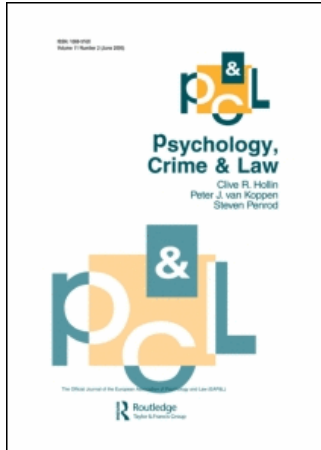


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### The role of death qualification in venirepersons' susceptibility to victim impact statements

Brooke Butler<sup>a</sup>

<sup>a</sup> University of South Florida-Sarasota, USA

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# The role of death qualification in venirepersons' susceptibility to victim impact statements

BROOKE BUTLER

*University of South Florida–Sarasota, USA*

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## Abstract

Two hundred venirepersons (prospective Jurors) from the 12th Judicial Circuit in Sarasota, Florida completed the following booklet of stimulus materials: (1) one question that measured their attitudes toward the death penalty; (2) one question that categorized their death-qualification status; (3) a summary of the guilt phase and penalty phases of a capital case in which victim impact statements were either absent or present; (4) 26 questions that measured their susceptibility to victim impact statements (VIS); and (5) standard demographic questions. Both death-qualification status and the presence of victim impact statements were significantly related to attitudes toward the victim, the victim's survivors, and the defendant. Legal implications are discussed.

**Keywords:** *Death qualification, victim impact statements, jurors, capital punishment, death penalty*

## Introduction

In the USA, juries in death-penalty cases are responsible for deciding the sentence of the defendant (i.e., either death or life in prison without the possibility of parole) in all states that retain capital punishment (*Ring v. Arizona, 2002*). While the jury's decision is typically considered to be a "recommendation" for which the judge must lend "great weight," the aforementioned sentence is rarely overturned.

The primary difference between capital jurors and jurors in other cases is that death penalty jurors must undergo a process called death qualification. During death qualification, prospective jurors are questioned regarding their beliefs about capital punishment. This process serves to eliminate jurors whose attitudes toward the death penalty would render them unable to be fair and impartial in deciding the fate of a defendant. In order to sit on a capital jury, a person must be willing to consider all legal penalties as appropriate forms of punishment. Jurors who "pass" the aforementioned standard are deemed "death-qualified" and are eligible for capital jury service; jurors who "fail" the aforementioned standard are deemed "excludable" and are barred from hearing a death penalty case.

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Correspondence: To whom correspondence should be addressed at the University of South Florida–Sarasota, Department of Psychology, 8350 N. Tamiami Trail, Sarasota, FL 34243, USA. E-mail: [bbutler@sar.usf.edu](mailto:bbutler@sar.usf.edu)  
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The current standard for death qualification is the *Witt* standard. In *Wainwright v. Witt* (1985), the Court ruled that if a potential juror feels so strongly about the death penalty that [his/her] belief would “prevent or substantially impair the performance of his duties as a juror, it is grounds for dismissal for cause” (p. 852).

Although the Court sought to enhance the fairness and impartiality of capital juries by developing the *Witt* standard, the data indicate that this modification did not have the intended effect. In fact, research has suggested that the adoption of the *Witt* standard has had significant consequences. For example, Dillehay and Sandys (1996) found that 28% of participants (who had served as jurors on felony cases) met the *Witt* standard would, contrary to law, automatically impose the death penalty. In fact, 36% of all venirepersons (prospective Jurors) exhibited attitudes toward the death penalty so vehement that it prevented them from being impartial in a capital case.

Death-qualified jurors are demographically unique: When compared to excludables, they are more likely to be male, Caucasian, moderately well-educated, politically conservative, Catholic or Protestant, and middle-class (Butler, 2007a,b; Butler & Moran, 2007; Butler & Moran, 2007b; Butler & Wasserman, 2006; Dillehay & Sandys, 1996; Fitzgerald & Ellsworth, 1984; Hans, 1986; Moran & Comfort, 1986).

