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Law and Human Behavior, Vol. 22, No. 3. (Jun., 1998), pp. 257-271.

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Construing Motive in Videotaped Killings: The Role of Jurors' Attitudes Toward the Death Penalty

Jane Goodman-Delahunty,¹ Edith Greene,^{2,4} and Winston Hsiao³

Death-qualified jurors are generally able to impose the death penalty, whereas excludable jurors are generally either unable or unwilling to do so. A long line of research studies has shown that the former are more likely than the latter to convict criminal defendants. Ellsworth (1993) argues that jurors' attitudes toward the death penalty predict verdicts because they are embedded in a cluster of beliefs and theories about the criminal justice system. Her studies show that jurors interpret ambiguous conduct based on these belief structures. The present study examines the possibility that death penalty attitudes also influence jurors' conceptions of criminal intent. We showed mock jurors the filmed murder of a convenience store clerk and examined the inferences they drew from this evidence. Jurors who favored the death penalty tended to read criminal intent into the defendant's actions and jurors who opposed the death penalty were less likely to do so. These data provide further explanation of the conviction-proneness of death-qualified jurors.

INTRODUCTION

The procedure of death qualification occurs during jury selection in a capital trial. During this process, potential jurors are questioned about their beliefs concerning the death penalty. An individual whose views on capital punishment would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath" (*Wainwright v. Witt*, 1985, p. 852) is excluded. The jurors who survive this questioning, all of whom are willing to consider imposing a death sentence, are termed "death-qualified."

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Evidence of a relationship between jurors' beliefs about capital punishment and their verdict preferences has been accumulating for more than 30 years. Findings from three kinds of empirical studies generally support the conclusion that death-qualified jurors are more conviction-prone than jurors who are excluded during the selection process (Thompson, 1989). First, a variety of jury simulation studies (e.g., Cowan, Thompson, & Ellsworth, 1984; Goldberg, 1970; Thompson, Cowan, Ellsworth, & Harrington, 1984; White, 1973) have shown that mock jurors who favor capital punishment are more likely to convict than those who oppose the death penalty. Second, several survey studies (e.g., Bronson, 1970; Buckhout, Baker, Perlman, & Spiegel, 1977; Fitzgerald & Ellsworth, 1984; Vidmar & Ellsworth, 1974) have found a relationship between attitudes toward the death penalty and a variety of other views about crime and the criminal justice system. For example, Fitzgerald and Ellsworth showed that jurors who survived the death-qualification process were more likely than excluded jurors to hold proprosecution attitudes and to trust police and prosecutors. In the third line of research, at least two studies (e.g., Moran & Comfort, 1986; Zeisel, 1968) have examined verdict preferences of impaneled criminal jurors who varied in their approval of capital punishment. Results of these studies showed that jurors who favored the death penalty also tended to favor conviction in a variety of noncapital cases. Although two studies (Osser & Bernstein, 1968; Elliot & Robinson, 1991) have failed to find greater likelihood of conviction among death-qualified jurors, the strong consensus in the literature suggests that death-qualification procedures create a jury that is less than neutral with respect to the guilt of a criminal defendant (Thompson, 1989).⁵

This tendency toward conviction-proneness among death-qualified jurors could stem from several sources (Luginbuhl & Middendorf, 1988). For example, death-qualified jurors are more authoritarian (Adorno, Frenkel-Brunswick, Levinson, & Sanford, 1950) and more punitive (Middendorf & Luginbuhl, 1981) than excludable jurors. The groups also differ in their beliefs about the criminal justice system: excludable jurors are more likely to endorse due-process guarantees, whereas death-qualified jurors are more concerned about crime control (Fitzgerald & Ellsworth, 1984). Death-qualified jurors express less regret for erroneous convictions and more regret for erroneous acquittals than excludable jurors (Thompson et al., 1984). Thus, death-qualified and excludable jurors differ along a number of attitudinal and personality dimensions which singly or in combination may influence their factfinding in capital cases and explain discrepancies in conviction-proneness.

