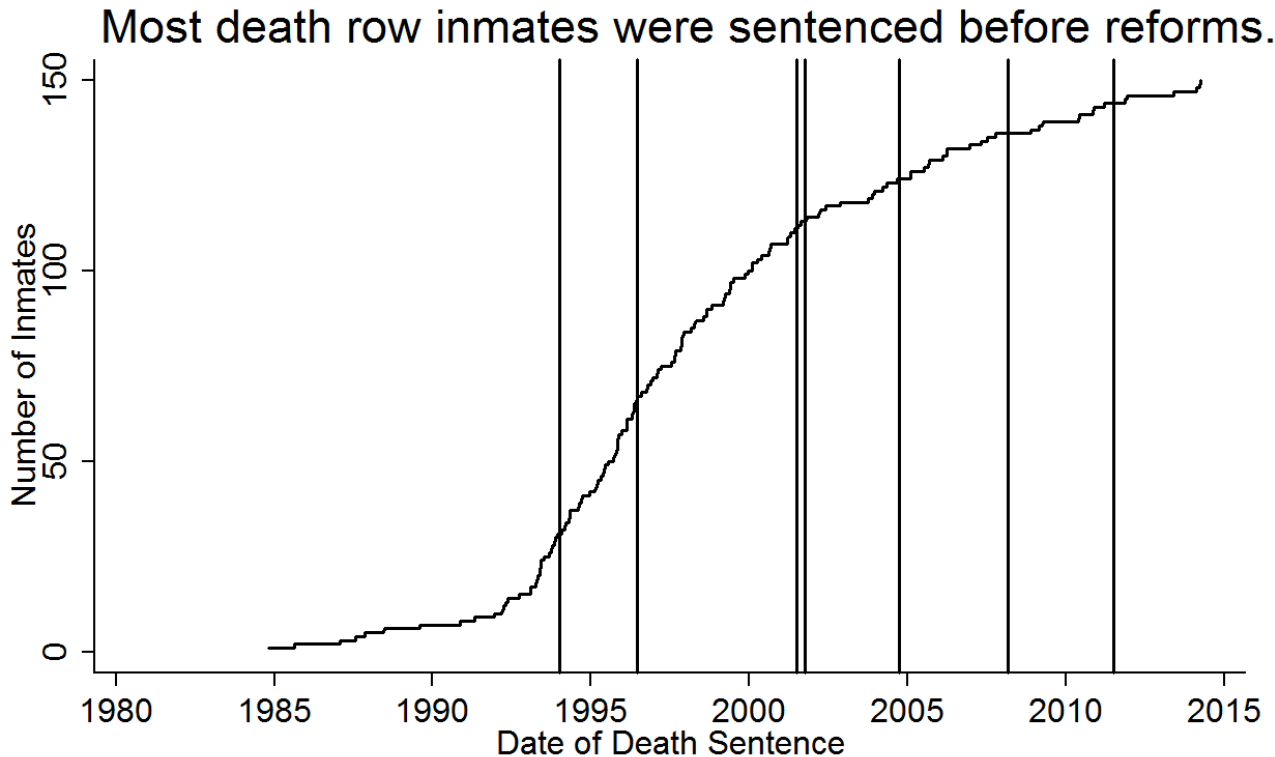
Prosecutorial discretion

- Only in July 2001 were prosecutors given the power to seek death or not. Previously, if there was an aggravating circumstance, they were required to do so.
- The number of capital prosecutions plummeted.

