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Jurors' Use of Non-Statutory Aggravating and Mitigating Evidence
In the Context of Improper Prosecutor Argument

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Forensic Psychology

Feinstein College of Arts and Sciences

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ROGER WILLIAMS UNIVERSITY
GRADUATE PROGRAM IN FORENSIC PSYCHOLOGY
THESIS PROJECT FORM

Date: 10/13/09

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(2) Thesis Chair - 1 copy
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Abstract

The proposed research examined the affective and cognitive processes involved in jurors' reactions to comparative value arguments and evidence of non-statutory aggravating and mitigating circumstances in the sentencing phase of a capital trial. The experiment utilized a 2 (Permissible Victim Impact Statements: Present v. absent) x 3 (Non-Statutory Mitigating Evidence: Social Value v. Troubled Life v. Both) x 2 (Comparative Value Argument: Life v. Worth) + 1 between-groups factorial design. Participants exposed to comparative worth arguments were more likely to vote for death than those exposed to comparative life arguments. In addition, participants were differentially influenced by comparative arguments. In a series of theoretically relevant path analyses, this effect was mediated by mood, and moderated by need for affect and cognition as well as concern for victims.

Keywords: improper prosecutor argument, sentencing phase evidence

Jurors' Use of Non-statutory Aggravating and Mitigating Evidence
In the Context of Improper Prosecutor Argument

The Supreme Court has ruled that using emotion in sentencing decisions is unconstitutional (*Gardner v. Florida*, 1977), yet a capital sentencing decision is one of the most emotional decisions a juror will make in their lifetime. Making the decision between the defendant spending his life in prison or receiving the death penalty is no doubt burdensome for jurors. Each juror comes to the proceedings with their own personality, morals, and biases. These factors influence the way evidence and testimony is weighed and processed in a jurors' decision-making. If jurors consider improper or prejudicial evidence in sentencing, the defendant's due process rights are violated. If jurors consider evidence that is provided to mitigate the defendant's sentence as an aggravating factor, the defendant's due process rights are again violated. If jurors use emotion or affect in their decision-making the defendant is once again not receiving a fair and just sentence.

Empirical research regarding juror's use of comparative value arguments and misuse mitigation evidence in sentencing recommendations is scarce. The empirical data that does exist on these issues has mostly been ignored by the Court, for political reasons or because the empirical studies do not fit the Court or legislature's preconceived decision or existing practices (Ogloff & Chopra, 2004). The purpose of the proposed research is to examine the cognitive and affective processes involved in jurors' decision-making when they are presented with comparative value arguments, victim impact evidence, and mitigating evidence.

Death Qualification

On January 12, 2003, the governor of Illinois with two days left in his term commuted the death sentences of 156 death row inmates. DePaul University students and faculty informed

Governor Ryan of issues within the criminal justice system that raised his doubts about the guilt of many Illinois death row inmates. Governor Ryan tried repeatedly to repair Illinois' broken justice system by drafting legislation to implement procedural reforms. The legislature did not pass the bill; all three times the bill was presented it was rejected. As a last resort, Governor Ryan called for a moratorium on the death penalty (Ryan, 2003). He acknowledged several factors for his decision; some of these reasons related to the process of death qualification (Wiener, & Haney, 2004).

Death qualification is the process of voir dire by which jurors are screened for their fitness to serve on a capital jury. This fitness is based on the jurors' death penalty views. In *Grigsby v. Mabry* (1985) the Eight Circuit considered social scientific evidence in their decision that death qualification produces unrepresentative juries. This is the root of the problem with death qualification; it is unconstitutional, violating the defendant's 6th amendment right because the juries are unrepresentative. The court realized the 6th Amendment implications of a sentence decided by a jury, which does not represent a cross-section of the community.

Only one year later, the Supreme Court in *Lockhart v. McCree* (1986) rejected this finding and challenged the validity of the social science research. Rehnquist writing for the majority stated, "it is hard for us to understand the logic of the argument that a given jury is unconstitutionally partial when it results from a State-ordained process, yet impartial when exactly the same jury results from mere chance" (p. 178). This statement exposes the Courts lack of understanding pertaining to the creation of a randomized and impartial jury. If the court randomly selected participants it would reduce the likelihood that individual differences would affect the outcome, or at least distribute this risk across the sample. Instead, specifically selecting jurors on an individual difference, attitudes toward the death penalty, accomplishes the exact

opposite by creating bias among the jury and a less robust deliberation.

Witherspoon v. Illinois (1968) led to the exclusion of jurors who are unequivocally opposed to the death penalty; those jurors who could never impose the death penalty, regardless of the facts or circumstances of the case. The Court redefined the death qualification standard in *Wainwright v. Witt* (1985) upholding the exclusion of jurors whose attitudes would “prevent or substantially impair performance...of duties as a juror” (p. 852). This less stringent standard of death qualification contained vague language that provided trial courts with unbridled discretion to apply the standard. A beneficial consequence of the *Witt* standard was the expansion of excludables to a group of individuals who would always recommend the death penalty (Automatic Death Penalty jurors [ADP]; *Hovey v. Superior Court*, 1980; *Morgan v. Illinois*, 1992).

Studying the effects of voir dire on juror attitudes, Haney (1984) compared traditional voir dire with death qualification voir dire. The researcher found that mock jurors exposed to death qualification voir dire were significantly more conviction prone. The death qualified mock jurors were also significantly more likely to believe that the judge, prosecutor, and even defense attorney thought that the defendant was guilty. Maybe one of the most important findings was that death qualification voir dire also effects jurors perceptions of the appropriate sentence for the defendant. Of 32 jurors who heard ordinary voir dire, only seven voted for the death penalty. Of 35 jurors who heard death qualification voir dire, 20 voted for the death penalty.

There are many possible explanations for this substantial difference. First, judges and attorneys may use highly prejudicial language during death qualification. Second, there are lengthy discussions of penalty before the jury has rendered a verdict of guilt or innocence. The jury's attention is drawn away from the presumption of innocence and toward post-conviction

events which may lead the jury to believe the defendant is undoubtedly guilty, violating the defendant's 5th and 14th Amendment rights to due process. Third, the amount of time and energy spent by the court can also imply to the jury that the defendant is guilty. Fourth, jurors are questioned and exposed repeatedly to an issue that is usually emotional but jurors can become desensitized to the decision of recommending a death sentence. Fifth, jurors must publicly commit to a viewpoint on the death penalty and being excluded implies that the juror is unfit for capital jury service.

Research findings can help explain the ramifications of the death qualification process that the Supreme Court has upheld. Butler and Moran (2007) showed a relationship between death qualified juries and prosecutor bias or a proneness to convict. The researchers found that death qualified jurors were more likely to find the defendant guilty and to sentence him to death. The researchers also found increased support for the death penalty associated with increased likelihood of sentencing the defendant to death. Butler and Moran (2007) also tested the impact of death qualification, belief in a just world, legal authoritarianism, and locus of control on venirepersons' evaluations of aggravating and mitigating circumstances in capital trials. Lerner's (1980) theory of belief in a just world posits that some people want to believe the world is a fair place and that people get what they deserve. Submission to authorities and derogation of subordinates, conformity to societal conventions, and the ostracism of societal rule-breakers categorize legal authoritarianism. Locus of control (Rotter, 1966) describes a person's attribution of life events as internal or external. Death penalty supporters and death qualification jurors are more likely to have a high belief in a just world, to be legal authoritarians, and harbor an internal locus of control. Death qualified jurors are also more likely to be politically conservative.

Death qualified juries are not made up of a representative sample of the community,

specifically men and Caucasians are more likely to favor the death penalty (Fitzgerald & Ellsworth, 1984). Cacioppo, Petty, and Kao (1984) defined the need for cognition as a propensity to engage in and enjoy effortful cognitive activity. Death qualified jurors were more likely to exhibit a low need for cognition. Need for cognition is significantly related to verdict and sentence. Jurors with low need for cognition were more likely to find the defendant guilty and sentence him to death.

The courts have established that the qualities of voir dire promote effective jury deliberation and functioning. However, research suggests that death qualification interferes with these principles. Cowan, Thompson and Ellsworth (1984) studied two types of juries, the first jury contained a mix of death qualified and excludable jurors, and the second consisted of strictly death qualified juries. The mixed juries were able to remember significantly more facts and evidence of the case than death qualified juries. The mixed juries were also more critical of the prosecution and defense cases. Thompson, Cowan, Ellsworth and Harrington (1984) showed that death qualified jurors were more likely than excludables to interpret conflicting testimony as favorable to the prosecution. Importantly the death-qualified jurors did not properly apply the reasonable doubt standard, which again violates the defendant's constitutional due process rights. The excluded jurors indicated that mistaken convictions are a more detrimental type of error than mistaken acquittals, whereas the death qualified jurors did not distinguish between the two.

Research has also shown that death qualified jurors differ from *Witt* and *Witherspoon* excludables with regard to their consideration of aggravating and mitigating factors (Butler & Moran, 2007). An increased support for the death penalty and death qualification is associated with a higher endorsement of aggravating factors and a lower endorsement of both statutory and nonstatutory mitigating factors. A lower belief in a just world and an external locus of control

relates to higher endorsements of statutory mitigators. Legal Authoritarians showed greater endorsement of aggravators and lower endorsements of nonstatutory mitigators.

Under these death qualification procedures a capital trial begins in a biased and partial manner. When these biases interact with evidence and arguments presented during the sentencing phase then the jury is more likely to recommend the death penalty in an arbitrary or capricious manner. These death qualification procedures lead to the violation of the defendant's 8th amendment right against cruel and unusual punishment (*Gregg v. Georgia*, 1976).

Comparative Value Arguments

Prosecutorial Misconduct.

