

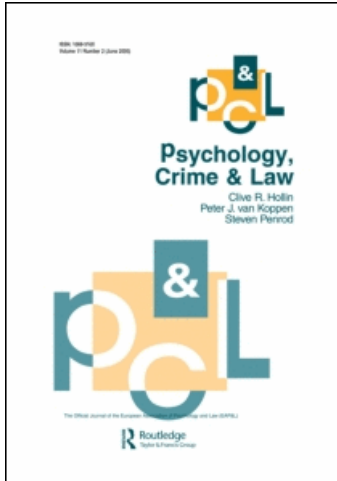
This article was downloaded by: [Florida International University]

On: 8 April 2010

Access details: Access Details: [subscription number 918417222]

Publisher Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Psychology, Crime & Law

Publication details, including instructions for authors and subscription information:

<http://www.informaworld.com/smpp/title~content=t713647155>

Moving beyond Ford, Atkins, and Roper: jurors' attitudes toward the execution of the elderly and the physically disabled

Brooke Butler ^a

^a Public Defender's Office of the Twelfth Judicial Circuit of Florida, Sarasota, FL, USA

First published on: 10 February 2010

To cite this Article Butler, Brooke(2010) 'Moving beyond Ford, Atkins, and Roper: jurors' attitudes toward the execution of the elderly and the physically disabled', Psychology, Crime & Law,, First published on: 10 February 2010 (iFirst)

To link to this Article: DOI: 10.1080/10683160902998033

URL: <http://dx.doi.org/10.1080/10683160902998033>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.informaworld.com/terms-and-conditions-of-access.pdf>

This article may be used for research, teaching and private study purposes. Any substantial or systematic reproduction, re-distribution, re-selling, loan or sub-licensing, systematic supply or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

Moving beyond Ford, Atkins, and Roper: jurors' attitudes toward the execution of the elderly and the physically disabled

Brooke Butler*

*Public Defender's Office of the Twelfth Judicial Circuit of Florida, Sarasota,
FL 34236, USA*

(Received 30 July 2008; final version received 20 April 2009)

The central purpose of the current study is to correlate level of support for the death penalty, death-qualification status, attitudes toward the death penalty (ATDP), legal authoritarianism (RLAQ (Revised Legal Attitudes Questionnaire)), and demographic indices with attitudes toward the execution of the elderly and the physically disabled. Two hundred and fifty residents of the 12th Judicial Circuit in Florida completed a booklet that contained the following: (1) one question that measured their level of support for the death penalty; (2) one question that categorized their death-qualification status; (3) the ATDP; (4) the RLAQ; (5) 20 questions that measured participants' attitudes toward the execution of the elderly and the physically disabled (EPPD); and (6) standard demographic questions. Results indicated that level of support for the death penalty, death-qualification status, attitudes toward the death penalty, legal authoritarianism, and demographic indices were significantly related to four components of the EPPD. Legal implications and applications are discussed.

Keywords: death penalty; juror decision making; prisoner; vulnerable adults; types of offenders

Introduction

In 2008, executions were at a 14-year low (Death Penalty Information Center, n.d.). In essence, defendants are being sentenced to death, but very few are being executed. As a result, death-row inmates are growing older and, at times, executed when they have become elderly (i.e. 65 and older) and/or physically disabled (e.g. having an amputated limb; hearing-impaired; paralyzed; suffering from cancer; visually impaired; etc.).

Although some elderly or physically disabled inmates are on death rows because they committed the crime at an unusually old age or with preexisting physical disabilities, most of the inmates who fall into one (or both) of these categories are there because of the aforementioned bottleneck. This delay in executions across the nation is due to a wide variety of reasons, ranging from litigation on the steps of the Supreme Court, to states' moratoria on putting inmates to death, to substantial delays in the appeals process.

As of this writing, there is a record of 110 elderly death-row inmates across the United States, which is nearly three times the 39 elderly inmates on death rows just

*Email: bbutler@sar.usf.edu

one decade ago (US Department of Justice, n.d.). Several recent well-publicized cases have highlighted the issue of executing the elderly and the physically disabled.

In 2004, a 74-year-old man was executed in Alabama for a murder he committed in 1977. James Hubbard was the oldest inmate executed in the United States in more than six decades. Before his execution, Mr Hubbard was known to be suffering from dementia and frequently forgot both his own name and that he was an inmate on Alabama's death row (Roig-Franzia, 2004). He also suffered from both colon and prostate cancer and was so weak that other inmates had to walk him to the shower and help comb his hair (Roig-Franzia, 2004). Willie Minor, Mr Hubbard's neighbor on the Alabama's death row filed a petition asking the governor to grant clemency as a 'matter of justice, mercy, and morality' (Willing, 2005).

The 2006 execution of Clarence Ray Allen drew national attention, largely because he was 76 years old, profoundly hearing- and visually-impaired, and confined to a wheelchair (Doyle, Egelko, & Finz, 2006). He had suffered a heart attack the year before his execution, only to be resuscitated and returned to California's death row (Fimrite, 2006). Mr Allen had to be carried into the execution chamber because he was unable to walk, either with or without assistance (Fimrite, 2006).

The legal system has traditionally treated the elderly and the physically disabled as populations that are special and, consequently, deserve special treatment under the law (Gaydon & Miller, 2007). For example, the victimization of someone who is elderly or physically disabled is frequently grounds for a more severe sentence. However, the legal system has been ambivalent with respect to both elderly and physically-disabled capital defendants and death-row inmates.

At present, the United States Supreme Court prohibits the execution of certain populations, ruling that subjecting 'vulnerable' groups to what is considered by most to be the ultimate punishment constitutes nothing more than senseless revenge. In 2008, only three such populations are barred from being executed: the mentally incompetent, the mentally retarded, and juvenile defendants.

