The Power of Innocence

Frank R. Baumgartner
UNC-Chapel Hill, Political Science Department
Frankb@unc.edu

Amplifying the Voices of Exonerated Death-Row Survivors:
How to Maximize the Power of Innocence

Witness to Innocence
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The More One Knows …

- Most people don’t think about the death penalty much
- Most people’s minds are firmly made up about it because of their religious background
- About 2/3 of US supports it, in the abstract
- Moving from abstract notions to concrete facts is key
- No one expects government to work perfectly
- Putting a face on what that means is why we are here
Innocence as an Argument

- There are many reasons to be opposed to the death penalty.
- What mobilizes you to be here in this room may or may not be an effective argument to people who do not already agree with you.
- Mobilizing your own constituency: Moral outrage might work.
- Convincing potentially hostile individuals to soften their support: Innocence works.
Focus on errors, imperfections, flaws

- Most Americans support DP in abstract
- Confirmation bias blinds people to much evidence, such as lack of deterrence effect
- But many may not know:
  - How rare it is, how arbitrary
  - Number of errors, what this means in human terms
  - Falsity of the argument about “closure” for families
  - Cost
  - Possible alternative uses of those funds
Possible counter-arguments

- Rehnquist: “Perfect the mechanism…”
  - More resources to the defense
  - Longer trials, more delays, etc.
  - Costs well summarized by Dick Dieter’s recent report and currently affecting many communities
  - Better to spend this money on other purposes

- Scalia: “What’s a few errors…”
  - Very unpopular argument
  - Impossible to make with Ray Krone, Delbert Tibbs, or Freddie Pitts in the room!
Tipping points

- At any given time, public attention tends to focus on just a few aspects of a complex debate.
- Occasionally these “flip” as attention shifts
- This has occurred in the past 10 years or so
- Innocence is associated with an entire cluster of arguments about flaws, costs, practical problems
- Key is the shift away from the abstract to the practical
- “Discovery of innocence” has already saved many
Decline in death sentences since 1996 has already saved over 1,400 Americans.
The Decline of the Death Penalty

Goals of project:

- Explain an important policy change
- Show power of framing
- Demonstrate ability to use media coding, statistical models of framing
- Predict and explain changes in public policy
- Test the relative importance of framing, opinion, and events in explaining policy change

Point for you: shows the power of the innocence argument in affecting the debate
Homicides: decline from 24,500 in 1993 to 15,500 in 2000

NB: France, UK, approx 400 per year
Executions in the US, 1800-2002
Number of Countries Having Abolished the Death Penalty

[Graph showing the increase in the number of countries having abolished the death penalty from 1860 to 2000.]
Executions by State, 1977-2007

Alaska: 0
District of Columbia: 0
Hawaii: 0
Iowa: 0
Kansas: 0
Maine: 0
Massachusetts: 0
Michigan: 0
Minnesota: 0
New Hampshire: 0
New Jersey: 0
New York: 0
North Dakota: 0
Rhode Island: 0
South Dakota: 0
Vermont: 0
West Virginia: 0
Wisconsin: 0
Colorado: 1
Connecticut: 1
Idaho: 1
New Mexico: 1
Wyoming: 1
Kentucky: 2
Oregon: 2
Tennessee: 2
Federal: 3
Montana: 3
Nebraska: 3
Pennsylvania: 3
Washington: 4
Maryland: 5
Utah: 6
Mississippi: 8
Illinois: 12
Nevada: 12
California: 13
Delaware: 14
Indiana: 17
Arizona: 22
Ohio: 24
Arkansas: 27
Louisiana: 27
Alabama: 35
South Carolina: 36
Georgia: 39
North Carolina: 43
Florida: 64
Missouri: 66
Oklahoma: 83
Virginia: 98
Texas: 379

Total: 379
## Death Row Population v. Executions (since 1976)

<table>
<thead>
<tr>
<th>State</th>
<th>Death Row</th>
<th>Executions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>392</td>
<td>379</td>
</tr>
<tr>
<td>Florida</td>
<td>398</td>
<td>64</td>
</tr>
<tr>
<td>California</td>
<td>657</td>
<td>13</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>228</td>
<td>3</td>
</tr>
</tbody>
</table>

Many states, like California, have a “virtual” death penalty system. Others are quicker to execute once the inmate is sentenced. Texas is in a class by itself, not for sentences, but for executions.
Death Sentences, Executions, and the Size of Death Row, 1930-2006
Exonerees: From Human Interest to Confirmation of an Established Theme

Wilbert Lee
Freddie Pitts
Delbert Tibbs
Alejandro Hernandez
Rolando Cruz
Anthony Porter
Earl Washington
Aaron Patterson