The Relationship Between Death Penalty Attitudes and Verdicts

Ellsworth and her colleagues (e.g., Cowan et al., 1984; Ellsworth, 1993; Thompson et al., 1984) argue that jurors' attitudes toward the death penalty predict verdicts because they are embedded in a cluster of beliefs and expectations about

5Haney (1984) suggests that the process of death-qualifying capital jurors itself creates a heightened likelihood of conviction among jurors who survive questioning because the procedure requires that the penalty be discussed before guilt is determined. Haney argues that this procedure draws jurors' attention away from the presumption of innocence and on to postconviction issues.

the criminal justice system and that these beliefs (e.g., opinions about the credibility of various kinds of witnesses, trust in prosecutors and defense attorneys, thoughts about criminal defendants), rather than the death penalty attitude *per se*, inform decision making in a capital case.

This cluster of beliefs serves another purpose as well. It forms the basis for inferences that jurors generate when evaluating the evidence and making a decision in court. In many criminal trials, the evidence is extensive, complex, and ambiguous, leaving room for multiple interpretations. People interpret ambiguous or incomplete information in line with their initial attitudes and in a way that confirms their expectations and theories (Snyder, Tanke, & Berscheid, 1977; Vallone, Ross, & Lepper, 1985). Ellsworth (1993) argues that jurors who favor capital punishment tend to interpret ambiguities in the testimony in a manner that is consistent with the prosecution's theory and that jurors who oppose the death penalty tend to resolve interpretive issues in line with defense arguments. Data from the study by Thompson et al. confirmed that death-qualified mock jurors were more likely than excluded jurors to interpret ambiguous evidence (i.e., conflicting testimony from a white police officer and black defendant about a confrontation between the two that led to the defendant's arrest) in a manner favorable to the prosecution.

We extend previous studies by examining a situation in which evidence about the defendant's behavior (the *actus reus*)⁶ is objectively clear and in which evidence about his motivation and intent (the *mens rea*) is decidedly ambiguous (as is true in most cases). In particular, we ask whether attitudes toward the death penalty influence jurors' judgments of the defendant's *mens rea*.

To answer this question, we conducted a jury simulation study of a murder case. All mock jurors answered a pretrial questionnaire related to their beliefs about capital punishment, heard oral summaries of the evidence by prosecutor and defense counsel and then saw the most crucial evidence in the trial: the actual footage of the murder of a convenience store clerk taken by a surveillance camera mounted in the store. Following brief closing arguments, we asked mock jurors to render a verdict in the case and, if they convicted the defendant of first degree murder, to also sentence him to death or life imprisonment. They all then answered several questions related to the inferences they drew from the videotaped evidence.

Jurors often hear conflicting testimony describing the facts of a crime. By contrast, factfinders in this case did not have to imagine how the murder was committed or assess the plausibility of different accounts; they watched the incident unfold before their eyes. The sole, albeit difficult question for these jurors concerned the defendant's intent (or *mens rea*): whether or not he premeditated the murder. Thus, the question we address is whether the cluster of beliefs which form the foundation of death penalty attitudes also influence jurors' judgments of the defendant's criminal intent.

⁶Every crime is composed of both a criminal act (*actus reus*) and criminal intent (*mens rea*). In general, neither an act alone or intent alone is sufficient to constitute a crime; the two must concur. This requirement reflects the fundamental legal assumption that one should not be punished for bad thoughts nor for an action that was accidental or otherwise unintended.

Some related research suggests that it might. Hastorf and Cantrill (1954) showed that personal biases can affect the perception of "objective" events. More recently, Luginbuhl and Middendorf (1988) showed a differential responsiveness to aggravating circumstances (factors in the crime that increase the defendant's culpability) and mitigating circumstances (factors that lessen the defendant's culpability) between excludable and death-qualified jurors: the former are significantly more receptive to mitigating circumstances and less receptive to aggravating circumstances than are the latter. These data suggest that attitudes toward the death penalty may be an especially powerful predictor of juror behavior at various points during a capital trial and support Ellsworth's (1993) contention that death penalty attitudes affect jurors' interpretations of the evidence long before these jurors are asked to render a verdict or sentence.

Videotaped Evidence

Despite the fact that videotaped evidence is often used in court in order to show confessions, identification lineups, views of crime scenes, surveillance operations, sobriety tests of drunk drivers, testimony of a child witness, and on occasion, crimes in progress (Goldstein, 1985), the literature on the effects of visual evidence on jurors is exceedingly sparse. A few researchers (e.g., Lindsay, Ross, Lea, & Carr, 1995) have examined the use of videotape in trials involving child witnesses and have found that conviction rates are not affected by the use of protective devices such as videotaped testimony. A recent study examined the effects on mock jurors of a videotaped recreation of a drowning that led to a wrongful death lawsuit (Fishfader, Howells, Katz, & Teresi, 1996). Although jurors who viewed the accident recreation experienced greater emotional arousal than did mock jurors who read trial transcripts, there were no differences in liability assessments or damage awards as a function of presentation mode. Finally, Kassin and Garfield (1991) found that subjects who saw the videotape of an actual murder victim and who were led to believe it depicted the victim described in their trial lowered their standards of proof necessary for conviction and were biased in favor of the prosecution. This finding suggests that crime scene videos can apparently prejudice the outcome of a criminal trial.