In *Ford v. Wainwright* (1986), the Court held that it was a violation of the Eighth Amendment's ban on cruel unusual punishment to execute death-row inmates who are so severely mentally ill that they are unable to comprehend the nature of and reason behind the aforementioned punishment. In its ruling, the Court stated that such executions had questionable retributive value, presented no example to others, had no deterrence value, and offended humanity. In *Ford v. Wainwright* (1986), the Court also posited that protecting the condemned from fear and pain without the comfort of understanding is just as important as protecting the dignity of society from the barbarity of exacting mindless vengeance.

In *Atkins v. Virginia* (2002), the Court ruled that it was also a violation of the Eighth Amendment's ban on cruel and unusual punishment to execute death-row inmates who are mentally retarded (i.e. having an IQ of 70 or below). In addition to what the *Atkins* Court called 'subaverage intellectual functioning', mentally-retarded defendants also consistently demonstrate

'significant limitations in adaptive skills. [They] frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others' reactions. [Mentally retarded defendants']

deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability' (pp. 12–17).

In its opinion, the Court reasoned that mentally-retarded defendants' suggestibility and willingness to please lead them to confess (sometimes falsely) to capital crimes. The Court also stated that mentally-retarded defendants lack the ability to understand the charges against them and assist in their own defense. Finally, the Court suggested that mentally-retarded death-row inmates are unable to comprehend why they are being executed.

In *Roper v. Simmons* (2005), the Court abolished the death penalty for defendants who were under the age of 18 at the time of the offense, stating that 'retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity'. In doing so, the Court's reasoning was three-fold: (1) adolescents think and behave differently from adults in ways that undermine the Court's rationale for capital punishment; (2) capital trials do not allow for the mitigating effect of adolescence in a sufficiently reliable manner to meet the Court's Eighth Amendment standards; and (3) capital trials cannot account for the heightened risk of error produced by adolescent decision making in earlier criminal proceedings.

As of this writing, the Court has concluded that the death penalty is, in fact, a constitutional method of punishment. However, the decisions in *Ford v. Wainwright* (1986), *Atkins v. Virginia* (2002), and *Roper v. Simmons* (2005) clearly demonstrate that while the Court does not appear to be at ease with a blanket abolishment (e.g. *Furman v. Georgia*, 1972), the Court does appear to be comfortable with protecting certain categories of defendants from execution. No case more powerfully exemplifies this notion than *Kennedy v. Louisiana* (2008), when the Court abolished the death penalty for defendants who had been convicted of raping a child. Citing 'evolving standards of decency', the Court stated that executing child rapists served no deterrent or retributive value and posited the following: there was no evidence that the pain of the child victim would be lessened if the defendant were to be sentenced to death; administering the death penalty forces an impossible choice on the victim of the crime; children's testimony can be unreliable; sex crimes against children are already underreported; and the death penalty for child rapists provides a removal of the incentive for the perpetrator not to kill the victim.

Clearly, capital defendants and death-row inmates who are 65 and older and/or physically disabled present special legal challenges (Rothman, Dunlop, & Entzel, 2000). In 1997, 26% of inmates in state prisons in the United States reported some type of physical disability (Marushack & Beck, 2001). However, the percentage of death-row inmates who are physically disabled remains unknown, as most state prisons are reluctant to compile this type of data. Also, given the prevalence of dementia or Alzheimer's disease in the non-inmate elderly population, it is reasonable to conclude that a certain percentage of capital defendants and death-row inmates are afflicted with one of the above-mentioned diseases. However, the percentage of capital defendants and death-row inmates with dementia or Alzheimer's disease has also gone largely unreported. In fact, *Dusky v. United States* (1960) clearly states that defendants – regardless of the source of their cognitive incapacity and irrespective of the nature of the charges against them – must have the ability to consult with her or his attorney with

a reasonable degree of understanding, and a rational, as well as factual understanding of the proceedings against her or him.

Although *Ford v. Wainwright* (1986) prohibits the execution of death-row inmates who are so cognitively impaired that they do not know why they are being executed, the constitutionality of executing someone who is afflicted with Alzheimer's disease or dementia has yet to be specifically addressed by the legal system. While elderly inmates comprise a small percentage of death rows across the country, the implications for executing a population that many may view as vulnerable appears to be an issue that is worthy of both discussion and empirical exploration.

To compound matters, psycholegal research has also repeatedly concluded that most laypersons fail to understand the social realities of the system of capital punishment (Butler & Wasserman, 2006; Haney, 2005). Specifically, most people lack the realization that capital crimes are not confined to young, able-bodied defendants. For example, in 2007; Nelson Serrano went on trial for killing four business associates and their family members at age 69. The crimes took place when he was almost 60 years old. He was convicted and given four death sentences. Mr Serrano is one of the four oldest men on Florida's death row (Schottelkotte, 2007).

Laypersons tend to believe the myth perpetrated by the modern media that death-row inmates are provided with luxurious accommodations and high-quality health care. In actuality, psycholegal research has repeatedly demonstrated that the harsh conditions of confinement on death rows have severe psychological – and, consequently, physical – ramifications, which can lead to significant disease, and, ultimately, disability (Haney, 2006).

Also, most people are unable to grasp that elderly and physically disabled defendants are actually being executed. At the time of the execution, state prisons' press releases often contain inmates' mug shots that are many years old. Consequently, laypersons are shielded from realistic images of who is on death row and, in turn, actually being put to death (Haney, 2005). In addition, unless there is a procedural glitch with the execution itself, state prisons rarely publicize the health of the defendant at the time of execution. Unless death-row inmates have attorneys or family members who choose to call attention to the issue, the plight of elderly and physically-disabled death-row inmates has gone largely unreported.