Any statement or action by the prosecutor that is improper is labeled as prosecutorial misconduct. Comparative value arguments have emerged in the last two decades as a way in which prosecutors can use victim impact statements to elaborate on the harm caused by the crime in closing arguments (*Humphries v. Ozmint*, 2005). Prosecutors use these tactics to play on the emotions and biases of the jury; this study will investigate how these arguments influence the juries' sentence recommendation.

Comparative value arguments have materialized into one of the most effective tool a prosecutor has to obtain a sentence recommendation of death (*Humphries v. Ozmint*, 2005). Comparative value arguments may compel the jurors' to recommend death arbitrarily and with caprice. There has not been a Supreme Court case that has specifically dealt with comparative value arguments and therefore there is no law that specifically prohibits the use of these arguments. There are, however, laws that already allow for the consideration of the defendant's societal value through the introduction of victim impact statements.

The legality of arguments comparing the victim and defendant was upheld in *Humphries*

v. Ozmint, where the court stated that under *Payne v. Tennessee* (1991), the case that endorsed victim impact statements, a defendant can receive the death penalty for the murder of a person more unique than themselves. The Fourth Circuit court in *Humphries v. Ozmint* (2005) even stated that under *Payne* these comparisons are inevitable. The *Humphries* court also declared that the prosecutor's argument was only implicitly comparative; the prosecutor compared histories as opposed to actual worth or value. The court then cited *State v. Haselden* (2003), in which the prosecutor's argument was more explicit, telling the jury that if they recommended life it would be equivalent to the jury finding that the defendant's life was worth more than the victim's life. The *Haselden* court found that this comparative argument was allowed under *Payne* because it reminded the jury that when they consider the defendant's life they should also consider the life of the victim.

Questionably, equality is the basic foundation our criminal justice system was built on, consideration of arguments that compare the defendant and the victim in any way is in direct opposition with this concept of equality. A defendant should never be compared to his or her victim; the defendant cannot win this comparison and a sentence based on such a comparison should be unconstitutional. Since there has not been a Supreme Court ruling on comparative arguments there is little guidance regarding the extent to which attorneys are allowed to utilize and jurors are permitted to consider these arguments. Punishment is intended to fit the crime not the criminal. There are two types of comparative value arguments, comparative life and comparative worth arguments, the line between the two is sometimes blurred.

Comparative Life Argument.

Comparative life arguments are used to encourage jurors to vote for a death sentence on the basis that the victim led a better life than the defendant. In this argument prosecutors will

compare the victim and defendant's lives at the same point in time. For example,

In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years (*Humphries v. Ozmint*, 2005).

This argument is presented to the jury to convey that at the very same points in time the victim's life was worthwhile and the defendant's was not (*Humphries v. Ozmint*, 2005). This point by point analysis does not include the prosecutor explicitly asking the jury to assign values to the lives of the victim and defendant, making this argument the more covert of the two arguments. The prosecutor, however, need not explicitly advise that jurors compare the values of the two lives and recommend the death penalty if the defendant's life is less valuable, the jury infers to do just that. The judge presiding over the *Humphries v. Ozmint* trial exclaimed that the prosecutor's comparative life closing argument was one of the best arguments he'd ever heard in regard to its effectiveness in securing a death sentence.

Comparative Worth Argument.

Comparative worth is argued to overtly encourage jurors to assign a value to the lives of the defendant and the victim (*Hall v. Catoe*, 2004; McCampbell, 2006). This argument compares the characteristics and qualities of the defendant and victim. If jurors conclude that the victim's life is worth more than the defendant's, they are urged to reach a sentence of death. For example,

If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because

he is a convicted killer (*Hall v. Catoe*, 2004).

The argument highlights the defendant's negative qualities and reviews the victim's positive qualities, previously presented in victim impact evidence (Logan, 2008). The jury is supplied the evidence necessary to assign value to the lives of the victim and defendant and are advised by the prosecutor to render a sentence accordingly.

Victim Impact Statements

Victim impact statements can be presented during sentencing hearings to the jury. Victim impact statements are used to convey the impact of and harm caused by the crime on the victim in a noncapital case or the victim's survivors in a capital case. Victim impact statements can vary from jurisdiction to jurisdiction but they often contain an identification of the offender, indication of financial loss, communication of the uniqueness of the victim, a characterization of the defendant and the crime, and a recommendation for sentencing.

Since the 1970s, there has been a movement toward victim's rights in the criminal justice process. Proponents of victim impact statements argue that victims or the relatives of victims should be involved in the criminal justice process. They also argue that fairness requires that victims have the same opportunities defendants do regarding presenting testimony to the jury about the victims' personal qualities and character traits. There is no empirical evidence that participation in the criminal justice process affects victim's perceptions of the process in a positive way. Davis and Smith (1994b) conducted interviews with victims after making victim impact statements, and found little evidence that they felt any more involved in the sentencing process, they also did not feel greater satisfaction with the criminal justice system. This research did not explore whether the survivors of a victim, in a capital case, would feel any more involved in the sentencing process or feel greater satisfaction with the criminal justice system after making

victim impact statements. Research should be done to address this paradigm because victims' relatives and the actual victim may have very different feelings about the process.

Victim impact statements are prejudicial, inflammatory, and irrelevant. Victim impact evidence distracts the jury from facts necessary to sentencing (i.e., circumstances of the crime, and background and character of the defendant). These statements, instead, focus on facts that should not be considered in sentencing a defendant; the victim's character, the experienced harm, and the emotional content of the testimony. Victim impact statements may persuade jurors to look beyond the facts necessary for sentencing, resulting in the statements being more prejudicial than probative to the jury's sentencing decision. The statements can be extremely emotional bringing the testifier to tears and at times bringing the judge and jurors to tears also, as in the Timothy McVeigh sentencing hearing. This type of testimony is obviously highly inflammatory. The jury must consider particular evidence in sentencing a defendant, the aggravating and mitigating circumstances, victim impact statements do not fit into the evidence the jury should be considering during sentencing; victim impact evidence is therefore irrelevant. Victim impact statements confuse the fact that the crime was committed against the state, which is the reason the state prosecutes the defendant; the victim does not hire an attorney to prosecute.

In *Booth v. Maryland* (1987) the defendant was convicted of first-degree murder. Victim impact statements about the effect of the crime on the victim's family were presented during the sentencing phase, including emotional testimony of the psychological impact, descriptions of the victim's characteristics, and the family's opinions and characterizations of the crime and the defendant. The defense moved to suppress the victim impact statements on the grounds that it was inflammatory and irrelevant to the sentencing judgment. The motion was denied, and Booth was sentenced to death. On automatic appeal, the Maryland Court of Appeals rejected Booth's

claim that victim impact statements introduce arbitrariness into sentencing decisions. In a 5-4 decision, the U.S. Supreme Court overturned Booth's death sentence. The majority reasoned that victim impact statements are irrelevant to sentencing, and would create a "constitutionally unacceptable risk" that the jury may impose death in an arbitrary and capricious manner. The Court also addressed the fact that information about the victim's qualities is not relevant to judgments of the defendant's blameworthiness and that jurors should focus on aspects relevant to sentencing.

In *South Carolina v. Gathers* (1989) the Supreme Court followed the reasoning in *Booth v. Maryland*. In the closing argument at the sentencing hearing, the prosecutor spoke about the victim's religious beliefs, even saying that the victim was with the angels now, and harshly characterizing the defendant; who was then convicted of first degree-murder and sentenced to death. The Supreme Court ruled that the victim impact information offered by the Prosecution was irrelevant to the capital sentencing decision. This decision reaffirmed that victim impact statements are irrelevant in sentencing decisions, even when those statements are coming from the prosecutor.

The court shifted in the next two years leading up to *Payne v. Tennessee* (1991). Brennan a liberal justice, who had held Rehnquist at bay for years, left the court in 1990. In 1991, the court decided to revisit victim impact statements. The Court ruled that the suffering of the victim's relative might be relevant to making decisions about the defendant's blameworthiness. The defendant was convicted on two counts of first-degree murder and one count of assault with intent to commit murder of the first-degree. The victim's grandmother gave a statement of the impact the murders of her daughter and granddaughter had on her and her grandson, who had survived the incident. The Prosecutor also elaborated on the statements in closing argument. The

Supreme Court, 6-3, ruled that victim impact statements are not inadmissible in all cases and that the prejudicial effects of such testimony must be determined on a case-by-case basis. The Supreme Court did not offer any guidance on what, if anything should be considered inadmissible victim impact evidence. Should there be a restriction of what can be included in the statements, the emotionality of the statements, or the number of relatives to give statements? The Supreme Court did not address any of these issues giving judges the wide discretion of allowing emotional testimony about the uniqueness of the victim by as many survivors of the victim or victims as the judge decides.

Feigenson, Park, and Salovey (1997) showed in a non-capital study, the degree of harm to the victim directly influences the amount of blame placed on the perpetrator; the more harm caused, the more blame pinned on the defendant by the jury. Kerr and Kurtz's (1977) research also revealed significantly longer sentences in high-victim-suffering conditions. There are limitations on generalizing this research to capital trials because the researchers examined harm felt by the victim not by the relatives of the victim. Other studies have focused on the harm suffered by victim's relatives. In research on a capital trial, Luginbuhl and Burkhead (1995) had participants read one of four trial summaries varying in both severity of crime and presence of victim impact statements that were adapted from the case of *Booth v. Maryland*. When present, 51% of participants voted for death. When the victim impact statements were absent, only 20% voted for death. Myers and Arbuthnot (1999) had participants watch a videotaped trial simulation with varied presence of victim impact statements from *Payne v. Tennessee*. In this study, participants were first asked whether the defendant was guilty or innocent. Of those who convicted, when victim impact statements were present, 67% of participants voted for death. When victim impact statements were absent, 30% voted for death.