There exists one well-known example of how video evidence that is unequivocal in its portrayal of facts can still be interpreted in different ways. On March 3, 1991, George Holiday's amateur video captured 56 baton lashings of black motorist Rodney King over the course of 81 s. That videotape was played repeatedly and dissected frame by frame during both the state and federal court trials of the four white police officers charged with beating King. Prosecutors argued that the tape was unambiguous and irrefutable evidence of police brutality, but the defense provided a significantly different framework in arguing that the officers' actions stemmed from self-defense and their concern for prudent police procedures. Interestingly, the state court jury acquitted all four defendants and the federal jury convicted two of the officers of using unreasonable force in violation of King's civil

rights.⁷ Of relevance to the present study is the possibility that the attitudes about crime and criminal justice that jurors brought with them to these two trials (several inner-city African Americans served as jurors in the federal trial, whereas the state court jurors tended to be upper-middle-class whites who reside in the suburbs) enabled them to organize evidence, fill in gaps, and draw inferences in very different ways.

The Present Study

Death penalty attitudes are apparently powerful predictors of jurors' responses to evidence in capital trials; they influence the credibility that jurors attribute to different kinds of witnesses, affect the ways that jurors interpret ambiguities in the testimony, and mediate responses to aggravating and mitigating circumstances in the penalty phase. Relying in large part on these findings and in small part on the example from the King case, we hypothesized that death penalty attitudes would influence mock jurors' judgments regarding the defendant's motives. Specifically, we predicted that mock jurors would judge the defendant's intent through the lens of their beliefs about capital punishment, and that death penalty supporters—those who support the death penalty in at least some circumstances—would be more likely than death penalty opponents to 1) believe that the defendant's actions indicate premeditation, (2) attribute responsibility for this crime primarily or solely to the defendant (and attribute little or no responsibility to the victim) (3) discount the possibility that the defendant's actions are related to his abuse of alcohol and drugs, (4) perceive the defendant as a future threat to society, (5) convict the defendant of first degree (premeditated) murder, and (6) sentence him to death.

METHOD

Participants

Potential participants were contacted by a market research firm and screened for their eligibility for jury duty. Only those respondents who met three criteria were invited to participate: (1) registered voters or licensed drivers; (2) no ties to individuals or places in the case, and (3) not employed in a law-related field. Screening continued until 200 respondents had been identified and agreed to participate. Of these, 198 appeared at the mock trial as scheduled. Respondents were paid \$10 for their participation and were given a meal.

Forty nine percent of participants were men; 51% were women. The sample was highly educated: 20% were college graduates and an additional 19% had com-

⁷Clearly there were other differences between the two cases (e.g., the statutes that had allegedly been violated, the burden of proof, the charge to the jury, the manner in which the evidence was presented) that could explain the discrepant verdicts.

pleted some postgraduate work. The racial mix of the group was 85% Caucasian, 5% African American, 5% Hispanic, and 4% Asian American.

Materials

Experimental materials consisted of (1) a pretrial questionnaire, (2) a summary of the actual criminal case, (3) the videotaped crime, (4) videotaped closing arguments, and (5) a posttrial questionnaire. The pretrial questionnaire consisted of six demographic questions, five questions related to crime control⁸ and five questions related to jurors' attitudes toward the death penalty.⁹ The crime control and capital punishment questions were answered on a scale from 1 to 10, where 1 = Strongly disagree and 10 = Strongly agree. The 1,000-word case summaries were presented orally by attorneys reenacting the roles of prosecutor and defense attorney. The videotaped closing arguments were presented by the same adversaries and lasted for approximately 10–15 min.

