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The Role of Individual Differences in Explaining the Acceptability of Prosecutorial Misconduct

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Abstract

Empirical evidence demonstrates that the inclusion of improper statements by the prosecutor during closing argument increases death penalty recommendations (Platania & Moran, 1999). Judicial instructions to disregard improper statements have been found to moderate this effect (Platania, Small, Fusco, Miller & Perrault, 2008). The present study further explored the effectiveness of judicial instruction as a legal safeguard and examined the role of individual differences in explaining individuals' acceptance of prosecutorial misconduct. One hundred and twenty four jury-eligible individuals viewed a videotape based on the penalty phase of a capital trial (*Brooks v. State*, 1979). Results revealed that attitudes toward the death penalty, instruction comprehension and mood predict individuals' acceptance of misconduct. Judicial instructions had limited effectiveness as a legal safeguard.

The Role of Individual Differences in Explaining the Acceptability of Prosecutorial Misconduct

Prosecutorial misconduct occurs in numerous forms and has been identified as a contributing factor in the wrongful conviction of innocent people (Schoenfield, 2005). Misconduct is defined as any intentional use of illegal or improper methods to convict a defendant in a criminal trial. Examples include suppressing evidence, using false or perjured evidence, improperly questioning witnesses and referencing the defendant's failure to testify on his own behalf (Lucas, Graif, & Lovaglia, 2006; Time, 1974). Prosecutorial misconduct has serious implications during the penalty phase of a trial. Research indicates that individuals exposed to improper statements made by the prosecution in closing arguments are significantly more likely to impose the death penalty than those who are not (Platania & Moran, 1999). The prejudicial impact of prosecutorial misconduct diverts jurors' attention from the legally relevant facts and compromises a defendant's right to a fair trial. Thus, it is extremely important for courts to distinguish prosecutorial misconduct from permissible arguments. In order to do this, the true legal task of the sentencing phase of a capital trial needs to be clearly defined and effectively communicated to the jury.

Guided Discretion

The bifurcated nature of capital cases requires jurors to complete two very distinct tasks, highlighting the need for guided discretion to assist them in this process. In bifurcated proceedings, a defendant's guilt and punishment are determined separately: the guilt phase focuses on legally relevant facts, while the penalty phase focuses on the defendant's character, history, and motivations. An attorney's closing argument during

sentencing is the final attempt to convince the jury that one punishment is more deserving than another. In doing so, attorneys sometimes go beyond the evidence of the case to trigger jurors' attitudes and emotions about human nature, morality, and justice. Without clearly defined rules for determining who deserves the death penalty and who does not, jurors are influenced by such factors, resulting in an arbitrary imposition of the death penalty (Costanzo & Costanzo, 1992).

The Supreme Court addressed this prejudicial imposition of the death penalty in the landmark decision of *Furman v. Georgia* (1972). In *Furman*, the Court ruled the death penalty to be unconstitutional as it was currently being administered and established the need to develop guidelines to reduce bias in juror's discretion. As a result of *Furman,* states introduced new statutes to improve the standards for imposing the death penalty. The first set of reformed death penalty statutes were decided in *Gregg v. Georgia* (1976). In *Gregg*, the Court agreed that jurors be provided with a specific list of aggravating and mitigating circumstances to consider when recommending a death sentence. In 1978, the Supreme Court ruled that aggravating circumstances be limited by statute (*Lockett v. Ohio*, 1978*).* Aggravating circumstances are determined by the state and can be used as legitimate reasons to vote for death. The prosecutor must prove these circumstances beyond a reasonable doubt and the jury must unanimously agree that they exist (Butler & Moran, 2002). Mitigating circumstances are any circumstances considered to be legitimate support for a life sentence. Mitigating factors may be proven by a preponderance of the evidence and may be found by just one or more members of the jury (Platania & Moran, 1999). Unfortunately, research indicates that the imposition of the death penalty remains discriminatory despite the Court's attempt to reduce juror

discretion (Costanzo & Costanzo, 1992). Research examining jurors' abilities to properly weigh aggravating and mitigating circumstances suggests that jurors often consider extralegal factors beyond those introduced by law (Costanzo & Peterson, 1994).

Costanzo and Peterson (1994) found persuasive techniques used in closing arguments seemed to revolve around a number of re-emerging themes, some of which deviate considerably from aiding the jury in evaluating aggravating and mitigating circumstances. These broad categories include: attorney's beliefs and attitudes towards the defendant, the defendant and his life, the murder, the victim, juror obligations, the sentence, and morality and justice. Prosecutors often argue that mitigating circumstances are feigned and insignificant, explain the crime in vivid detail and focus on the suffering of the victims and their families. Prosecutors may also shift the burden of responsibility for determining sentence from the juror to the law, arguing that life in prison is not sufficient punishment and that revenge is morally legitimate (Costanzo & Peterson, 1994). Each is an attempt to improperly justify imposing the death penalty. Although the facts of the case and the law limit the persuasive arguments that can be used during closing argument, both the defense and prosecution have considerable latitude in constructing their arguments. In their attempts to persuade the jury to vote for death, prosecutors' arguments combine a number of persuasive tactics, often with little relevance to the law's requirements of proving the existence of aggravating circumstances.

Improper Penalty Phase Argument

Research has found that improper statements made by prosecutors include arguments designed to influence jurors' sentencing decisions (Platania & Moran, 1999).

This type of misconduct is particularly problematic because in order to be considered improper, an appellate court must conclude that a prosecutor's statements violated the defendant's right to a fair trial. Although the Supreme Court has not yet established specific guidelines for determining permissible prosecutorial argument, lower courts have provided general guidelines for identifying improper argument. Statements have been considered improper if they ask the jury to impose the death penalty for the following reasons: cost (*Gregg v. Georgia*, 1976), trivializing the jury's role (*Caldwell v. Mississippi*, 1985), and using personal discretion and victim characteristics, to name a few (*Brooks v. Kemp*, 1985). In reviewing cases of confirmed misconduct, other categories of prosecutorial misconduct emerge such as: prosecutor's personal beliefs and opinions in support for the death penalty, mischaracterizing the jury's role, using improper grounds to impose the death penalty (e.g., quoting the bible), and the use of inflammatory comments to describe the defendant (e.g., references to race). In general, statements that increase the likelihood that extra-legal factors will be considered in making a sentence determination are classified as improper prosecutor argument (Platania et al., 2008).

Even if statements are by definition improper, appellate courts may rule the statement insignificant to the outcome of the trial. For example, The Court of Criminal Appeals has set forth four areas in which closing arguments by a prosecutor are proper. If a prosecutor's statements provide a summation of the evidence, a reasonable deduction from the evidence, an answer to an argument presented by opposing counsel, or a plea for law enforcement, they would not constitute error. If a statement falls outside these categories however, it is still not sufficient grounds for a reversal of the sentencing

outcome. It must also be demonstrated that statements were serious enough to strike down the decision made at trial (Time, 1974). In *Chapman v. California* (1967), the Supreme Court ruled that the prosecutor's tactic of repeatedly referencing the defendant's failure to testify inferred his guilt and substantially influenced the jury to convict. In other words, the prosecutor's actions constituted "irreversible" rather than "harmless" error.

Unfortunately, it is not uncommon for higher courts to rule that prosecutorial misconduct is harmless error. For example, in *Brooks v. Kemp* (1985), the Federal Court of Appeals for the 11th Circuit refused to overturn a defendant's death sentence despite the existence of prosecutorial misconduct on the grounds that in the absence of the statements, the defendant would still have received the death penalty. Considering that exposure to prosecutorial misconduct during closing argument has been found to increase the likelihood of imposing the death penalty, this harmless error rule is particularly problematic (Platania & Moran, 1999).

Legal Safeguards

Although research has uncovered the biasing effect of improper statements, legal safeguards are assumed to minimize the influence of improper arguments to harmless error. The Supreme Court has indicated that arguments violating the parameters of permissible argument should be objected to and clarified by specific judicial instruction (Time, 1974). However, little research has investigated jurors' responses to specific curative instruction. Platania, et al. (2008) investigated the effectiveness of defense attorney objections and judicial instructions as legal safeguards against prosecutorial misconduct with three levels of instruction: no instruction vs. general instructions (based on *Weaver v. Bowersox,* 2006) vs. specific instructions (based on *Donnelly v.*

DeChristoforo, 1974). Results indicated that both general and specific misconduct instructions had a moderating effect on perceptions of improper statements made during closing argument, however no significant differences existed between the two types of instruction. In other words, any type of instruction seemed to fare better than none at all.

Unfortunately, instructional safeguards must also overcome issues of comprehensibility. Previous research indicates that jurors' instruction comprehension is often poor and can influence sentencing decisions in capital trials (Weiner, Pritchard & Westin, 1995). Sentencing instructions should guide the jury to objectively weigh aggravating and mitigating circumstances, preventing inconsistent imposition of the death penalty. Specifically, this guided discretion should help the jury distinguish between aggravating and mitigating factors and the decision rules of each. Research examining juror comprehension of judges' instructions in the penalty phase of capital trials indicates that jurors' understanding of mitigating decision rules is particularly inadequate (Luginbuhl, 1992). Individual differences and attitudes that jurors bring to trial may in turn limit their ability to understand and adhere to instructions. Researchers examining the role of instruction comprehension and attitudes on sentence certainty have suggested that instruction comprehension and support for the death penalty are interrelated in a complex way that may be explained by motivational factors (Beringer, Weiner & Richter, 2008). If jurors do not understand sentencing instructions, they may be less motivated to follow the instructions or more prone to use their own decision criteria, relying on extralegal factors such as improper penalty phase argument. Thus, poor instruction comprehension may mediate the effectiveness of judicial instructions as a legal safeguard against prosecutorial misconduct.

Juror Attitudes

Individual differences such as juror attitudes, may further mediate the degree to which jurors consider prosecutorial misconduct in their sentencing decisions. Determining which attitudes may be the strongest predictors of jury decision making has been a difficult and rather unsuccessful endeavor for social science researchers (Kassin & Wrightsman, 1983). However, research indicates that attitudes toward the death penalty (Butler & Moran, 2007) and authoritarianism (Narby, Cutler & Moran, 1993) are significant predictors of juror decision making in general. O'Neil, Patry, and Penrod (2004) have indicated that attitudes toward the death penalty may influence sentencing decisions in three ways: directly influencing sentencing verdicts, indirectly influencing jurors' identification of aggravating and mitigating factors, or through the interacting influence of attitudes and the process of weighing aggravating and mitigating factors.

Most research examining the relation between attitudes toward the death penalty and juror decision making have relied on death qualification status, assuming that death qualified jurors support the death penalty more than excludable jurors (O'Neil et al., 2004). Death qualification is the process by which potential jurors are dismissed from service on capital juries if their attitudes toward the death penalty are so strong that they would "prevent or substantially impair the performance of their duties as a juror" (*Wainwright v Witt*, 1985, p. 424). Research has continued to indicate that death qualified jurors are more conviction and death prone than excludable jurors (Butler & Moran, 2007; Butler & Moran, 2002). However, O'Neil et al. (2004) surmise that there are problems with using only death qualification status as an indicator of support for the death penalty. The percentage of individuals who consider themselves excludable is

considerably small; making it challenging to locate and adequately compare excludables to death qualified individuals. In addition, the excludable category also includes the small percentage of individuals whose favorable attitudes render them incapable of being impartial. Attitudes toward the death penalty are thus better measured on a scale such as the Attitudes Toward the Death Penalty (ATDP) Scale created by O'Neil et al. (2004) which attempts to assess all potential reasoning guiding support of the death penalty.