Death-qualified jurors are dispositionally unique: When compared to excludables, they are more likely to have a high belief in a just world, espouse legal authoritarian beliefs, exhibit an internal locus of control, and have a low need for cognition (Butler & Moran, 2007; Butler & Moran, 2007b).

Death-qualified jurors are attitudinally unique: When compared to excludables, they are more likely to weigh aggravating circumstances (i.e. arguments for death) more heavily than mitigating circumstances (i.e. arguments for life) (Butler & Moran, 2002, 2007), evaluate ambiguous expert scientific testimony more favorably (Butler & Moran, 2007b), be skeptical of defenses involving mental illness (including the insanity defense) (Butler & Wasserman, 2006; Cutler, Moran, & Narby, 1992; Ellsworth, Bukaty, Cowan, & Thompson, 1984), and are more susceptible to both the pretrial publicity that inevitably surrounds capital cases (Butler, 2007b). Finally, death-qualified jurors are 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; Cowan, Thompson, & Ellsworth, 1984; Fitzgerald & Ellsworth, 1984; Haney, 1984a; Haney, Hurtado, & Vega, 1994; Hans, 1986; Moran & Comfort, 1986; Robinson, 1993; Thompson, Cowan, Ellsworth, & Harrington, 1984).

Death-qualified jurors are behaviorally unique: When compared to excludables, they are more likely to find capital defendants guilty as well as sentence them to death (Butler, 2007a,b; Butler & Moran, 2002; Butler & Moran, 2007; Butler & Moran, 2007b; Butler & Wasserman, 2006; Moran & Comfort, 1986). We have seen this pro-conviction, pro-death bias in death-qualified jurors' evaluations of both adult and juvenile defendants (Butler, 2007a).

Previous researchers have found that the mere process of death qualification affects jurors' beliefs about the defendant's guilt and their willingness to impose the death sentence. For example, Haney (1984a,b) found that capital voir dire (i.e. jury selection) is the only voir dire that requires the penalty to be discussed before it is relevant. Thus, the focus of jurors' attention is drawn away from the presumption of innocence and onto post-conviction events. The time and energy spent by the court presents an implication of guilt

and suggests to jurors that the penalty is relevant, if not inevitable (Haney et al., 1994). Death qualification also forces jurors to imagine themselves in the penalty-phase proceeding. Previous research has found that simply assuming an event will occur increases the subjective estimate that it will (Tversky & Kahneman, 1974). In addition, during death qualification, jurors are questioned repeatedly about their views on the death penalty. This can have two negative effects. First, jurors can become desensitized to the imposition of the death penalty due to repeated exposure to this potentially emotional issue. Second, jurors are forced to publicly commit to a particular viewpoint. Earlier findings have suggested that public affirmation of an opinion can actually cause that opinion to strengthen (Festinger, 1957). Finally, jurors who do not endorse the death penalty encounter implied legal disapproval by being “excluded” because they are “unfit for capital jury service.”

During the sentencing phase of capital trials, certain states allow victims to speak about the harm that they have suffered as a result of the crime (*Booth v. Maryland*, 1987; *Payne v. Tennessee*, 1991). The aforementioned victim impact statements are not without controversy. Some legal experts suggest that they give victims a voice and allow for psychological healing and closure; other legal experts posit that such statements encourage jurors to base life-and-death decisions on sentiment, as opposed to fact (Greene, 1999; Myers, Godwin, Latter, & Winstanley, 2004; Myers & Greene, 2004). Previous research has suggested that the presence of victim impact statements affects the way that jurors perceive the victim and victim’s survivors (Greene, 1999). Earlier studies have also found that death-qualified jurors appear to be more likely to sentence the defendant to death when s/he is described in dehumanizing language (Myers et al., 2004). However, previous research failed to examine the relationship between death-qualification status and susceptibility to victim impact statements through the use of a *Witt*-based death qualification measure, veritable venirepersons, victim impact statements that do not involve negative characterizations of the defendant, and a comprehensive survey assessing attitudes toward the victim, victim’s survivors, and defendant.

