

The Role of Death Qualification in Jurors' Susceptibility to Pretrial Publicity¹

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Two hundred residents of Florida's 12th Judicial Circuit completed questions measuring participants' level of death-penalty support, death-qualification status, knowledge of the facts surrounding an actual capital case, and attitudes toward the defendant in the aforementioned capital case. Results indicated that death-qualified participants were better able to correctly identify the defendant, recognize most of the factual details of the case, think that the defendant was guilty, and recommend the death penalty. In addition, death-qualified jurors were more likely to feel that the pretrial publicity surrounding the case would have minimal impact on the defendant's right to due process. Legal applications and implications are discussed.

In capital trials, it is the jury's responsibility to recommend a sentence of either life or death (*Ring v. Arizona*, 2002). This obligation is extremely unusual, considering the fact that jury sentencing in non-capital trials is almost nonexistent (Hans, 1986). The most salient difference between capital and non-capital voir dire (i.e., jury selection) is that jurors in capital trials must undergo an extraordinarily controversial process called *death qualification*.

Death qualification is a part of voir dire during which prospective jurors are questioned regarding their beliefs about capital punishment. This process serves to eliminate jurors whose attitudes toward the death penalty would prevent them from being fair and impartial in deciding the fate of a defendant. In order to sit on a capital jury, a person must not feel so strongly about the death penalty that his or her belief would "prevent or substantially impair the performance of [his or her] duties as a juror" (*Wainwright v. Witt*, 1985, p. 852). Jurors who "pass" the *Witt* standard are deemed

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death-qualified and are eligible for capital jury service, while jurors who fail the standard are deemed “excludable” and barred from capital jury service.

Previous research has demonstrated that death-qualified jurors tend to be demographically, attitudinally, dispositionally, and behaviorally distinguishable from their excludable counterparts. For example, they are more likely to be male, Caucasian, financially secure, politically conservative, and Christian (Butler & Moran, 2002; Hans, 1986). Death-qualified jurors are more likely to trust prosecutors; view prosecution witnesses as more believable, credible, and helpful; consider inadmissible evidence even if a judge has instructed them to ignore it; and infer guilt from a defendant’s failure to take the witness stand (Hans, 1986). Death-qualified jurors tend to be hostile to psychological defenses (Butler & Wasserman, 2006), more likely to believe in the infallibility of the criminal justice process, and less likely to agree that even the worst criminals should be considered for mercy (Butler & Moran, 2002; Butler & Wasserman, 2006; Ellsworth, Bukaty, Cowan, & Thompson, 1984; Fitzgerald & Ellsworth, 1984; Haney, 1984; Haney, Hurtado, & Vega, 1994; Hans, 1986; Moran & Comfort, 1986; Robinson, 1993; Thompson, Cowan, Ellsworth, & Harrington, 1984). Death-qualified jurors, when compared to excludables, are also more likely to have a high belief in a just world, an internal locus of control, and espouse legal authoritarian (i.e., pro-government) beliefs (Butler & Moran, in press). Perhaps more importantly, the aforementioned factors translate into behavior: Death-qualified jurors are significantly more likely than excludables to both find capital defendants guilty and sentence them to death (Butler & Wasserman, 2006; Moran & Comfort, 1986).

Because the death penalty typically is reserved for only the most heinous offenses and because the American media thrives on sensational headlines, most capital cases tend to be surrounded by a great deal of pretrial publicity. However, prior research has noted that the aforementioned media coverage tends to focus more on engaging the audience by inflating crime statistics, blurring fact and fiction, and demonizing violent offenders, and less on presenting an accurate and balanced picture of crime news (Haney, 2005). Since the vast majority of media outlets receive their information from law-enforcement organizations, it is hardly surprising that numerous studies have found almost all pretrial publicity to be pro-prosecution, pro-conviction, and pro-death (Besirevic & Fulero, 1999; Dexter, Cutler, & Moran, 1992; Haney, 2005; Moran & Cutler, 1991; Otto, Penrod, & Dexter, 1994). It also has been suggested that the sensationalism that tends to accompany death-penalty cases is similar, if not identical, to the aggravating factors (which focus on characteristics of the crime) presented during the penalty phase of a capital trial. In fact, very

rarely does mitigation (which focuses on the characteristics of the defendant) make front-page news (Haney, 2005).

Since prior findings have suggested that death-qualified jurors place more emphasis on aggravating than on mitigating circumstances, it stands to reason that death-qualified jurors, when compared to their excludable counterparts, would be more susceptible to “aggravator-laden” pretrial publicity (Butler & Moran, 2002; Luginbuhl & Middendorf, 1988). However, this assumption has yet to be investigated empirically. In addition, almost all of the earlier research on pretrial publicity has exposed participants to laboratory-simulated pretrial publicity for brief periods of time (Studebaker et al., 2002). We felt that assessing participants’ reactions to the repeated exposure of pretrial publicity surrounding a real capital case would enhance the external validity of the research (Stebly, Besirevic, Fulero, & Jimenez-Lorente, 1999).