In *Booth v. Maryland*, the court poignantly and accurately cited *Gardner v. Florida* (1977), “It is of vital importance to the defendant and to the community that any decision to impose the death sentence be, and appear to be, based on reason rather than caprice or emotion”. One can see how victim impact statements may be potentially inflammatory because they are highly emotional, sometimes tear-filled, testimony coming from the victim or those who knew the victim best. The testimony is also given during a time in which the balance in the system is delicate and the stakes are high. The potential for victim impact statements to be highly emotional was revealed in the Timothy McVeigh sentencing trial. There was sobbing in the courtroom not just from survivors of the victims but from the jurors, judge and press. Emotional victim impact statements may weaken the rational decision-making processes of the jurors.

There has not been much empirical research on whether emotions impair a juror’s ability to remain rational and impartial. Myers, Lynne, & Arbuthnot (2002) varied both the emotional demeanor of the witness and the degree of harm described in the victim impact statements. The emotionality of the witnesses’ testimony did not influence sentencing, however the severity of harm did. The victim impact statements led jurors to have emotional reactions but these reactions did not influence sentencing; sentencing judgments remained independent of the emotional ratings of participants. Therefore, the sentencing by these jurors did not reflect capricious decisions. Other research by Myers, Godwin, Latter, & Winstanley (2004) has shown at a nonsignificant level, that those jurors who hear dehumanizing statements about the defendant are more likely to sentence the defendant to death. More research is needed on the way in which jurors may use emotional victim impact statements to make their sentencing decisions, especially in such areas as whether irrationality caused by emotion influences capriciousness or whether jurors are recommending death arbitrarily based on other reasons.

Other than the policy recommendation to make victim impact statements inadmissible, recommendations have focused on limiting victim impact statements. Victim impact statements should be limited in scope, especially regarding testimony about the victim's sterling character. Testimony about the victims' or relatives' opinions of the defendant and the crime are also not appropriate. Victim impact statements should be kept to efforts of humanizing the victim (giving the victim a face to the name as the Court said) and not efforts of dehumanizing the defendant. There should also be a limit on the number of people to give victim impact statements. Jurors need to be given more guidance about the purpose and function of victim impact statements when they are admitted. This of course would mean that the Court would have to come to a consensus about the purpose, function, and weight of victim impact evidence in sentencing decisions. Thus far they have not.

Victim impact statements may also encourage jurors to use the victim's status and social value to influence sentencing decisions. The most powerful victim impact statements are from relatives of a "socially valued" victim. For example, in *Booth v. Maryland* the victim's son testified that his parents were hard workers and loving parents and grandparents. His parents were highly regarded in the community. He also said the funeral was one of the largest in the town. In *Booth v. Maryland* the Court discarded this evidence stating that there is no justification for allowing a sentencing decision to be influenced by the victim's sterling or questionable character.

In *Payne v. Tennessee* the Court endorsed the use of such evidence to give a face to the name of the victim but also noted the information should not be used to make comparative judgments about the victim's value to society and hence whether the defendant deserves a death sentence. Studies have found that victim social attractiveness and status have been shown to

influence blame judgments (Jones & Aronson, 1973; Shaw & Skolnick, 1996). Greene and researchers (1998) used victim impact statements from *Booth v. Maryland* and varied the respectability of the victim. Those participants who had the highly respectable victim condition rated the victim as more likable, decent, and valuable and most importantly they also perceived the crime as more severe than jurors who had a less respectable victim. Greene (1999) conducted another study and found survivors' suffering was perceived as greater when the victim was perceived as more respectable. Perceptions of harm were also influenced by victim's social standing; the greater standing, the more perceived harm to surviving relatives. A new avenue emerging in research is exploring whether jurors are also ultimately comparing the victim's respectability, value and standing with the defendant's as a guide in sentencing.

Are jurors told to bear in mind this evidence to remember the victim's uniqueness when considering the defendant's mitigating evidence as per the Court in *Payne v. Tennessee*? This has further implications for changing sentencing criteria and confusing jurors about whether they should be comparing the uniqueness of the victim against that of the defendant's. Of course, the defendant is not going to win this comparison. Such a comparison made by the jury in coming to a sentence is unconstitutional. Execution impact statements, where relatives of the defendant speak on the uniqueness of defendant and the loss that would be incurred if he or she were executed may be thought of as a way to put a little more balance back into the sentencing hearing since victim impact evidence has tipped the scales toward death. This evidence, however, may present problems in its own right in such cases where there is no one to testify for the defendant or there are not as many people to testify as the victim or if their testimony is less emotional than that of the victim's family.

These are extra problems brought on by the imbalance created from introducing victim

impact statements. Victim impact statements have introduced increased discretion to judges, increased prejudicial views of the defendant and arbitrariness in sentencing, and it instituted decreased impartiality and direction jurors receive in coming to a sentence recommendation. This may result in a comparison of the victim and defendant's value, again the defendant is not going to win this tug of war, especially in the wake of emotional victim impact statements. Jurors, in addition to hearing prejudicial victim impact statements, may also be exposed to comparative value arguments made by the prosecutor, which will only exacerbate these issues and the arbitrariness of the sentence.

Mitigation Evidence

Mitigation evidence is presented during the sentencing phase of trial; the jury is required to recommend a sentence in a capital trial based on the aggravating and mitigating factors. Mitigation evidence is the only information the jury receives that has the potential to lessen their sentence recommendation. Jurors must consider statutory mitigation, those mitigating factors that are listed within statutes, including offender characteristics and elements of the crime. Jurors must also consider any other non-statutory mitigating factor that may not be listed in statute (*Lockett v. Ohio*, 1978), such as an absence of significant criminal history, age, and intoxication. Often in capital sentencing trials "the defense case rests in whole or in part on nonstatutory mitigating circumstances" (Ellmann, 1986, p. 26). In *Eddings v. Oklahoma*, the Court required that a jury and court hearing a capital case determine what weight to give mitigation evidence "but may not give it no weight by excluding it from their consideration" (*Eddings v. Oklahoma*, 1982, pp. 112-116).

The Supreme Court in *Lockett v. Ohio* did not specifically state that defense attorneys would be required to investigate the defendant's background to find aspects that jurors should

consider in their sentence. The Court, however, did imply that the defense was to examine the defendant's background for possible mitigating factors. After *Payne*, victim impact statements were in a "direct tug-of-war" with mitigation, making a comprehensive defense even more crucial (Hughes, 2009, p. 9). In *Williams v. Taylor* (2000) the Court found mitigating factors that the defense had failed to present. The Court cited the ABA's Standards for Criminal Justice to stress the importance of conducting an exhaustive exploration of the defendant's history. Since defense attorneys assigned to a capital case already have such a weighty responsibility, capital mitigation specialist have become critical to the defense (Hughes, 2009). A capital mitigation specialist has the important occupation of investigating the defendant's history to assist the defense attorney in building an inclusive case against the recommendation of the death penalty. In *Skipper v. South Carolina* (1986), the Court reemphasized the jury's ability to consider any evidence of mitigation by admitted evidence of the defendant's good character and behavior after the crime was committed.

There are two common types of nonstatutory mitigation, social value and troubled life. Evidence of the defendant's social value may include their contribution in the community, or good behavior and success at school. Mitigation evidence of the defendant's troubled life may consist of their difficult childhood or maladjustment. The latter of the two is the type of mitigation evidence, in particular, that may be misused by juror's as an aggravating factor to, in fact, decrease the value of the defendant in sentencing.

Barnett, Brodsky, and Davis (2004) conducted a study to examine the efficacy of certain psychosocial factors on sentencing in a capital trial. When mitigation evidence was absent there were only 26.5% life sentences, when mitigation evidence was present life recommendations increased to 52.2%. This revealed that generally jurors were using the mitigating factors as they

were intended to be used by the jury; to encourage leniency. Additional findings from this study indicate that drug addiction and childhood abuse are not considered by jurors to be as mitigating as mental retardation or mental illness. They were still, however, used as mitigation evidence in sentencing and may be important in a comprehensive mitigation case overall.

Some psychosocial factors that are presented to the jury as mitigation are in fact used by the jury as aggravating factors to justify a more severe punishment (Logan, 1989). Research has shown that factors such as the defendant's childhood abuse and negative family history can be used to recommend death sentences (McPherson, 1995). Jurors may see this evidence as proof of the defendant's inability to be rehabilitated. A study conducted with jurors from an actual capital murder case provided evidence that some mitigation factors are considered to be aggravating factors and even those that are considered to be mitigating may not actually be utilized as such in sentencing (Garvey, 1998). Garvey found that although 74% of jurors reported that mental retardation is a mitigating factor, only seven (44%) of the sixteen jurors who concluded the defendant was mentally retarded actually used the evidence to mitigate their sentence recommendation. Less than 20% of jurors found that being under the influence of drugs or alcohol at the time of the crime was mitigating and if the defendant was an alcoholic or drug addict, this was found to be aggravating.

Researchers found that those jurors who were strongly opposed to the death penalty were significantly more receptive to mitigating circumstances than were other jurors (Luginbuhl & Middendorf, 1988). This research also showed that jurors excluded under the *Witherspoon* standard were significantly less receptive to aggravating circumstances than other jurors were. Other research has shown that death qualified jurors were significantly more likely to find a schizophrenic defendant guilty than were excludable jurors (Ellsworth et al., 1984). No

differences were found between the verdicts of death qualified and excludable jurors regarding mentally retarded defendants or defendants with psychomotor epilepsy. Death qualified jurors who were exposed to a mental illness defense to the capital crime were more punitive than jurors exposed to an anti-capital-punishment argument or even no defense at all (White, 1987). These findings raise serious questions about death qualified jurors ability to consider nonstatutory mitigating circumstances.