In the sentencing phase of capital trials, attitudes toward the death penalty as measured by the ATDP scale have been found to influence the identification of aggravating and mitigating factors (Beringer et al., 2007; Butler & Moran, 2002) and to have a direct, unmediated effect on sentencing verdict (O'Neil et al., 2004). Researchers also suggest that individual differences in attitudes toward the death penalty may decrease a jurors' comprehension of sentencing instructions (Beringer et al., 2007). These biasing effects of support for the death penalty are concerning, especially given that the reasons cited for opposing or supporting the death penalty are often based on emotion and ideological self-image rather than factual information (Ellsworth & Gross, 1994). Therefore, attitudes toward the death penalty are thought to have an affective component, acting as a mediator in sentencing decisions. Research indicates that in addition to juror attitudes, affect may be a mediator of verdict and judgment (Myers & Greene, 2004; Forgas, 1995).

Affect

The stress of being a capital juror can play a particularly important role in sentencing decisions. The guilt phase is considered to be a factual or evidence-based task, while the penalty phase is considered a more difficult, emotional task (Costanzo &

Costanzo, 1994). Prosecutors' closing arguments that recount the most vivid details of the crime can trigger juror emotion and heighten reactions to persuasive statements (Costanzo & Peterson, 1994). In addition, the most frequently cited reason for imposing a death sentence was the gruesome or cruel nature of the murder (Geimer & Amsterdam, 1998; as cited in Costanzo & Costanzo, 1992).

The notion that emotional statements can lead to emotional judgments is demonstrated in research examining the effect of victim impact statements on sentencing verdicts. Victim impact statements (VIS) are extremely emotion-laden and have been found to significantly increase jurors' decisions to sentence the defendant to death (Myers & Greene, 2004; Platania & Berman, 2006). Furthermore, attitudes toward the death penalty have been found to mediate this effect. Individuals who have neutral or moderately favorable attitudes toward the death penalty were even more likely to vote for death in the presence of victim impact statements (Myers & Greene, 2004). Affect may also play a similar role in mediating the biasing effect of improper penalty phase argument. Jurors' acceptability of prosecutorial misconduct may be influenced by the emotional reactions they induce, particularly if these arguments tap into jurors' powerful attitudes about the death penalty. However, the interacting effects of affect and attitudes on sentencing verdicts remain relatively unstudied, particularly in the presence of prosecutorial misconduct.

The Theory of Affect Infusion (AIM)

The Affect Infusion Model (AIM) proposed by Forgas (1995) may provide valuable insight into the role of individual differences in predicting the acceptability of prosecutorial misconduct and sentencing judgments. However, previous research on

emotion and judgment suggests that not all judgments containing an emotional component are irrational and biased (Myers & Greene, 2004). Some emotions may promote rational decision making rather than inhibit it. Furthermore, individual juror characteristics may mediate this complex relationship and result in a wide variety of perceptions of emotionally-laden aspects of trial. Forgas' (1995) notion of affect infusion seeks to explain this complex relationship between affect and decision making. Affect infusion is defined as "the process whereby affectively loaded information exerts an influence on and becomes incorporated into the judgmental process, entering into the judge's deliberations and eventually coloring the judgmental outcome" (Forgas, 1995, p. 39). The AIM is a multi-process approach to understanding social judgments which attempts to account for those instances in which affect seemingly has little influence, as well as those in which affect unduly influences an individual's judgment. This model may be particularly helpful in conceptualizing individual differences in responses to prosecutorial misconduct and instructional safeguards.

Forgas' (1995) affect infusion model is based on the premise that the nature and degree to which mood influences judgments largely depends on what kind of processing strategy the individual is engaged in (known as process mediation) and the notion that individuals will adopt the simplest and least effortful processing strategy possible (known as effort minimization). According to the AIM, there are four information processing strategies: direct access strategy, motivated strategy, heuristic strategy, and substantive strategy. The direct access strategy is the simple retrieval of previously stored information that is typically used in highly familiar tasks. This method is a low affect infusion strategy as the information necessary to make the judgment is readily available

and there are no strong forces demanding a more elaborate form of processing (Forgas, 1995). Given that a juror's task in the penalty phase is highly unfamiliar, capital jurors are not likely to engage in this processing strategy in their sentencing decisions.

Forgas' (1995) second strategy is termed motivated processing and involves highly selective, guided and targeted information searches in which preferences are most likely to guide one's inferences. This is also a low affect infusion strategy because the search pattern and judgment outcome are guided by a previous motivational goal, only subtly influenced by mood. This strategy may be more common among capital jurors who have strongly held personal beliefs that may guide their decision making. However, attitudes with a strong affective component such as attitudes toward the death penalty may decrease the motivated processing. Thus according to the AIM, jurors may be more likely to engage in high affect infusion information processing strategies when judging a defendant's appropriate punishment compared to low affect strategies.

The heuristic processing may be more representative of the type of processing used by capital jurors in the penalty phase. According to the AIM, individuals with no prior experience with the task and no strong motivational goal to determine the outcome are likely to utilize this strategy by considering only some of the available information and using whatever heuristic shortcuts are available (Forgas, 1995). In the penalty phase of a capital trial, these heuristics may include previously held attitudes toward the death penalty, statements made by the prosecutor during closing argument, or misconceptions of the sentencing phase task. Many capital jurors have admitted that they did not feel the sentencing phase was necessary to render a fair punishment after listening to the guilt phase of the trial (Costanzo & Costanzo, 1992). Individuals utilizing this processing

strategy may be more likely to disregard judicial instruction or be less motivated to adhere to instructions if they are making judgments based on heuristic shortcuts and are incorporating their affective reactions into their sentencing decisions.

The final strategy of substantive processing is also a high affect infusion model and may explain how affect may interact with individual differences to influence sentencing decisions and the acceptance of prosecutorial misconduct. According to Forgas (1995), this strategy is more likely to occur when "the target is complex or atypical and the judge has no specific motivation to pursue, has adequate cognitive capacity and is motivated to be accurate, possibly because of explicit or implicit situational demands" (p. 47). The atypical nature of the sentencing task, along with poor instruction comprehension, emotionally-laden and improper closing arguments, and strong attitudes toward the death penalty have the potential to influence the degree to which emotions color jurors' judgments. Due to its complex nature, this form of processing depends on the nature of the individual's memory and is hypothesized to be the default option, utilized only when simpler and less effortful strategies are inadequate (Forgas, 2004). The perceived difficulty of the penalty phase task (Costanzo & Costanzo, 1992) and jurors' demonstrated difficulty understanding and adhering to penalty phase instructions (Luginbuhl, 1992) suggest that jurors may be forced to adopt more comprehensive information processing strategies.

In summary, the Affect Infusion Model suggests that as the task becomes less familiar, more complex and more demanding, affect is more likely to color a juror's rational decision making capacity. Applied to jury decision making in the penalty phase of a capital trial, Affect Infusion Theory suggests that the nature of the task itself, the

individual juror, and situational variables all interact to determine whether affect will mediate juror decision making. The complex nature of the sentencing task itself suggests that jurors' judgments regarding the deservingness of the death penalty will be mood-congruent. However, individual differences such as attitudes toward the death penalty may influence the degree to which jurors make emotional judgments. The current study seeks to explore whether affect in fact predicts jurors' evaluations of aggravating and mitigating factors, responses to prosecutorial misconduct and sentencing decisions.

Purpose and Hypothesis

The current study is based on the 1977 trial of William Anthony Brooks. In this case, Brooks was convicted of the armed robbery, rape, kidnapping, and murder of Carol Jeanine Galloway for which he was sentenced to death. Upon appeal, the United States Supreme Court affirmed in part and reversed in part, ruling the prosecutorial misconduct present in the sentencing phase as harmless error. Due to the strength of the evidence, the Court ruled that the penalty phase was not prejudiced despite the existence of improper remarks made by the prosecutor during closing argument (*Brooks v. Kemp*, 1985). Although Brooks' appeal was granted on an instruction issue, it is most noted for the prosecutor's use of improper comments in his closing argument. Previous research utilizing this stimulus case revealed that individuals exposed to the improper arguments are more death prone (Platania & Moran, 1999), and that judicial instructions regarding the improper statements were effective in moderating the prejudicial impact of the prosecutorial misconduct (Platania et al., 2008).

The primary aim of the current study was to explore whether and to what extent individual differences established in voir dire predict the acceptability of prosecutorial

misconduct and mediate the effectiveness of judicial instructions. We predicted that attitudes toward the death penalty, instruction comprehension and juror affect will predict individuals' perceived acceptance of prosecutorial misconduct and would influence the effectiveness of judicial instructions as a legal safeguard. The effectiveness of judicial instructions against the negative impact of prosecutorial misconduct will be measured by ratings of importance of the improper statements, evaluations of aggravating and mitigating factors, and sentence outcome.

Consistent with previous research, we also predicted that judicial instructions will moderate the degree of importance jurors' attribute to improper statements made during closing argument (Platania et al., 2008). Judicial instruction would also moderate the impact of misconduct as measured by sentence outcome, and consideration of aggravating and mitigating factors. Jurors exposed to instructions would be less likely to consider improper statements in their sentencing decision, would be less likely to impose the death penalty and be more likely to consider mitigating circumstances.

Method

Participants

One-hundred seventy-four total participants completed the study. Participants consisted of 79 community members and 95 undergraduate students from Roger Williams University. Undergraduate students were recruited from a subject pool of core undergraduate courses. Community members were recruited via a printed advertisement in the Eastbay Times or an internet advertisement through www.craigslist.org. Participants were pre-screened for eligibility to ensure their willingness to participate objectively in a study involving a capital murder trial. Students received extra credit or a

ten dollar gift card. Community members received a twenty dollar gift card or volunteered their participation.

After screening for eligibility, 50 participants were excluded via their questionnaire responses. These individuals were excluded for non-death qualification status, voting not guilty after reading the summary of the guilt phase, failing to qualify for jury eligibility or indicating they did not take their role as juror seriously in this study. The remaining sample was 60 undergraduate students (48%) and 64 community members (52%). With respect to demographic information, the sample consisted of slightly more female (57%) than male (43%) participants and a majority of the participants (74%) were between the ages of 18-35 years, while the remainder (26%) were 35 years or older. Almost the entire sample was Caucasion (97%) and nearly three-quarters (72%) classified themselves as having either a liberal or slightly liberal political orientations.

Design and Procedure

A two (Participant Type: community members vs. undergraduate students) x three (Instruction Type: general v. specific v. no misconduct instructions) between subjects factorial design was used. In the specific misconduct instruction condition (based on *Donnelly v. DeChristoforo*, 1974), the judge instructed the jury as follows:

> Closing arguments are not evidence for your consideration. In his closing argument, the prosecutor made several statements relating to the following: his personal discretion in seeking the death penalty; the impact of the loss of the victim on the family; the relation between deterrence and punishment; mischaracterizations of your role as jurors, and justification for seeking the death penalty. He has also made several inflammatory comments designed to elicit sympathy, passion, or prejudice. Consider the case as though no such statements were made.

In the general instruction condition (based on *Weaver v. Bowersox*, 2006), the judge instructed the jury "Closing arguments are not evidence for your consideration. As such,

you should not use sympathy, passion, or prejudice when arriving at a decision". In the No instruction condition, the judge gave no instruction regarding closing arguments or the prosecutor's conduct. In all three experimental conditions, the prosecutor's closing argument contained 15 improper statements, which were un-objected to. Other variables examined were participant type and sentence recommendation.