In spite of laypersons' lack of knowledge about the mechanics of the scheme of capital punishment and the misperceptions perpetrated by state prisons, the public does seem to be somewhat uneasy with such executions (Willing, 2005). However, there has been very little psycholegal research that explores people's attitudes toward capital punishment as they relate to the elderly and the physically disabled (Brank, 2007; Miller & Bornstein, 2007). While it is unlikely that such prisoners would be completely exempt from executions, Miller and Bornstein (2007) have posited that age and/or physical disability might be considered on a case-by-case basis, although the authors acknowledge that state courts have been reluctant to do so in the past. Since the Court has voiced concern about 'evolving standards of decency' as they relate to the death penalty, empirical examination of this issue appears to be of relative importance (*Kennedy v. Louisiana*, 2008).

Another topic that has yet to be studied is the impact of defendant's advanced age or physical disability on decision-making processes in capital trials. If a conviction occurs in a capital case, the jury then determines the penalty by weighing the aggravating circumstances (i.e. arguments for death) against the mitigating

circumstances (i.e. arguments for life). If the aggravators outweigh the mitigators, the jury is to recommend the death sentence; if the mitigators outweigh the aggravators, then the jury is to recommend life in prison without the possibility of parole (i.e. LWOP) (*Ring v. Arizona*, 2002).

The Supreme Court ruled in *Lockett v. Ohio* (1978) that mitigating circumstances are not limited by statute and the jury may consider any aspect of the defendant's background or character may be considered in mitigation. In essence, a defendant's advanced age and/or physical condition are legitimate legal reasons for the trier of fact to consider a life sentence. However, because the majority of capital defendants are not elderly and/or physically disabled, very few social scientists and legal scholars have examined whether the aforementioned issues affect decision-making in capital cases.

Previous research has found that certain individual-difference variables appear to impact the way jurors evaluate mitigating circumstances and, consequently, determine sentencing in capital trials. For example, one of the more salient personality characteristics proven to affect decision making in capital trials is jurors' level of support for the death penalty (i.e. a unidimensional construct typically measured on a continuum scale). Specifically, as support for the death penalty increases, jurors appear to be less receptive to the mitigation presented during capital trials, and, consequently, are more likely to recommend a sentence of death (Butler & Moran, 2002, 2009).

On a similar note, death-qualification status (i.e. prospective jurors' eligibility for capital jury service based on their willingness to impose either a death or life sentence) has also been proven to strongly correlate with both evaluations of mitigating circumstances in capital trials and life-or-death recommendations (*Wainwright v. Witt*, 1985). Specifically, people who are barred from capital jury service because of their unwillingness to consider both legal penalties as appropriate forms of punishment (i.e. 'excludable' jurors) are more receptive to mitigating circumstances and, consequently, more like to recommend a sentence of LWOP than those who are not excluded from capital jury service because of their beliefs about the death penalty (i.e. 'death-qualified' jurors) (Butler, 2007a,b,c, 2008; Butler & Moran, 2002, 2007a,b, 2009; Luginbuhl & Middendorf, 1988; Robinson, 1993; Haney, Hurtado, & Vega, 1994). However, the role of level of support for the death penalty and, its counterpart, death-qualification status, in participants' attitudes toward capital punishment as they relate to the elderly and the physically disabled has yet to be determined.

An additional personality variable that appears to impact decision-making processes in capital cases is people's attitudes toward the death penalty. Social scientists have concluded that the issue of capital punishment is extraordinarily complex; in like fashion, people's opinions toward the death penalty are similarly multifaceted and need to be measured in a way that taps into the aforementioned underlying ambivalence (Haney, 2005). While previous research has demonstrated that people who espouse positive attitudes toward the death penalty are less receptive to mitigation and, consequently, more willing to impose the death sentence, a study of the relationship between attitudes toward the death penalty and attitudes toward the death penalty as it applies to the elderly and the physically disabled has yet to be conducted (Butler & Moran, 2009)

Another individual-difference variable that affects the way jurors view arguments for life and death is that of legal authoritarianism (Narby, Cutler, & Moran, 1993).

Specifically, legal authoritarians are more likely to feel that the rights of the government outweigh the rights of the individual with respect to legal issues. Previous studies have found that legal authoritarians are more receptive to aggravating circumstances and less receptive to mitigating circumstances (Butler & Moran, 2007a). Legal authoritarians are also more conviction-prone and death-prone than their civil libertarian counterparts (Butler, 2007a; Butler & Moran, 2002, 2007a; Martin & Cohn, 2004; Narby et al., 1993). However, the role of legal authoritarianism in people's attitudes toward executing the elderly and the physically disabled has yet to be determined.

The first purpose of the current study is to measure community members' attitudes toward the execution of the elderly and the physically disabled. The second purpose of the current study is to correlate level of support for the death penalty, death-qualification status, attitudes toward the death penalty, legal authoritarianism, and demographic indices with attitudes toward the execution of the elderly and the physically disabled.

It is hypothesized that participants who exhibit a high level of support the death penalty will be more likely to favor the execution of the elderly and the physically disabled. It is also hypothesized that death-qualified jurors will be more likely to have positive attitudes toward the execution of the elderly and the physically disabled. In addition, it is hypothesized that participants who have positive attitudes toward the death penalty will be more likely to feel that the death penalty is an appropriate form of punishment for the elderly and the physically disabled. Finally, it is hypothesized that legal authoritarian jurors will more likely to support the ultimate punishment for the aforementioned groups.

