The Discovery of Innocence

Frank R. Baumgartner
Distinguished Professor of Political Science
Penn State University

The Faces of Wrongful Conviction
UCLA School of Law
April 8, 2006

Two Views on the Death Penalty

- Morality:
  - 1) State Killing is Wrong
  - 2) Eye-for-an-eye
  - (Most Americans support #2)
  - Religious, moral nature of this debate
- Innocence
  - The system is not perfect and can make mistakes. Innocents may be killed.

A Government Program Run by Bureaucrats, Prone to Cost-Overruns, Inefficiencies, and Mistakes

-Peter Loge on the Death Penalty

The Discovery of Innocence

- Exonerations have been consistent, a few every year since 1976.
- Innocence Project, Justice Project, work of advocates such as Barry Scheck, Larry Marshall, and Richard Dieter have illustrated serious flaws.
- These were probably always there.
- Public attention never focused on them.
- This "discovery of innocence" may put an end to the Death Penalty.
- It has already had a huge impact.

Key Elements of the Two Arguments

- Morality:
  - Very convincing to those who already agree
  - Completely unconvincing to those who disagree.
    - Cognitive dissonance: ignore challenging evidence
    - Reinforces the idea that morality is the correct way of thinking of it.
  - Counter-productive as a conversion strategy.
    - Good for mobilization of those already on your side, however.
- Innocence:
  - No challenge to pre-existing moral views.
  - Shifts the debate away from the dimension of morality.
  - Many are willing to admit that bureaucracies make errors.
  - This causes no cognitive dissonance.
  - DNA evidence is extremely convincing.
  - Low trust in government enhances acceptance of this view.
  - A much more effective argument.

Research Approach

- Media coding
  - Document the rise and power of the innocence frame compared to previous frames
- Experiments on individuals to assess reaction to morality v. innocence argument
- Predict number of death sentences over time
  - Include media coding
  - Homicides
  - Other control variables
- Show that the media coding has had independent impact
- Public opinion modeling in progress

New York Times Coding

- Every article since 1960
- Almost 4,000 articles
- Exhaustive list of 67 arguments
- Count attention to each argument over time
- Dynamic Factor Analysis: shows rise of new issues

Microsoft Access - [Death Penalty]

File Edit View Insert Format Records Tools Window Help

Type a question for help

MS Sans Serif 8

ID: 1944
Subject: Capital Punishment
NYT Year: 1960
NYT Page: 172
NYT Column: 1
Day / Month: 1/14/1960
First Three Words: NYS Council of
Front Page:
3 Tone: 5
4 Story Type: 1

Victim Characteristics

- 10 Officer
- 11 Child
- 12 Multiple
- 13 Family Mention
- 14 Female
- 19 Other

Defendant Characteristics

- 20 Terrorist
- 21 Minority
- 22 Mentally Handicapped
- 23 Female
- 24 Parent
- 25 Juvenile
- 27 Humanized
- 29 Other Vul Char

Nature of Crime/ Mode of Execution

- 30 Mode of execution discussed
- 31 Type of Crime
- 32 Violence of crime discussed
- 40 Legislative Initiative ☑

Dimensions of Debate

100 Efficacy
- 101 Deterrence
- 102 Incapacitation
- 103 Alts Flawed
- 109 General Pro
- 110 Not Deterrent
- 111 Alt Systems Pro
- 119 General Anti

200 Moral
- 201 Retribution
- 202 Family Vengeance
- 203 Type Crime/Extension
- 209 General Pro
- 210 Killing Ven Bad
- 211 Family Opposed
- 219 General Anti

300 Fairness/Process
- 301 Are Fair
- 302 Abbreviated Process
- 303 Flaws Overstated
- 304 No Blanket Regs
- 309 General Pro
- 310 Inadequate Rep
- 311 Arbitrary
- 312a Racist
- 312b Classist
- 312c Other Demographic
- 313a Vulnerable Popul
- 313b Mitigating
- 314 Mandatory Sent Bad
- 315 No Alt Punish
- 316 Evidence
- 317 Innocence
- 318 Broken
- 319 General Anti

400 Const/PopControl
- 401 Not Cruel
- 402 Process Upheld
- 403 Pop Support Pro
- 404 States Rights Pro
- 405 Fed Juris Pro
- 409 General Pro
- 410 Cruel Unusual
- 411 Vio Due Process
- 412 Pop Support Anti
- 413 State Rights Anti
- 414 Fed Juris Anti
- 419 General Anti