Participants first read a summary of the guilt phase of a capital murder trial (based on *Brooks* v. *State*, 1977) and rendered a verdict: guilty or not guilty. Participants then completed the pre-trial questionnaire and were randomly assigned to view 1 of 3 videotaped reenactments of the penalty phase of the trial, in which they were instructed to imagine themselves as a juror in this case. Participants were tested individually and in groups ranging from 2 to 30. After viewing the videotape participants completed the post-trial measures designed to assess juror perceptions of the penalty phase and juror decision making processes. Those who voted not guilty were excluded from analysis. The experiment lasted approximately 1 hour.

Stimulus Materials

Pre-trial Questionnaire. The pre-trial questionnaire consisted of a series of 12 demographic items: gender, age, ethnicity, religious affiliation, marital status, parental status, political orientation, prior jury service (civil and criminal), occupation, education and relation to someone in the justice system. Additional demographic items used as exclusion criteria were: voter registration, possession of a valid driver's license, death qualification status and views regarding the death penalty. Death qualification status was determined by asking whether the participant's "views on the death penalty, either in favor or opposed, would prevent or substantially impair their performance as a juror in

this case" based on the Witt standard question (*Wainwright v Witt*, 1985). Participants were asked to indicate their views regarding the death penalty: appropriate in all cases where someone is murdered, generally appropriate with very few exceptions, generally opposed with very few exceptions, or opposed in every possible case where someone has been murdered. Those who indicated that the death penalty was appropriate in *all* cases where someone is murdered were excluded from analysis.

Pre-trial Scales. The pre-trial questionnaire also consisted of two scales assessing the role of individual differences (i.e. attitudes toward the death penalty and affect). These scales included the Attitudes Towards the Death Penalty Scale (ATDP) (O'Neil et al., 2004) and the Positive and Negative Affect Schedule Expanded (PANAS-X). The ATDP Scale is a 5-factor, 15-item scale measuring participants' attitudes toward the death penalty on a 9-point Likert scale ranging from 1=*Strongly Disagree* to 9=*Strongly Agree* using the following subscales: General Support, Retribution and Revenge, Death Penalty is a Deterrent, Death Penalty is Cheaper, and LWOP Allows Parole. It was constructed and validated over the course of 11 studies and was found to be moderately predictive of sentencing verdicts (mean total effect = 0.39), with reliability coefficients for each subscale ranging from $r = 0.69$ to 0.89 (O'Neil et al., 2004). The PANAS-X is a 60-item scale measuring general dimensions of positive and negative affect as well as 11 specific affects: Fear, Sadness, Guilt, Hostility, Shyness, Fatigue, Surprise, Joviality, Self-Assurance, Attentiveness, and Serenity. It consists of a number of words and phrases that describe different feelings and emotions. Participants are instructed to indicate to what extent they feel this way right now on a scale of 1 = *Very slightly or not at all* to 5 = *Extremely*. Validation studies have established that trait scores on the

PANAS-X are stable over time, show significant convergent and discriminate validity, are highly correlated with corresponding measures of affect, and are strongly related to measures of personality and emotionality (Watson & Clark, 1994).

Videotaped Penalty Phase. The videotape was based on the penalty phase of the trial of William Anthony Brooks (*Brooks v. State*, 1977). It was filmed in a mock courtroom setting from a juror's perspective. The videotapes ranged in length from 37 to 38 minutes and consisted of: 1) a summary of the guilt phase read to them by the judge, 2) each closing argument, and 3) judge's instructions. The judge and both attorneys were portrayed by male law school professors or professional actors.

Post-trial Questionnaire. After viewing the videotape, participants were first asked to respond to a series of questions to assess instruction comprehension, agreement with the judges' instructions and the evaluation of aggravating and mitigating circumstances. Instruction comprehension was measured by a combination of 3 items reflecting participants' agreement with mitigating decision rules and the true task of the sentencing phase on an 8-point Likert scale. To measure consideration of aggravating and mitigating factors, participants rated the degree to which they would consider each factor on a scale of 1 = *Not considered at all* to 8 = *Completely considered*.

Participants were then asked to recommend a sentence for the defendant: life in prison or death by lethal injection. They were also asked how deserving the defendant was to receive death by lethal injection on a scale of 1 = *Not at all deserving* to 8 = *Completely deserving* and provided a confidence rating of their sentence decision on a 8-point Likert-type scale. Participants also responded to items measuring the degree to which each misconduct statement was considered to be important to their sentencing

decision on a 8-point Likert-type scale ranging from 1 = *Not considered at all* to 8 = *Completely considered*. Finally, they completed the basic positive affect and basic negative affect subscales of the PANAS-X Scale (See Appendix for all stimulus materials and measures).

Results

The Role of Individual Differences

Predicting the Acceptability of Prosecutorial Misconduct. The first hypothesis predicted that death penalty attitudes, instruction comprehension and affect would predict juror acceptance of prosecutorial misconduct and other decision making processes in the presence of misconduct. To measure consideration of the prosecutorial misconduct, participants rated the degree to which they considered each of the 15 misconduct statements on a scale of 1 to 8. With a Cronbach's of alpha = .89, these items were combined to create a total consideration of misconduct score (TCM). Scores ranged from 15 to 116, M = 70.53, Median = 72.00, N= 121 with high scores indicating high levels of consideration of the prosecutorial misconduct.

A multiple regression analysis investigated the predictive ability of the four individual difference variables (ATDP, Pre-trial PANAS-X Positive Affect, Pre-trial PANAS-X Negative Affect, and instruction comprehension) in explaining the variance of total consideration of misconduct scores (TCM). The Cronbach's alpha = .75 for the ATDP Scale with a normal distribution. Scores ranged from 15 to 101, M = 70.94, Median = 72.00, N = 121, with high scores indicating support of the death penalty. Affect was measured with the PANAS-X (Pre-test Basic Positive and Basic Negative Affect Pre-test Subscales). The basic positive subscale consisted of 17 items measuring:

Joviality, Self-Assurance and Attentiveness. The basic negative subscale included 23 items measuring: Fear, Sadness, Guilt, and Hostility. Reliability analysis of the PANAS-X revealed a Cronbach's alpha = .91 for the Pre-Positive Subscale and a Cronbach's alpha = .85 for the Pre-Negative Subscale. Scores on the pre-positive subscale ranged from 24 to 80 out of a possible 17 to 85, M = 45.82, SD = 11.40, Median = 46, N = 122. Scores on the pre-negative subscale ranged from 23 to 49 out of a possible 23 to 115, M = 28.19, SD = 6.20, Median = 26, N = 122. High scores are indicative of current heightened emotional experience.

Instruction comprehension was measured by a combination of 3 items reflecting participants' agreement with mitigating decision rules and the true task of the sentencing phase: "Closing arguments are evidence for consideration", "Mitigating circumstances not agreed upon by all jurors can be considered" and "Sentence is determined only by the existence of aggravating and mitigating factors". After recoding the item related to closing arguments to ensure that high scores are indicative of good instruction comprehension, these items were combined to create an instruction comprehension score. This score was conceptualized based on face validity, and was not meant to be internally consistent as each item assessed agreement with a different aspect of the sentencing phase task as outlined in the judge's instructions. Scores ranged from 6 to 24 out of a possible 3 to 24, M = 15.31, Median = 15, N = 121.

Overall, the results revealed that the model significantly predicted consideration of the prosecutor's improper statements, F (4, 112) = 6.02, $p < .001$; $R^2 = .18$. Table 1 displays the standardized beta coefficients and part correlation coefficients for each significant variable in this model. Individuals' ATDP Scores ($\beta = .33$, $r^2 = .10$) and

Instruction Comprehension scores (β = -.23, r^2 = .05) were significant predictors in this model, uniquely explaining 10% and 5% of the variance respectively. Consistent with predictions, the higher an individual's ATDP scores in support of the death penalty, the higher his or her consideration of prosecutorial misconduct. As individual's instruction comprehension decreased, his or her consideration of prosecutorial misconduct increased.

Predicting Consideration of Aggravating and Mitigating Factors. To assess participants' overall consideration of aggravating and mitigating factors, they responded to the items: "How much did you consider aggravating circumstances when making your decision?" and "How much did you consider mitigating circumstances when making your decision?" on a scale of 1 = *Not considered at all* to 8 = *Completely considered*. A multiple regression analysis investigated the predictive ability of the four individual difference variables (ATDP, Pre-trial PANAS-X Positive Affect, Pre-trial PANAS-X Negative Affect, and instruction comprehension) in explaining participants' overall consideration of aggravating and mitigating factors. Overall, the model significantly predicted participants responses to both the aggravating item, F (4, 115) = 5.26, p = .001; R^2 = .16 and the mitigating item, F (4, 115) = 4.49, p = .002; R^2 = .14. Table 1 displays the standardized beta coefficients and part correlation coefficients for each significant variable. For the aggravating item, pre-trial positive affect scores (β = .34, r^2 = .14) and ATDP scores (β = -.20, r^2 = .04) were significant predictors in the model, uniquely explaining 14% and 4% of the variance respectively. As ATDP scores increased, consideration of aggravating factors decreased. The remaining analyses reveal additional mixed findings with respect to participants' evaluations of aggravating factors, which is addressed in the discussion section. For the mitigating item, pre-trial positive affect

scores (β = .30, r^2 = .05) and instruction comprehension (β = .20, r^2 = .04) were significant predictors, uniquely explaining 9% and 4% of the variance of the model respectively. As positive mood scores increased and instruction comprehension scores increased, consideration of mitigating items also increased.

Predicting Sentence Recommendation. Direct logistic regression was also performed to assess the impact of the individual difference variables (attitudes toward the death penalty, instruction comprehension and affect) and total consideration of misconduct scores on the likelihood that participants would vote for the death penalty. The full model containing all predictors was significant, $\chi 2$ (5, N = 124) = 22.04, p = .001, indicating that the model was able to distinguish between participants who voted for death by lethal injection and those who voted for life in prison. The model as a whole explained between 17.2% (Cox and Snell R Square) and 23% (Nagelkerke R Square) of the variance in sentence outcome and correctly classified 67.5% of cases.

Only two of the individual difference variables made a unique statistically significant contribution to the model (Total Consideration of Misconduct Scores (TCM) and Attitudes Towards the Death Penalty Scores (ATDP)). The more participants considered the improper statements and the stronger their support for the death penalty, the more likely they were to sentence the defendant to death. The ATDP Scores and TCM Scores were similarly strong predictors, reporting odds ratios of 1.04 and 1.03 respectively. This indicated that participants whose attitudes support the death penalty and participants who took the improper statements into consideration were both over 1 time more likely to vote for the death penalty than those with less supportive attitudes

toward the death penalty and those who were not likely to consider the misconduct controlling for all other factors in the model.

Instructions as a Legal Safeguard

Sentence Recommendation. The second hypothesis predicted that judicial instructions would moderate the impact of prosecutorial misconduct as measured by sentence outcome, consideration of aggravating and mitigating factors and consideration of misconduct statements. First, a loglinear analysis investigated the effect of instruction type and participant type on sentence recommendation. A significant participant by sentence association was found: $\chi 2(1, N = 124) = 7.67, p = .006$. Post hoc crosstabulation found students more likely to vote for the death penalty compared to community members: $\chi 2\ (1, N = 124) = 7.58, p = .006$. Figure 1 displays the proportion of participants willing to impose the death as a function of participant type. The proportion of students who sentenced the defendant to death was 41 of 60 (*68%*) compared to 28 of 64 (*44%*) for community members. The predicted main effect for instruction type was nonsignificant: $\chi 2(1, N = 124) = .73, p > .05$. Due to the relatively even overall sentence recommendation split of 44% life in prison and 56% death penalty, sentence recommendation was considered as an independent variable in the remaining analyses.