From 2001, Capital Trials Plummet

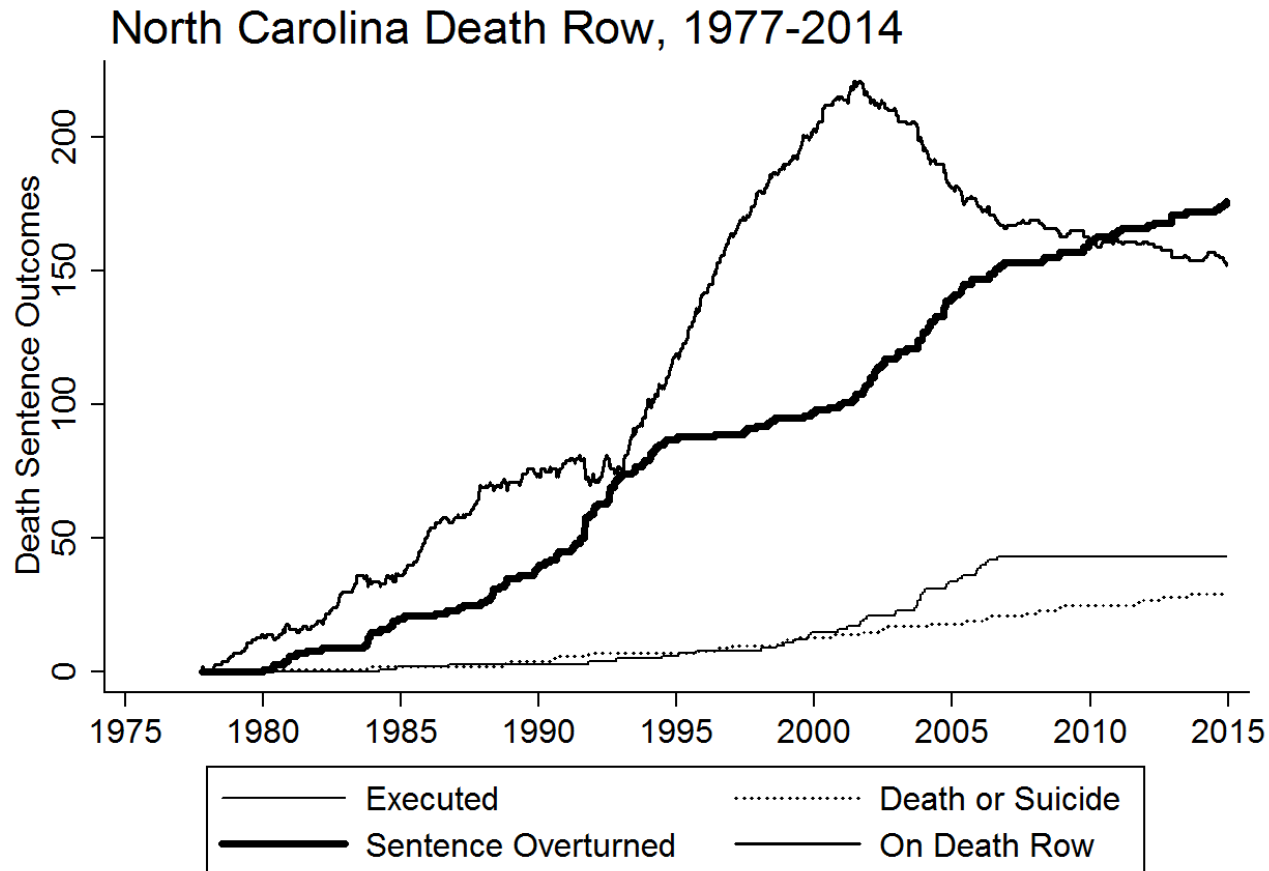


Various reforms designed to “perfect the mechanism” of death.



Vertical lines represent: 1) Life Without Parole 1/1/1994; 2) Post-Conviction Discovery 6/21/1996; 3) DA Discretion and Creation of IDS 7/1/2001; 4) Post Conviction DNA Testing 10/1/2001; 5) Pre-trial Open File Discovery 10/1/2004; 6) Eyewitness ID Reform 3/1/ 2008; 7) Forensic Science Reforms 7/1/2011.

More NC death sentences overturned than are currently on Death Row



Appeals, part I

- Judge very hostile (The Deacon)
- Old-school judge from when you could get death for robbery, rape, arson
- Ruling 1: Bo Jones is psychologically competent to stand trial
- Ruling 2: The original trial was fair
 - “God bless”

OK, fine, bad ruling from the defense perspective, needs to be appealed

- Six years later, NC SC review: No.
- OK, appeal to federal courts
- Judge Boyle, US District Court, Republican appointee, good or bad luck?