500 Cost
- 501 Worth It
- 502 Prison Exp
- 509 General Pro
- 510 Not Worth It
- 511 Prison Cheaper
- 519 General Anti

600 Mode
- 601 Mode Just
- 609 General Pro
- 610 Mode Questioned
- 619 General Anti

700 International
- 709 General Pro
- 710 Int Complaints
- 711 Extradition Probs
- 712 Foreign Natls
- 719 General Anti

900 Other Dimension
900 Description
Notes

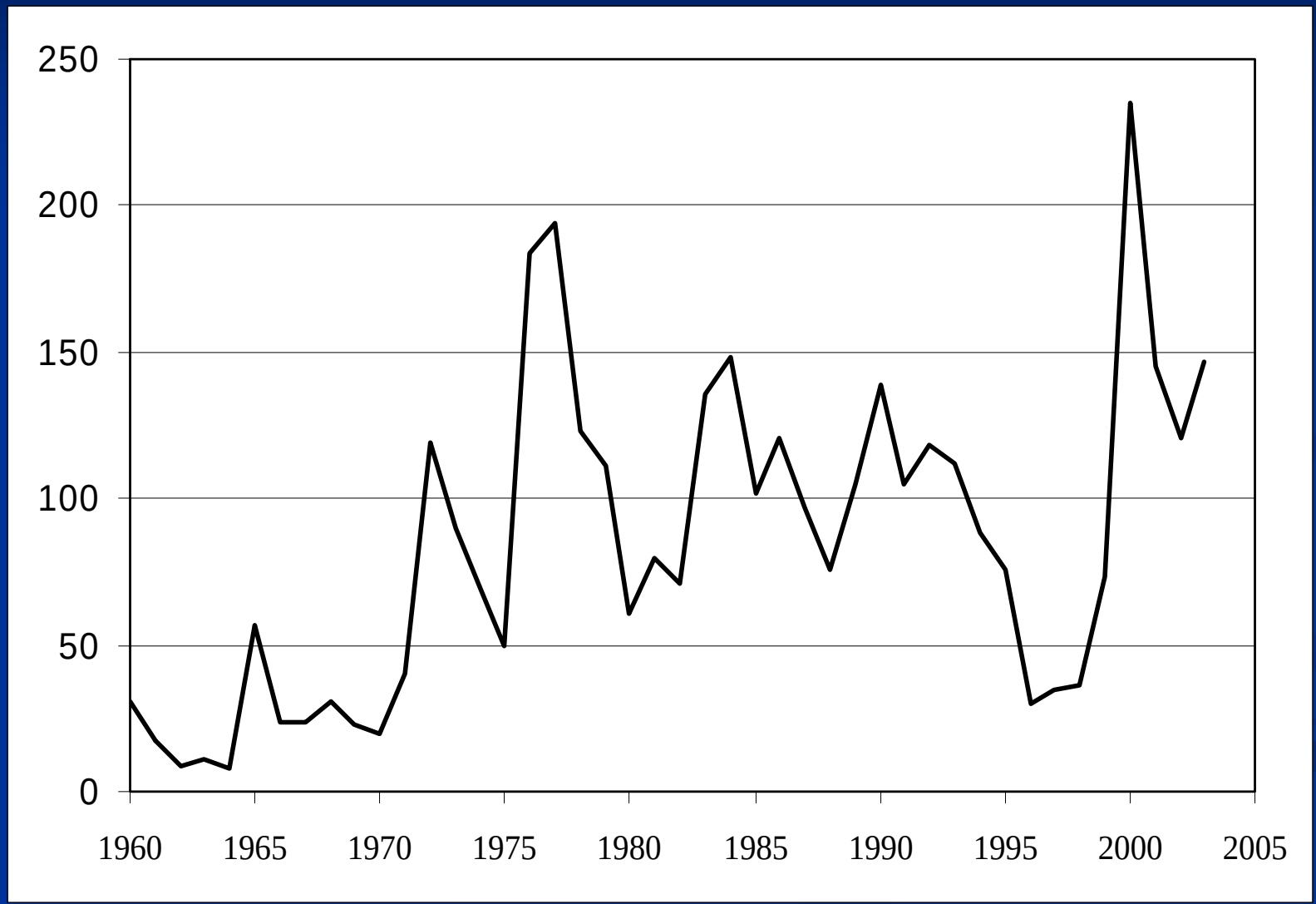
Record: 1 of 3512

Form View NUM

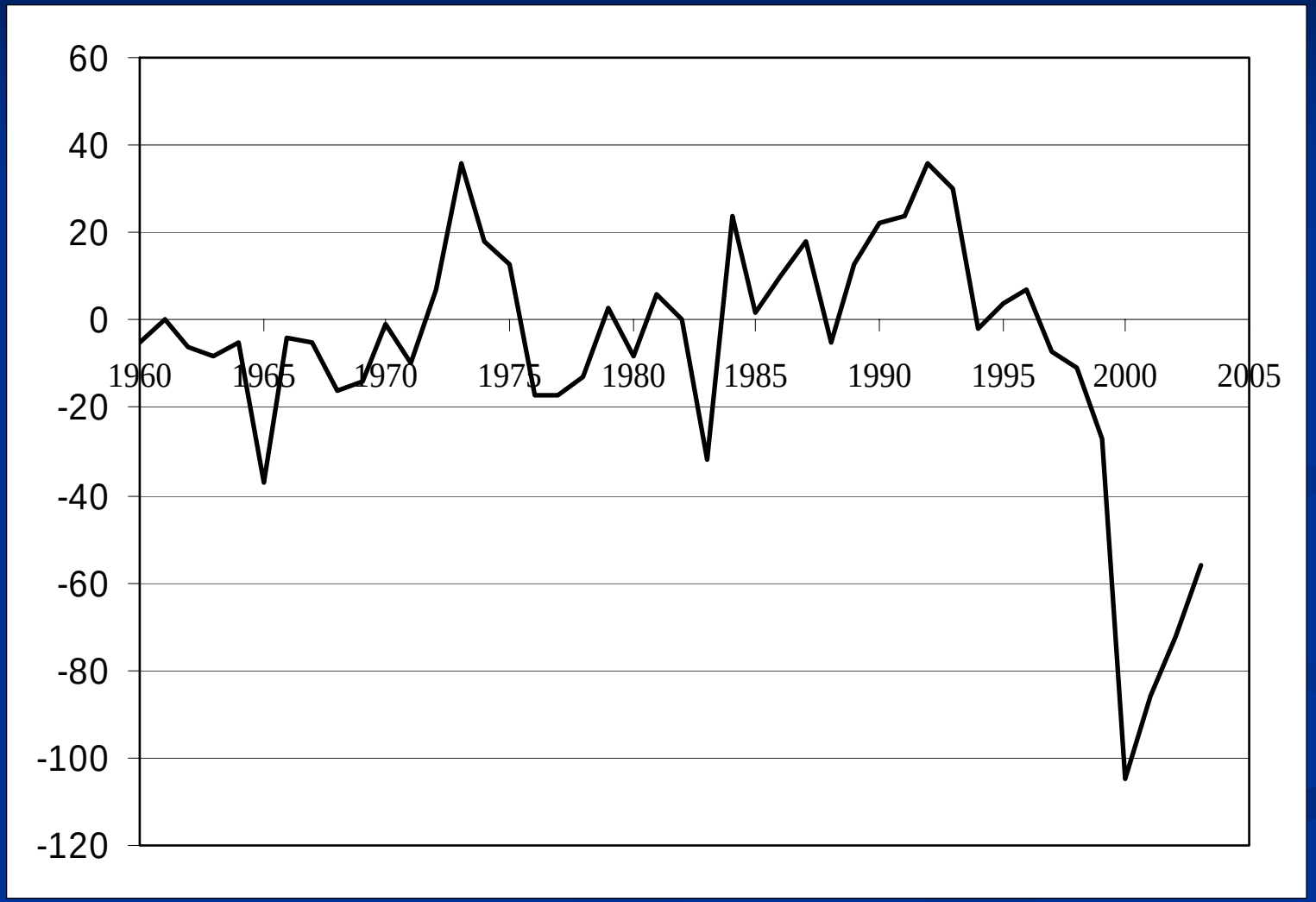
Major Dimensions of Death Penalty Debate

- **Efficacy**- Does the punishment serve a functional purpose?
- **Moral**- Should we use the death penalty at all?
- **Fairness**- Is the capital punishment process fair?
- **Constitutionality/Judiciary**- Is the penalty constitutional and how much power do the courts have?
- **Cost**- Is the death penalty cost-effective?
- **Mode of Execution-** Which modes of execution should be permitted?
- **International**- We should consider the many complaints from abroad regarding our death penalty system