*Consideration of Aggravating Factors***.** Next, a two (Participant Type) x two (Sentence Recommendation) x three (Instruction Type) multivariate analysis of variance investigated the effect of sentence recommendation, participant type and instruction type on individuals' consideration of the 3 statutory aggravating factors: a) The murdered individual was killed in the course of another felony, b) The murdered individual was

actually killed by the defendant, and c) The defendant acted with intent to kill the murdered victim. These items were moderately positively correlated ranging from .27 to .73 at $p < .001$. The results revealed a significant participant type x instruction type interaction for the item, "The murdered individual was actually killed by the defendant", F (6, 220) = 2.20; p = .044; Wilks' Lambda = .89; partial eta squared = .07. Students given no instruction (M = 7.00, SD = 2.15) were significantly less likely to take this factor into consideration, while community members given no instruction (M = 7.48, SD = .55) were the most likely to take this factor into consideration.

The results also revealed a main effect for sentence recommendation on one aggravating factor, F (3, 110) = 2.89, p = .039; Wilks' Lambda = .93; partial eta squared = 07. Participants who voted for the death penalty were more likely to consider that the defendant acted with the intent to kill than those who recommended life imprisonment (M_{DP} = 7.08; M_{LIP} = 6.32).

Consideration of Mitigating Factors. A two (Participant Type) x two (Sentence Recommendation) x three (Instruction Type) multivariate analysis of variance was also conducted on the 4 mitigating items: a) The defendant has no significant history of prior criminal activity, b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, c) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired, d) The age of the defendant at the time of the crime. These items were moderately positively correlated ranging from .22 to .80. The results revealed a significant participant type x instruction type interaction on one mitigating factor, F (8, 218) = 2.26, p = .024; Wilks' Lambda = .85; partial eta squared = .01.

Students given no judicial instruction were the least likely to consider that the defendant had no significant prior criminal activity.

The results also indicated a significant main effect for participant type on three of the four factors, F (4, 109) = 5.88, $p < .0005$; Wilks' Lambda = .82*;* partial eta squared = .18. Community members were more likely to consider that the defendant acted under extreme mental disturbance ($M_{cm} = 5.91$*;* $M_{students} = 4.35$), the age of the defendant at the time of the crime ($M_{cm} = 5.36$*;* $M_{students} = 4.09$), and the defendant's capacity to appreciate the wrongfulness of his actions or to conform his action to the requirements of the law ($M_{cm} = 5.89$*;* $M_{students} = 4.13$).

Consideration of Misconduct. A two (Participant Type) x two (Sentence Recommendation) x three (Instruction Type) analysis of variance investigated the influence of sentence recommendation, participant type and instruction type on total consideration of misconduct scores (TCM). Results revealed a significant participant x instruction interaction, F (2, 109) = 3.90; $p = .023$; partial eta squared .17. Figure 2 displays mean TCM scores as a function of Participant type and Instruction type. Consistent with our hypothesis community members exposed to specific judicial instructions to disregard the improper statements were the least likely to consider these statements when making their sentencing decision ($M = 59.51$, $SD = 26.67$) in contrast with students exposed to the same instructions who were the most likely to consider the improper statements ($M = 79.15$, $SD = 18.78$).

Results also revealed a significant instruction x sentence interaction, F (2, 109) = 3.94; $p = .022$; partial eta squared .07. Participants who voted for death by lethal injection were the most likely to consider the misconduct statements when given no

judicial instruction. Results revealed a main effect for participant type, F (1, 109) = 6.09, p = .015; partial eta squared .05 and a main effect for sentence recommendation, F (1, 109) = 12.62, p = .001; partial eta squared .10**.** Students were more likely to take the misconduct statements into consideration than community members (M_{cm} = 65.15*;* $M_{students}$ = 74.42). Individuals who voted for death by lethal injection were more likely to consider the prosecutorial misconduct than those who voted for life in prison (M_{DP} = 76.45*;* M_{LIP} = 63.11). The predicted main effect for instruction type was nonsignificant, F (2, 109) = .305, p > .05.

Demographic Variables by Participant Type

Participant type emerged as a significant variable in participants' consideration of misconduct, aggravating and mitigating factors and sentencing outcomes. Therefore, a series of chi-square tests of independence were conducted to explore potential differences between these groups on a number of demographic variables deemed important to legal decision making. Results revealed no significant differences between students and community members on the following demographic variables: religion, $\chi 2$ (1, N = 124) = .53, p > .05, gender, $\chi 2$ (1, N = 124) = .73, p > .05, political views, $\chi 2$ (1, N = 123) = .02, p > .05 and relation to someone in the justice system, $\chi 2$ (1, N = 124) = 1.18, p > .05.

There was a significant difference in prior jury service both in a criminal case, $\chi 2$ (1, N = 124) = 8.02, p = .005 and in a civil case, $\chi 2$ (1, N = 124) = 3.88, p = .05. However comparisons were small: 8 of 64 (6.5%) of community members v. 0 of 60 (0%) of students had served on a jury in a criminal trial and 4 of 64 (3.2%) of community members vs. 0 of 60 (0%) of students had served on a jury in a civil trial.

Mixed Model. A two (Participant Type) x two (Sentence Recommendation) x three (Instruction Type) mixed analysis of variance investigated the impact of sentence recommendation, participant type and instruction type on participants' affect scores pre- and post-trial. There was a significant change in Negative Affect scores, F (1, 108) = 26.27, $p < .0005$; Wilks' Lambda = .80; partial eta squared .20. Individuals experienced an increase in negative emotions from pre- (M = 28.30) to post-trial *(*M = 31.93). There was also as significant change in Positive Affect scores, F (1, 107) = 115.40, $p < .0005$; Wilks' Lambda = .48; partial eta squared = .52. Individuals experienced a decrease in positive emotions from pre- (M = 45.71) to post-trial (M = 37.20). The predicted interaction between affect and instruction type was nonsignificant, F (1, 107) = 1.15, $p > .05$; Wilks' Lambda = .98. The presence of judicial instruction did not impact participants' changes in positive or negative affect scores from pre- to post-trial.

Discussion

The Role of Individual Differences

The primary aim of the current study was to explore whether and to what extent individual differences established in voir dire predict the acceptability of prosecutorial misconduct and influence the effectiveness of judicial instructions as measured by sentence outcome, and the consideration of aggravating and mitigating factors. In support of the primary hypothesis, attitudes toward the death penalty, instruction comprehension and juror affect were together a significant predictive model of individuals' total consideration of misconduct statements, consideration of aggravating and mitigating factors and sentence outcome.

Attitudes Towards the Death Penalty. Overall, attitudes toward the death penalty were the strongest predictor, making a unique contribution to three of the four primary dependent measures: sentence outcome, consideration of misconduct and consideration of aggravating factors. As death penalty support increased, consideration of prosecutorial misconduct and death sentences also increased. However, the opposite effect occurred when considering aggravating factors. As death penalty support increased, general consideration of aggravating factors decreased, suggesting a more complex relationship may exist between ATDP scores and the evaluation of aggravating factors. Overall, there was considerable variation in participants' consideration of each aggravating item when asked about these items individually. One possible explanation for this finding is that strong supporters of the death penalty may have had a lower threshold for consideration of aggravating factors, perhaps because they were more likely to impose the death penalty and considered only those factors that would challenge their verdict of preference.

Affect. Positive mood scores significantly predicted consideration of both aggravating and mitigating factors. When participants scored high on positive affect including items measuring joviality, self-assurance and attentiveness, they were more likely to consider both aggravating and mitigating factors. According to the theory of affect infusion, individuals are more likely to make mood-congruent judgments as the complexity of the task increases. However, results of the present study suggest that juror decision making in the presence of prosecutorial misconduct is not necessarily mood-congruent as mood was not a significant predictor of sentence outcome. Individuals experienced an increase in negative mood and a decrease in positive mood from pre- to

post-trial, which did not vary as a function of their sentence recommendation or the presence or absence of judicial instructions. As with any repeated measure design, caution should be used when interpreting this result. Therefore, no causal inferences can be made as to what initiated this shift in mood. Results do suggest that positive mood plays an important role when evaluating aggravating and mitigating factors in the presence of misconduct.

Instruction Comprehension. Instruction comprehension also emerged as a significant individual difference variable, predicting participants' consideration of misconduct statements and consideration of mitigating factors. Previous research demonstrates that jurors' comprehension of mitigating decision rules is particularly poor (Luginbuhl, 1992). Consistent with the existing literature examining the relationship between instruction comprehension and evaluation of mitigating circumstances, results of the present study revealed that as instruction comprehension increased, consideration of mitigating factors also increased. As instruction comprehension scores increased, consideration of misconduct statements also increased. These results suggest that instruction comprehension may serve as a protective factor in the presence of prosecutorial misconduct.

Judicial Instruction as a Legal Safeguard

The second purpose of the current study was to further explore the effectiveness of judicial instructions as a legal safeguard. In contrast to previous research, the present study did not support the predicted moderating effect of instruction type on sentence recommendation, deservingness of death, evaluation of aggravating and mitigating factors and consideration of the prosecutors' 15 improper closing argument statements.

However, results revealed that the effectiveness of judicial instructions varied as a function of participant type.

Participant Type. Specific instructions to disregard improper prosecutor statements were an effective legal safeguard among community members. Community members were not only less likely to consider improper statements, they were also more likely to vote for life in prison and more likely to consider 4 of the 5 mitigating factors. The absence of instructions was particularly harmful for the student sample, while community members appeared to benefit from the presence of instruction. Although they were not significantly different from community members on their support of the death penalty, political views or other important demographic items, students judged William Anthony Brooks much more harshly than community members. Students more likely to vote for the death penalty, found the defendant more deserving of the death penalty, were less likely to consider mitigating factors in favor of life imprisonment and were more likely to consider misconduct statements than community members, regardless of instruction type. One exception occurred in students' lower consideration of the aggravating item: "The murdered individual was actually killed by the defendant". One possible explanation for this finding is that students may have disregarded this item as important to this case due to the presence of Brooks' own written confession to the crime. With such overwhelming evidence of his guilt, students may not have taken this factor into consideration, having accepted it as fact.

Limitations

Similar to other simulated capital trial studies, the weaknesses of the current study reflect limitations in recreating the intensity of an actual capital trial. Although this study

controlled for participant jurors' perceptions of how serious they took their role as a juror in this case, it is difficult to assess the degree to which individuals' participation in this experiment approached the level of seriousness and responsibility associated with serving as a juror in an actual capital case.

Also, a more comprehensive and representative measure of instruction comprehension would be necessary to further investigate the role of instruction comprehension in the effectiveness of judicial instructions as a legal safeguard. The current measure of instruction comprehension was insufficient in yielding information regarding the degree to which participants heard the instructions, agreed with the instructions and took these instructions into consideration when evaluating aggravating and mitigating factors and determining sentence outcome.