The centerpiece of the mock trial was the videotaped evidence taken by surveillance camera in the convenience store. It depicted a masked and armed man in the act of robbing the store. Filming was initiated automatically when a female clerk who was later killed by the assailant activated the store's alarm button. Although not as clear as a film produced by an on-site operator, the videotape clearly depicted the perpetrator exchanging words with the clerk (who momentarily challenged his orders), brandishing his gun in the air, firing a shot into the ceiling, and eventually shooting the victim and escaping with \$27. The perpetrator could be seen on film for approximately 2 min. After she was shot, the victim staggered, called 911 for assistance and fell to the ground. She died before reaching the hospital.

The actions of the defendant were never an issue. The question before the jury was whether the murder was premeditated. Jurors were instructed that if they believed the murder was premeditated, they should convict the defendant of first degree murder and that if they believed it was not, they should convict him of a lesser charge (e.g., second degree murder or manslaughter). The death penalty can be invoked only after a conviction on first degree murder.

In his presentation, the prosecutor argued that because the defendant had loaded the gun and checked to make sure it was working before entering the store, the crime was premeditated. The defense argued that the defendant—under emotional stress and the influence of drugs and alcohol—intended only to frighten the clerk because she refused to fall to the floor when ordered to do so.

The posttrial self-administered questionnaire asked for individual verdicts, a sentencing decision (i.e., life imprisonment or the death penalty) from jurors who

⁸1. "A person would not be brought to trial unless he or she was guilty of a crime." 2. "It is better for society to let some guilty people go free than to risk convicting an innocent person." 3. "Prosecuting attorneys have to be watched carefully because they will use any means they can to get convictions." 4. "Harsher treatment of all criminals is not the solution to the crime problem." 5. "Defense attorneys have to be watched carefully because they will use any means to get their clients off."

⁹The precise wording of these questions is shown in Table 1.

voted for first degree murder, and responses to five questions that tapped jurors' recall of the factual evidence.¹⁰ The questionnaire also included 30 statements that probed the interpretation and weight accorded to items presented in evidence and to thoughts about the verdict and sentencing. These statements were answered on a scale from 0 ("definitely not true") to 10 ("definitely true") and covered four categories (inferences about the evidence, attribution of responsibility, verdict preferences, and sentencing decisions), although the items were not identified in this manner nor were they presented in these clusters. (These statements are shown in Table 3.)

Twelve of the 30 statements related to jurors' interpretation of and inferences about the evidence. Of these, 4 items (1–4) tapped jurors' beliefs about the intentionality of the defendant's conduct, 4 items (5–8) related to jurors' interpretation of specific items of evidence, and 4 items (9–12) concerned assessments of the evidence overall. Seven of the 30 statements related to jurors' attributions of responsibility: 3 items (13–15) dealt with the victim's contribution to her own victimization and 4 items (16–19) concerned the defendant's use of alcohol and drugs. Four statements (20–23) tapped issues related to the verdict. Seven statements dealt with the sentencing decision: 4 items (24–27) related to whether the defendant was a threat to society in the future and 3 items concerned whether he deserved to die (28–30).

Procedure

Mock jurors participated in groups of 20–25. They answered the pretrial questionnaire, heard oral summaries of the case presented by the prosecuting and defense attorneys, viewed the videotaped robbery and murder, and watched videotaped closing arguments. They received a packet that contained relevant criminal pattern jury instructions (e.g., reasonable doubt, intent, definitions of and elements necessary to prove various forms of homicide, burden of proof) and an individual verdict form. After returning a verdict and a sentencing decision, they completed the posttrial questionnaire and were debriefed.

RESULTS

Attitudinal Groupings

Mean responses to the five attitudinal questions about the death penalty are shown in Table 1. Responses to the five items were summed (and, in some instances, reversed) in order to compute an aggregate attitudinal score for each mock juror.¹¹ Scores ranged from 9 to 45 (low scores indicate opposition to the death penalty

¹⁰The recall questions were these: 1) For how long was the defendant in the store? 2) Was the defendant wearing a hat? 3) What is the defendant's race? 4) How many times did the defendant pull the trigger? 5) In which hand was the defendant holding the gun?

¹¹We chose to use several rating scales (rather than one specific death-qualification question) to assess death penalty attitudes because they provide a more refined measure of these attitudes. In an actual trial, however, jurors with virtually any opposition to the death penalty are excluded and, after *Witt*, there is no clearly defined level of opposition to capital punishment that results in exclusion.