Total Number of *NYT* Articles, 1960–2003

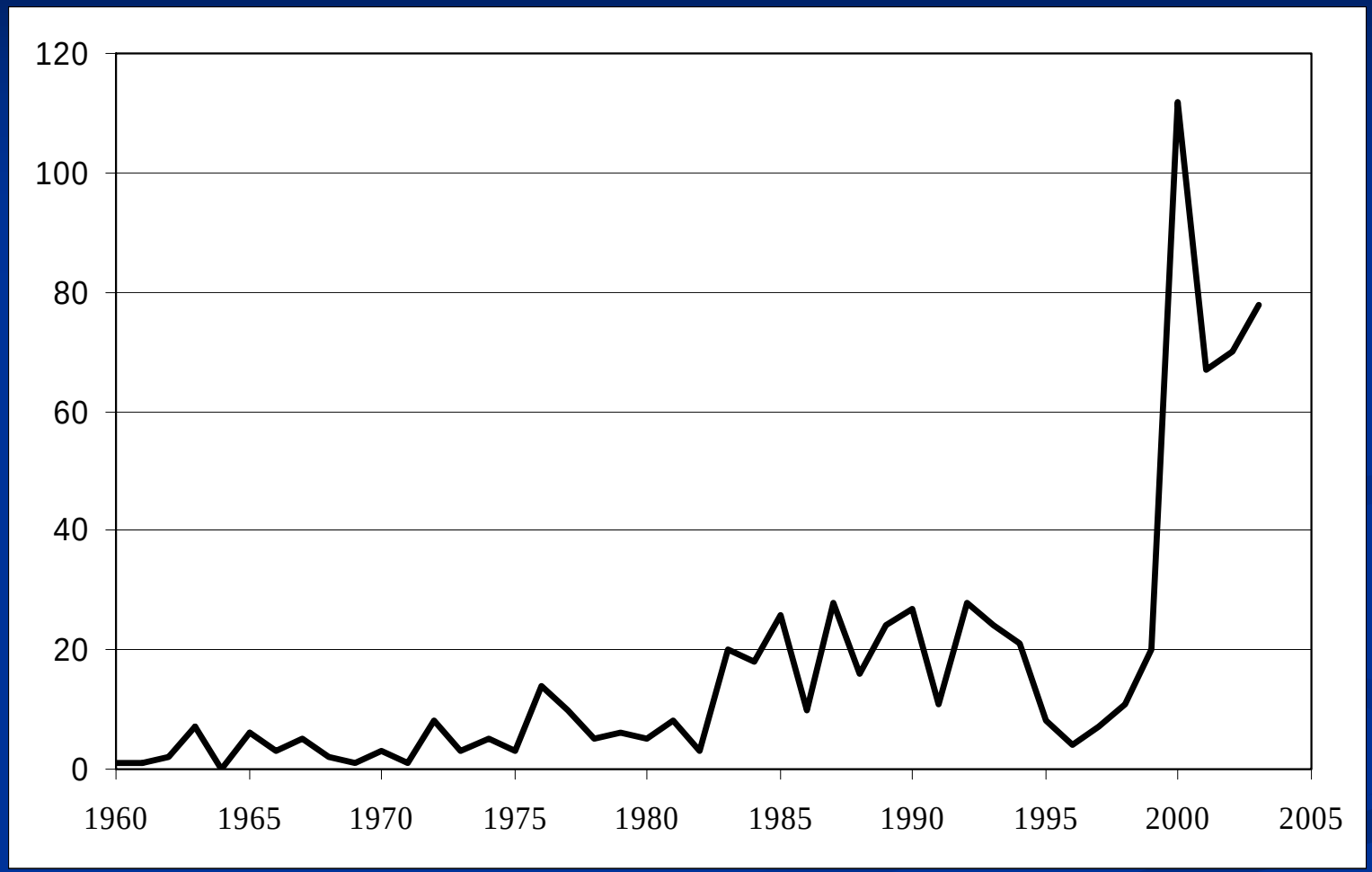


The "Net Tone" of NYT Coverage, 1960–2003



Shows the number of pro- minus the number of anti-death penalty stories per year

The Rise of the "Innocence" Frame



Includes: Innocence; Evidence; System-is-Broken; Mention of the Defendant

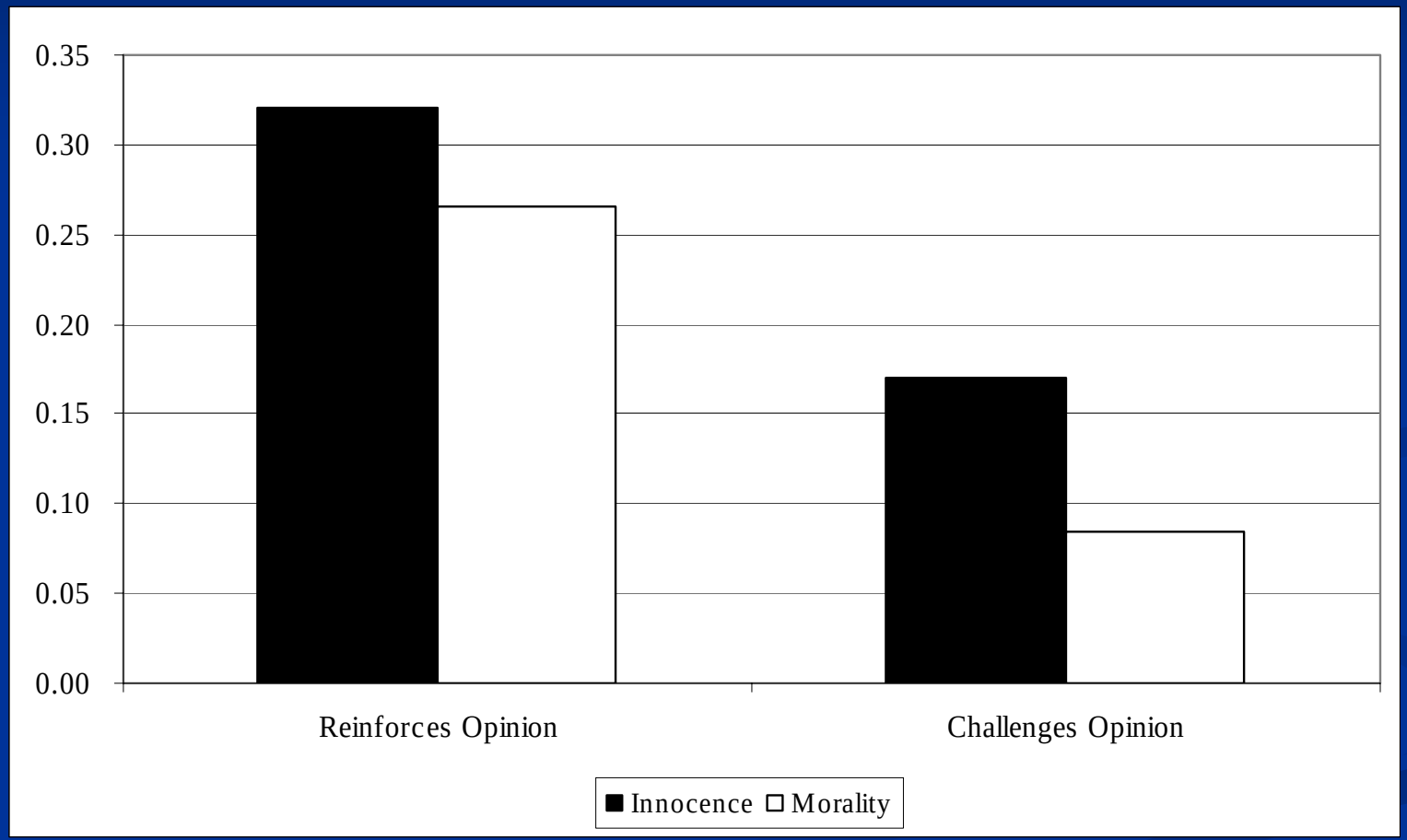
Conclusions from *NYT* analysis

- Innocence frame is the single most powerful media frame in history
- It equals the constitutionality focus of the 1960s and 1970s
- It surpasses that frame in amount of coverage
- It brings together previously existing arguments, such as the racial disparity argument, but puts it in a new context
- Most important: How people respond to it…

An Experiment on the Death Penalty
(Don't worry: not that kind of experiment)

- 184 students
- Newspaper stories
  - State legislative debate about capital punishment
  - Pro-DP Morality Focus
  - Anti-DP Morality Focus
  - Anti-DP Innocence Focus
  - Control Group
- How do subjects explain their opinions?