Future Directions

The nonsignificant effect for the primary manipulation of instruction type raises important questions about the effectiveness of the instructions as a legal safeguard, particularly among undergraduate students. Perhaps a more salient instruction in the form of an immediate admonition after each improper statement is necessary to impact juror decision making. Future research should investigate this and other ways to improve legal safeguards against prosecutorial misconduct. Also, future research exploring the role of mood in both the presence and absence of misconduct could provide meaningful insight into the results of the current study with respect to juror affect and help to gain an understanding of how misconduct impacts jurors as they consider aggravating and mitigating circumstances and other decision making processes.

Finally, future research should also address the role of deliberations in jurors'

decision making processes in the presence of prosecutorial misconduct. A qualitative analysis of jury deliberations could help to inform legal professionals and policy makers of the degree to which jurors adhere to and acknowledge judicial instructions, the degree to which individual difference variables found to influence sentencing decisions in this context influence the deliberation process.

Summary

Overall, results of the present study support the findings of previous empirical research demonstrating the harmful impact of improper remarks in the penalty phase of a capital trial. Participants' overall consideration of prosecutorial misconduct was a significant predictor of sentence recommendation. Individuals who took the improper statements into consideration were more likely to sentence the defendant to death. Results of this study may have implications for the validity of judicial instructions as a legal safeguard and support the need for policy reform to improve prosecutorial accountability for misconduct and other issues contributing to wrongful convictions.

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Table Caption

Table 1. Summary of Multiple Regression Analyses for Individual Difference Variables

	TCM Scores		Aggravating Factors		Mitigating Factors	
Variable	β	sr^2	β	sr^2	β	sr^2
Instruction Comprehension	.31	.05	–	–	.20	.04
Pre-Trial Positive Affect	–	–	.34	.14	.30	.05
ATDP	.31	.10	-.20	.04	–	–

Note. R^2s range from .14 to .18; ΔR^2s range from .14 to .18 (ps < .002). sr^2 = part correlation coefficients. *N* = 117 for TCM Scores. *N* = 120 for Aggravating and Mitigating Factors

Figure Caption

Figure 1. Sentence Recommendation as a Function of Participant Type.

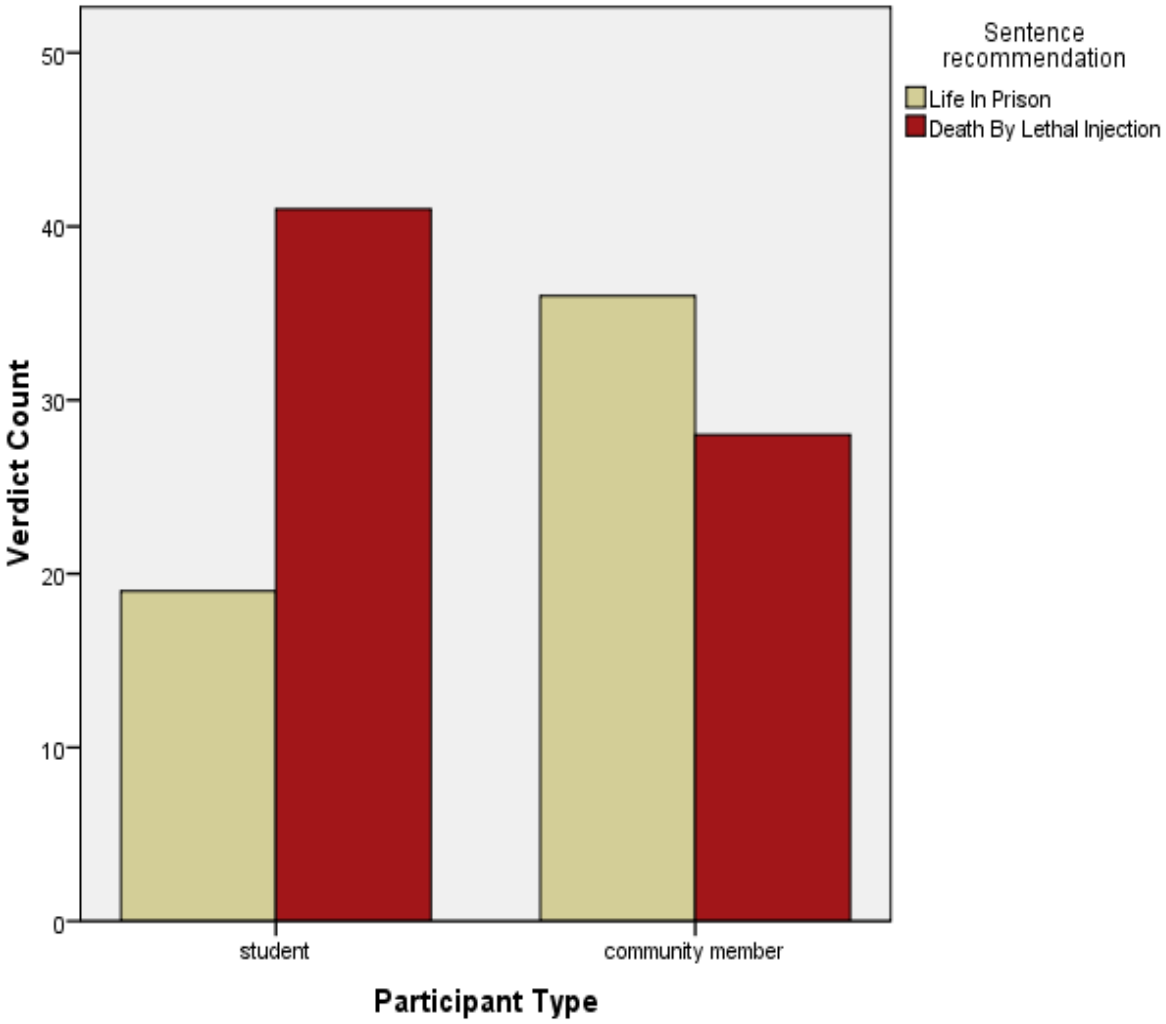
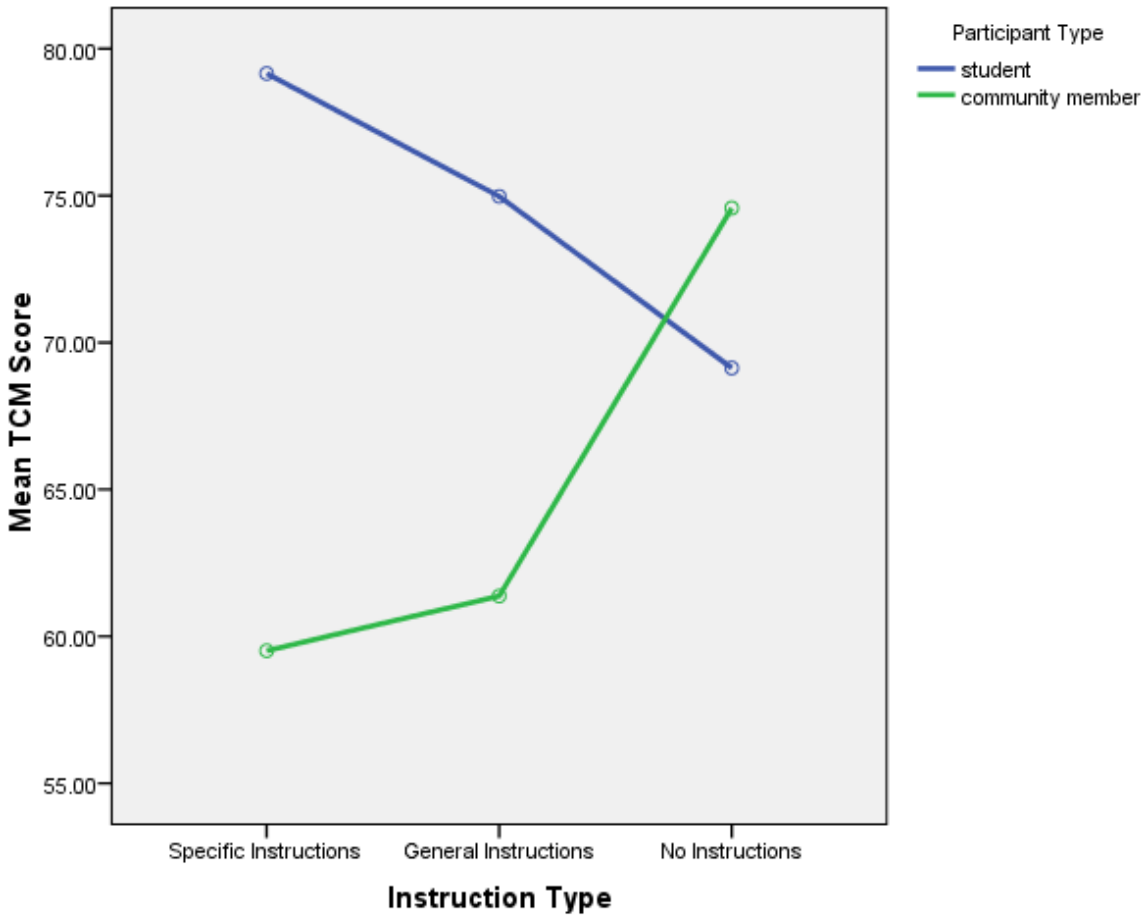


Figure Caption

Figure 2. TCM Scores as a Function of Participant Type and Instruction Type



Appendix A

Summary of Guilt Phase

Please read through the following summary of the guilt phase of a capital trial and render a verdict based on the facts presented.

William Anthony Brooks the defendant in this case, has been charged with the kidnapping and first-degree murder of Carol Jeanine Galloway. The evidence established that Brooks abducted Miss Galloway from her home, forced her against her will into her small red Honda automobile, took her to a secluded area and shot her. The young woman was going to meet a friend for breakfast. All this was established by Brooks' own written confession, and was corroborated by independent evidence. In his confession, Brooks also stated that, at one point Miss Galloway started screaming and at that point he aimed his pistol at her to make her stop screaming. He stated that the pistol fired and struck her in the throat. Brooks fled at that point and Galloway bled to death. There is no dispute about any of these facts.

As a result of reading the facts in this case, do you find the defendant, William Anthony Brooks:

☐ Not Guilty [1]

☐ Guilty [2]

of the charges of kidnapping and first-degree murder of Carol Jeanine Galloway.

Please submit this completed form to the researcher. Thank you.

Pre-trial Survey Instrument

Thank you for agreeing to participate in our study. Your responses are important to our research. Please answer every question on this form by placing a check in the box that corresponds to the appropriate response.

Your gender:

☐ Male [1]

☐ Female [2]

Into which of the following age categories do you fall:

☐ 18-24 [1]

☐ 25-34 [2]

☐ 35-44 [3]

☐ 45-54 [4]

☐ 55-64 [5]

☐ 65 or older [6]

Which of the following characterizes your background?

☐ Caucasian [1]

☐ Hispanic [2]

☐ African-American [3]

☐ Other [4]

What is your religious affiliation?

- ☐ Catholic [1]
- ☐ Protestant [2]
- ☐ Jewish [3]
- ☐ Muslim [4]
- ☐ Other [5]

Your marital status:

- ☐ Single [1]
- ☐ Married [2]
- ☐ Separated [3]
- ☐ Divorced [4]
- ☐ Widowed [5]

Do you have any children?

- ☐ No [1]
- ☐ Yes [2]

How would you evaluate your political views?

- ☐ Liberal [1]
- ☐ Slightly Liberal [2]
- ☐ Slightly Conservative [3]
- ☐ Conservative [4]

Do you have a valid driver's license?