Method

Participants

Participants consisted of 250 people drawn from local businesses, driver's license bureaus, restaurants, and shopping malls in the Twelfth Judicial Circuit (i.e. Desoto, Manatee, and Sarasota counties) in Florida. Fifty-three per cent of participants were women; 47% were men.

Sixteen per cent of jurors were between the ages of 18 and 24; 22% per cent were between the ages of 25–34; 22% per cent were between the ages of 35–44; 19% were between the ages of 45–54; 15% were between the ages of 55–64; and 6% of the sample was 65 and older.

Twenty five per cent of participants described their political beliefs as 'conservative'; 26% described their political beliefs as 'slightly conservative'; 27% described their political beliefs as 'slightly liberal'; and 21% described their political beliefs as 'liberal'.

Seven per cent of respondents earned less than \$20 000 per year; 15% earned between \$20 000 and \$30 000 per year; 24% earned between \$30 000 and \$45 000 per year; 21% earned between \$45 000 and \$60 000 per year; 12% earned between \$60 000 and \$75 000 per year; and 21% earned more than \$75 000 per year.

The ethnic origin of the sample was as follows: 10% were African–American; 1% was Asian; 76% were Caucasian; 8% were Hispanic; and 5% were of an ethnic origin other than what was specified on the questionnaire. Although a disproportionately

large percentage of the sample was Caucasian, participants closely matched the demographics of the Twelfth Judicial Circuit.

Three per cent of jurors had some high school education; 19% had completed high school; 35% had some college or junior college; 31% had a college degree; and 12% had a post-graduate or professional degree.

Seventeen per cent of community members had served on a jury before. Of the participants who had prior jury service, 7% had served on a civil jury; 8% had served on a criminal jury; and 3% had served on both civil and criminal juries.

Forty-one per cent of participants reported that they had spent a significant amount of time caring for someone who is elderly; 28% of participants reported that they had spent a significant amount of time caring for someone who is physically disabled. Only 6% of the sample considered themselves to be elderly or physically disabled.

Level of support for the death penalty

Participants were asked to circle the statement that they agreed with most: (1) The death penalty is never an appropriate punishment for the crime of first-degree murder; (2) I am opposed to the death penalty, but would consider it under certain circumstances for the crime of first-degree murder; (3) I favor the death penalty, but would not consider it under certain circumstances for the crime of first-degree murder; and (4) The death penalty is the only appropriate punishment for the crime of first-degree murder.

Death-qualification status

Participants were then asked to indicate if they felt so strongly about the death penalty (either for or against it) that their views would prevent or substantially impair the performance of their duties as a juror in a capital case (*Wainwright v. Witt*, 1986). Those who answered 'No' to the aforementioned question were classified as death-qualified; those who answered 'Yes' were classified as excludable.

Attitudes toward the death penalty

Twenty-three questions that measured their attitudes toward the death penalty (ATDP) were included in the survey. Items were measured on a five-point Likert scale ranging from 1 = 'Strongly Disagree' to 5 = 'Strongly Agree' (Hingula, 2001). A few examples of questions from the ATDP include the following: 'People on death row are permitted to appeal their sentence too often'; 'People remain on death row too long'; 'Severe actions deserve equally severe punishments'; and 'The government does not have the right to sentence people to death' (Hingula, 2001).

The ATDP was developed by performing an item analysis on 50 questions and selecting the 23 items that had the highest discrimination values (L. Wrightsman, personal communication, 8 December 2008). While a factor analysis and reliability tests were not performed on the original measure, the ATDP was found to have a high level of internal consistency in the current study ($\alpha = 0.85$).

Revised Legal Attitudes Questionnaire

Kravitz, Cutler, and Brock's Revised Legal Attitudes Questionnaire (RLAQ) (Kravitz, Cutler, & Brock 1993) was used to measure participants' level of legal authoritarianism. This measure is made up of 23 items measured on a six-point Likert scale ranging from 1 = 'Strongly Disagree' to 6 = 'Strongly Agree'. Previous research has found that the RLAQ has acceptable levels of validity and reliability with respect to measuring legal authoritarianism (Narby et al., 1993).

Attitudes toward the execution of the elderly and the physically disabled

Measure

Twenty items were constructed to measure both participants' attitudes toward and factual knowledge about the execution of the elderly and the physically disabled (EEPD; please see the Appendix). For the purposes of the current study, 'elderly' was defined as age 65 and older. 'Physical disability' was defined as an inmate who was an amputee, hearing impaired, paralyzed, suffering from cancer, visually impaired, etc. Both constructs were explained to participants within the context of the survey. The aforementioned questions were measured on a six-point Likert scale ranging from 1 = 'Strongly Disagree' to 6 = 'Strongly Agree'.

Principal component analysis

An exploratory principal component analysis with varimax rotation was performed on all 20 items of the EEPD. The items in the EEPD appeared to load on five factors (see Table 1): (1) attitudes toward the punishment of the elderly and the physically disabled (component 1; items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10; $\alpha = 0.93$); (2) factual knowledge regarding the punishment of the elderly and the physically disabled (component 2; items 12, 13, 14, 15; $\alpha = 0.88$); (3) receptiveness to age and physical status as mitigation at trial (component 3; items 19, 20; $\alpha = 0.76$); (4) factual knowledge regarding the sentencing of the elderly and the physically disabled (component 4; items 17; 18; $\alpha = 0.90$); and (5) attitudes about general government-mandated punishment (component 5; items 11, 16; $\alpha = 0.53$) (see Appendix). Component 5 was dropped from subsequent analyses because of its low alpha level; composite measures were created for each of the remaining components and used in the EEPD analyses.