  - First 3 justifications: Do people incorporate or counter-argue against information provided, when that information challenges or reinforces their existing beliefs?

Cognitive Response to Morality and Innocence Arguments



Experiment Results Suggestive:

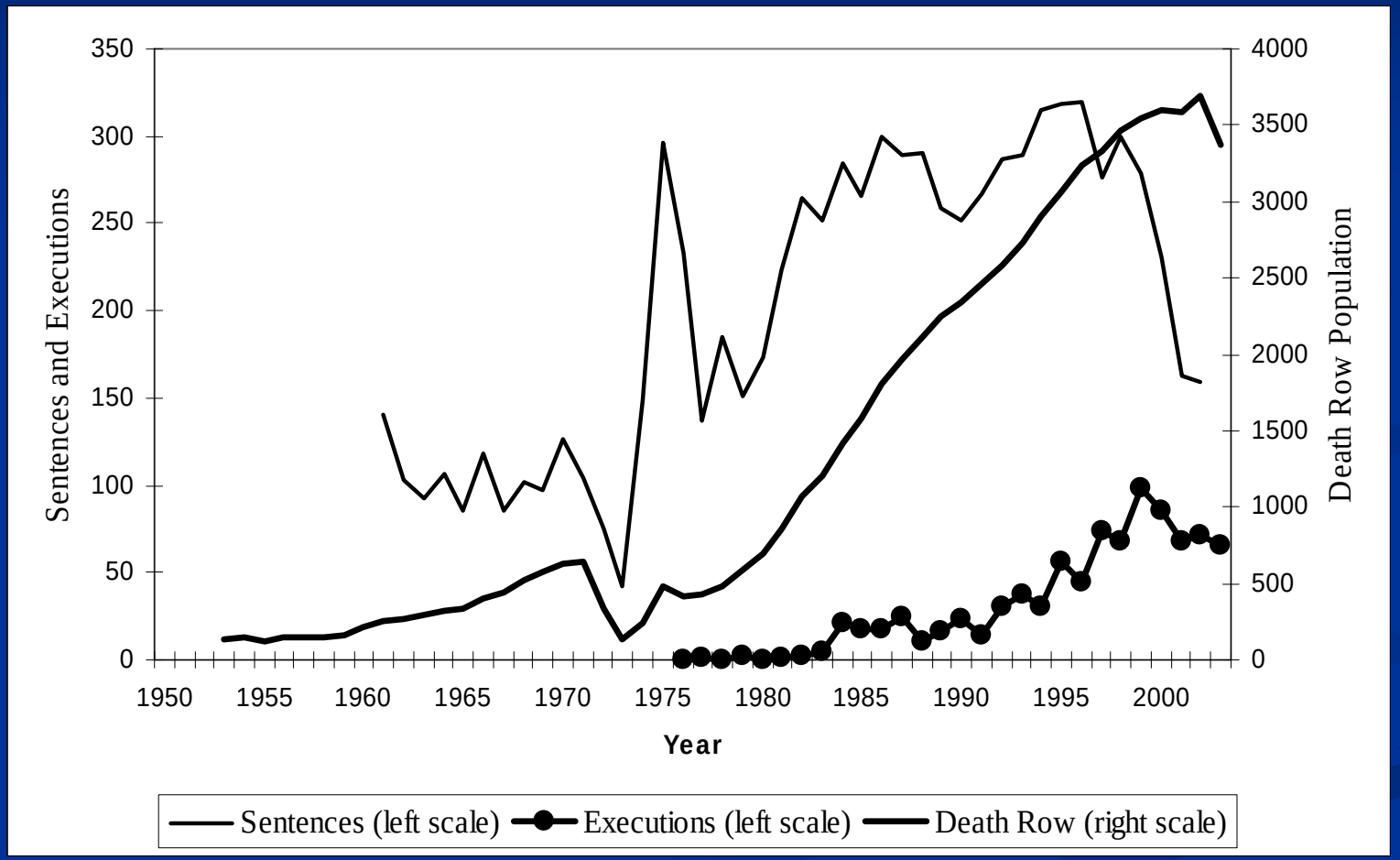
- People accept arguments that reinforce their opinions: No surprise there.
- Among those who disagree, however:
  - Moral argument has almost no impact: very few accept it
  - Greater openness to the innocence argument
  - Lower cognitive dissonance
  - No admission that one's moral code is wrong
- One exposure does not change opinions
- However, people seem more likely to incorporate these arguments into their thinking
- (These results are suggestive, not conclusive.)

Part Three: Predicting Death Sentences over Time

- Framing has occurred
- Experiments suggest people are affected by it
- Has it had an impact on public policy outcomes?

- Can we predict the future?
- Can we assess the impact of framing on the current situation?

Death Sentences, Death Row, and Executions



Can we predict the number of Death Sentences per year?

(And, if so, does framing matter?)