☐ No [1]

☐ Yes [2]

Are you a registered voter?

☐ No [1]

☐ Yes [2]

Have you ever served on a jury in a civil case?

☐ No [1]

☐ Yes [2]

Have you ever served on a jury in a criminal case?

☐ No [1]

☐ Yes [2]

What is your employment status? (Only check one)

☐ Not working now/unemployed [1]

☐ Retired [2]

☐ Student [3]

☐ Homemaker [4]

☐ Employed full-time [5]

☐ Employed part-time [6]

Are you, a close friend of, or related to, anyone employed in the justice system? (police officer, judge, attorney, etc.)

☐ No [1]

☐ Yes [2]

What is the highest year of education you have attained?

☐ Less than high school [1]

☐ Attended some high school [2]

☐ High school diploma [3]

☐ Partial college or junior college [4]

☐ College degree [5]

☐ Post-graduate college degree [6]

Do you feel that your views on the death penalty, either in favor or opposed, would prevent or substantially impair you from considering both penalties in this case? (Life in prison vs. death penalty)

☐ No [1]

☐ Yes [2]

Which of the following best describes your view regarding the death penalty?

☐ Appropriate in all cases where someone has been murdered. [1]

☐ Generally appropriate with very few exceptions. [2]

☐ Generally opposed with very few exceptions. [3]

☐ Opposed in every possible case where someone has been murdered. [4]

This scale consists of a number of words and phrases that describe different feelings and emotions. Read each item and mark the appropriate answer in the space next to that word. Indicate to what extent you feel this way *right now*. Use the following scale to record your answers:

1	**2**	**3**	**4**	**5**
very slightly or not at all	a little	moderately	quite a bit	extremely

_____ cheerful

_____ disgusted

_____ attentive

_____ bashful

_____ sluggish

_____ daring

_____ surprised

_____ strong

_____ scornful

_____ relaxed

_____ irritable

_____ delighted

_____ inspired

_____ fearless

_____ disgusted with self

_____ sad

_____ calm

_____ afraid

_____ tired

_____ amazed

_____ shaky

_____ happy

_____ timid

_____ alone

_____ alert

_____ upset

_____ angry

_____ bold

_____ blue

_____ shy

_____ active

_____ guilty

_____ joyful

_____ nervous

_____ lonely

_____ sleepy

_____ excited

_____ hostile

_____ proud

_____ jittery

_____ lively

_____ ashamed

_____ at ease

_____ scared

_____ drowsy

_____ angry at self

_____ enthusiastic

_____ downhearted

_____ sheepish

_____ distressed

_____ blameworthy

_____ determine

_____ frightened

_____ astonished

_____ interested

_____ loathing

_____ confident

_____ energetic

_____ concentrating

_____ dissatisfied with self

Please circle the number that corresponds most closely to how you feel.

It is immoral for society to take a life regardless of the crime the individual has committed.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

Executing a person for premeditated murder discourages others from committing that crime in the future.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

The death penalty is the just way to compensate the victim's family for some murders.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

It is more cost efficient to sentence a murderer to death rather than to life imprisonment.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

The death penalty should be used more often than it is.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

There are some murderers whose death would give me a sense of personal satisfaction.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

There is no such thing as a sentence that truly means "life without parole."

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

The desire for revenge is a legitimate reason for favoring the death penalty.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

Executing a murderer is less expensive than keeping him in jail for the rest of his life.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

The death penalty does not deter other murderers.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

No matter what crime a person has committed executing them is a cruel punishment.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

Even when a murderer gets a sentence of life without parole, he usually gets out on parole.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

I think the death penalty is necessary.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

The death penalty makes criminals think twice before committing murder.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

Society has a right to get revenge when murder has been committed.

1 2 3 4 5 6 7 8 9

Strongly disagree *Strongly agree*

VIDEOTAPED TRANSCRIPTS

JUDGE: Ladies and Gentlemen, you have just convicted William Anthony Brooks the defendant in this case, of the kidnapping and first-degree murder of Carol Jeanine Galloway. The evidence established that Brooks abducted Miss Galloway from her home, forced her against her will into her small red Honda automobile, took her to a secluded area and shot her. The young woman was going to meet a friend for breakfast. All this was established by Brooks' own written confession, and was corroborated by independent evidence. In his confession, Brooks also stated that, at one point Miss Galloway started screaming and at that point he aimed his pistol at her to make her stop screaming. He stated that the pistol fired and struck her in the throat. Brooks fled at that point and Galloway bled to death. There is no dispute about any of these facts. At the completion of William Brooks' trial he was found guilty of the kidnapping and first-degree murder of Miss Galloway. The question to you, as jurors in this case, is which penalty is appropriate for this crime. **YOU WILL NOW HEAR CLOSING ARGUMENTS IN THIS CASE.** The prosecutor will argue that you should vote for the death penalty. You will then hear the defense attorney's argument for mercy, asking that you spare the defendant's life. Finally, I will be providing you with sentencing instructions. I would like to provide you with two important legal definitions at this time. You will hear the defense attorney and the prosecutor object to statements made during their respective closing arguments. When I, the judge **overrule** the objections, I find the statement, or line of argument proper and will allow it to be made in court. On the other hand, if I agree with the attorney's objection I will **sustain** the objection and does not allow the statement to be made in court.

PROSECUTOR'S CLOSING ARGUMENT

MR. WESTFALL: May it please the Court, and you, ladies and gentlemen of the jury, I thank you again for your patience, and this is the last stage of the trial, but, this is an important part of the trial, just as important as the guilt or innocence stage of the trial, and we ask you to treat it as such.

By your verdict, you have found this defendant guilty of kidnapping and first-degree murder, and we're at the stage of the trial now where we fix his punishment, you fix his punishment. Punishment has a two-fold purpose, one purpose is to punish the guilty offender; the other purpose is to deter others of a like mind from committing the same type of crime. In other words, if somebody else is thinking about murder, if you punish William Anthony Brooks it's supposed to deter others from committing murder.

Let me talk about the first purpose, to punish the guilty. Punishment is supposed to be adequate and appropriate. In other words, the punishment is supposed to fit the crime, and the crime in this case is murder. He took the life of another person. So, you've got to decide what kind of punishment fits that crime, whether he gets life in prison, or death. And, we say in these circumstances that the only appropriate punishment is death. I will have some more to say about that before I sit down.

Let me tell you here at the outset that I am **for** capital punishment. If you've got to take sides, I take the side of capital punishment. I believe in the death penalty. I think it's necessary.

I'm sure Mr. Hedley is going to tell you that there is no proof that the death penalty deters crime. But, I can tell you this: the last execution in the state was 1994, and

since that date, crime has increased year by year. And every time the statistics come out, we have an increase in crime rate. We seldom had this type of crime, we heard about it happening somewhere else, but not around here.

Now let's talk a minute about the person who is not here, about Carol Jeannine Galloway. What kind of a person was she? We know that she was a pretty young lady, a beautiful young lady. We know that she was about twenty-three years old; she wasn't married, she still lived with her mother and father, and we know that she was a person of high morals. We know that she was a considerate person. We know that she was a thoughtful person, she was going to treat her friend to breakfast before her friend left town. As a matter of fact the morning she was kidnapped she was in the driveway, sparing her parents from having to retrieve the trash bin from the morning's collection. So, when Mr. Hedley makes the argument – when he starts talking about Williams Brooks' life, and about William Brooks, about what a young person he is, his family. Think about the Galloway family. And think about Carol Jeannine Galloway who is not here in the courtroom today, and who will never be here again.

Now, they're going to tell you not to take Williams Brooks' life that locking him up is enough. They'll say don't make his family go through that. But I ask you - What has the Galloway family gone through? Soon, when it's Thanksgiving, and they are sitting around the table, Carol Jeannine won't be there, and never will be there again.

Now, we don't ask for the death penalty often – I've been District Attorney for seven and a half years, and we don't take this business of asking for the death penalty lightly. We don't come up here on every murder case that we try and say, "Sentence this

man to death." In the seven and a half years I've been District Attorney, I believe we've only asked for it less than a dozen times. I think it's nearer eight or nine, but I know it's less than twelve.

Now, what **do** we consider before we come to you and ask you to impose the death penalty? Well, one thing that we consider is the evidence of the case that's being tried. Was it a horrible crime that was committed? And let's stop there and look at the facts of this case, and look at what type of crime this was. Here was Carol Jeannine Galloway on a summer Friday morning, getting ready to go have breakfast with her friend, she sees a trash can outside the house and decides, "Well, I'll pick it up and bring it in for my mother so she won't have to." And, along comes William Anthony Brooks, probably never seen her before and didn't know her, but he had that pistol in his pocket, he puts it on her, makes her get into the car, drives her out into the woods; what does he do, he turns around and shoots her down like you would a sick dog, a stray dog.

But, he didn't kill her then, he said she was screaming and he shot her, and she fell, and was still trying to scream, so he said in his statement, but the sound wouldn't come out, and she bled to death, very slowly. I pray that she was unconscious. That's the kind of condition he left that lady in. You wouldn't do that, as I said, to a stray animal that you wanted to get rid of, you wouldn't treat it like that. But, that's what Williams Brooks did to Carol Jeannine Galloway. If you tried to think of a worse crime, could you think of anything more horrible than what you're hearing here today, that this defendant committed on this young lady? Could you think of anything more horrible?

All right, and another thing that we consider before we come to you and ask for the death penalty is the proof in the case, not that we just prove him guilty beyond a reasonable doubt and you find him guilty, but I mean, overwhelming proof, and you have that in this case. You've already found him guilty, and I'm sure you agree that the evidence in this case against William Brooks is overwhelming, he did it, there's no question about it.

And, another thing we consider before we ask for the death penalty, and I'm sure you're going to hear this from the defense, is rehabilitation. Is there any chance that the defendant might be rehabilitated? And we thought about that in this case. And I submit to you that there's no chance that William Anthony Brooks will ever be rehabilitated. Let's look at what he did. He's been in trouble since he was a child. His own sisters testified that he was a car thief when he was an adolescent. They talked about how he was beaten by his stepfather, but they never did say what his stepfather was beating him for, maybe he needed it. There are thousands of children who have been abused and beaten, but they don't turn to a life of crime.

Goodness sakes, I got beatings when I was a child; that didn't give me an excuse to go out and commit a crime. The fact that he got a beating when he was ten or eleven years old, does that give him the right to stop at somebody's house and put a gun in their back, and drive them down to the woods, and murder them? That's what they want you to accept. Just because he got some beatings when he was a child, that you should forgive him for that, or that he should have a right to do something like that. Our society and our laws were never designed to accept anything like that, and it's ridiculous, and I don't believe that you'll accept it.

Now I'm sure they're going to say, "He's a young person, just twenty-two years old, spare his life." Well, he's no child, he's not fifteen, he's a grown man. You can vote when you're eighteen years old, you can buy cigarettes, you can serve on a jury, have property in your name when you're eighteen. He's four years beyond that; he's a grown, mature man.

And another thing, he is young, and if you look around, that's the group that's committing crimes in this country. And if you don't punish young people, then you're not punishing the people who are committing the crimes. He's a mature man, and he doesn't deserve any sympathy from you just because of his age.

Now, I'm sure another question that might be going through your mind at this time is, "Can I vote to take somebody's life, can I do it?" I know it's rough; it would be hard for me as well. Can I take somebody's life? Well, the truth of the matter is, you're not taking his life, you're not "pulling the switch".