Table 1. Mean Responses (and Standard Deviations) to Death Penalty Attitude Questions on Scale from 1 to 10 (1 = Strongly Disagree, 10 = Strongly Agree)

1. The death penalty should be applied in all cases where the law allows it	5.08 (3.50)
2. Even the worst criminal should be considered for mercy	4.81 (3.09)
3. I am generally in favor of the death penalty	7.01 (2.73)
4. The death penalty does not deter murderers	5.42 (3.90)
5. I could never impose the death penalty	3.59 (2.08)

and high scores indicate support). The mean score was 26.51 and the median was 27. On the basis of their responses to these questions, mock jurors were classified into three groups of approximately equivalent size corresponding to the lower, middle, and upper thirds of the distribution of scores: those opposed to the death penalty (opponents $n = 61$, mean score = 14.42), those who held moderate views (moderates $n = 66$, mean score = 26.92), and those in favor of the death penalty (proponents $n = 64$, mean score = 37.56).¹²

Verdict Preferences

Overall, 51% ($n = 96$) of mock jurors found the defendant guilty of first degree murder; 41% ($n = 79$) found him guilty of a lesser offense; and 8% (16) did not answer this question or were undecided. Verdicts were highly correlated with attitude grouping: of the 96 participants who opted for first degree murder, 17 (18%) were opponents, 32 (33%) were moderates, and 47 (49%) were proponents of the death penalty, and of the 79 participants who chose second degree murder, 36 (46%) were opponents, 25 (32%) were moderates, and 18 (23%) were proponents of the death penalty, $\chi^2(2) = 19.12, p < .01$.

Sentencing Decisions

Of the 96 individuals who found the defendant guilty of first degree murder, 49 (51%) opted for the death penalty and 47 (49%) opted for life imprisonment. This decision was also highly correlated with attitude grouping: of the 49 death sentences, 1 (2%) came from opponents, 13 (27%) came from moderates, and 35 (71%) came from proponents; and of the 47 life sentences, 29 (62%) came from opponents, 12 (26%) came from moderates, and only 6 (13%) came from proponents of the death penalty, $\chi^2(2) = 46.64, p < .01$.

Factual Recall

Mock jurors answered five questions that tapped their recall of facts related to the shooting. Responses were scored as correct or incorrect and analyzed by

¹² $F(2,189) = 681.34, p < .01$. (Seven of the 198 subjects were excluded from attitude classification because they did not answer one or more of the attitude questions.)

Table 2. Percent Correct of Five Factual Items as a Function of Death Penalty Attitude

Item	Death penalty attitude		
	Opponent	Moderate	Proponent
1. For how long was the defendant in the store? ^a	40	50	59
2. Was the defendant wearing a hat?	74	76	78
3. What is the defendant's race?	64	68	80
4. How many times did the defendant pull the trigger?	46	38	34
5. In which hand was the defendant holding the gun?	75	77	78

chi-square tests as a function of death penalty attitude grouping. These data are shown in Table 2. Overall, 63% of responses were correct. There were no differences in recall on any of the items as a function of death penalty attitude (all $ps > .10$).

The Relationship Between Death Penalty Attitudes and Jurors' Reaction to the Case

Consistent with our hypotheses, there were significant differences in interpretation and evaluation of the evidence as a function of death penalty attitudes. Table 3 presents mean responses on an 11-point scale (where 0 = definitely not true and 10 = definitely true), probability levels, and results of post-hoc testing (using Scheffe's test at the .05 level) for all 30 judgments from opponents, moderates, and proponents of the death penalty.¹³ As can be seen from overall significance levels, responses varied by attitudinal grouping on 24 of thirty items. In general, death penalty opponents were less likely than moderates and proponents to believe that this murder was premeditated, that the defendant would be a future threat to society, and that the defendant deserved to die.¹⁴ Responses to specific categories of questions are described below.

Inferences About the Evidence

There were three categories of items related to inferences about the evidence: (1) whether the defendant's actions were intentional, (2) specific evidence related to premeditation, and (3) general evidence related to premeditation. Each category consisted of four judgments.

Overall, opponents of the death penalty were significantly less likely than other jurors to believe that the defendant's actions were intentional, $F(2, 179) = 15.05$, $p < .01$. Opponents were less likely than others to believe (1) that the de-

¹³To avoid response bias, we worded the questions so that approximately half the time, jurors who believed that the crime had been premeditated would answer with a low number (indicating low agreement) and half the time with a high number (indicating high agreement). For ease of analysis, approximately half of the items shown in Table 3 have been reworded and mean responses reversed. Mock jurors who believe that the murder was premeditated would tend to agree with the statements given in Table 3.