- Statistical controls for relevant factors
- We care about the Net Tone of the NYT: Does this affect sentencing rates?
- Other variables make it very hard to find effects, but are important controls
- Results show impact of each variable, *holding constant* the effects of the other factors included

Our Model

- Death Sentences are a function of:
  - Number of death sentences last year
  - Homicides
  - Number of states using the death penalty
  - Moratorium begins (1972-73)
  - Moratorium about to end (1974-76)
  - **Net Tone, from *New York Times* data shown earlier**
  - Mathematical Constant term

Results:

Death sentences =

15.169 +

0.585 x (Death sentences the previous year) +

3.0 x (Homicides in the current year, in thousands) +

1.699 x (Number of states using the death penalty) +

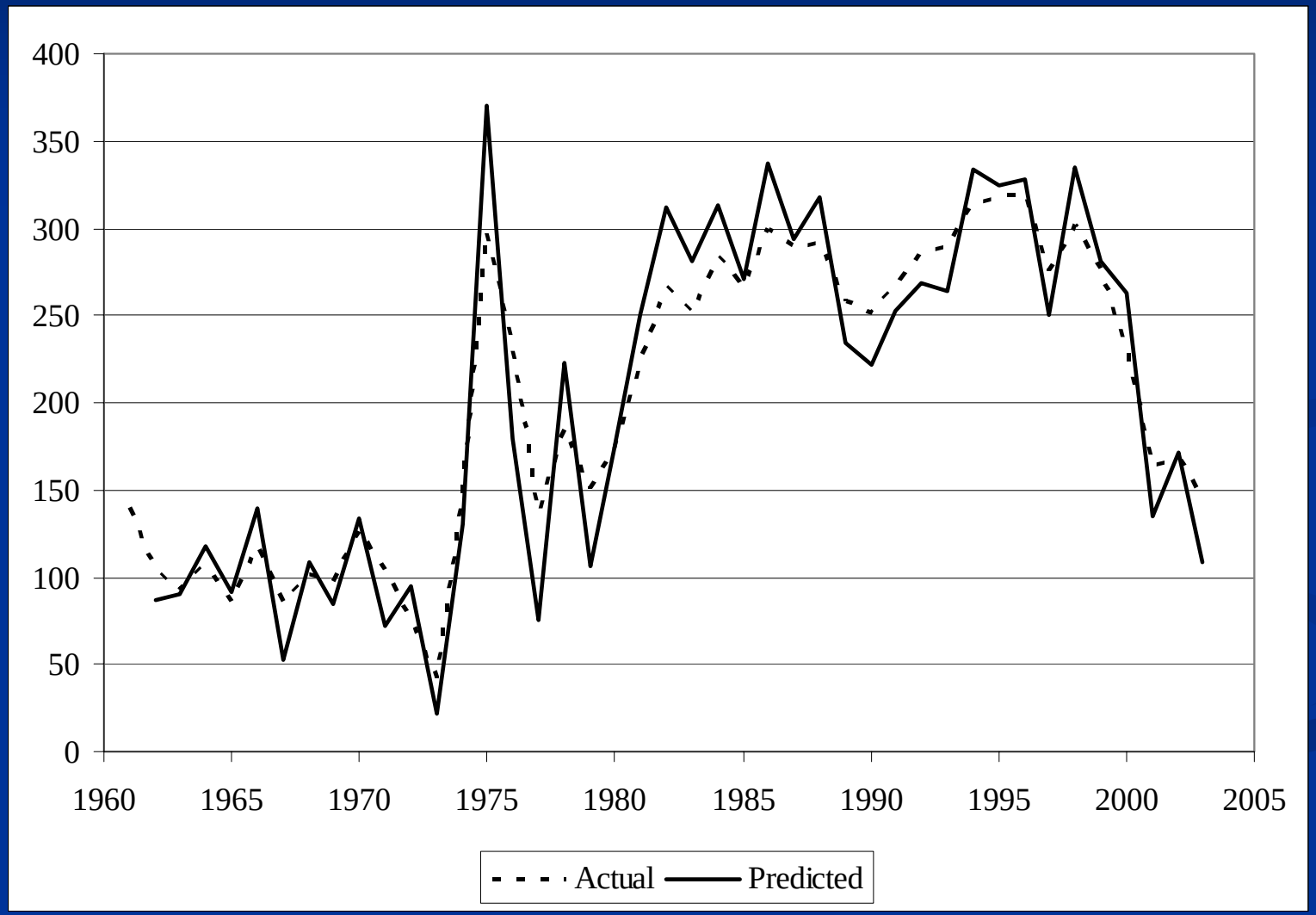
-82.665 x (Moratorium begins – 1 for 1972, 1973) +

52.073 x (State reinstatements – 1 for 1974, 5, 6) +

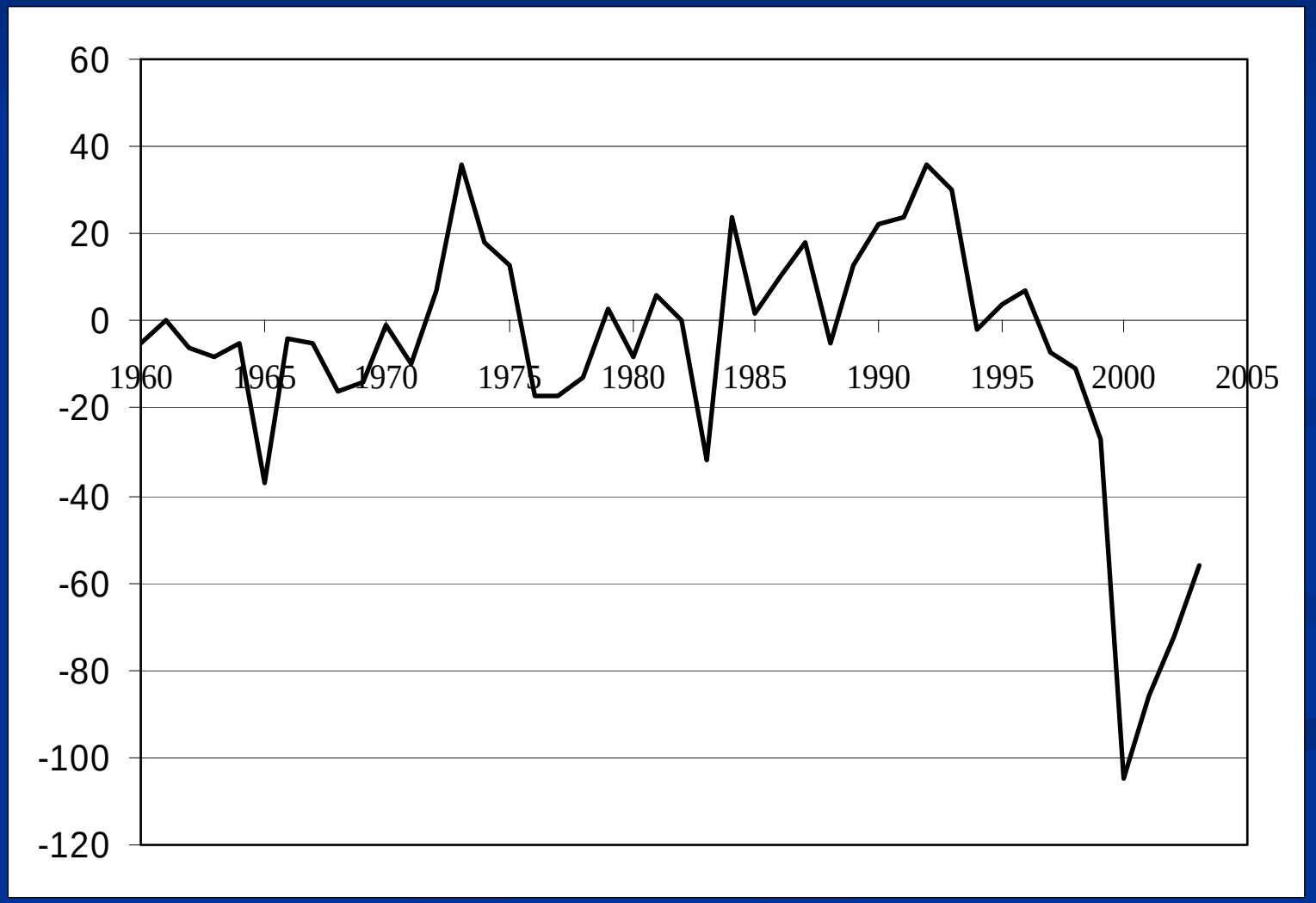
0.720 x (Net Tone from *New York Times*)