Some things have changed from 1993 to time of the appeals

- Avoid publicity at all costs...
 - Now, publicity can be good for the defense

- A series of other clients were executed during this time
 - Slowed down only in 2003, stopped in 2006
 - Strong effect, as all are defended in the same office

New lawyer on the case

- Mark Kleinschmidt
 - He was the mayor of Chapel Hill until the last election.

Judge Boyle

- Denies 12 claims
 - Bible in the jury room not linked to the outcome and therefore inconsequential
 - Conflict of interest for Graham Phillips similarly ruled not to have affected his behavior...
 - A series of rulings against...
- Accepts 2 claims however
 - Ineffective assistance of counsel **at the sentencing hearing**
 - Mental capacity

Death, not innocence, on the line

- Judge Boyle accepted arguments about the sentencing hearing
- Can they use that to convince the judge that there were *ALSO* problems of the guilt phase?
- Tall order...

IQ tests and the rule of 70

- Above 70, you are fit to be killed
- Below 70, you are “mentally retarded” and can’t be executed.
- USSC just recently ruled that any such hard numeric rule is unconstitutional

Boyle's rulings

- No proof Bo Jones is mentally incompetent
 - IQ tests must be below 70
 - Bo's were a mix, and often just above
 - Note how difficult this argument is
 - USSC has just ruled no hard numerical rule can be used, but that does not mean psychologists and experts will not argue that inmates are above, or below, some line.

Lovely Lorden as witness

- Judge amazed at her willingness to say almost anything.
 - DA leads her in questioning
 - Defense leads her in questioning
 - Judge: This woman will agree to anything...
- And the defendant was found guilty based on that.

No to mental issue, yes to hearing on guilt

- We move from ineffective assistance of counsel at the penalty phase to the guilt phase: he could get out.
- Judge notes Lorden got \$4000 in reward money, was afraid of Bo returning from prison
- Spaulding: (p. 210): “the law does not require that you always get the best trial lawyer”

Three potential criminals

- Larry Lamb (found guilty in trial, 1st degree murder, sentenced to life in prison)
- Ernest Matthews (pleads guilty, gets 2nd degree murder, serving jail time)
- Bo Jones – is supposed to get the message and plead guilty and take a reduced term. Refuses.
- Lovely Lorden is the only person saying these three went into the house, and who knows which of them supposedly pulled the trigger.

Conviction vacated

- Jan 2007 deadline passes, state does not appeal Judge Boyle's ruling on ineffective assistance of counsel
- Bo Jones remains in prison but not on death row, as the DA believes he is guilty and therefore will be tried again. At this point he is a suspect being held in jail pending trial.
- Lamb and Matthews still in jail...

DA offers a deal

- Bo: Take a plea, plead guilty to 2nd degree murder and armed robbery, serve 20 years, get out in about 4 years (2012)
 - Note: previously, the same office had said he deserved to die. Now, it's 4 years in jail...
- Lovely Lorden is the only witness, will have to testify again.

Can the DA convict?

- Based on *Lovely Lorden*, can he convict Bo Jones in 2008 for a crime that took place in 1987? If not, he will be acquitted? So, proceed with trial and take the chance, or drop the charges?

Lovely Lorden's affidavit

- December 2007 the statement everyone on the legal team wanted comes in. She says:
 - Testified for the state because she was afraid of the sheriff's office
 - She and Bo sometimes bought liquor at LG's house
 - She did not know if they had done so that night
 - She never heard gunshots, ever
 - Deputy Sheriff Dalton Jones fed her details
 - "Much of what I testified to was simply not true. Dalton Jones let me know what he wanted me to say in my testimony for both Bo Jones' trial and Larry Lamb's trial."

May 2008

- Two weeks before the trial is to begin, charges are dropped, Bo Jones is free.
- Note: DA believes he is guilty but he can't prove it.
- This is not uncommon. No DNA connected him to the crime in the first place...