The purpose of the current study is to correlate death-qualification status with venirepersons’ susceptibility to victim impact statements through the use of a methodology that is internally and externally valid. Based on the findings of similar studies, it is hypothesized that death-qualified venirepersons, when compared to excludables, will be more likely to do the following: (1) Exhibit more empathy toward both the victim and the victim’s survivors; (2) exhibit less empathy toward the defendant, (3) evaluate the victim more positively; (4) feel that the crime had a significant impact on family members of the victim; (5) feel that survivors’ opinions regarding the sentence are an important part of capital trials; and (6) sentence the defendant to death.

It is also hypothesized that, when victim impact statements are present, participants will be more likely to do the following: (1) exhibit more empathy toward both the victim and the victim’s survivors; (2) exhibit less empathy toward the defendant, (3) evaluate the victim more positively; (4) feel that the crime had a significant impact on family members of the victim; (5) feel that survivors’ opinions regarding the sentence are an important part of capital trials; and (6) sentence the defendant to death.

Finally, it is hypothesized that death-qualified participants exposed to victim impact statements will be more likely to do the following: (1) exhibit more empathy toward both the victim and the victim’s survivors; (2) exhibit less empathy toward the defendant; (3) evaluate the victim more positively; (4) feel that the crime had a significant impact on

family members of the victim; (5) feel that survivors' opinions regarding the sentence are an important part of capital trials; and (6) sentence the defendant to death.

## **Method**

### *Participants*

Participants consisted of 200 venirepersons who had been called for jury duty at the Twelfth Judicial Circuit in Sarasota, Florida. Fifty-five per cent of participants were women; 45% were men. The median age was 55; the median income was \$65 000.

### *Attitudes toward the death penalty*

Venirepersons' specified their 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*

Venirepersons were 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. Participants who answered "No" to the aforementioned question were classified as death-qualified; those who answered "Yes" were classified as excludable.

### *Stimulus case*

Venirepersons read the summary of testimony presented during the guilt and penalty phases of a capital trial involving the robbery and murder of a convenience store clerk. The scenario was constructed with the assistance of an attorney experienced in capital cases and has been used in three prior studies (Butler, 2007; Butler & Moran, 2002, 2007). Half of the scenarios contained a series of victim impact statements during the penalty phase; half did not. The scenarios were identical in all other respects.

In the scenario, three eyewitnesses saw a man enter the convenience store and demand money from the cashier. When the cashier turned around to open the register, the perpetrator shouted at him to "hurry up." The cashier fumbled with the register, and the perpetrator shot him once, killing him instantly. The perpetrator then took the money out of the register (amounting to \$300) and fled. A short time later, the police found a man who matched the description of the murderer walking near the convenience store. The man, Andrew Jones, did not have an alibi for his whereabouts at the time of the crime. They searched him and found \$300. The police arrested Mr Jones and took him to the police station. In a subsequent lineup, the three eyewitnesses positively identified Mr Jones as the person they had seen murder the convenience store clerk. His fingerprints were also found at the scene of the crime.

*Victim impact statements*

Half of the stimulus cases contained a series of victim impact statements; the other half did not. Surveys were randomly assigned in a between-subjects design, so each participant received and completed only one survey.

In the victim impact statement-absent condition, participants read the following:

Gregory Bass, the 25-year-old cashier who was murdered at the Quick Stop, is survived by his parents, a wife, an 18-month-old son, and best friend.

In the victim impact statement-present condition, participants read the following:

Gregory Bass, the 25-year-old cashier who was murdered at the Quick Stop, is survived by a wife and 18-month-old son. He took the job at the convenience store in order to earn extra money to pay his way through college. In fact, he was due to graduate from Keiser College that December with a degree in computer networking. He would have been the first person in his family to earn a college degree. His wife, Sandra Bass, testified that her husband was thrilled to be a new father. "He spent all of his free time with our son," she testified, sobbing. "He was so proud to be a father. My son will never know what a wonderful person his dad was." After her husband was murdered, Sandra fell into a deep depression and contemplated suicide. "The only thing that stopped me from killing myself was our son," she cried. "I didn't want him to grow up without parents." Matthew Gibson, Greg's best friend of over 20 years, testified that his friend was honest, loyal, and reliable. "I could always count on Greg," he said, wiping away tears. "I can't believe he's gone. It just doesn't seem real." After his best friend was murdered, Matthew began to drink heavily. "I would come home from work and sit in the dark, drinking" he said. "I was wracked with guilt. I wondered if there was some way that I could have prevented my best friend from dying." Greg's parents, George and Susan Bass, described their son as an avid fisherman with a great sense of humor. "Greg always had a smile on his face and a joke to tell," Susan Bass said, smiling. "He's up in heaven now, entertaining the angels." George reported that their son's murder put a heavy strain on their marriage. "We went from being best friends to complete strangers," he said. "All Susan wanted to do was talk about our son. I couldn't bear to talk about him because the pain was so deep. Because of this, we almost divorced."