Internal reliability

A reliability analysis was performed on all 20 items of the EEPD. The EEPD was found to have a high level of internal consistency ($\alpha = 0.88$).

Procedure

Prior to their participation, community members read an informed consent form, which described the nature of the study, ensured that their participation was completely voluntary and anonymous, and reiterated that they would not receive compensation for their participation. They were also given a contact number in case

Table 1. Principal component analysis for the EEPD*.

	Component				
	1	2	3	4	5
Elderly not be eligible for death penalty (I1)	0.842	-0.042	-0.089	0.257	0.042
Physically disabled not be eligible for death penalty (I2)	0.841	-0.017	0.027	0.164	0.072
Elderly not be eligible for LWOP (I3)	0.690	0.133	0.233	-0.228	-0.110
Physically disabled not be eligible for LWOP (I4)	0.688	0.174	0.241	-0.259	-0.073
Waste of money to imprison an elderly person (I5)	0.663	0.220	0.261	-0.135	-0.098
Waste of money to imprison a physically disabled person (I6)	0.684	0.208	0.320	-0.112	-0.022
Person is elderly, their sentence should be commuted (I7)	0.694	0.161	0.447	-0.103	0.041
Person is physically disabled, their sentence should be commuted (I8)	0.675	0.163	0.445	-0.150	0.077
Elderly should not be executed (I9)	0.887	-0.010	0.060	0.212	0.104
Physically disabled should not be executed (I10)	0.871	-0.033	0.068	0.210	0.111
LWOP more punitive (I11)	0.193	0.039	0.121	-0.014	0.784
No elderly inmates (I12)	0.098	0.808	-0.022	0.138	-0.091
No physically-disabled inmates (I13)	0.063	0.852	0.081	0.104	-0.032
Government does not execute elderly (I14)	0.111	0.855	-0.009	0.154	0.058
Government does not execute physically disabled (I15)	0.072	0.828	0.093	0.152	0.082
Death penalty more punitive (I16)	0.109	0.025	0.052	0.073	-0.821
Elderly rarely sentenced to death (I17)	0.083	0.332	0.077	0.833	-0.049
Physically disabled rarely sentenced to death (I18)	-0.015	0.357	0.148	0.809	-0.084
Age taken into account (I19)	0.152	-0.010	0.822	0.142	0.097
Physical disability taken into account (I20)	0.367	0.051	0.766	0.113	-0.044

*Extraction method: principal component analysis; Rotation method: Varimax. Values in bold represent the highest factor loadings.

they were interested in the final results of the study once the data were collected and analyzed.

Participants were then asked to complete a booklet of measures. They were first asked to complete one question that measured their level of support for the death penalty and one question that categorized their death-qualification status. Participants were then asked to complete the ATDP, RLAQ, and EEPD measures. Finally, they answered standard demographic questions.

Results

Level of support for the death penalty

Eight per cent of participants felt the death penalty is never an appropriate punishment for the crime of first-degree murder; 34% opposed the death penalty, but would consider it under certain circumstances; 44% favored the death penalty, but would not consider it under certain circumstances; and 14% said the death penalty is the only appropriate punishment for the crime of first-degree murder.

Death-qualification status

Seventeen per cent of participants felt so strongly about the death penalty that they said their views would prevent or substantially impair the performance of their duties as a juror in a capital case. Consequently, these participants were classified as *Witt* excludables.

Attitudes toward the punishment of the elderly and the physically disabled***Level of support for the death penalty***

Level of support for the death penalty was significantly related to attitudes toward the punishment of the elderly and the physically disabled ($F(3,230) = 9.91, p < 0.001$). *Post hoc* comparisons revealed that community members who felt the death penalty was never an appropriate punishment for the crime of first-degree murder were significantly less likely to support the harsh punishment of the elderly and the physically disabled than were jurors who opposed the death penalty, but would consider it under certain circumstances ($M = 0.95; SE = 0.27$), participants who favored the death penalty, but would not consider it under certain circumstances ($M = 1.37; SE = 0.26$), and respondents who believed that the death penalty was the only appropriate punishment for the crime of first-degree murder ($M = 1.24; SE = 0.30$).

Death-qualification status

Death-qualification status was significantly related to attitudes toward the punishment of the elderly and the physically disabled ($F(1,232) = 11.61, p = 0.001$). Specifically, death-qualified participants were more likely to support the harsh punishment of the elderly and the physically disabled.

ATDP

Attitudes toward the death penalty were significantly related to attitudes toward the punishment of the elderly and the physically disabled ($r = 0.49, p = 0.01$). Specifically, as attitudes toward the death penalty became more positive, receptiveness to the harsh punishment of the elderly and the physically disabled also increased.

RLAQ

Legal authoritarianism was also significantly related to attitudes toward the punishment of the elderly and the physically disabled ($r = 0.43, p = 0.01$). Specifically, as legal authoritarianism increased, receptiveness to the harsh punishment of the aforementioned groups also increased.

Ethnic background

Respondents' ethnic background was significantly related to attitudes toward the punishment of the elderly and the physically disabled ($F(4,242) = 4.70, p = 0.001$). *Post hoc* comparisons revealed that African-American participants were significantly

less likely than Caucasian jurors to support the harsh punishment of the elderly and the physically disabled ($M=0.92$; $SE=0.24$).

Political views

Political views were significantly related to attitudes toward the punishment of the elderly and the physically disabled ($F(3,236)=2.71$, $p=0.05$). *Post hoc* comparisons revealed that participants who described their political views as 'liberal' were less likely to support the harsh punishment of the aforementioned groups than jurors who described their political beliefs as 'conservative' ($M=0.59$; $SE=0.21$).