¹⁴We determined the overall scores for each category by averaging the responses to items within that category.

Table 3. Mean Rating Score for Inferences about Evidence, Attributions of Responsibility, Verdicts, and Sentences as a Function of Death Penalty Attitudes (on a Scale from 0 to 10 (0 = Definitely Not True, 10 = Definitely True))

Questionnaire statement	Death penalty attitude			Significance	
	Opponent	Moderate	Proponent	Overall ^a	Specific ^b
I. Inferences about the evidence					
A. Evidence indicates defendant's actions intentional					
1. Defendant could see through the mask	4.00	5.52	5.68	A	a, b
2. Defendant did not seem very nervous	3.19	4.48	5.75	A	a, b, c
3. Defendant killed victim before, not during, his fleeing	3.34	3.97	3.47	NS	NS
4. When defendant left, he realized he had shot victim	4.35	6.33	5.30	B	b
	5.28	7.39	8.09	A	a, b
B. Specific evidence indicates premeditation					
5. Firing of gun in air was to harm victim	3.55	4.75	5.95	A	a, b, c
6. Defendant shot victim to preserve anonymity	1.58	2.24	2.77	B	a
7. Defendant had enough time to form intent	2.97	4.65	5.95	A	a, b, c
8. Test firing of gun indicated premeditation	6.07	6.77	8.41	A	a, c
	3.36	5.35	6.74	A	a, b, c
C. Overall evidence indicates premeditation					
9. Murder was intentional, not act of passion	3.98	6.05	7.26	A	a, b, c
10. Murder was intentional, not accidental	3.58	5.40	6.53	A	a, b
11. Defendant's actions due to his own choosing	3.93	6.78	7.92	A	a, b
12. There is enough evidence for premeditation	5.72	7.38	8.08	A	a, b
	2.85	4.91	6.63	A	a, b, c
II. Attributions of responsibility					
A. Victim not responsible for her own death					
13. Victim's arguments didn't contribute to her death	4.86	4.87	5.26	NS	NS
14. Victim's insubordination didn't cause her death	3.51	3.60	3.95	NS	NS
15. Victim completely innocent, wasn't threat to defendant	3.02	2.76	3.44	NS	NS
	7.98	8.09	8.48	NS	NS
B. Despite substance abuse, defendant responsible					
16. Defendant not drunk or high during robbery	3.63	4.60	4.65	A	a, b
17. Alcohol and drugs did not confuse defendant	2.50	3.26	3.95	NS	NS
18. Alcohol and drugs didn't make defendant more aggressive	2.72	4.09	4.09	A	a, b
19. Drugs and alcohol no excuse for defendant's crimes	2.32	2.58	2.05	NS	NS
	6.85	8.45	9.27	A	a, b
III. Verdict preferences					
A. Defendant consciously intended to kill victim					
20. Defendant planned to kill victim	3.82	6.13	7.36	A	a, b, c
21. Defendant knew what he was doing, acted deliberately	3.30	5.41	6.91	A	a, b, c
22. Defendant intended to kill victim	4.52	7.30	8.23	A	a, b
23. Defendant's intent to kill victim was pre-mediated	3.98	6.32	7.21	A	a, b
	3.34	5.50	7.19	A	a, b, c
IV. Sentence decisions					
A. Defendant will be threat to society in the future					
24. Defendant won't rehabilitate and won't benefit others	5.23	6.71	7.94	A	a, b, c
25. Defendant won't improve; no chance for rehabilitation	4.52	6.54	7.54	A	a, b, c
26. Defendant is likely to be dangerous in the future	3.90	4.65	6.24	A	a, c
27. Defendant is dangerous, has record, and may kill again	7.23	8.38	9.40	A	a, b, c
	5.31	7.28	8.66	A	a, b, c

Table 3 (continued)

Questionnaire statement	Death penalty attitude			Significance	
	Opponent	Moderate	Proponent	Overall ^a	Specific ^b
B. Defendant deserves the death penalty	1.46	3.99	7.16	A	a, b, c
28. There is little or no doubt: award death penalty	2.03	3.95	7.05	A	a, b, c
29. Death penalty is appropriate for this crime	1.72	4.33	7.51	A	a, b, c
30. Death penalty fits crime, defendant has no right to live	0.78	3.80	6.78	A	a, b, c

^aFor overall significance (one-way analyses of variance), A indicates $p < .01$, B indicates $p < .05$.