*Dependent measure*

Twenty-six questions measuring participants' susceptibility to victim impact statements (i.e. VIS) were utilized (Greene, 1999). Questions were grouped into the following six categories: (1) the victim; (2) the victim's survivors; (3) the defendant; (4) victim qualities; (5) impact of the crime on family members; and (6) survivors' opinions regarding the sentence. Venirepersons were asked to read each item and indicate their opinion on a six-point Likert scale.

*Procedure*

Permission to collect data at the courthouse was obtained from the Director of the Jury Pool, Mark Martell, under the assumption he had the opportunity to review the proposal before the research was undertaken. After the proposal was approved, the experimenter

collected data in 20 sessions during January–May of 2006. Volunteers were solicited from an area designated for prospective venirepersons who were waiting to be called randomly and assigned to particular cases.

Prior to their participation, venirepersons 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. Venirepersons were also given a contact number in case 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. Venirepersons were first asked to complete one question that measured their attitudes toward the death penalty and another question that categorized their death-qualification status. Next, participants read a summary of the guilt and penalty phases of a capital case in which victim impact statements were either absent or present. Venirepersons were then asked to complete the VIS, select a sentence (either death or life in prison without the possibility of parole), and answer standard demographic questions.

## Results

Twenty-five 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 venirepersons were classified as *Witt* excludables.

### *The victim*

The presence of victim impact statements was significantly related to empathy toward the victim ( $F(7,192) = 4.29, p < 0.001$ ). Specifically, when victim impact statements were present, participants were more likely to feel compassion for the victim ( $F(1,198) = 3.98, p = 0.05$ ), like the victim ( $F(1,198) = 5.87, p = 0.02$ ), feel similar to the victim ( $F(1,198) = 11.66, p = 0.001$ ), and feel that the victim suffered tremendously ( $F(1,198) = 6.36, p = 0.01$ ).

There was an interaction between death-qualification status and presence of victim impact statements on empathy toward the victim ( $F(7,190) = 1.52, p = 0.06$ ). Specifically, when victim impact statements were present, death-qualified venirepersons were more likely to feel similar to the victim ( $F(1,196) = 3.89, p = 0.05$ ) and that the victim was valuable to his family and friends ( $F(1,196) = 4.03, p = 0.05$ ).

### *The victim's survivors*

Death-qualification status was significantly related to empathy toward the victim's survivors ( $F(6,193) = 3.09, p = 0.007$ ). Specifically, death-qualified participants were more likely to feel compassion for the victim's survivors ( $F(1,198) = 4.15, p = 0.04$ ), that the victim's survivors had suffered psychologically ( $F(1,198) = 3.49, p = 0.06$ ), and that the victim's survivors and suffered physically ( $F(1,198) = 6.22, p = 0.01$ ).

The presence of victim impact statements was also significantly related to empathy toward the victim's survivors ( $F(6,193) = 2.79, p = 0.01$ ). Specifically, when victim impact statements were present, participants were more likely to like the victim's survivors ( $F(1,198) = 5.34, p = 0.02$ ) and feel that the victim's survivors suffered financially ( $F(1,198) = 3.83, p = 0.05$ ).

There was an interaction between death-qualification status and presence of victim impact statements on empathy toward the victim's survivors ( $F(6,191) = 1.31, p = 0.07$ ).