Political views

Income level was significantly related to attitudes toward the punishment of the elderly and the physically disabled ($F(5,231)=2.32$, $p=0.04$). *Post hoc* comparisons demonstrated that participants with an annual income of over \$75 000 were significantly more likely to support the harsh punishment of the aforementioned groups than jurors with an annual income of between \$20 000 and \$30 000 ($M=0.84$; $SE=0.32$).

Factual knowledge regarding the punishment of the elderly and the physically disabled

Level of support for the death penalty

Level of support for the death penalty was significantly related to factual knowledge regarding the punishment of the elderly and the physically disabled ($F(3,230)=4.85$, $p=0.003$). *Post hoc* comparisons revealed that participants who felt the death penalty was never an appropriate punishment for the crime of first-degree murder were significantly more likely to have accurate knowledge regarding the execution of the elderly and the physically disabled than participants who favored the death penalty, but would not consider it under certain circumstances ($M=1.07$; $SE=0.35$) and respondents who believed that the death penalty was the only appropriate punishment for the crime of first-degree murder ($M=1.26$; $SE=0.40$).

Death-qualification status

Death-qualification status was significantly related to factual knowledge regarding the punishment of the elderly and the physically disabled ($F(1,232)=2.77$, $p=0.10$). Specifically, death-qualified jurors were less likely to have factual knowledge regarding the punishment of the aforementioned groups.

ATDP

Attitudes toward the death penalty were significantly related to factual knowledge regarding the punishment of the elderly and the physically disabled ($r=-0.27$, $p=0.01$). Specifically, as attitudes toward the death penalty became more positive, factual knowledge regarding the punishment of the elderly and the physically disabled decreased.

RLAQ

Legal authoritarianism was significantly related to factual knowledge regarding the punishment of the elderly and the physically disabled ($r = -0.28$, $p = 0.01$). Specifically, as legal authoritarianism increased, factual knowledge regarding the punishment of the elderly and the physically disabled decreased.

Receptiveness to age and physical status as mitigation at trial*Level of support for the death penalty*

Level of support for the death penalty was significantly related to receptiveness to age and physical status as mitigation at trial ($F(3,230) = 4.76$, $p = 0.003$). *Post hoc* comparisons revealed that community members who opposed the death penalty, but would consider it under certain circumstances were significantly more likely to be receptive to age and physical status as mitigation at trial than participants who favored the death penalty, but would not consider it under certain circumstances ($M = 0.68$; $SE = 0.21$) and jurors who believed that the death penalty was the only appropriate punishment for the crime of first-degree murder ($M = 0.89$; $SE = 0.29$).

ATDP

Attitudes toward the death penalty were significantly related to receptiveness to age and physical status as mitigation at trial ($r = -0.21$, $p = 0.01$). Specifically, as attitudes toward the death penalty became more positive, receptiveness to age and physical status as mitigation at trial decreased.

RLAQ

Legal authoritarianism was significantly related to receptiveness to age and physical status as mitigation at trial ($r = -0.14$, $p = 0.05$). Specifically, as legal authoritarianism increased, receptiveness to age and physical status as mitigation at trial decreased.

Political views

Political views were significantly related to receptiveness to age and physical status as mitigation at trial ($F(3,236) = 2.19$, $p = 0.09$). *Post hoc* comparisons revealed that participants who described their political views as 'liberal' were more likely to support age and physical status as mitigation at trial than jurors who described their political beliefs as 'conservative' ($M = 0.32$; $SE = 0.26$).

Factual knowledge regarding the sentencing of the elderly and the physically disabled*Income level*

Income level was significantly related to factual knowledge regarding the sentencing of the elderly and the physically disabled ($F(5,222) = 2.26$, $p = 0.05$). *Post hoc* comparisons revealed that respondents with an annual income of over \$75 000 had

more factual knowledge regarding the sentencing of the aforementioned groups than jurors with an annual income of between \$20 000 and \$30 000 ($M=0.81$; $SE=0.29$).

Self-concept

Self-concept was significantly related to factual knowledge regarding the sentencing of the elderly and the physically disabled ($F(1,235)=3.71$, $p=0.06$). Specifically, participants who considered themselves to be elderly or physically disabled had more factual knowledge regarding the sentencing of the aforementioned groups.

Discussion

The findings of the present study indicate that attitudes toward the execution of the elderly and the physically disabled were more complex than previously imagined. In essence, jurors who exhibited a high level of support for the death penalty, were death-qualified, held positive attitudes toward the death penalty, and espoused legal authoritarian attitudes were more likely to support the ultimate punishment for elderly and the physically disabled. They also tended to have the least amount of factual knowledge regarding the ultimate punishment of the aforementioned groups. This replicates earlier findings in that people who know the least about the death penalty tend to be the most likely to support the system of capital punishment (Haney, 2005).

The current research also demonstrated that certain demographic and attitudinal subgroups were more willing than others to consider age and physical status as mitigating factors at the time of trial. In essence, some (but not all) jurors saw advanced age or physical disability as a legitimate reason for a life sentence.

The findings also explored the relationship between demographic indices and attitudes toward the execution of the elderly and the physically disabled. Previous research has demonstrated that such correlations tend to be complex and, at times, contradictory (Butler & Moran, 2002). Clearly, the current findings support this notion. Future research should continue to investigate how individual differences drive decision-making in capital cases.