^bFor specific significance (by Scheffe post hoc test of variance between specific groups, with $p < .05$, a indicates that differences between death penalty opponents and death penalty proponents are significant, b indicates that differences between opponents and moderates are significant, and c indicates that differences between moderates and proponents are significant.

defendant could see through his mask, (2) that the defendant killed the victim before, rather than after he began to flee, and (3) that the defendant realized that he had shot the victim. There were no differences in ratings of the defendant's nervousness as a function of attitude grouping.

There were significant differences in beliefs about whether specific conduct in evidence (e.g., firing the gun into the air) indicated premeditation. Opponents of the death penalty were least likely to think that they did and proponents were most likely, $F(2, 183) = 20.25, p < .01$. In terms of specific questions, opponents were least likely (and proponents most likely) to believe that the defendant shot the victim to preserve his anonymity and that the test firing of the gun indicated premeditation. Opponents were less likely than proponents to believe that the firing of the gun in the air was intended to harm the victim and that the defendant had enough time to form intent.

There were also significant differences in beliefs about whether the evidence generally indicated premeditation as a function of death penalty attitudes. Opponents were least likely to agree that it did and proponents were most likely $F(2, 182) = 30.88, p < .01$. Specifically, opponents were less likely than other jurors to believe that the murder was intentional, not an act of passion or an accident, that the defendant's actions were of his own choosing, and that there was enough evidence to indicate premeditation.

Attribution of Responsibility

There were two groupings of judgments related to attribution of responsibility. The wording of each item, mean responses, and results of post hoc testing are shown in Table 3.

One category, consisting of three items, concerned the extent to which the victim contributed to her own victimization. There were no differences in jurors' responses to any of these items (e.g., "The victim's insubordination caused her death") as a function of attitudes toward the death penalty.

The second category, consisting of four items, concerned the extent to which the defendant was responsible for this murder despite the fact that he was under emotional stress and abusing alcohol and drugs at the time. Overall, opponents were less likely than other jurors to agree with this sentiment, $F(2, 182) = 6.87, p < .01$. In particular, opponents were more likely than others to believe that alcohol and drugs confused the defendant and excused his crime.

Verdict Preferences

This analysis fleshes out the previously described relationship between verdict preferences and death penalty attitudes. We asked mock jurors to answer four questions related to the extent to which they believed that the defendant consciously intended to kill the victim. Data are shown in Table 3.

In general, death penalty opponents were least likely, and death penalty proponents were most likely to believe that the defendant's acts were intentional, $F(2, 184) = 25.57, p < .01$. Specifically, opponents were least likely (and proponents most likely) to believe that the defendant planned to kill the victim and that his intent was premeditated. Death penalty opponents were also less likely than other jurors to agree that the defendant knew what he was doing and that he intended to kill the victim.

Sentencing Decisions

Two categories of items related to jurors' decisions about sentencing: whether the defendant would be a threat to society in the future and whether he deserved to die. Four questions comprised the former category and three comprised the latter.

Overall, death penalty opponents were least likely (and proponents were most likely) to endorse the belief that the defendant would be a threat to society in the future, $F(2, 183) = 33.50, p < .01$. Specifically, opponents were least likely (and proponents most likely) to believe that the defendant would not be a benefit to others, would be dangerous in the future, and may kill again. In addition, opponents were less likely than others to believe that the defendant had no chance for rehabilitation.

Death penalty opponents were least likely (and proponents most likely) to state that the defendant deserved the death penalty, $F(2, 181) = 61.23, p < .01$. Opponents gave the lowest rating and proponents gave the highest rating to these statements: (1) "There is little or no doubt, award the death penalty." (2) "The death penalty is appropriate for this crime." (3) "The defendant has no right to live."

DISCUSSION

The death penalty attitudes of mock jurors in this study were related to their guilt and sentencing decisions: proponents of the death penalty were more likely than opponents to convict the defendant of first degree murder and sentence him

to death. Thus, our findings are consistent with the line of previous work (e.g., Cowan et al., 1984; Moran & Comfort, 1986) that suggests that death-qualified jurors are more conviction-prone than excludable jurors.