Mitigation evidence may be improperly used not only as an aggravating factor but also in the context of comparative value arguments to lower the defendant's value. This is especially true with a defendant's troubled life mitigating circumstances (McCampbell, 2006). Research has shown that the defendant's positive character evidence does not reduce guilt or convictions; however negative character evidence negatively impacts the defense in judgment (Hunt, & Budesheim, 2004). The misuse of mitigating factors is enhanced in the aftermath of victim impact evidence, while the use of comparative value arguments may also influence jurors to improperly use evidence.

Affect Infusion Model

In *Gregg v. Georgia* (1976) the Court upheld the death penalty; however, it created restrictions to attempt to prevent sentences from violating the defendant's 8th amendment right against cruel and unusual punishment. The Court was trying to thwart juries from recommending a sentence in an arbitrary and capricious manner. *Gardner v. Florida* (1977) requires that any decision to impose the death penalty to be based on reason rather than caprice or emotion. Bandes (1999) contends that the legal system is in denial about the role emotion plays in jurors decision-making because it is part of justice system's façade that juror's verdicts and sentencing are based on pure reason.

Emotion can deplete attention and the capacity to process information and may increase heuristic processing (Wilder & Simon, 1996). Anger, in particular, is an emotion which results in shallower information processing, due to the feeling of certainty it produces in the angered individual (Lerner & Tiedens, 2006). A more recent study done by Moons and Mackie (2007) revealed that angry people have the motivation and capacity necessary to process information analytically and that angered individuals only have a greater reliance on heuristic processing when the heuristic cue is perceived by the individual as relevant to their decision. For example, Moons and Mackie used the heuristic cue of race, so when angered individuals felt that race was relevant to their decision-making process they relied on heuristics such as racial stereotypes. This finding does not provide much comfort in angry individual's abilities to make reasoned sentencing decisions.

Research has found that emotion influences legal decision-making, by affecting cognitive processes (Forgas, 1995). The affect infusion model (AIM) explains the role of emotion and cognition in juror's consideration of victim impact evidence, comparative value arguments, and mitigation in determining sentence. The AIM (Forgas, 1995) theorizes that affective states will influence an individual's judgmental processes when the individual is engaged in constructive information processing which is the generating of information by open search strategies and cognitive elaboration, such as the processing used in making a sentence recommendation. Therefore, because trials promote less directed, and more constructive information processing, emotions are very likely to influence the decision-making process. Emotions can act as cognitive shortcuts or heuristics, the emotions may lead an individual to generate thoughts associated with these emotions.

Decision-making by jurors involves creating new judgments and a long, detailed process

whereby the individuals are likely to use affect-infused strategies (Forgas, 1995). The sentencing phase of a trial generates an atmosphere where affect can easily influence decision-making.

Mood will be measured by the Positive Affect Negative Affect Scale (PANAS: Watson & Clark, 1994). The PANAS measures positive and negative affect constructs as both states and traits, while also assessing specific affects such as, fear, guilt, hostility, shyness and attentiveness.

Participants indicate to what extent they feel a particular emotion at the moment on a scale of 1 (*Very slightly or not at all*) to 5 (*Extremely*). Affect will be measured by the Need for Affect scale (NFA: Maio, & Esses, 2001). The NFA is a 2-factor, 26-item scale measuring an individual's motivation to approach as well as avoid emotion. The NFA is measured on a scale ranging from -3 (*Strongly disagree*) to +3 (*Strongly agree*). Cognition will be measured by the Need for Cognition scale (NFC: Cacioppo, Petty, & Kao, 1984). The NFC uses 18 items to measure an individual's predisposition to engage in and enjoy thinking. The scale is measured from 1 (*Strongly disagree*) to 5 (*Strongly agree*).

Research has shown that individuals who are high in need for affect and low in need for cognition are more persuaded by messages containing affective content and less persuaded by cognitive messages (Haddock, Maio, Arnold, and Huskinson, 2008). The opposite is true for individuals with low need for affect and a high need for cognition. It is important to see how these individual differences affect sentencing decisions when emotional evidence, such as victim impact statements, is presented. Results of such a study should not be used in voir dire to select out jurors who are high in need for affect or cognition. Results from such a study, however, would show that emotion is in fact used in sentencing decisions.

When jurors' are confronted with applying victim impact evidence in the context of comparative arguments, decision-making may be somewhat clouded by affect. Jurors may

misuse the evidence to gauge the values of the victim and defendant and determine sentencing accordingly. Naturally, the value of the victim will increase with the introduction of victim impact statements. Also, the value of the defendant will decrease with the introduction of troubled life mitigating evidence. The courts need to provide jurors with guidance on how to properly utilize non-statutory evidence in the sentencing phase. The courts must also consider how jurors use comparative value arguments. These factors are essential in ensuring an impartial system of capital jurisprudence.

According to the literature the following hypotheses were formed:

- H1:* Individual as well as combined effects of manipulated factors on confidence in sentence were examined, specifically non-statutory mitigating evidence will lead to significantly less death penalty recommendations when presented as social value compared to evidence of troubled life. Furthermore, non-statutory mitigating evidence will result in more death penalty recommendations, when it is presented with victim impact statements.
- H2:* Perceptions of comparative value arguments were examined as a function of the trial factors. Comparative worth statements will lead to higher scores, demonstrating more consideration of statements in recommending the death penalty, than comparative life statements.
- H3:* Effects will be mediated by individuals' need for cognition as well as affective states.

Method

Participants

Participants were 253 undergraduate students and adult education students. All participants were pre-screened for jury eligibility and ability to serve on a capital jury. Students

were recruited from a Northeast University community of undergraduate students, and participated as part of a research requirement. Students were also recruited from adult education classes at a Southeast University. Participation required one hour.

Materials

Materials included a pre-trial survey instrument consisting of demographic items, the Positive Affect Negative Affect Schedule (PANAS), the Need for Affect (NFA) and Need for Cognition (NFC) scales and the Attitudes Toward the Death Penalty questionnaire (ATDP). Trial simulation materials, adapted from *Humphries v. Ozmint* and *Hall v. Catoe*, and were comprised of a guilt phase summary; materials from the sentencing phase consisted of attorney opening statements, testimony from various prosecution and defense witnesses, attorney closing arguments, and judge's instructions. The post-trial measures contained dependent measures including verdict, sentence recommendation, witness and attorney credibility, and weight given to comparative value statements, non-statutory mitigating and aggravating evidence. Post-trial measures also included PANAS, and the Victim Concern Scale (VCS).

Design

The current study utilized a 2 (Permissible Victim Impact Statements: Present v. Absent) x 3 (Non-Statutory Mitigating Evidence: Social Value v. Troubled Life v. Both) x 2 (Comparative Value Argument: Life v. Worth) + 1 between-groups factorial design. In the control condition, no evidence of non-statutory aggravating and mitigating evidence was offered. In this condition, the prosecutor's argument contained no elements of impropriety, defense witnesses offered evidence regarding only the statutory mitigating circumstances, and prosecution witnesses presented evidence regarding only the statutory aggravating circumstances.

Procedure

Participants first received and signed an informed consent (Appendix A). Participants then completed a pre-trial instrument (Appendix B) consisting of a series of attitudinal scales to control for individual differences, including the validated Attitudes Toward the Death Penalty scale (ATDP: O'Neil, Patry, & Penrod, 2004), the Need for Affect scale (NFA: Maio, & Esses, 2001), the Need for Cognition scale (NFC: Cacioppo, Petty, & Kao, 1984), and the Positive and Negative Affect Schedule (PANAS: Watson, Clark, & Tellegen, 1988). The pre-trial instrument also consisted of demographics including those, which would typically be administered as part of the *voir dire* process. The participants were then randomly assigned to one of 13 conditions (including the control condition).

Participants received a summary of the guilt phase of the trial (Appendix C). In the trial a young man is accused of the murder of a convenience store clerk while attempting robbery (*State v. Humphries*, 1996). The summary included a summation of the events leading up to the murder including the following: the night before the killing the defendant and a friend were drinking, stole a gun, and in the course of robbing the store clerk, the clerk reached under the counter for a gun, the defendant then fired a shot which struck the victim in the head. The judge then gave preliminary instructions (Appendix D).

Participants were also given a re-creation of the sentencing phase (Appendix E) of the trial with the manipulations embedded. The sentencing phase of the trial began with each attorney's opening statement. A witness for both the prosecution and defense then provided testimony describing the aggravating (the murder was committed while in the commission of a robbery while armed with a deadly weapon, and the defendant committed the murder after substantial planning and premeditation) and mitigating factors (the defendant has no significant

history of prior criminal conviction involving the use of violence against another person, the age or mentality of the defendant at the time of the crime, and any other mitigating matter concerning the background, character, or record of the defendant or the circumstances of his offense including evidence of a troubled life and evidence of the value of his life) of the case, respectively. The opening statements and witness testimony regarding aggravating and mitigating circumstance were held constant.

The defense presented a family member and a guidance counselor to testify to the defendant's troubled life or social value, depending on the condition. Permissible victim impact evidence was either present or absent in the trial paradigm. The prosecutor's comparative life closing argument was adapted from the transcript of the *Humphries v. Ozmint* (2004) trial. In the comparative life condition, the prosecutor contrasted the manner in which the defendant and the victim lived their lives. The prosecutor's comparative worth closing argument was adapted from the case of *Hall v. Catoe* (2004). In the comparative worth condition, the prosecutor explicitly requested jurors assign a value to the life of the victim and the defendant. The defense attorney's closing argument remained constant across all conditions. The judge then instructed (Appendix F) the jurors on the law and the proper way to use aggravating and mitigating circumstances to render a sentence recommendation. All elements of the trial were held constant except the manipulations listed.