0 50 100 150 200 250 300
## A Framing Multiplier Effect

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Average Exonerations</th>
<th>Average Stories</th>
<th>Stories per Exon.</th>
</tr>
</thead>
<tbody>
<tr>
<td>73-91</td>
<td>3</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>92-98</td>
<td>4</td>
<td>85</td>
<td>33</td>
</tr>
<tr>
<td>99-05</td>
<td>7</td>
<td>212</td>
<td>40</td>
</tr>
</tbody>
</table>
A Social Cascade

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

Old issue-definition: Morality / constitutionality

New issue-definition: Innocence / system is broken / human institutions cannot be perfect

Documenting these trends and this cascade effect is one goal of our book.
Statistically Identified Issue-Frames

- Constitutionality - Pro
  - Eye for an Eye

- Constitutionality - Anti
  - Humanizing the Defendant I
  - "Eye" Redux

- Humanizing the Defendant II
  - "Eye" Redux

- Popular Support Down
  - Innocence

Number of Stories x Factor Loadings
From the Victim to the Defendant

Stories Mentioning Victim Characteristics Minus Stories Mentioning Defendant Characteristics
The “Net Tone” of NYT Coverage, 1960–2005
The “Net Tone” of Readers’ Guide, 1960–2005

The chart shows the net tone of stories as reported in Reader’s Guide from 1960 to 2005. The y-axis represents the difference between pro-stories and anti-stories, with values ranging from -40 to 0. The x-axis represents the years from 1960 to 2005. The net tone generally trends downward, indicating a decrease in pro-stories compared to anti-stories over this period.
The Rise of the “Innocence” Frame

Includes: Innocence; Evidence; System-is-Broken; Mention of the Defendant
“Innocence” in the NYTimes v. Other Papers

- New York Times
“Innocence” is in the Houston Chronicle too
Policy Impact

Annual Death Sentences as the most appropriate dependent variable

Juries not faced with a hypothetical question as posed in surveys

Juries presented with strong stimulus, not like aggregate public opinion

May be different, should definitely be less inertial
Reminder: Number of Death Sentences
Measuring Public Opinion

- 65 different questions posed in identical manner by the same survey organization
- 292 surveys used from 1960 to 2004 to construct the index
- The index is based on Jim Stimson’s method of combining survey data, as used in his construction of the measure of “public mood”
- It is similar to a factor analysis, using all available data, focusing on trends over time
Establishing a Single Public Opinion Series: I, raw data

Data show the three most commonly asked questions, but 65 series are used.
Establishing a Single Public Opinion Series: II, the index
Net Public Opinion, 1960-2004
Number of Death Sentences
Can We Predict this Series?
Predicting Annual Death Sentences

Annual Number of Death Sentences =
22.92 (19.20) +
0.316 x Sentences\(_{t-1}\) (0.097) +
0.453 x Net Tone of *New York Times*\(_{t-1}\) (0.137) +
0.817 x Homicides (thousands)\(_{t-1}\) (1.437) +
5.059 x Opinion\(_{t-1}\) (1.069) +
-67.80 x 1973 dummy (25.80) +
129.49 x 1975 dummy (25.34)

R\(^2\) = .930 (N=42)

Note: Analysis is annual from 1963 to 2005.
Predicted and Actual Death Sentences
Interpretation

0.453 \times \text{Net Tone of } New \ York \ Times_{t-1} (0.137)

A 10-point shift in news coverage: 4.5 fewer death sentences in the following time period, with a longer term impact of 6.7 fewer.

1992: Net tone = +36
2000: Net tone = -106

Shift of 142 points

Expected impact: 98 death sentences
Interpretation

5.059 x Opinion_{t-1} (1.069)

This is a big impact:

In the long term, after inertia plays out:

15 point shift in opinion: 111 fewer death sentences
Estimating Error Rates

Many possible ways of doing this:

138 exonerations v. 1,000+ executions: ~ 13%

Impossible to know exactly how many innocent have been killed. Rare that serious inquiries are made. We’ll never know the actual percentage, plus it is not clear what number would be “ok.”

But: How reliable is the system? Here we can see some more reliable data, and it will shock you, as it did me when I learned of it doing this research.
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 reviewed by federal courts. This is unique in US criminal justice because of the history of state application of death sentences.

How many are overturned, with the federal judge requiring a new trial?
68 percent
Points of Comparison

- **NASA**: 127 shuttles sent off, 2 lost: 1.6%

- **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%

- On these comparisons, the death penalty looks more like a FEMA operation…
Should we expect better in the case of death?

- Yes: it is the most important decision a government ever makes, to put a person to death
- Yes: it is irreversible
- Yes: massive resources go into insuring accuracy
- No: A brutal crime has occurred, passions are high
- No: A trial is by nature imperfect and based on incomplete and conflicting information
Put a face on “mistakes”

- Background, statistics, bla bla bla bla
- Meeting these men, listening to them, hearing their stories is powerful stuff

  (Much more powerful than dull professors with charts...)
Frank R. Baumgartner

Richard J. Richardson Distinguished Professor of Political Science
UNC Chapel Hill

Frankb@unc.edu