The police who investigated this case, who apprehended William Brooks, they're not taking his life: the Trial Court Judge who heard the evidence in the preliminary hearing, he's not responsible for taking his life. How about the Grand Jury who listened to the evidence and indicted him for murder; are the Grand Jurors responsible for his life? Of course not. How about me and my staff, we put the case together and we prosecuted him, and we're here now asking for the death penalty, do we feel responsible? I don't. And I don't think anybody in my office does.

How about the man, if he's executed, who performs the act of executing William Brooks - is he responsible for taking William Brooks' life? Of course not. The person

who is responsible for taking his life is William Brooks himself, and if he's put to death, he "pulled the switch" the morning that he was walking along Saint Mary's Road when he put the gun in the back of Carol Jeannine Galloway and kidnapped her. That's when he took his own life. He's a grown man, old enough to know what he was doing, and he **knew** what he was doing.

Now, I'm sure the argument is going to be made by Mr. Hedley, "Well, the death penalty is bad; maybe we can do something else." Well, let me say this to you; I told you I believe in it. Furthermore, William Brooks believes in the death penalty, he believes in executing people. He carried Carol Jeannine Galloway down in those woods out of sight of everybody. He just stepped back at point-blank range within three feet of her and killed her, shot her. So, he believes in the death penalty, he executed her.

And they may also say, "Can we sympathize, what about sympathy, can't we be sympathetic toward him?" The only answer to that is to show him the same sympathy that he showed Carol Jeannine Galloway, the same sympathy he showed her, after he had shot her: not one spark of sympathy, not one bit of sympathy did he show for her. His only thought then was to get away, and he did that. He had gotten his shoes muddy so he went and bought a new pair of shoes. No remorse at all. He has no sympathy due to him, and we ask you not to show him any.

All right, I'm sure that the defense is going to make this argument to you, we don't have to take his life, **you** don't have to take his life, just lock him up, put him away somewhere where he'll never be in society again, where he'll never harm anybody again, that's punishment enough, spare his life, just put him away forever. Let's think about

that. Going back to what I said a while ago, the first thing is you've got to give an appropriate punishment to fit the crime, and letting him live is not appropriate for the crimes that he committed, that's the first thing. And the next thing is that he has demonstrated that he's a killer. Anybody who can kill a poor defenseless person will kill again.

He doesn't care; life doesn't mean anything to him. So, you put him in prison. How about those guards that have to guard him? They have families depending on them, how do you know he won't kill one of them?

And, even worse, how about some young prisoner, who is in prison with him, who is there trying to serve his time, trying to be rehabilitated so he can go back to his family? He could kill him, a fellow prisoner.

How about if he escapes? And I'm sure you're going to hear, "Oh, he couldn't escape." But it was the early part of this year, or late last year, I don't recall exactly when, that a man escaped from a prison in Tennessee that no one had ever escaped from before. So, you always have the possibility that he might escape and be out on the streets, and who knows who it will be next time, whose daughter will it be next time? It was Mrs. Galloway's daughter this time, Bobby Murray's girlfriend; whose girlfriend or daughter will it be next time?

And I'm going to say this, and maybe you don't agree with me, but if he's given life, it costs money to keep him, thousands of dollars a year to keep a prisoner housed, fed and clothed, and given medical care. Why should the taxpayers have to keep

somebody like William Brooks locked up for the rest of his life, when he's done what he's done?

Let me say this to you, during my lifetime this country has been in three wars. Each time we've taken our young men, down to the age of seventeen, trained them, put guns in their hands, taught them how to kill the enemy, and sent them overseas. They have killed individuals who were enemies of our country, and when they did – we decorated them and gave them citations, praised them for it.

Well, we're in a war again in this country, except that it's not a foreign nation we're at war with, it's a war against the criminal element in this country – and they're winning the war. And if you don't believe they're winning, just look around you. You don't dare go out on the streets at night and walk around; you don't dare leave you house unlocked. In fact, almost everyone I know has added more locks to their house, and burglar alarms. And, we've got a man here in town that makes a living with guard dogs. And there are security guards everywhere. Why are they there? Because of the criminal element in this country winning this kind of war.

And, if we can send a 17-year-old young man overseas to kill an enemy soldier, is it asking too much for you to vote for the death penalty in this case? I submit to you that William Anthony Brooks is an enemy, and he's a member of the criminal element, and he's our enemy, an enemy of the law-abiding citizens and the people who want to live peacefully in this country, who want to be secure in their persons and their homes.

You know, lots of times you hear people saying, "You know, something's got to be done about this crime wave, what can we do, Mr. Westfall; we've got to do something

about it." Well, you have an opportunity to do something about it right now. The police have investigated the case, we've prosecuted it the best we know how, and the buck stops with you today. You can do something about it. You can tell William Brooks, and you can tell every other criminal like him, that if you come to this county and you commit a crime, and it's one of those crimes that's punishable by death, and if the aggravating circumstances are there, you will be sentenced to death, that's what you can do. And, I believe that will stop some of the crime.

Now, I know it's going to be a hard decision, it's not easy, it's never easy. You can think about it this way – sometimes the only way for a surgeon to cure cancer is to remove a limb - and it's bad to have to remove someone's arm, for example. Sure that's terrible, but it's done because you save the rest of the body. And, I submit to you that Williams Brooks is a cancer on the body of society, and if we're going to save society and save civilization, then we've got to remove him from society.

And, you know, it's one thing that people who oppose capital punishment can't dispute, if he's put to death, he'll never commit another crime, he'll never kill anybody else.

Now, I ask you, and you'll hear the judge's instructions, and in order to impose the death penalty, you must first find that while the murder was committed that he was engaged in certain other crimes, namely kidnapping and certainly he was engaged in that when he committed the murder, he carried her away from her home against her will. You recall that she had an appointment to eat breakfast, she had no idea she would be going anywhere other than to the restaurant.

Now I'm asking you to consider the facts and circumstances of this case. Think about how at eight-thirty in the morning she went out to the edge of the yard in broad open daylight, and how he was just walking along with a pistol in his pocket, and decided, "Well, I'll make a hustle," to use his language. And then after he did that, "Well, I'll kill her," so he carried her down in the woods, and shot her, and left her there bleeding to death. Those are the facts and circumstances we are talking about today. I believe you'll vote for the death penalty, I want to you to think about this case, and bring back a verdict that he be put to death. Thank you.

DEFENSE ATTORNEY CLOSING ARGUMENT

MR. HEDLEY: May it please the court. Ladies and gentlemen of the jury, I've been selected to argue this case for you, to plead for William Brooks' life. This is not an easy job; it's hard to get up in front of you now, after this defendant has been found guilty and ask you to consider sparing his life. First I will ask you to think about the larger picture of William Anthony Brooks' life as you contemplate the most extraordinary and extreme punishments – life in prison or death.

I would like to spend some time discussing some of the time-honored arguments against the death penalty, which you may have considered before today, in a different context. The district attorney has argued to you that – these people, the trial court judge, the District Attorney's office, and other individuals he named, would not be opposed to imposing capital punishment. Why should they be - when it is you, the jurors, who must ultimately decide? None of the people that he has named bear the decision-making responsibility, of deciding whether this man lives or dies. What the prosecuting district attorney wants is meaningless now. It is your responsibility now, and only your responsibility - to weigh aggravating and mitigating circumstances in this case, nothing more, nothing less and after doing so – decide on the fate of William Anthony Brooks. His fate - his life are entirely yours to define through your decision.

The District Attorney stated that you were being called upon to be nothing less than soldiers in the service of your country. I know some of you have served in the armed forces. Fulfilling a soldier's duty is an honorable service of our country. Your duty now is also in service of our country, and Williams Brooks. All of you have a duty to

carefully weigh aggravating and mitigating evidence. But, a soldier doesn't have time to contemplate, and he isn't asked to make decisions about whether anyone lives or dies, and that is the difference, because you have that power, you have that decision-making responsibility upon your shoulders, as to whether this man will live or die. The responsibility is weighty, and this is no easy task, that you have been called to complete. You have the ability to think about the facts, listen to the arguments and the judge's instructions, and decide intelligently.

There is now another life at stake, a life that can be extinguished through a legal gesture and a legal judgment with as much crushing finality as the life destroying nature of Brooks himself. As you know, you have convicted William Anthony Brooks of kidnapping and first-degree murder. I'm not going to rely upon rhetoric, or emotional appeal, but I would like to point out for you several factors that we believe would be important to your considerations and deliberations on the punishment of the defendant in this case.

As you know there are only two possible punishments: death penalty, or life imprisonment. You are now faced with the hardest decision of your life – whether or not this man is to be given life imprisonment, or is to be put to death. You alone have the right to decide what justice should be for this man. Your decision will be respected and carried out by the law. The point I would like to make to you is that no matter what you do today, no matter what sentence you impose; your decision will not bring back Carol Jeannine Galloway. Remember that life in prison has virtually the same outcome as the death penalty for the family of Carol Galloway. Either outcome will not bring her back. Therefore, I submit to you that no good can come from a verdict for death.

We all recall from our earliest days, of course, the sixth commandment "Thou shalt not kill." The sixth commandment did not say thou shall not kill except when it's imposed by the State, thou shalt not kill except when the jury imposes it, thou shalt not kill except when capital punishment is imposed; it simply says, "Thou shalt not kill."

MR. WESTFALL: Objection, Your Honor, to that line of argument, because the Court is going to charge this jury that they have a right under certain circumstances to impose the death penalty. Counsel is saying that they shall not kill.

THE COURT: Overruled. Continue, Mr. Hedley

MR. HEDLEY: The District Attorney has stated that if William Anthony Brooks is put to death he can never kill again. Remember, however, that life in prison has virtually the same outcome as the death penalty in this case. William Anthony Brooks will never be released from prison and therefore could never kill again. The District Attorney has also stated that the death penalty is a deterrent – that it deters others from committing the same or similar crimes. However, he failed to provide any evidence to support that statement. I would argue that the death penalty is not a deterrent. Death penalty statistics show that the death penalty does not deter the commission of crimes as it is supposed to. You can rest assured that if there were any studies that demonstrated the death penalty is a deterrent, the District Attorney certainly would have been able to provide you with that evidence. That being the case, of what benefit, of what good it is going to do to put this man to death? To decide for death in this case would eliminate any possibility of good. It will not bring Carol Galloway back. Deciding for death will not deter others from committing similar crimes.

The District Attorney has reviewed the facts of this case with you, and I would like to comment on them. In this case, of course, you are convinced, beyond a reasonable doubt as to the guilt of William Brooks. You are convinced that the evidence was sufficient to prove his guilt. However, is this evidence sufficient to take another human being's life? In order to take another person's life, you should be convinced beyond a reasonable doubt that the murder was committed with malice and forethought by this defendant. Can you be so sure, based upon this evidence that you should order the life of the defendant to be taken? In this case, it is the contention of the State that William Anthony Brooks has killed Carol Jeannine Galloway and that his punishment should be nothing less than death. The District Attorney has asked that you consider the taking of a life for a life. This is a barbaric trade. This is not a solution. Taking the life of the defendant will never bring back Carol Jeannine Galloway, nor will it deter others from committing like crimes.