The primary dependent measures consisted of verdict, sentence (measured dichotomously: life in prison v. death), confidence in sentencing, perceptions of the witness and attorney credibility, and weight given to comparative value statements, non-statutory mitigating and aggravating evidence (Appendix G). The post-trial questionnaire also included the Victim Concern Scale to assess attitudes regarding victims of violent crimes, and a post-PANAS in

order to examine any shifts in participant's mood after hearing all of the case evidence.

Participants were debriefed (Appendix H) and thanked for their time.

Results

Sample Demographics

Of a sample of 253 jury-eligible participants, 44.3% were male and 55.7% were female. Participants were obtained from a Northeast University (47.4%) and a Southeast University (52.6%). Participants from the Southeast University were in adult learning classes. Many of the participants (75.5%) were between the ages of 18-34, 24.5% were between the ages of 35-60. Participants responded to a racial background question in the following way: 56.1% of the sample was Caucasian, 25.7% were Hispanic, 15% were African-America, and 3.2% identified themselves as "Other". The majority of the sample (62.8%) described themselves as Catholic, a small percentage was Protestant (5.9%) and Jewish (5.1%), many labeled themselves as "Other" (25.7%). When participants were asked about their political views, 30% described themselves as liberal, 32% identified themselves as slightly liberal, 26.1% were slightly conservative, and 11.1% were conservative. Participants were asked if they had a relative or close friend in the criminal justice system, 54.9% responded no, 45.1% said yes.

Scale Reliabilities

To assess the scale reliabilities of the dependent measures, reliability analyses were conducted. The pre-trial PANAS items measuring positive affect had a Cronbach's $\alpha = .75$, $n = 10$. The range of responses was 10 – 50; higher scores indicated higher positive affect prior to the presentation of materials. The pre-trial PANAS items measuring negative affect demonstrated a Cronbach's $\alpha = .80$, $n = 10$; responses ranged from 10 – 50, higher scores indicative of higher negative affect. Attitudes Toward the Death Penalty (ATDP) had a

Cronbach's $\alpha = .76$, $n = 15$, with higher scores indicating greater death penalty approval.

The post-trial PANAS scales demonstrated excellent reliability. The post-trial PANAS items measuring positive affect had a Cronbach's $\alpha = .85$, $n = 10$; the responses ranged from 10 – 52, higher scores signifying higher positive affect. The post-trial PANAS items measuring negative affect demonstrated a Cronbach's $\alpha = .86$, $n = 10$. The range of responses was 10 – 50. The victims of violent crime subscale (Clements, et al., 2006) of the Victim Concern Scale (VCS) also demonstrated excellent reliability, Cronbach's $\alpha = .85$, $n = 10$.

After recoding a few items of the need for affect (NFA) and need for cognition (NFC) scales so that higher scores were indicative of a higher need for affect or cognition and lower scores indicated a low need for affect or cognition, these scales were tested for reliability. Each demonstrated good reliability; need for affect had a Cronbach's $\alpha = .80$, $n = 25$, responses ranged from 41 – 93. The need for cognition demonstrated a Cronbach's $\alpha = .80$, $n = 19$, responses ranged from 24 – 68.

The items assessing juror's consideration of comparative life and worth statements were inter-correlated, at $p < .001$ (See Table 1 and 2 for inter-item correlations). This supported the creation of comparative life and worth scales. Comparative life had a Cronbach's $\alpha = .62$, $n = 3$. Comparative worth demonstrated a Cronbach's $\alpha = .76$, $n = 3$.

Death Qualification

The sample was death qualified using the participant's responses to three items: a valid driver's license, the *Witt* Standard, and a general death penalty question. Those participants who indicated they did not have a valid driver's license (5.9%), had views of the death penalty that would prevent or substantially impair their consideration of both penalties (22.9%), and thought that the death penalty was either appropriate (4.7%) or inappropriate (9.5%) in all cases were

excluded from the sample for further analyses. The resulting death qualified sample was 166 participants.

Hypothesis Testing

Sentencing is a dichotomous variable (1 = Life in prison, 2 = Death penalty) that was recoded into (– 1 = Life in Prison, +1 = DP) to make it a linear variable. Confidence in sentence is a linear variable measured on a 9 point Likert scale (0-8). A new Sentence x Confidence variable was computed with ratings ranging from - 8 to + 8. Negative ratings indicate a life in prison recommendation and positive ratings indicate a death penalty recommendation. Ratings that are closer to eight, regardless of sign, signify confidence in recommendation. This index has previously been created in studies examining culpability (Bornstein & Muller, 2001).

To test associations among categorical variables, hierarchical loglinear analysis was conducted using backward elimination. A significant comparative value by sentence (*IV/DV*) association was found: $\chi^2(2, N = 166) = 10.40, p = .006$. *Post hoc* (cross-tabulation) participants exposed to comparative worth arguments were more likely to vote for death than those exposed to comparative life: $\chi^2(2, N = 166) = 10.63, p = .005$ (See Table 3), this analysis partially supported Hypothesis 1. A two-way ANOVA was conducted to test the effects of our manipulated trial factors on confidence in sentence, no significant interactions or effects were found.

To test Hypothesis 2, we examined perceptions of Comparative value argument (CVA) as a function of our trial factors. Comparative worth and life statements were scaled 1 = weighed in favor of life, 4 = did not weigh in decision, 7 = weighed in favor of death. A MANOVA revealed a significant multivariate effect of CVA: Wilks' Lambda = .69; $F(2, 151) = 33.23, p < .001, \eta p^2 = .31$. Tests of between-subjects effects revealed a significant effect on both dependent measures,

for Comparative Worth Scale, $F(1, 152) = 19.85, p < .001, \eta p^2 = .12$ and Comparative Life Scale, $F(1, 152) = 20.41, p < .001, \eta p^2 = .12$. Post-hoc comparisons using Scheffe's test determined that participant's perceptions of the Comparative Worth Scale were significantly different for participants who were presented comparative worth ($M = 15.91$), comparative life ($M = 13.97$), and no statements ($M = 12.48$). Additionally, participant's perceptions of the Comparative Life Scale were significantly different for participants who were presented comparative life ($M = 14.76$), than those presented comparative worth ($M = 12.7$), and no statements ($M = 13.03$). The possible range of scores for the CWS and CLS are 3 – 21, the CWS ($M = 14.53$) ranged from 6 – 21 while the CLS ($M = 13.58$) ranged from 3 – 21.

To test Hypothesis 3, a series of theoretically relevant path models were conducted. Path modeling using multiple regression was used to test for the mediating effects of affective states on the relation between comparative life and worth statements and confidence in sentencing (See Figure 1, 2, 3, and 4). Comparative value statements were used as predictor variables of confidence in sentencing, with Need for affect (NFA), need for cognition (NFC), pre and post-trial positive affect, pre and post-trial negative affect (PANAS), and the victim concern scale (VCS) as a mediator.

The comparative worth scale (CWS) significantly predicted confidence in sentence, $\beta = .390, r^2 = .15, p < .001$. CWS and NFC in a model together also significantly ($p < .001$) predicted confidence in sentence. This demonstrated full mediation; NFC significantly mediated the relation between CWS, $\beta = .424, r^2 = .18, p < .001$, and confidence in sentence, $\beta = .132, r^2 = .02, p = .072$. NFA also fully mediated ($p < .001$), the relation between CWS, $\beta = .425, r^2 = .18, p < .001$, and confidence in sentence, $\beta = .045, r^2 = .00, p = .543$. Interestingly, CWS also significantly predicted NFA, $\beta = -.180, r^2 = .03, p = .022$, and marginally predicted NFC, $\beta = -$

.147, $r^2 = .02$, $p = .061$.

Another significant path ($p < .001$) indicated CWS and pre-trial positive affect predicted confidence in sentence. Demonstrating the mediating effect of pre-trial positive affect on the relation between CWS, $\beta = .412$, $r^2 = .16$, $p < .001$, and confidence in sentence, $\beta = -.081$, $r^2 = .01$, $p = .285$. Post-trial positive affect also fully mediated ($p < .001$) the relation between CWS, $\beta = .412$, $r^2 = .17$, $p < .001$, and confidence in sentence, $\beta = -.125$, $r^2 = .02$, $p = .089$. CWS also significantly predicted pre-trial, $\beta = .210$, $r^2 = .05$, $p = .006$, and post-trial, $\beta = .161$, $r^2 = .03$, $p = .040$, positive affect. Pre-trial positive affect significantly predicted post-trial positive affect, $\beta = .718$, $r^2 = .52$, $p < .001$.

The comparative life scale (CLS) and pre-trial negative affect in a model together also significantly ($p = .05$) predicted confidence in sentence. Pre-trial negative affect fully mediated the relation between CLS, $\beta = .118$, $r^2 = .01$, $p = .134$, and confidence in sentence, $\beta = .169$, $r^2 = .03$, $p = .033$. Post-trial negative affect also fully mediated ($p = .03$) the relation between CLS, $\beta = .117$, $r^2 = .01$, $p = .133$, and confidence in sentence, $\beta = .179$, $r^2 = .3$, $p = .021$. These models were driven by negative affect because CLS did not predict anything else independent of other variables. Pre-trial negative affect fully mediated ($p < .001$) the relation between CWS, $\beta = .370$, $r^2 = .14$, $p < .001$, and confidence in sentence, $\beta = .077$, $r^2 = .01$, $p = .301$. Pre-trial negative affect also significantly predicted confidence in sentence, $\beta = .152$, $r^2 = .02$, $p = .053$, and post-trial negative affect, $\beta = .652$, $r^2 = .43$, $p < .001$. CWS significantly predicted pre-trial negative affect, $\beta = .187$, $r^2 = .04$, $p = .017$. Post-trial negative affect fully mediated ($p < .001$) the relation between CWS, $\beta = .376$, $r^2 = .14$, $p < .001$, and confidence in sentence, $\beta = .126$, $r^2 = .02$, $p = .084$. Post-trial negative affect also significantly predicted confidence in sentence, $\beta = .170$, $r^2 = .03$, $p = .029$. These significant path models support the mediating effect of mood and need for

affect and cognition predicted in Hypothesis 3.