However, the current study was not without its methodological issues. In an actual trial, it is the judge (as opposed to the jurors themselves) who determines whether or not a venireperson is death-qualified or excludable. In addition, this process of death qualification is done in public and in the presence of other jurors; questions on a written survey may, indeed, have limited external validity. In addition, defense attorneys often try to rehabilitate excludable jurors who express opposition to the death penalty, rather than allow them to be immediately dismissed for cause. Finally, this sample was predominantly Caucasian, older, and of higher socio-economic status. While the sample was representative of the Twelfth Judicial Circuit in Florida, it may not be representative of other jurisdictions.

In spite of the aforementioned limitations, the present study reveals preliminary psycholegal data that replicate social scientific conclusions about the impact that individual-difference variables have on attitudes toward elderly and/or physically-disabled capital defendants and, consequently, decision making in capital trials (Butler, 2007a,b,c, 2008; Butler & Moran, 2002, 2007a,b, 2009; Butler & Wasserman, 2006; Luginbuhl, 1992; Diamond, 1993; Lynch & Haney, 2000). This research also

provides an introductory tool with respect to assessing the multifaceted attitudes concerning the execution of the elderly and the physically disabled.

The current findings also extend preexisting knowledge about capital jurors' decision-making processes by suggesting that certain jurors consider a defendant's advanced age and/or physical disability to be legitimate mitigating factors, as opposed to reasons for recommending the death penalty. Finally, the results of the current research may have implications for public policy in that many consider the elderly and the physically disabled to be a 'vulnerable' group. Future studies should attempt to tease apart some of the attitudinal complexities highlighted in the present study.

Perhaps most importantly, the present research demonstrates the community's lack of knowledge about the mechanics of the system of capital punishment, which may explain jurors' apparent ambivalence regarding the execution of these two groups of people. As Miller and Bornstein (2007) suggested, it appears that laypersons – not unlike the courts – appear to be willing to consider age or physical disability on a case-by-case basis. However, in order to take the aforementioned situations into account, the public must be accurately informed as to the stressful conditions of confinement that can cause disability, crime statistics (which include elderly offenders charged with capital crimes), and how the death penalty is applied, particularly to populations that many might perceive to be at risk.

As of this writing, Leroy Nash is 93 years old and the oldest American death-row inmate. Like the other prisoners on Arizona's death row, he is allowed to leave solitary confinement for an hour each day to exercise in a secure room. Mr Nash is unable to do so, as his body is disabled by arthritis, deafness and heart disease (Willing, 2005). Attorneys on behalf of Mr Nash have asked federal judges to rule on the constitutionality of executing inmates suffering from age-related afflictions (Willing, 2005). Whatever the outcome, legal scholars have posited that such cases have helped bring the issue of executing the elderly and physically disabled to the forefront of American consciousness.

'Dead man walking is one thing', said Jonathan Turley, a George Washington University law professor and executive director of the Project for Older Prisoners (POPS). 'Dead man being pushed along to the execution chamber in a wheelchair is another [issue entirely]' (Willing, 2005).

References

- Atkins v. Virginia, 536 U.S. 304 (2002).
- Brank, E.M. (2007). Elder research: Filling in an important gap in psychology and law. *Behavioral Sciences and the Law*, 25, 701–716.
- Butler, B. (2007a). The role of death qualification in capital trials involving juvenile defendants. *Journal of Applied Social Psychology*, 37, 549–560.
- Butler, B. (2007b). The role of death qualification in jurors' susceptibility to pretrial publicity. *Journal of Applied Social Psychology*, 37, 115–123.
- Butler, B. (2007c). Death qualification and prejudice: The effect of implicit racism, sexism, and homophobia on capital defendants' right to due process. *Behavioral Sciences and the Law*, 25, 857–867.
- Butler, B. (2008). The role of death qualification in venirepersons' susceptibility to victim impact statements. *Psychology, Crime & Law*, 14, 133–141.
- Butler, B., & Moran, G. (2002). The role of death qualification in participants' perceptions of aggravating and mitigating circumstances in capital trials. *Law and Human Behavior*, 26, 175–184.