- Explains 88 percent of the variation

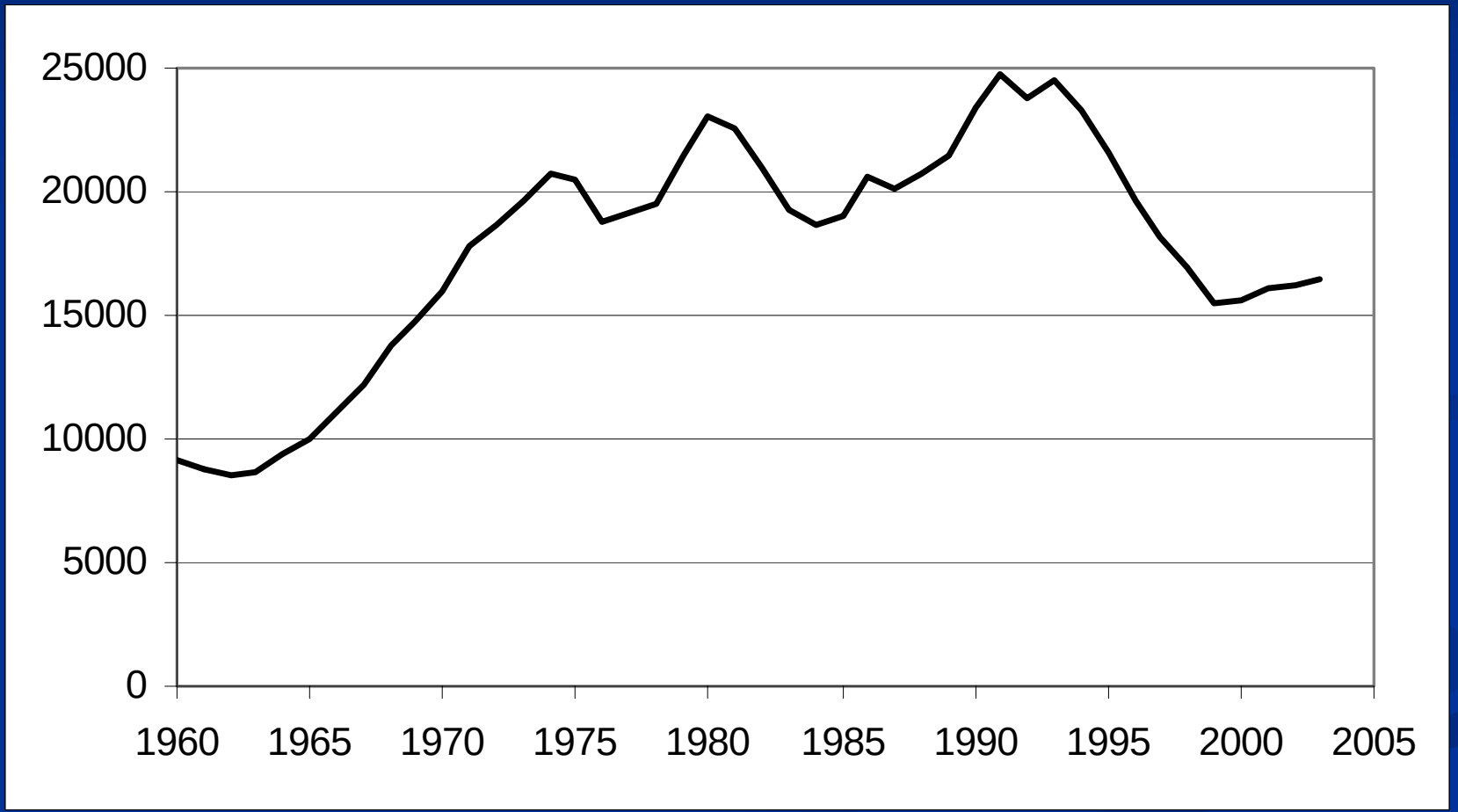
Does This Really Work??? You betcha. Actual and Predicted number of Death Penalty Sentences Per year, 1960-2003



Reminder: The Net Tone of *New York Times* Coverage 1960-2003



Homicides: decline from 24,500 in 1993 to 15,500 in 2000



Net Effects of Framing

Predicted effects on numbers of death sentences (controlling for other relevant factors)