Another path model was conducted, in which VCS fully moderated ($p < .001$) the relation between CWS, $\beta = .395$, $r^2 = .16$, $p < .001$, and confidence in sentence, $\beta = .038$, $r^2 = .00$, $p = .604$. VCS did not significantly predict confidence in sentence; surprisingly however, CWS also did not significantly predict VCS. The model was driven by the original finding that CWS significantly predicts confidence in sentence, $\beta = .390$, $r^2 = .15$, $p < .001$.

To examine regional differences, a separate $2 \times 3 \times 2 \times 2$ (Region: Northeast v. Southeast) MANOVA was conducted on how jurors weighed aggravating and mitigating factors. A comparative value by region interaction was found on the first aggravating factor, the murder was committed while in the commission of a robbery while armed with a deadly weapon: $F(1, 140) = 4.48$, $p = .036$, $\eta p^2 = .04$ (See Figure 5). The second statutory aggravating factor, the defendant committed the murder after substantial planning and premeditation and the two statutory mitigating factors, the defendant has no significant history of prior criminal conviction involving the use of violence against another person, and the age or mentality of the defendant at the time of crime were all non-significant.

Discussion

We found partial support for our hypotheses. As predicted, comparative value arguments produced more death penalty recommendations than the control condition in which no prosecutorial misconduct was present. Specifically comparative worth arguments led to more death penalty sentences than comparative life arguments. Participants who were presented with comparative worth statements also had a greater consideration of such statements in recommending the death penalty ($M = 14.53$) than those presented with comparative life statements ($M = 13.58$). It was suggested by the Court in *Humphries v. Ozmint* (2005) and

McC Campbell (2006) that comparative worth arguments are more prejudicial than comparative life arguments. Empirical evidence now supports this point. More research is needed to bolster this claim and test the nuances of these arguments. Jurors exposed to this compelling sentencing evidence and prosecutorial misconduct are violating defendants' constitutional rights by failing to correctly weigh aggravation and mitigation in their sentence recommendation. This is the result McC Campbell (2006) warned of in her review of comparative value arguments and is in direct opposition to Heaphy's (2006) naïve and inaccurate claims that defendant's rights are not being violated by comparative value arguments.

No differences were found on our other manipulated factors and confidence in sentencing. Victim impact statements and non-statutory mitigating evidence did not have the hypothesized effects. This could be due to a lack of power; after death qualification there were only 166 participants as supposed to the original 253 jury eligible participants. This may also be due to the strength of the evidence presented. Many studies have found a prejudicial effect of victim impact statements on sentencing. In this study we intentionally avoided wording victim impact statements in an emotional manner. Thus, the prejudicial nature of victim impact statements may not have been accurately portrayed in our stimulus materials due to a lack of emotionality embedded in the statements.

Mood was a significant mediator in the relation between comparative value arguments and confidence in sentence recommendation. After listening to comparative value arguments, participants allowed mood to influence their decision-making. Jurors who allow mood to influence their sentence recommendations are violating the defendant's rights. The Court strictly prohibited juror's use of emotion in their decision-making (*Gardner v. Florida*, 1977). The Court was trying to prevent any decision made based on caprice and emotion rather than the proper

weighing of aggravating and mitigating circumstances. The prosecutorial misconduct in this research certainly draws juror's attention away from the aggravating and mitigating factors and to a comparison of the defendant and victim.

Furthermore, comparative worth resulted in the strongest use of affect (PANAS and NFA) and cognition (NFC) in juror's confidence in sentencing. A series of path models continuously revealed the mediating effects of affect and cognition on the relation between comparative worth and sentencing. Another path model showed that concern for victims of violent crime (VCS) also moderated the relation between comparative worth and sentencing. Jurors were obviously using affect in their sentencing decision. This has grave implications for the defendant especially when the juror's compare the defendant and the victim.

An examination of region was conducted on juror's consideration of aggravating and mitigating factors. A significant difference was only found for the first aggravating factor, the murder was committed while in the commission of a robbery while armed with a deadly weapon. The differences between the Northeast and Southeast region can be explained by the Northeast state not have the death penalty, while the Southeast region does have the death penalty.

Limitations

Limitations to the study include the trial stimulation materials being in paper and pencil format. The arguments and evidence may be more realistic and therefore more potent if presented to participants as a videotape. The strength of the arguments and evidence may also have to do with the lack of significant differences. The emotionality of victim impact evidence in particular could be better portrayed on videotape. Another limitation in this study included the self-report nature of the questionnaire. Jurors may not accurately report their weighing of aggravating and mitigating circumstances or their improper use of other trial factors.

Future Research

Since this was the first empirical study on comparative value arguments there are many future research studies that are needed to paint a clearer picture of these issues. Future research should manipulate the emotionality of the victim impact statements and be presented to the jury in videotaped format so they can be aware of emotional cues. Different aggravating and mitigating factors should be examined. There are many non-statutory mitigating factors that need to be tested, such as alcohol and drug addiction, alcohol intoxication during the crime, and a background of mental illness or intellectual disabilities. Some of these mitigating factors could potentially be used as aggravating factors in juror's decision-making. Legal safeguards, specifically the timing of objections, are another area to be manipulated and analyzed. A very important area that must be empirically testing is the differences between individual and group sentencing decision. When jurors are placed in a group of peers and asked to arrive at a sentence recommendation, evidence may be looked at and discussed in different ways compared to individual jurors coming to a decision. The prejudicial effects of the comparative value arguments and victim impact evidence may dissipate or strengthen. Comparing the individual recommendations and group deliberations will provide better ecological validity to this area of research. These paradigms must be tested to have a clearer representation of the difficulties capital jurors' face, when presented with these arguments and evidence, in making the difficult decision between life in prison and the death penalty.

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Table 1

Inter-item correlations for comparative life statements

	“That's the same year Shawn Paul Humphries committed two house break-ins at age 13.”	“So, at the very instant one life was being put to worthwhile use, the other was not.”	“How profane to give this man a gift of life under these circumstances.”
“That's the same year Shawn Paul Humphries committed two house break-ins at age 13.”		.346	.346
“So, at the very instant one life was being put to worthwhile use, the other was not.”	.346		.375
“How profane to give this man a gift of life under these circumstances.”	.346	.375	

Note. All inter-item correlations were significant at the $p < .001$.

Table 2

Inter-item correlations for comparative worth statements

	“I am talking about values, because a jury verdict is a statement of values. What is the life of this victim worth?”	“The reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die.”	“If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's.”
“I am talking about values, because a jury verdict is a statement of values. What is the life of this victim worth?”		.571	.433
“The reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die.”	.571		.518
“If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's.”	.433	.518	

Note. All inter-item correlations were significant at the $p < .001$.

Table 3

Post-hoc crosstabulations of comparative value by sentence

	Life in prison	Death penalty
--	----------------	---------------

Comparative life	65.2% <i>n</i> = 43	34.8% <i>n</i> = 23
Comparative worth	38% <i>n</i> = 27	62% <i>n</i> = 44

Figure Captions

Figure 1. Test for the mediating effects of need for affect (NFA) and need for cognition (NFC) on the relation between comparative life and worth statements and confidence in sentencing

Figure 2. Test for the mediating effects of pre and post trial positive affect (PANAS) on the relation between comparative life and worth statements and confidence in sentencing

Figure 3. Test for the mediating effects of pre and post trial negative affect (PANAS) on the relation between comparative life and worth statements and confidence in sentencing

Figure 4. Test for the moderating effects of the victim concern scale (VCS) on the relation between comparative life and worth statements and confidence in sentencing

Figure 5. A comparative value by region interaction on the first aggravating factor