Specifically, when victim impact statements were present, death-qualified participants were more likely to like the victim's survivors ( $F(1,196) = 5.39, p = 0.02$ ), feel similar to the victim's survivors ( $F(1,196) = 4.97, p = 0.03$ ), and believe that the victim's survivors had suffered psychologically ( $F(1,196) = 3.41, p = 0.07$ ).

#### *The defendant*

Death-qualification status was significantly related to attitudes toward the defendant ( $F(4,195) = 3.09, p = 0.06$ ). Specifically, death-qualified participants viewed the defendant less favorably ( $F(1,198) = 5.06, p = 0.03$ ), were less likely to feel that the defendant could be rehabilitated in prison ( $F(1,198) = 4.08, p = 0.05$ ), and viewed the defendant as less likeable ( $F(1,198) = 8.25, p = 0.005$ ).

#### *Victim qualities*

The presence of victim impact statements was significantly related to perceptions of victim qualities ( $F(3,196) = 2.03, p = 0.10$ ). Specifically, when victim impact statements were present, participants were more likely to feel that the victim was respectable ( $F(1,198) = 4.17, p = 0.04$ ).

#### *Impact of the crime on family members*

Death-qualification status was significantly related to attitudes toward the impact of the crime on family members ( $F(3,196) = 4.39, p = 0.005$ ). Specifically, death-qualified participants were more likely to feel that information about the impact of the crime on survivors should be made known to a jury because family members may not be able to articulate their grief even though their loss is severe ( $F(1,198) = 5.92, p = 0.02$ ) and less likely to feel that information about the impact of the crime on survivors should not be made known to a jury because the defendant did not consider the victim's family at the time he considered the crime ( $F(1,198) = 8.70, p = 0.004$ ).

#### *Survivors' opinions regarding the sentence*

Death-qualification status was also significantly related to survivors' opinions regarding the sentence ( $F(3,196) = 1.71, p = 0.06$ ). Specifically, death-qualified participants were more likely to feel that information about survivors' thoughts on punishment should be made known to a jury because the survivors are the true victims and their voices should be heard ( $F(1,198) = 5.05, p = 0.03$ ), less likely to feel that information about survivors' thoughts on punishment should not be made known to a jury because nearly all survivors will be emotional, vindictive, and desirous of the harshest penalty possible ( $F(1,198) = 2.93, p = 0.09$ ), and more likely to feel that information about survivors' thoughts on punishment should be made known to a jury because it is related to the harm the defendant has caused ( $F(1,198) = 3.08, p = 0.08$ ).

#### *Sentence*

Finally, death-qualification status was significantly related to sentence ( $\chi^2(1) = 9.34, p = 0.002$ ). Specifically, death-qualified venirepersons were more likely to sentence the defendant to death. The presence of victim impact statements was not significantly related to sentence ( $\chi^2(1) = 0.00, p = 0.99$ ). Specifically participants were no more likely to sentence

the defendant to death when victim impact statements were present than when they were absent. There was, however, an interaction between death-qualification status and presence of victim impact statements on sentence ( $F(1,196) = 3.62, p = 0.06$ ). Specifically, when victim impact statements were present, death-qualified participants were even more likely to sentence the defendant to death.

## Discussion

The present findings replicate an earlier body of research that concluded that the process of death qualification results in the selection of differentially partial jurors. In addition, the current study extends previous findings by demonstrating that simply choosing a jury for a capital case systematically excludes people who are less likely to be swayed by victim impact statements while systematically including people who are more likely to be swayed by victim impact statements.

The current study is not without its surprises. For example, the presence of victim impact statements did not significantly affect venirepersons' sentence preferences. However, this may be because victim impact statements presented in a written summary of a capital case don't have the nearly the impact of live, emotional testimony. Consequently, future research, utilizing more realistic methodologies, is warranted in order to fully explore the impact that victim impact statements has on capital defendants' right to due process.

The present findings replicate an earlier body of research regarding the powerful impact that victim impact statements have on capital cases (Greene, 1999). However, the current study extends prior findings by demonstrating that death-qualified jurors are even more susceptible to the aforementioned statements than their excludable counterparts. Consequently, capital defendants appear to be at a significant disadvantage: They are having their fate determined by a subgroup of the population that is prone to base life-or-death decisions on sentiment, as opposed to evidence.

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