The primary purpose in conducting the current study is to explore the role of death qualification in jurors’ susceptibility to pretrial publicity. It is hypothesized that death-qualified participants, when compared to excludables, will be more likely to correctly identify the defendant in an actual, highly publicized capital case involving the kidnapping, sexual assault, sexual battery, and murder of an 11-year-old girl, correctly recall the charges, and to exhibit more negative attitudes toward the defendant. It also is hypothesized that death-qualified jurors, when compared to excludables, will be more likely to correctly recognize more of the factual details of the case, to think that the defendant is guilty, and to recommend a death sentence.

Method

Participants

Participants consisted of 200 residents (108 female, 92 male) of the 12th Judicial Circuit in Sarasota, Florida; they were drawn from local shopping malls, businesses, and motor vehicle bureaus. The median age was 45 years; the median income was \$60,000.

The ethnic origin of the sample was as follows: 78% Caucasian; 11% Hispanic; 2% Asian; 2% African American; and 7% of an ethnic origin other than what was specified on the questionnaire. Two percent of respondents had no high school education, 4% had some high school, 14% had completed high school, 38% had some college or junior college, 30% had a college degree, and 12% had a postgraduate or professional degree. Finally, 26% of the jurors had served on a jury before.

Predictor Variables

First, participants specified their level of support for the death penalty. This was assessed in two ways. They were asked to circle the statement with which they most agreed: 1) The death penalty is never an appropriate punishment for the crime of first-degree murder; 2) In principle, I am opposed to the death penalty, but I would consider it under certain circumstances; 3) In principle, I favor the death penalty, but I would not consider it under certain circumstances; and 4) The death penalty is the only appropriate punishment for the crime of first-degree murder.

Second, participants were asked to indicate if they felt so strongly about the death penalty (either for it or against it) that their views would prevent or substantially impair the performance of their duties as a juror in a capital case. Participants who answered “No” to the aforementioned question were classified as *death-qualified*, while those who answered “Yes” were classified as *excludable*.

Capital Case

The study was conducted in conjunction with a change-of-venue motion filed for the Public Defender’s Office of the 12th Judicial Circuit regarding *Florida v. Joseph Peter Smith*.³ In February 2004, Joseph Smith was charged with the kidnapping, sexual assault, sexual battery, and first-degree murder of Carlie Brucia in Sarasota, Florida. The case received national attention, largely due to the fact that the victim’s abduction was caught on the surveillance videotape of a car wash (Saewitz, 2004a; 2004b; 2004c; 2004d).

Pretrial Publicity

After the defendant was arrested, the media news outlets were flooded with highly prejudicial and, often, largely inaccurate information. For example, the media reported that Mr. Smith had a “significant history” of violent offenses. In reality, the defendant had pled guilty to one charge of battery (which, in and of itself, does not constitute a “significant history”). The media also reported that the defendant “refused to cooperate” with authorities, clearly neglecting to mention Mr. Smith’s right to remain silent.

³In October 2005, Judge Andrew Owens denied the defense attorney’s request for the prohibition of death qualification of jurors. A subsequent motion for change of venue was also denied. In November 2005, a jury convicted Joseph Smith of capital murder, kidnapping, and sexual battery. In December 2005, a jury recommended the death sentence by a margin of 10 to 2. In March 2006, Judge Owens upheld the jury’s recommendation and formally sentenced Joseph Smith to death.

The media frequently described the defendant in dehumanizing and demoralizing terms (e.g., “tattooed,” “animal,” “monster,” “evil”). Finally, shortly after the defendant’s arrest, the Sarasota County Sheriff’s office announced that the defendant would pay “the ultimate price” for his crime, in spite of the fact that the State Attorney’s Office of the 12th Judicial Circuit had yet to charge Mr. Smith with a capital offense.

Measure of Susceptibility to Pretrial Publicity

The measure included three open-ended questions regarding the identification and attitude toward the defendant and 16 multiple-choice items that assessed participants’ knowledge of various factual details of the aforementioned case, their perception of the defendant’s guilt, the sentence he should receive if convicted, and evaluations of the impact that the pretrial publicity had on the defendant’s right to due process. Some questions included information that was well-publicized, while others included information that had not been well-publicized.

Procedure

Prior to their participation, participants 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. Participants also were given a contact number in case they were interested in the final results of the study once the data were collected and analyzed. After participants provided their informed consent, they completed the aforementioned booklet of measures and answered standard demographic questions.

Results

Participants’ breakdown with regard to attitudes toward the death penalty was as follows: 10% felt that the death penalty is never an appropriate punishment for the crime of first-degree murder; 38% opposed the death penalty, but would consider it under certain circumstances; 30% favored the death penalty, but would not consider it under certain circumstances; and 21% said that the death penalty is the only appropriate punishment for the crime of first-degree murder. There were 23% who 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*.