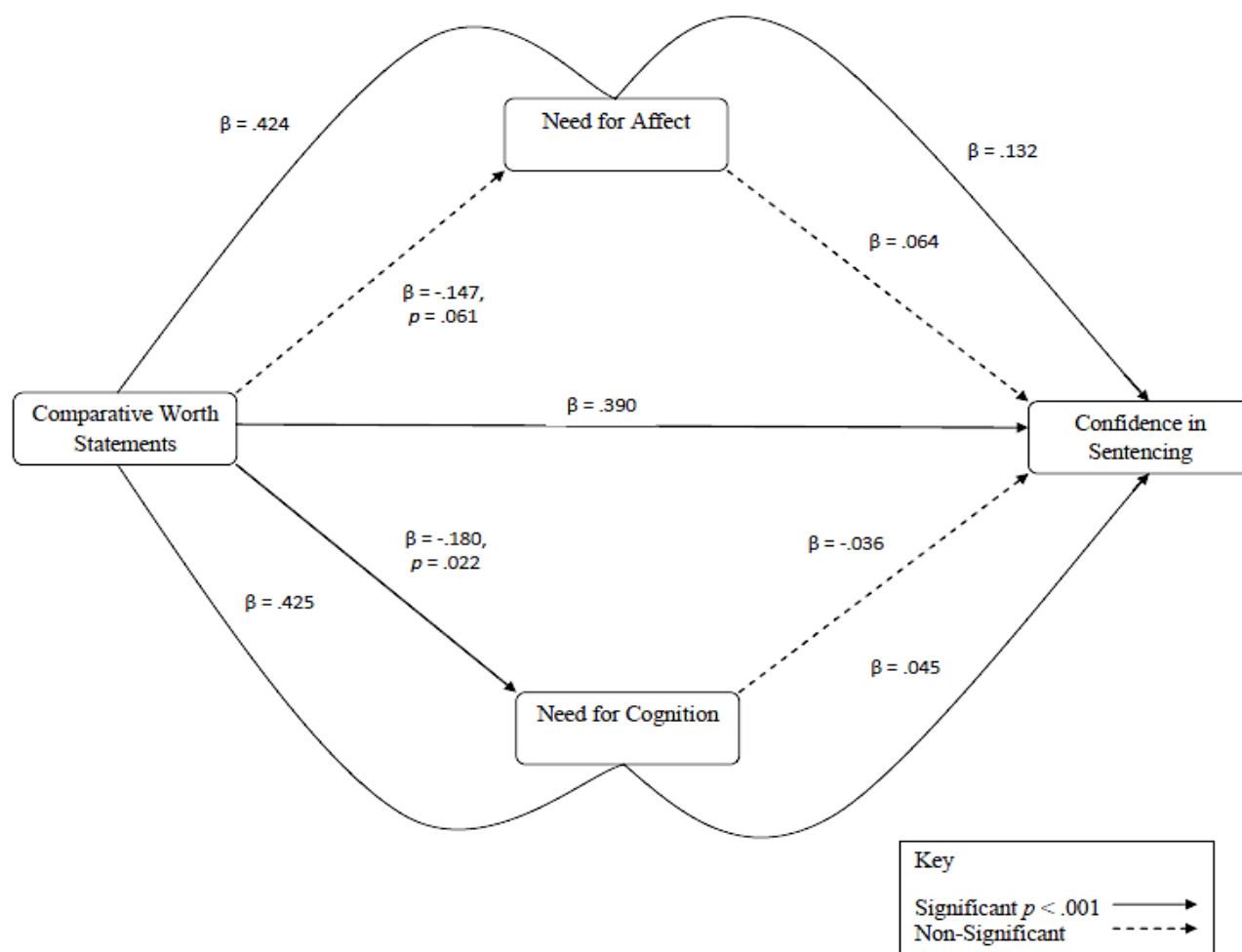


Figure 1. Test for the mediating effects of need for affect (NFA) and need for cognition (NFC) on the relation between comparative life and worth statements and confidence in sentencing

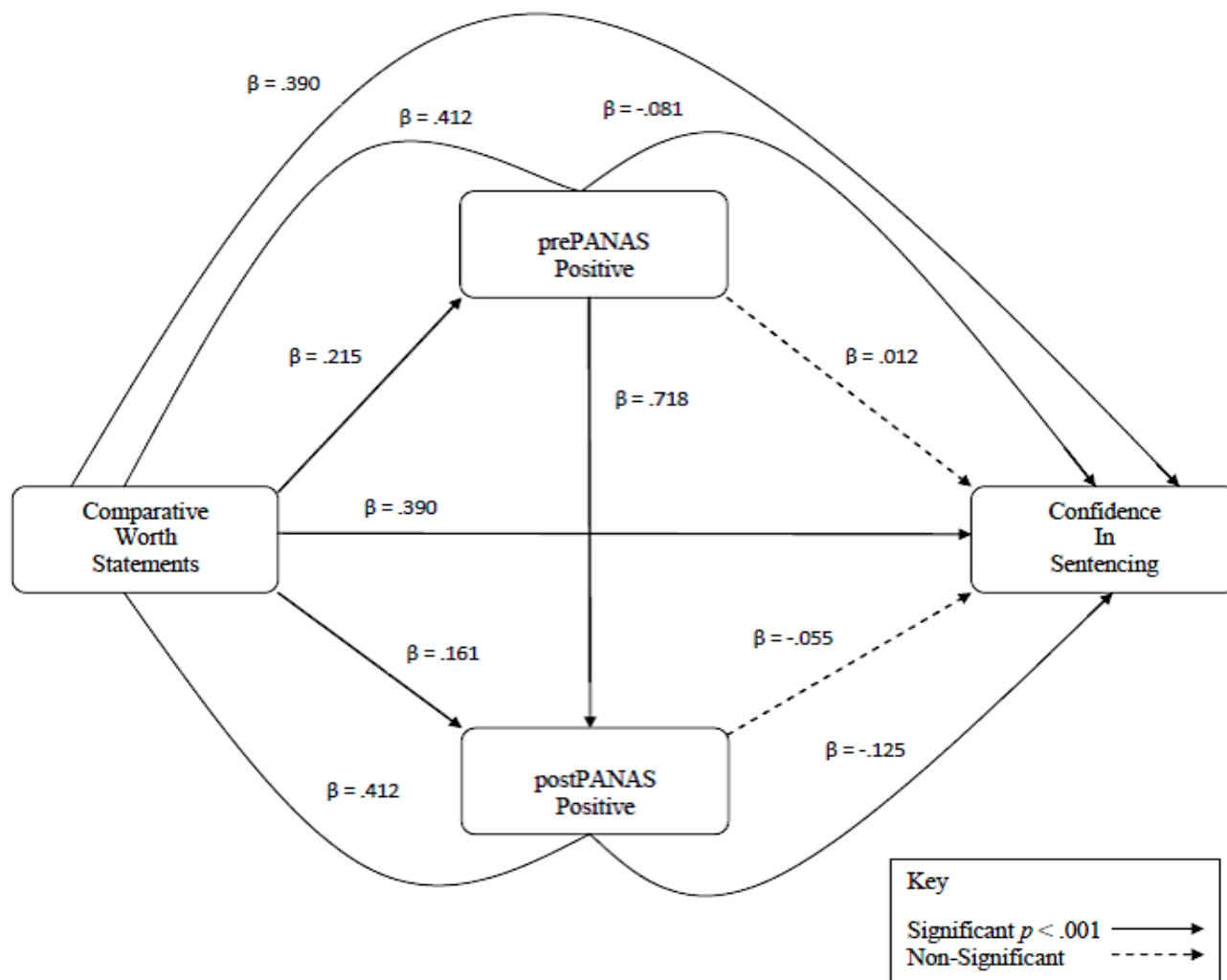


Figure 2. Test for the mediating effects of pre and post trial positive affect (PANAS) on the relation between comparative life and worth statements and confidence in sentencing

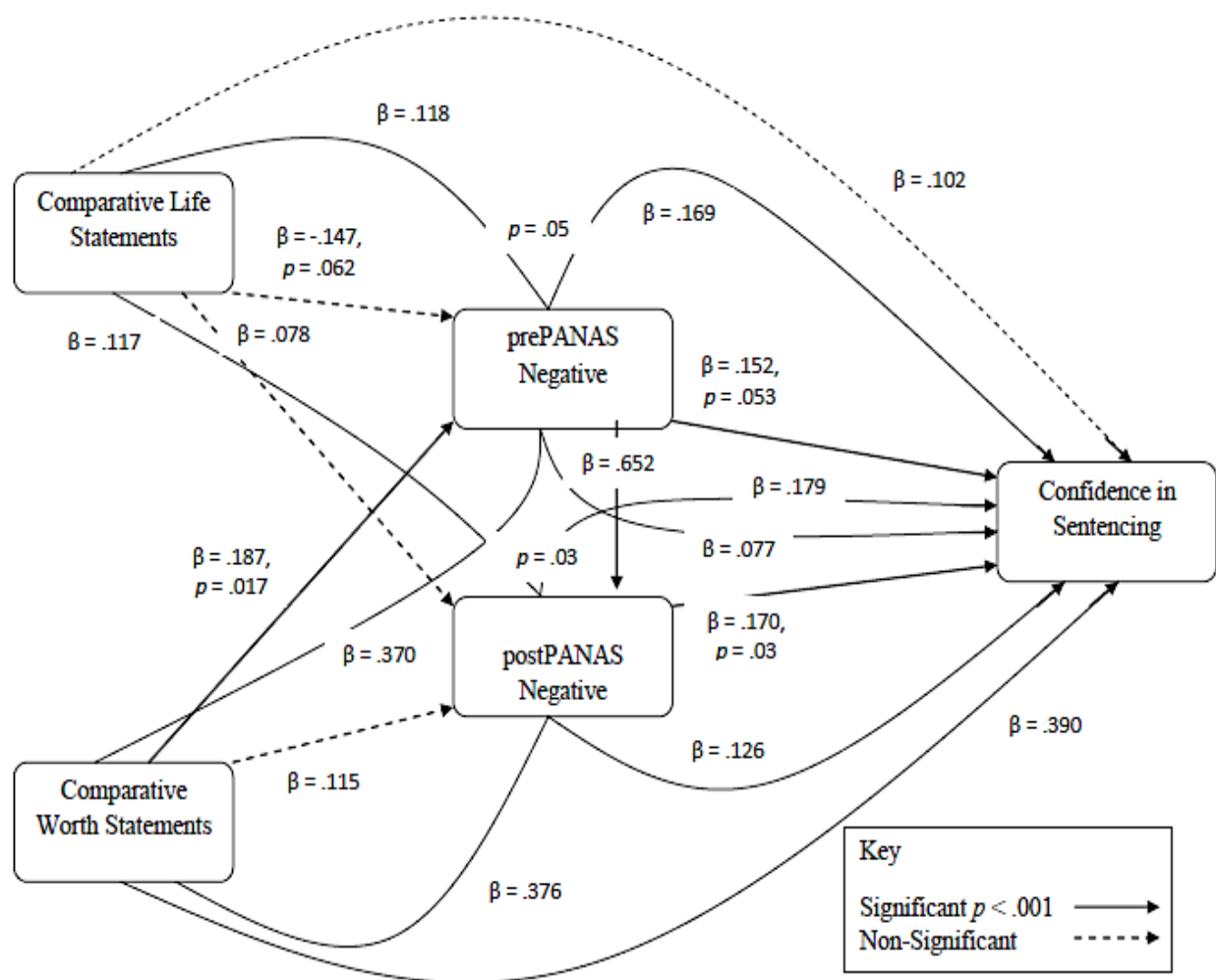


Figure 3. Test for the mediating effects of pre and post trial negative affect (PANAS) on the relation between comparative life and worth statements and confidence in sentencing

