

The Secondary Consequences of Innocence

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A Social Cascade

Somehow, the concept of innocence has entered the social discourse. People understand a new way of thinking about the death penalty.

What was once “someone’s lucky day” has become a sign of a system gone wrong.

The same facts lead now to dramatically different reactions because of the “discovery” of innocence.

Consequences of Innocence

- Abstract to particular
- Victim to inmate
- Causes of errors
 - Rate of error, keystone cops idea, system is messier than people realized
- Race
- Cost
- Other factors

A Rickety, Unreliable, System

- Reliability: does a process produce the same outcome twice?
- We might expect a decision as important as this to be extremely reliable, but actually the vast majority of initial decisions to impose death are overturned.
- The crimes are so terrible that the trials are full of emotion.

James Leibman et al. 2002: Why is there so much error in capital cases...

Review of ALL murder cases from 1973 to 1995 in those states having capital punishment

118,992 murder convictions

5,826 death sentences

All are automatically reviewed by state supreme courts or by federal courts. This is unique in US criminal justice.

How many are overturned, with the federal judge requiring a new trial?

68 percent

Points of Comparison

- NASA: 131 shuttles sent off, 2 lost: 1.5%
- Social Security Administration
 - 3,600,000 people entitled to both retirement and widow benefits, 9,751 underpaid: 0.27%
- IRS: 67,000,000 electronic returns, 78,000 lost: 0.116%
- IRS: 3,000,000 packets with personal information sent by UPS, 181 lost: 0.06%
- 60 to 70 percent error in the case of court cases to send someone to death: why???

Is 99.88% good enough?

- Not for the IRS. Their inspector general's report concerning the 78,000 lost returns (out of 67 million) was entitled:
- “Additional Enhancements Could be Made to Strengthen Lockbox Security.”
- Why do we accept an error rate of 70 percent in the case of putting someone to death whereas a rate of 0.12% is unacceptable in other cases?

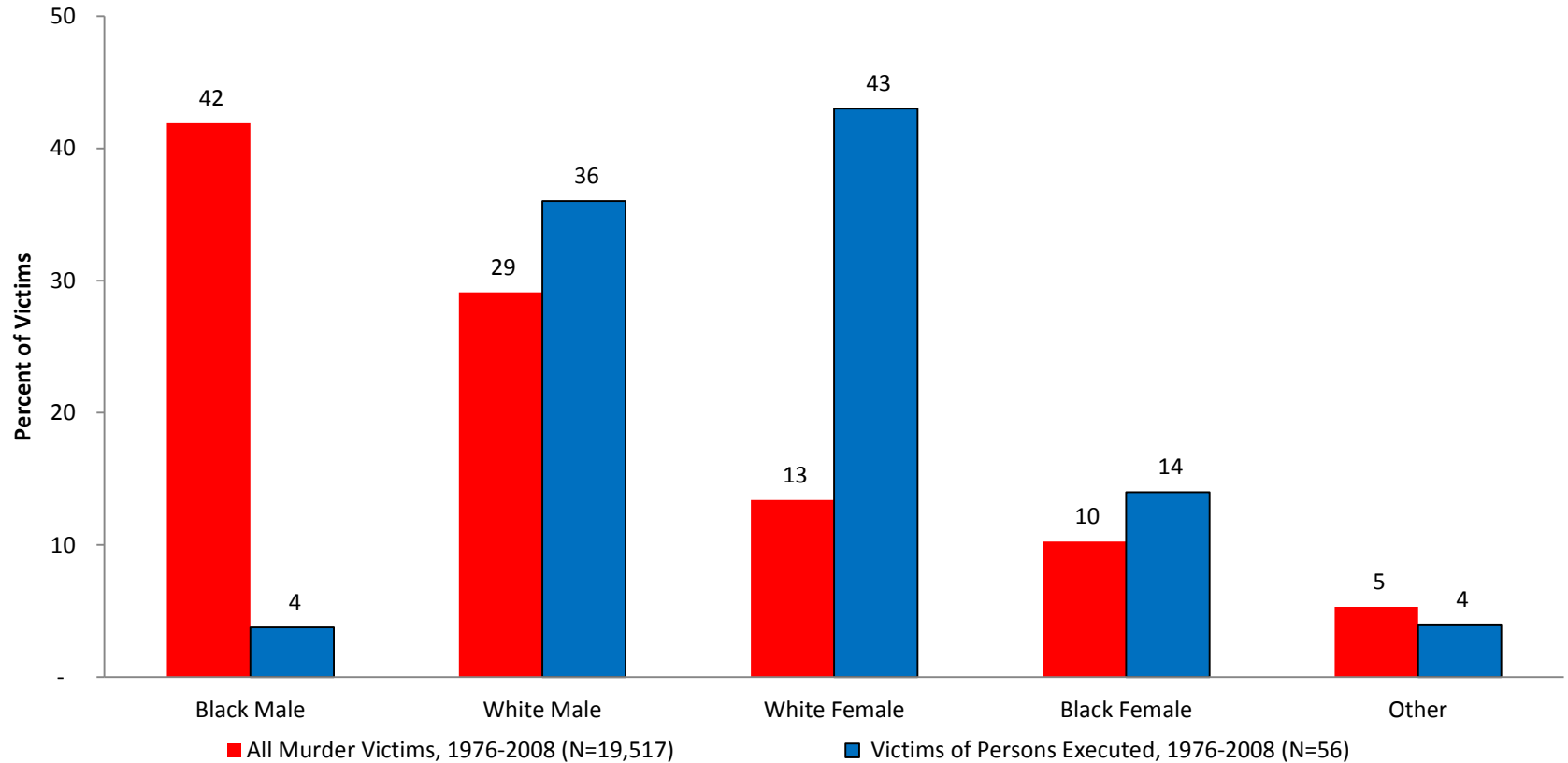
Executions in North Carolina since 1977

- 43 executions
- 56 victims, as a few had multiple victims
- 44 (79 percent) of the victims were white
- Just one person was executed for the crime of killing an African-American man
- A second person killed a black man in a triple slaying, and he was also executed