The more interesting findings from this study concern the judgments jurors made about the defendant's intent. Results showed that jurors who favored the death penalty were more likely than those who were opposed to infer from the videotape (1) that the defendant intended to murder the victim, (2) that his specific actions indicated premeditation, (3) that the defendant's substance abuse did not mitigate his actions, and (4) that the defendant would be a future threat to society.

Social psychologists (e.g., Hastorf & Cantrill, 1954; Snyder et al., 1977; Vallone et al., 1985) have shown that people construe ambiguities and fill in missing details in accordance with their attitudes and expectations. In the context of a criminal trial, in which the evidence is often extensive, complex, and disputed, people apparently organize this information in light of their beliefs about crime and criminal justice (Thompson et al., 1984). For example, death-qualified jurors, whose attitudes correspond more closely to the prosecution's perspective than to the defense, apparently distort details, fill in gaps and draw inferences in light of this perspective. Excludable jurors tend to do so in a way that favors the defense.

Findings from the present study suggest that attitudes toward the death penalty also apparently impact a number of social judgments related to inferences about the defendant's mental state at the time of the killing. Issues of *mens rea* are often ambiguous and our data suggest that jurors' judgments about such ambiguities are strongly influenced by their attitudes toward the death penalty.

Death penalty attitudes did not affect memory for specific trial facts, however. There were no differences in memory accuracy across the three attitudinal groups. This finding suggests that neither the different kinds of inferences that jurors drew from the evidence nor the disparities in their verdicts and sentences can be explained by their memory of the videotaped conduct that they witnessed. This result is consistent with Cowan et al.'s (1984) data showing that excludable jurors did not remember evidence significantly differently than death-qualified jurors.

During the sentencing phase of a capital trial, jurors are allowed to consider any factor they want in mitigation, whether or not it has been so defined by a legislature or enumerated by a judge (*Lockett v. Ohio*, 1978). Thus, we asked whether the defendant's substance abuse and/or the victim's conduct acted as mitigating factors in this case. Like Luginbuhl and Middendorf (1988), we found that attitudes toward the death penalty affected individuals' receptivity to one of the so-called mitigating circumstances: opponents of the death penalty were more likely than others to endorse the defendant's substance abuse as a mitigating factor.

There were no differences in attributions of responsibility to the victim as a function of death penalty attitude, however. This finding suggests that jurors were unwilling to endorse the victim's behavior (she argued a bit with the perpetrator before he fired a shot into the ceiling) as a mitigating circumstance. Although not surprising in this context given the minimal challenge waged by the victim, it is worth noting that jurors in other cases (e.g., in situations in which the defendant claims self-defense) may view victims' behavior as contributing to their victimizations. Jurors' thoughts about this possibility may vary as a function of their beliefs

about the death penalty: excludable jurors may be more willing than death-qualified jurors to view the victim's conduct as mitigating the defendant's crime.

Many of the usual caveats concerning simulation studies apply here: mock jurors did not undergo a thorough *voir dire* and thus were not truly classified as death-qualified or excludable¹⁵; their judgments concerning the arduous, even tortuous decision of life imprisonment versus execution were made in a somewhat perfunctory manner without access to all of the evidence; and they did not deliberate. For these reasons, we hesitate to draw far-reaching conclusions from this study.

Nonetheless, we believe that our data provide evidence of another mechanism that contributes to the conviction-proneness of death-qualified jurors. Compared to death penalty opponents, proponents are more likely to read criminal intent into a defendant's actions, are less likely to endorse mitigating circumstances, and are more likely to perceive the defendant as a danger to society. Death penalty opponents and proponents apparently make different sense of the same facts.

Data on the relationship between death penalty attitudes and jurors' judgments of the defendant's intent further illuminate the disparity in evidence evaluation between death-qualified and excludable jurors. The exclusion of prospective jurors who are opposed to the death penalty narrows the range of interpretations of evidence concerning a central element in every capital case, namely the defendant's *mens rea*.

ACKNOWLEDGMENTS

This study was funded by the Spokane County (Washington) Public Defender's Office. We thank Deputy Public Defenders Scott Mason and Don Westerman for their help and the Gilmore Research Group for its assistance in screening participants and collecting and coding the data.

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¹⁵In some respects, however, our classification scheme reflects the reality of death-qualification under *Witt*: a judge's decision about death qualification no longer depends on specific responses to specific standard questions. Rather, the decision to exclude a juror turns on the judge's overall impression of that juror's ability to follow the law (Thompson, 1989).

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