William Brooks was subjected to persistent and brutal abuse throughout his childhood. He saw explosive tempers all around him, and they became for him a model of how to behave. To say the least he grew up in the absence of a nurturing environment. Through no fault of his own the very volatile feelings inside him were left to fester. He did not develop internal controls or mechanisms for dealing with his anger. He never found a place to put it. You heard also, that his mother worked constantly to keep her children and herself off of welfare. This defendant has hurt himself as well as many others around him. What you need to consider is: What forces pushed him in that direction? But will any of this excuse what happened? Nothing excuses or justifies his crime. Let me remind you what is not before you. This is not about whether the defendant

will be excused. There is no excuse for what William Brooks did. When you consider mitigating evidence it isn't to excuse or justify. He is responsible for what he did. That's why we are here, at the point of sentencing. Mitigating evidence is offered to help you understand what he did, not to excuse or justify it.

We learn about the place of mercy and compassion. Here the law makes room for mercy and compassion. We are proud of our law because it allows us to show mercy. If you find mitigation that can be a reason to give life – anything about William Brooks' life and background, or about his behavior in prison that makes him worthy of not being killed – If anything merits mercy whether you've heard it or not, you can vote for life in prison rather than death. So ladies and gentlemen, you have heard my points on this position. We ask, on behalf of the defense, that you put William away in the penitentiary for the rest of his natural life. Truly, that is not a pleasant thing either. However, it is the only choice that we believe is appropriate in this case. Thank you.

JUDGE'S INSTRUCTIONS

No Misconduct Instructions

It is now your duty to determine what punishment will be imposed upon the defendant for his crime of first-degree murder. Sentence is determined exclusively by the existence of aggravating and mitigating circumstances. If you recommend the death penalty, then the court is required by law to sentence the defendant to death. On the other hand, if you can see fit to recommend mercy for the defendant, then the court is required by law to sentence the defendant to life imprisonment. Your first responsibility as a juror is to determine whether any mitigating or aggravating circumstances existed at the time the murder was committed. You are authorized to recommend the death penalty only if you find, beyond a reasonable doubt, the existence of one or more of three statutory aggravating circumstances. A defendant who at the time of the crime has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if: (a) The murdered individual was killed in the course of another felony [kidnapping], (b) The murdered individual was actually killed by the defendant, and (c) The defendant acted with the intent to kill the murdered individual. If you recommend a life sentence then the court is required by law to sentence the defendant to life imprisonment. Among the mitigating circumstances you may consider: (a) The defendant has no significant history of prior criminal activity, (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (c) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired, (d) The age of the defendant at the time of the crime, (e) Any other aspect of the defendant's character

or record or any other circumstances of the offense. Each aggravating circumstance must be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Your sentence must be based on these considerations, carefully considering all of the evidence realizing that a human life is at stake and bring to bear your best judgment in reaching your sentence.

General Misconduct Instructions

It is now your duty to determine what punishment will be imposed upon the defendant for his crime of first-degree murder. Sentence is determined *exclusively* by the existence of aggravating and mitigating circumstances. If you recommend the death penalty, then the court is required by law to sentence the defendant to death. On the other hand, if you can see fit to recommend mercy for the defendant, then the court is required by law to sentence the defendant to life imprisonment. Your first responsibility as a juror is to determine whether any mitigating or aggravating circumstances existed at the time the murder was committed. You are authorized to recommend the death penalty only if you find, beyond a reasonable doubt, the existence of one or more of three statutory aggravating circumstances. A defendant who at the time of the crime has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if: (a) The murdered individual was killed in the course of another felony [*kidnapping*], (b) The murdered individual was actually killed by the defendant, and (c) The defendant acted with the intent to kill the murdered individual. If you recommend a life sentence then the court is required by law to sentence the defendant to life imprisonment. Among the mitigating circumstances you may consider: (a) The defendant has no significant history of prior criminal activity, (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (c) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired, (d) The age of the defendant at the time of the crime, (e) Any other aspect of the defendant's character or record or any other circumstances of the offense. Each aggravating circumstance must

be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Your sentence must be based on these considerations. Closing arguments are not evidence for your consideration. As such, you should not use sympathy, passion, or prejudice when arriving at a decision. Please consider carefully all of the evidence presented, realizing that a human life is at stake and bring to bear your best judgment in reaching your sentence.

Specific Misconduct Instructions

It is now your duty to determine what punishment will be imposed upon the defendant for his crime of first-degree murder. Sentence is determined *exclusively* by the existence of aggravating and mitigating circumstances. If you recommend the death penalty, then the court is required by law to sentence the defendant to death. On the other hand, if you can see fit to recommend mercy for the defendant, then the court is required by law to sentence the defendant to life imprisonment. Your first responsibility as a juror is to determine whether any mitigating or aggravating circumstances existed at the time the murder was committed. You are authorized to recommend the death penalty only if you find, beyond a reasonable doubt, the existence of one or more of three statutory aggravating circumstances. A defendant who at the time of the crime has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if: (a) The murdered individual was killed in the course of another felony [*kidnapping*], (b) The murdered individual was actually killed by the defendant, and (c) The defendant acted with the intent to kill the murdered individual. If you recommend a life sentence then the court is required by law to sentence the defendant to life imprisonment. Among the mitigating circumstances you may consider: (a) The defendant has no significant history of prior criminal activity, (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (c) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired, (d) The age of the defendant at the time of the crime, (e) Any other aspect of the defendant's character or record or any other circumstances of the offense. Each aggravating circumstance must

be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Your sentence must be based on these considerations. Closing arguments are not evidence for your consideration. In his closing argument, the prosecutor made several statements relating to the following: his personal discretion in seeking the death penalty; the impact of the loss of the victim on the family; the relation between deterrence and punishment; mischaracterizations of your role as jurors, and justification for seeking the death penalty. He has also made several inflammatory comments designed to elicit sympathy, passion, or prejudice. Consider the case as though no such statements were made, carefully considering all of the evidence presented, realizing that a human life is at stake and bring to bear your best judgment in reaching your sentence.

Post-Trial Survey Instrument

Thank you again for agreeing to participate in our study. Your responses are important to our research. Please answer every question on this form. We are interested in your reactions so please do not alter your answers.

Please circle the number that corresponds with the degree to which you agree or disagree with the following statements.

Closing arguments are evidence for your consideration.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made statements regarding his personal discretion in seeking the death penalty.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made statements regarding the impact of the loss of the victim on the family.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made statements regarding the relation between deterrence and punishment.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made statements regarding the mischaracterizations of the juror role.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made statements regarding the justification for seeking the death penalty.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The prosecutor made inflammatory comments designed to elicit sympathy, passion, or prejudice.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

The ultimate responsibility for imposing the death penalty on the defendant resides with the jury.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

Mitigating circumstances not agreed upon by all jurors should be considered when providing a sentencing decision.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

Sentence is determined *only* by the existence of aggravating and mitigating circumstances.

1 2 3 4 5 6 7 8

Completely Disagree *Completely Agree*

Please place a check in the box that corresponds with the appropriate response.

Please indicate the standard of proof you will use in establishing the existence of aggravating factors.

☐ Beyond a reasonable doubt [1]

☐ Reasonably convincing [2]

Please indicate the standard of proof you will use in establishing the existence of mitigating factors.

☐ Beyond a reasonable doubt [1]

☐ Reasonably convincing [2]

Please rate the extent to which you will consider each of the following factors in your sentencing decision by circling the number that corresponds to your feelings.

The murdered individual was killed in the course of another felony [kidnapping].

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The individual was actually killed by the defendant.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The defendant acted with the intent to kill the murdered individual.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The defendant has no significant history of prior criminal activity.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law were substantially impaired.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

The age of the defendant at the time of the crime.

1 2 3 4 5 6 7 8

Not consider at all *Completely consider*

List any other aspect of the defendant's character or record or any other circumstances of the offense that you will consider when making your sentencing decision:

_____

_____

Please place a check in the box that corresponds with your response.

Please recommend a sentence for the defendant in this case.

☐ Life in prison [1]

☐ Death by lethal injection [2]

Please circle the number that corresponds most closely to how you feel.

How confident are you of your sentencing recommendation?

1 2 3 4 5 6 7 8

Not at all confident *Completely confident*

How much did you consider aggravating circumstances when making your decision?

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

How much did you consider mitigating circumstances when making your decision?

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

Please rate the extent to which you considered each of the following statements of the prosecutor's closing argument in your sentencing decision by circling the number that corresponds to your feelings.

"If somebody else is thinking about murder, if you punish William Anthony Brooks it's supposed to deter others from committing murder."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"I believe in the death penalty. I think it's necessary."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"Now let's talk a minute about…Carol Jeannine Galloway. What kind of person was she? We know that she was a pretty young lady, a beautiful young lady."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"In the seven and a half years I've been District Attorney, I believe we've only asked for the death penalty less than a dozen times. I think it's nearer eight or nine, but I know it's less than twelve."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"William Anthony Brooks…what does he do? He turns around and shoots her down like you would a dog, a stray dog."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"I'm sure you agree that the evidence in this case against William Brooks is overwhelming, he did it, there's no question about it."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"I submit to you that there's no chance that William Anthony Brooks will ever be rehabilitated."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"There've been children who have been abused and beaten, but they don't turn to a life of crime because of it."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"Can I take somebody's life? Well, the truth of the matter is, you're not taking his life, you're not pulling the switch."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"William Brooks believes in the death penalty, he believes in executing people."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"Anybody who can kill a poor defenseless person will kill again."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"You don't dare go out on the streets at night and walk around, you don't dare leave your house unlocked. Why? Because of the criminal element in this country. It's winning."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"Why should the taxpayers have to keep up somebody like William Brooks for the rest of his life, when he's done what he's done?"

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"I submit to you that William Brooks is a cancer on the body of society, and if we're going to save society and save civilization, then we've got to remove them from society"'

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

"I believe you'll vote for the death penalty, I want you to think about this case, and bring back a verdict that he be put to death."

1 2 3 4 5 6 7 8

Not considered at all *Completely considered*

How seriously did you take your role as a juror in this case?

1 2 3 4 5 6 7 8

Not at all serious *Completely serious*

This scale consists of a number of words and phrases that describe different feelings and emotions. Read each item and then mark the appropriate answer in the space next to that word. Indicate to what extent you feel this way *right now*. Use the following scale to record your answers:

1	**2**	**3**	**4**	**5**
very slightly or not at all	a little	moderately	quite a bit	extremely

_____ cheerful

_____ disgusted

_____ attentive

_____ daring

_____ scornful

_____ irritable

_____ delighted

_____ fearless

_____ disgusted with self

_____ sad

_____ afraid

_____ shaky

_____ happy

_____ alone

_____ alert

_____ angry

_____ bold

_____ blue

_____ guilty

_____ joyful

_____ nervous

_____ lonely

_____ excited

_____ hostile

_____ proud

_____ jittery

_____ lively

_____ ashamed

_____ scared

_____ angry at self

_____ enthusiastic

_____ downhearted

_____ blameworthy

_____ determined

_____ frightened

_____ loathing

_____ confident

_____ energetic

_____ concentrating

_____ dissatisfied with self

Debriefing

We appreciate your participation in our study on juror perceptions. The responses you provided will be used to examine effects of the prosecutor's statements on sentencing decisions in capital cases.

If you have any concerns regarding this study, please feel free to contact Jillian Rowback via e-mail at jrowback950@hawks.rwu.edu or at 716-912-3573 or Dr. Judith Platania in the Feinstein College of Arts and Sciences Building Office 106, via e-mail at jplatania@rwu.edu or at 401-254-5738. Thank you for your participation.

*If you are experiencing stress and need assistance, please contact the Roger Williams University Counseling Center at **(401) 254-3124.**