Homicides decline by 9,000 from 1993 to 2000

x 3.0 = **decline of 27 death sentences**

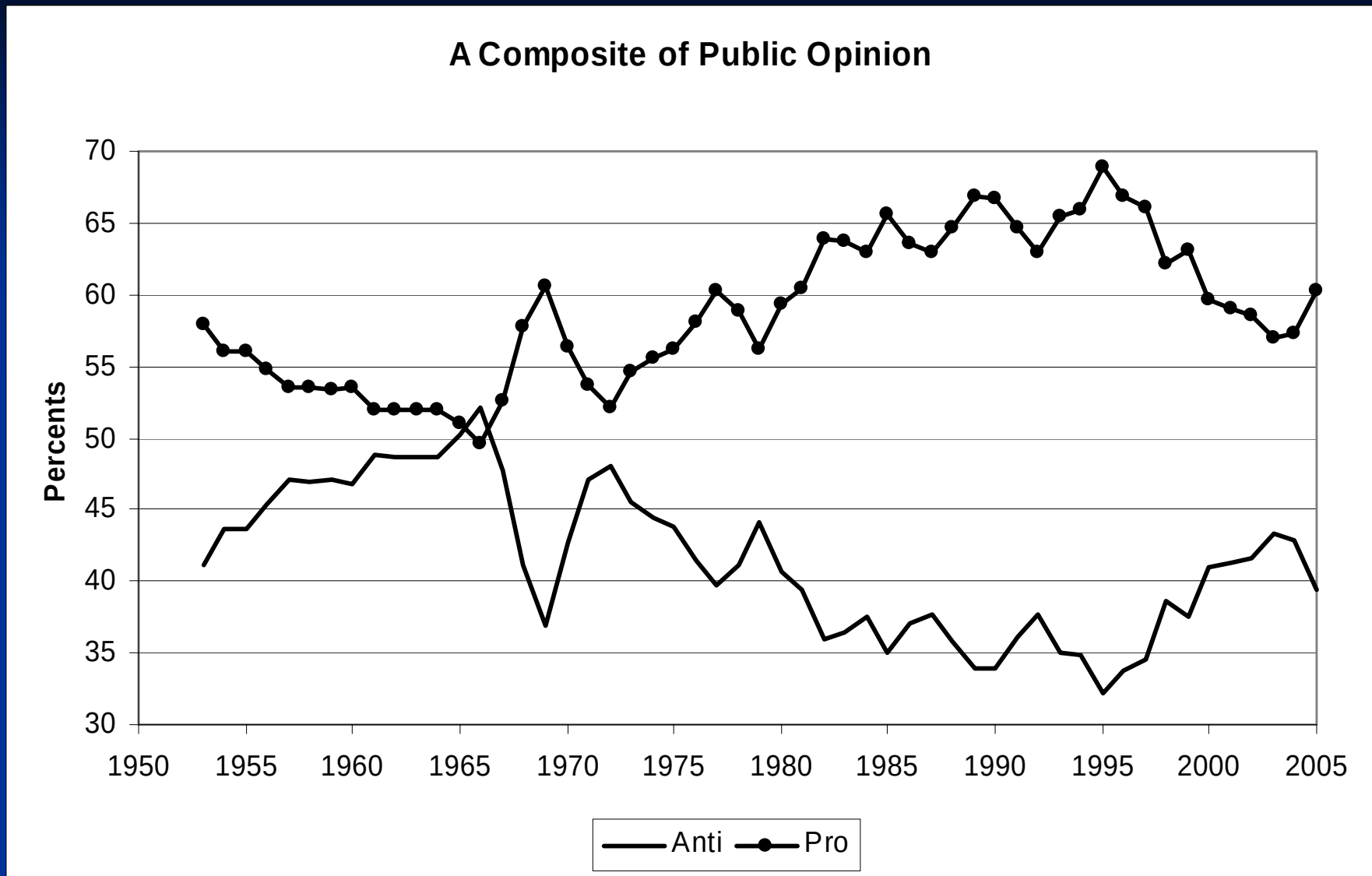
Media tone declines by 140 points from 1993 to 2000

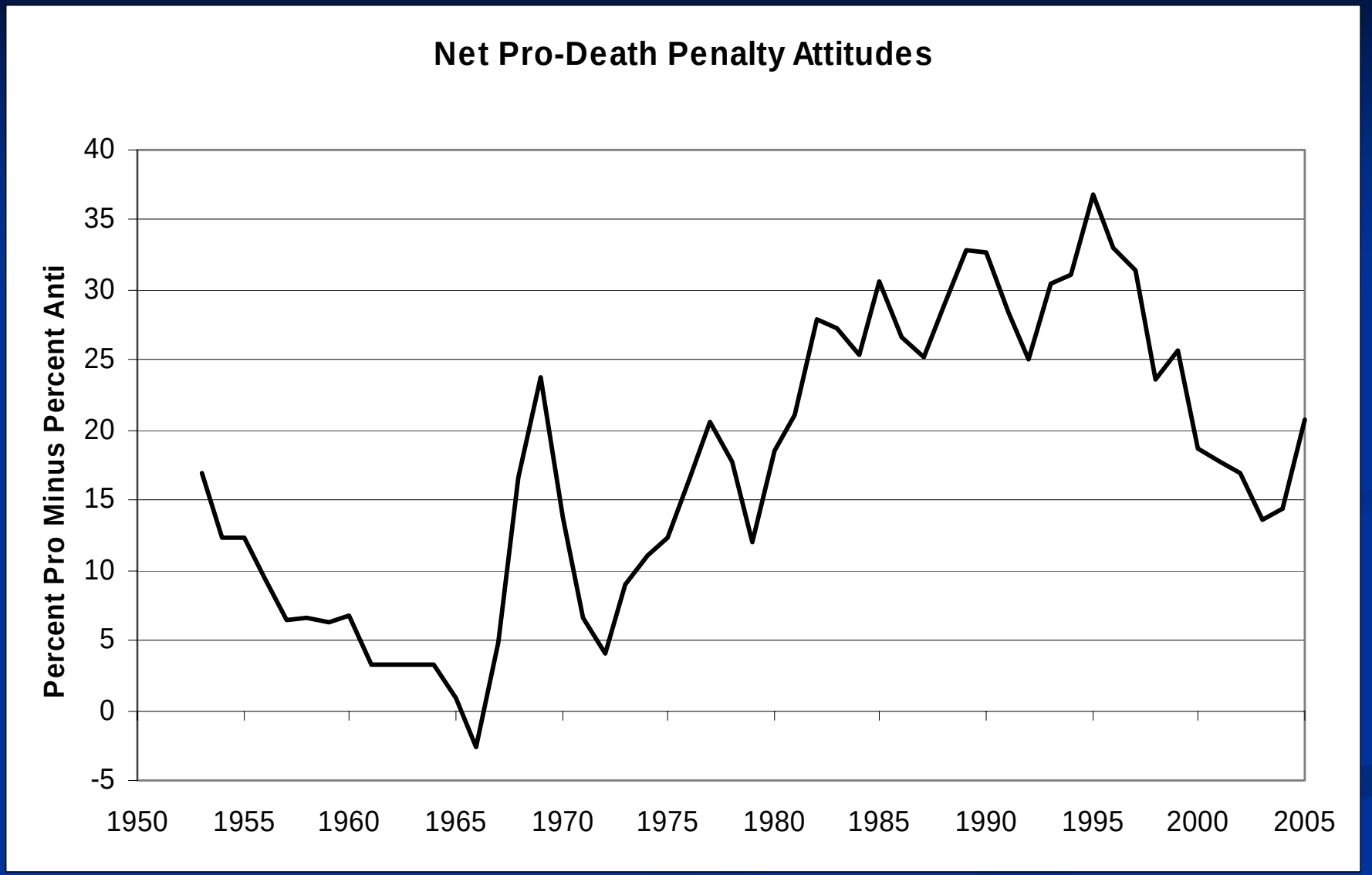
x 0.720 = **decline of 100 death sentences**

This stuff makes a difference!