Victims of homicide

Victims of those executed

Race and Gender of NC Homicide Victims, by Execution Status



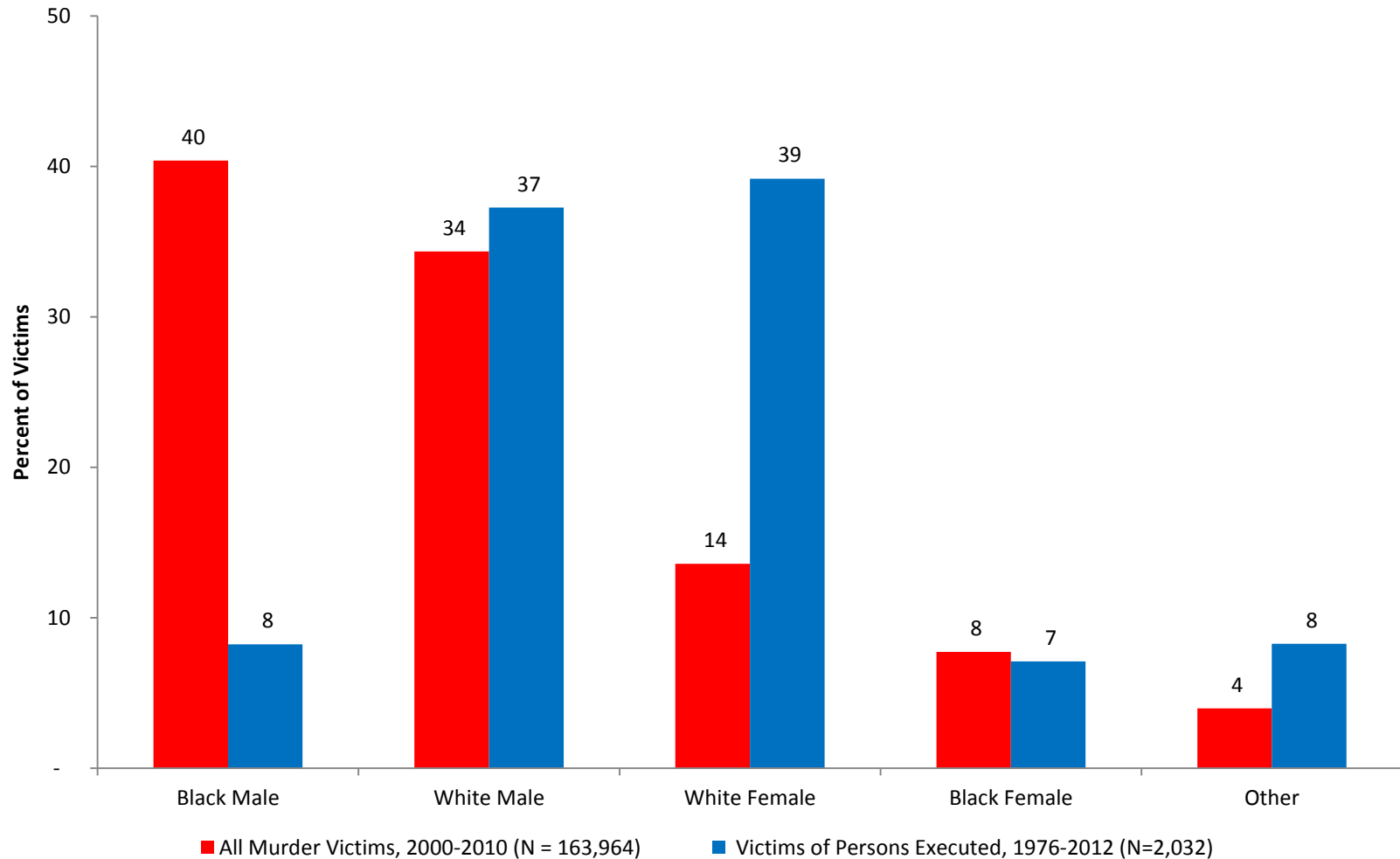
Executions nationwide since 1977

- 1,306 executions
- 2,032 victims overall
- 76 percent of the victims were white
- Trends are almost the same as in NC

Victims of homicide

Victims of those executed

Race and Gender of US Homicide Victims, by Execution Status



Secondary consequences of innocence

- Revisions to correct possible errors
- Examples from NC
 - Indigent Defense Services 1999 / 2000
 - Eyewitness best practices 2002
 - Innocence Inquiry Commission
 - SBI investigation / discredit
 - Racial Justice Act
 - Cook Cost Study (\$11 million per year)

Reduced Use

- All those reforms reduce the incidence of capital prosecutions, death sentences, and executions
- Those reforms, in turn:
 - Reduce deterrence arguments (crime also down)
 - Increase cost per execution to astronomical levels
 - Reduce priority for retention among DA's, others
 - Increase the “wonton and freakish” nature of it

A self-perpetuating process

- Decline, just like the growth (1976-1995) is self-perpetuating
- So innocence claims in a particular case can have a huge multiplier effect.
- Consider that about 2,500 people are not on death row today who would have been if we continued to sentence at the rate of 1996.

2492 Death Sentences did not happen