- Butler, B., & Moran, G. (2007a). The impact of death qualification, belief in a just world, legal authoritarianism, and locus of control on participants' evaluations of aggravating and mitigating circumstances in capital trials. *Behavioral Sciences and the Law*, 25, 57–68.
- Butler, B., & Moran, G. (2007b). The role of death qualification and need for cognition in venirepersons' evaluations of expert scientific testimony in capital trials. *Behavioral Sciences and the Law*, 25, 561–571.
- Butler, B., & Moran, G. (2009). Is 'more' mitigation 'better'? A comparison of the additive and averaging models in capital cases. *American Journal of Forensic Psychology*, 27, 57–70.
- Butler, B., & Wasserman, A.W. (2006). The role of death qualification in participants' attitudes toward the insanity defense. *Journal of Applied Social Psychology*, 36, 1744–1757.
- Death Penalty Information Center (n.d.). *The death penalty in 2008: The Year End Report*. Retrieved 12 December 2008 from <http://www.deathpenaltyinfo.org/>.
- Diamond, S.S. (1993). Instructing on death: Psychologist, juries, and judges. *American Psychologist*, 48, 423–434.
- Doyle, J., Egelko, B., & Finz, S. (2006, 17 January). Ailing killer executed at age 76: Condemned for three slayings, Allen is oldest ever to be put to death in state. *San Francisco Chronicle*.
- Dusky v. United States, 362 U.S. 402 (1960).
- Fimrite, P. (2006, 15 January). Allen is first of many sick, aged in line at death row. *San Francisco Chronicle*.
- Ford v. Wainwright, 477 U.S. 399 (1986).
- Furman v. Georgia, 408 U.S. 238 (1972).
- Gaydon, L.B., & Miller, M.K. (2007). Elders in the justice system: How the system treats elders in trials, during imprisonment, and on death row. *Behavioral Sciences and the Law*, 25, 677–699.
- Haney, C., Hurtado, A., & Vega, L. (1994). 'Modern' death qualification: New data on its biasing effects. *Law and Human Behavior*, 18, 619–633.
- Haney, C. (2005). *Death by design: Capital punishment as a social psychological system*. New York: Oxford University Press.
- Haney, C. (2006). *Reforming punishment: Psychological limits to the pains of imprisonment*. Washington, DC: American Psychological Association.
- Hingula, R. (2001). *Jurors' understanding of instructions in death penalty cases*. Unpublished honors thesis, Department of Psychology, University of Kansas, Lawrence, KS.
- Kennedy v. Louisiana, 128 S. Ct. 2641, 2649 (2008).
- Kravitz, D.A., Cutler, B.L., & Brock, P. (1993). Reliability and validity of the original and revised Legal Attitudes Questionnaire. *Law and Human Behavior*, 17, 661–677.
- Lockett v. Ohio, 438 U.S. 586 (1978).
- Luginbuhl, J. (1992). Comprehension of judges' instructions in the penalty phase of a capital trial: Focus on mitigating circumstances. *Law and Human Behavior*, 16, 203–218.
- Luginbuhl, J., & Middendorf, K. (1988). Death penalty beliefs and jurors' responses to aggravating and mitigating circumstances in capital trials. *Law and Human Behavior*, 12, 263–281.
- Lynch, M., & Haney, C. (2000). Discrimination and instructional comprehension: Guided discretion, racial bias, and the death penalty. *Law and Human Behavior*, 24, 337–358.
- Martin, T.A., & Cohn, E.S. (2004). Attitudes toward the criminal legal system: Scale development and predictors. *Psychology, Crime & Law*, 10, 367–391.
- Marushack, L.M., & Beck, A.J. (2001). *Medical problems of inmates, 1997* (Special Report). Washington, DC: Bureau of Justice Statistics.
- Miller, M.K., & Bornstein, B.H. (2007). Elders on death row: Should age be a basis for execution exception. *Monitor on Psychology*, 38, 60.
- Narby, D.J., Cutler, B.L., & Moran, G. (1993). A meta-analysis of the association between authoritarianism and jurors' perceptions of defendant culpability. *Journal of Applied Psychology*, 78, 34–42.
- Ring v. Arizona, 536 U.S. 584 (2002).
- Robinson, R.J. (1993). What does 'unwilling to impose the death penalty mean anyway? Another look at excludable jurors. *Law and Human Behavior*, 17, 471–477.

- Roig-Franzia, M. (2004, 6 August). Alabama executes 74-year-old man: Infirm convict's death spurs debate on age, appeals process. *Washington Post*.
- Roper v. Simmons, 543 U.S. 551 (2005).
- Rothman, M.B., Dunlop, D.B., & Entzel, P. (2000). *Elders, crime, and the criminal justice system: Myth, perceptions, and reality in the 21st century*. New York: Springer.
- Schottelkotte, S. (2007, 26 June). Nelson Serrano sentenced to death. *The Ledger*.
- US Department of Justice (n.d.). *Bureau of Justice Statistics*. Retrieved 12 December 2008 from <http://www.ojp.usdoj.gov/bjs/>.
- Wainwright v. Witt, 469 U.S. 412 (1985).
- Willing, R. (2005, 10 February). Death row population is graying. *USA Today*.

Appendix. The EEPD

Strongly Disagree 1 2 3 4 5 6 Strongly Agree

1. If a person is elderly (i.e. 65 or older), they should not be eligible for the death penalty. (A¹)
2. If a person is physically disabled (e.g. an amputee; hearing impaired; paralyzed; suffering from cancer; visually impaired; etc.), they should not be eligible for the death penalty. (A)
3. If a person is elderly, they should not be eligible for a sentence of life in prison without the possibility of parole. (A)
4. If a person is physically disabled, they should not be eligible for a sentence of life in prison without the possibility of parole. (A)
5. It is a waste of taxpayers' money to imprison an elderly person, even if that person has been convicted of a violent crime. (A)
6. It is a waste of taxpayers' money to imprison a physically-disabled person, even if that person has been convicted of a violent crime. (A)
7. If a person is elderly, their sentence (either death or life in prison without the possibility of parole) should be commuted and they should be released, so they can spend their final days with friends or family. (A)
8. If a person is physically disabled, their sentence (either death or life in prison without the possibility of parole) should be commuted and they should be released, so they can spend their final days with friends or family. (A)
9. If a person is elderly, they should not be executed. (A)
10. If a person is physically disabled, they should not be executed. (A)
11. Life in prison without the possibility of parole is more punitive than the death penalty. (G²)
12. There are no elderly inmates on Florida's death row. (FP³)
13. There are no physically-disabled inmates on Florida's death row. (FP)
14. The government does not execute inmates who are elderly. (FP)
15. The government does not execute inmates who are physically disabled. (FP)
16. The death penalty is more punitive than life in prison without the possibility of parole. (G)
17. People who are elderly are rarely sentenced to death. (FS⁴)
18. People who are physically disabled are rarely sentenced to death. (FS)
19. A defendant's age should be taken into account when they are on trial. (R⁵)
20. A defendant's physical disability should be taken into account when they are on trial. (R)

Appendix notes

1. Attitudes toward the punishment of the elderly and the physically disabled.
2. Government-mandated punishment.
3. Factual knowledge regarding the punishment of the elderly and the physically disabled.
4. Factual knowledge regarding the sentencing of the elderly and the physically disabled.
5. Receptiveness to age and physical status as mitigation at trial.