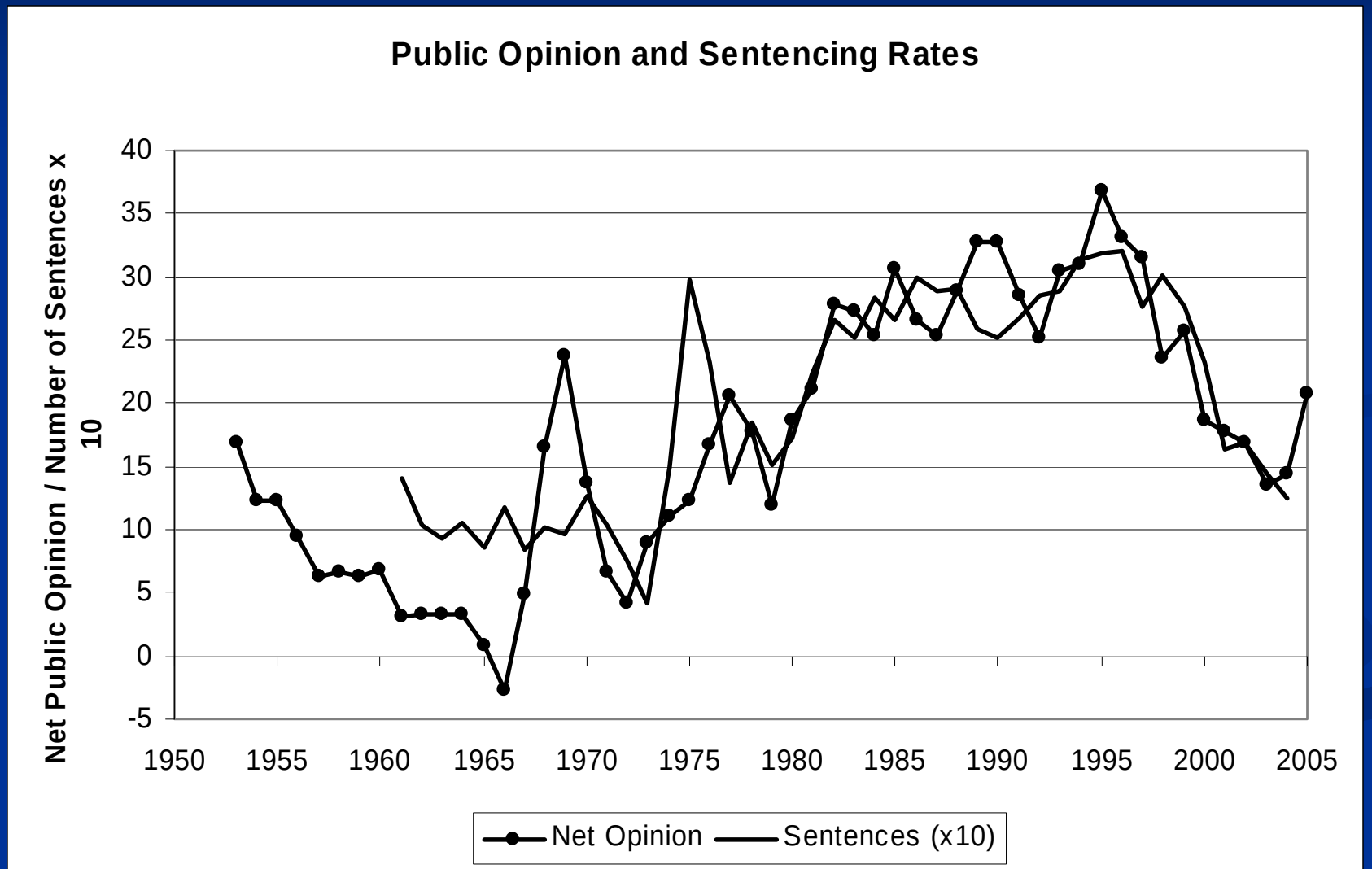
Public Opinion

- 270 surveys
- 65 different question wordings
- Most common question used 39 times
- Mathematical formula written by Prof. Jim Stimson of UNC Chapel Hill.
- Compares *trends* in *identical* question wordings and combines all the available data to produce a *single trend* reflecting the direction of movement in public opinion based on *all the available survey evidence*.


A Composite of Public Opinion
Percents
70
65
60
55
50
45
40
35
30
1950
1955
1960
1965
1970
1975
1980
1985
1990
1995
2000
2005
Anti
Pro


Net Pro-Death Penalty Attitudes
Percent Pro Minus Percent Anti
40
35
30
25
20
15
10
5
0
-5
1950
1955
1960
1965
1970
1975
1980
1985
1990
1995
2000
2005

A Similar Trend: Up up up from 1976 to 1993; then down



The Mid-1990s are a key turning point

- From 1976 to ~ 1995:
  - Rising homicide rates
  - Increasing media coverage favorable to the DP
  - Increasing concern with crime generally
  - Increasing public support for the DP
- From ~ 1995 to present:
  - Lower homicide rates
  - Increasing concern with execution of the innocent
  - Dramatic changes in both sentencing and opinion

What caused these shifts?

- The nature of public discourse is more important than declining homicide rates
- Not just media coverage per se
  - Rather, a shift in the *focus* of coverage
  - Movement away from the traditional moral frame
  - Result of strategic efforts by legal scholars, campaigners, many of whom are here at this conference.
- The Innocence Frame
  - Unprecedented in scope of coverage
  - Does not challenge pre-existing moral beliefs
  - May lead to an end of capital punishment in America

Concluding Thoughts

- US public opinion *not* moving on the moral issue
- Like it or not, most Americans support the idea, in theory. This is based on their moral views, and those are hard to change.
- But this is *not a theoretical issue*.
- In real courtrooms, with real jurors presented with real evidence about real people and with the chance to make real big mistakes, flaws in the system matter.
- Everyone can understand that, and it challenges no one's moral code. It's an argument that works.
- It has already saved a lot of lives.