Death qualification was related significantly to correct identification of the following: defendant, $\chi^2(1, N = 200) = 2.23, p = .09$; victim's age, $\chi^2(3, N = 200) = 6.77, p = .08$; where the victim was going at the time of her abduction, $\chi^2(3, N = 200) = 6.77, p = .08$; presence of a videotape of the abduction, $\chi^2(3, N = 200) = 9.98, p = .02$; where the victim's body was found, $\chi^2(3, N = 200) = 13.01, p = .01$; defendant's prior arrest record, $\chi^2(1, N = 200) = 8.14, p = .01$; and relationship between the defendant and the victim, $\chi^2(3, N = 200) = 9.86, p = .02$. The aforementioned findings may be because death-qualified participants were significantly more likely than were excludable participants to watch news programs on a daily basis, $\chi^2(4, N = 200) = 9.57, p = .05$.

Death-qualified participants, when compared to excludables, were also significantly more likely to believe that the defendant was guilty, $\chi^2(3, N = 200) = 24.16, p < .001$ and that he should be sentenced to death, $\chi^2(1, N = 200) = 7.25, p < .01$. Death-qualified participants, when compared to excludables, were more likely to feel that the media attention surrounding the case would not significantly impact the defendant's right to a fair trial, $\chi^2(1, N = 200) = 6.99, p = .07$.

Death-qualified participants were more likely to be male, $\chi^2(1, N = 200) = 4.12, p = .03$; Caucasian, $\chi^2(1, N = 200) = 8.87, p = .07$; and of higher socioeconomic status, $\chi^2(5, N = 200) = 10.18, p = .07$. Death-qualified participants were also less likely to have had prior jury service, $\chi^2(1, N = 200) = 2.71, p = .08$. Finally, they were less likely to have been convicted of a crime other than minor traffic offenses or to have had a family member convicted of a crime other than minor traffic offenses, $\chi^2(1, N = 200) = 9.23, p < .01$.

Discussion

This study clearly demonstrates the salient role that death qualification has on jurors' susceptibility to pretrial publicity. As hypothesized, death-qualified participants were more likely to correctly identify the defendant. Also as hypothesized, death-qualified participants were more likely to correctly recognize most of the factual details of the case, to think that the defendant is guilty, and to recommend the death sentence. Finally, death-qualified participants were more likely to feel that the pretrial publicity surrounding the case would have minimal impact on the defendant's right to due process.

The aforementioned results may be due to the fact that death-qualified participants were significantly more likely than excludable participants to watch news programs on a daily basis. This may be because death-qualified jurors tend to espouse pro-prosecution beliefs (Butler, in press; Butler & Moran, in press). This may also be because death-qualified jurors are more

receptive to aggravating than to mitigating circumstances. Consequently, they may be more interested in pro-prosecution, aggravator-laden legal news than are their excludable counterparts.

However, the current study is not without its methodological limitations. Since capital voir dire typically is conducted both verbally and publicly, utilizing a written survey to assess participants' death-qualification status and knowledge of the pretrial publicity surrounding a capital case has limited external validity. Also, jurors were predominantly Caucasian, older, politically conservative, and of higher socioeconomic status. While the sample was representative of the 12th Judicial Circuit in Florida, it may not be representative of other jurisdictions. Finally, all capital cases are unique; it would be impossible to conclude that the pretrial publicity surrounding this case is representative of all cases that involve the death penalty.

In spite of the aforementioned issues, the results of this study appear to have broad legal implications. The present findings replicate earlier research concluding that the process of death qualification results in the seating of differentially partial jurors (Butler & Moran, 2002; Diamond, 1993; Luginbuhl, 1992; Lynch & Haney, 2000; Wiener, Pritchard, & Weston, 1995).

The current study both extends previous findings and underscores the importance of change-of-venue motions by demonstrating the tremendous effect that death qualification, combined with exposure to pretrial publicity, has on capital defendants. In essence, capital juries are more likely to be comprised of people who know more about the case, think the defendant is guilty, and view the death sentence as the appropriate punishment before the trial even begins. Perhaps most disturbingly, prior research has suggested that knowledge of pretrial publicity is particularly resistant to rehabilitative voir dire (Dexter et al., 1992). This may be because the most prejudiced jurors are often the least aware of and/or the least likely to admit their biases (Haney, 2005). It may also be because it is nearly impossible for people to set aside prior knowledge, attitudes, and beliefs before being seated as jurors (Haney, 2005).

So, what are we to do? The United States Supreme Court has concluded definitively that the death-qualification process is constitutional (*Lockhart v. McCree*, 1986). However, psycholegal research continues to suggest otherwise and, even more importantly, some courts are beginning to listen. The Supreme Court recently abolished the juvenile death penalty (*Roper v. Simmons*, 2005) and execution of the mentally retarded (*Atkins v. Virginia*, 2002) in part because of psycholegal research. Consequently, it is imperative that social scientists continue to investigate the issues that pertain to capital cases.

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