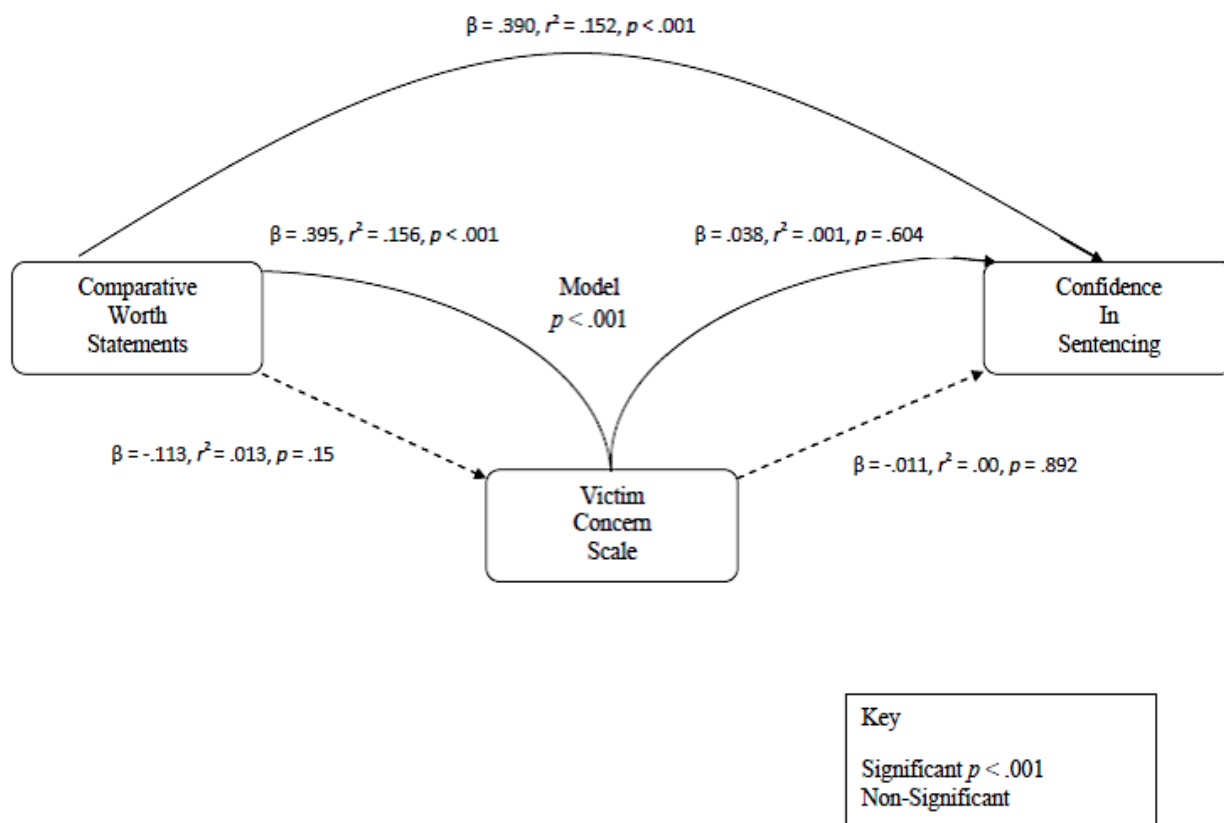


Figure 4. Test for the moderating effects of the victim concern scale (VCS) on the relation between comparative life and worth statements and confidence in sentencing

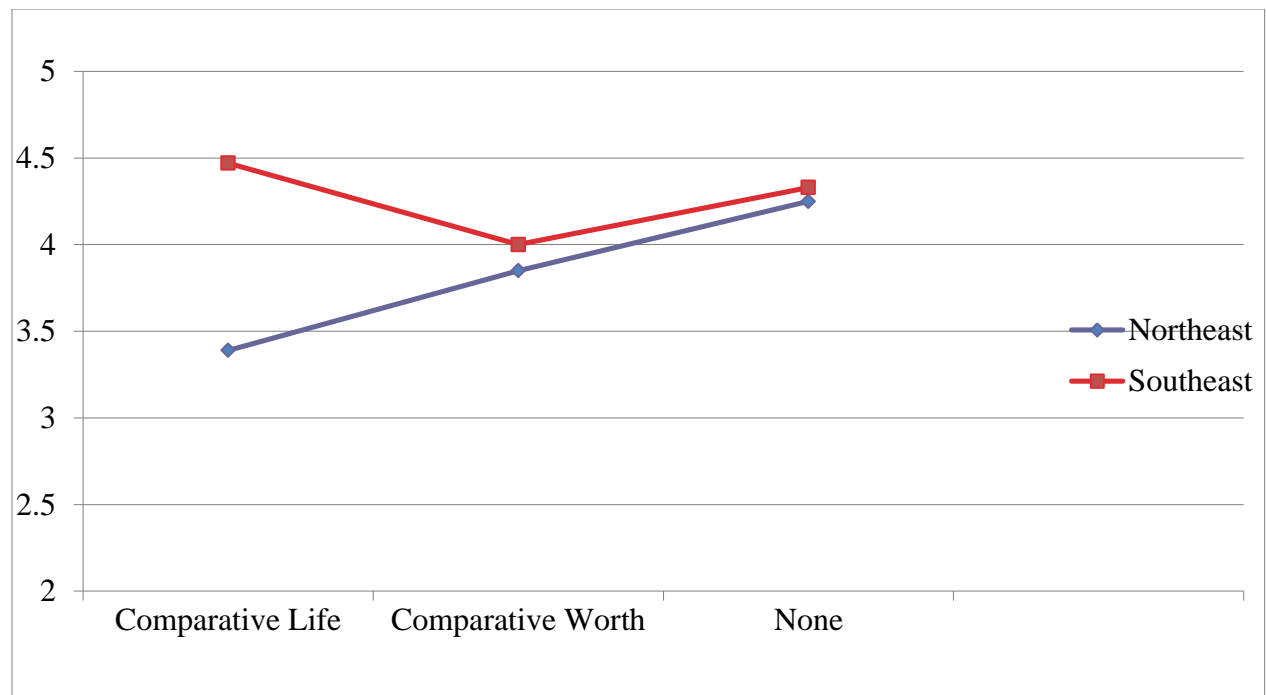


Figure 5. A comparative value by region interaction on the first aggravating factor

Appendix A
Informed Consent Form

Principal Investigators: Alicia Serpa, B.A., Rachel Small, B.A., and Judith Platania, Ph.D.

1. Purpose of the Study: This study will examine jury decision making during a capital trial. A minimum of 260 participants will be included in this study.

2. Procedures Experienced by Participants: By participating in this study, you will be asked to read a segment of testimony in a death penalty case. You will then fill out a questionnaire regarding your attitudes toward the testimony you viewed. Participation should take approximately one hour, and the questionnaires will be completed in the given time today.

3. Confidentiality and Anonymity: Only the investigators listed above will have access to your responses, which will ensure your confidentiality. Additionally, your name will only be written on your consent form, which will be collected and maintained separately from your questionnaire. Thus, your responses will remain anonymous.

4. Your Rights: You have the right to decline participation without any penalties or prejudice because participation is strictly voluntary. Additionally, at any point in the study if you do not feel comfortable or no longer want to participate, you have the right to withdraw from the study without prejudice or penalty. You may also ask questions at any time during the course of the study and you may contact the primary investigator (whose name, email address and telephone number appear at the bottom of this form) at any time after you have participated in the study.

5. Risks and Benefits of being a Participant: No physical, psychological, or emotional risks are associated with this study. At any time during your participation, you are allowed to withdraw from this study without facing any penalties. A potential benefit is an increased understanding of how psychological research is conducted.

More Information: After participation, please feel free to contact Dr. Judith Platania in FCAS 104, by email at jplatania@rwu.edu, or telephone 254-5738 should you have any additional questions.

This certifies that I _____ have given my full consent to participate
Print your name

in this study. I am at least 18 years of age or older. I have read this form and fully understand the content.

Participant's Signature

Date

This certifies that I have defined and informed the participant named above of all elements pertaining to this research study.

Principal Investigator

Date

Appendix B

PRE-TRIAL JUROR QUESTIONNAIRE

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:

- | | |
|---------------------------------|-----|
| <input type="checkbox"/> Male | [1] |
| <input type="checkbox"/> Female | [2] |

Into which of the following age categories do you fall:

- | | |
|--------------------------------------|-----|
| <input type="checkbox"/> 18-24 | [1] |
| <input type="checkbox"/> 25-34 | [2] |
| <input type="checkbox"/> 35-44 | [3] |
| <input type="checkbox"/> 45-54 | [4] |
| <input type="checkbox"/> 55 or older | [5] |

Which of the following characterizes your background?

- | | |
|---|-----|
| <input type="checkbox"/> Caucasian | [1] |
| <input type="checkbox"/> Hispanic | [2] |
| <input type="checkbox"/> African-American | [3] |
| <input type="checkbox"/> Other | [4] |

What is your religious affiliation?

- | | |
|-------------------------------------|-----|
| <input type="checkbox"/> Catholic | [1] |
| <input type="checkbox"/> Protestant | [2] |
| <input type="checkbox"/> Jewish | [3] |
| <input type="checkbox"/> Other | [4] |

Your marital status:

- | | |
|-----------------------------------|-----|
| <input type="checkbox"/> Single | [1] |
| <input type="checkbox"/> Married | [2] |
| <input type="checkbox"/> Divorced | [3] |
| <input type="checkbox"/> Other | [4] |

How would you evaluate your political views?

- | | |
|--|-----|
| <input type="checkbox"/> Liberal | [1] |
| <input type="checkbox"/> Slightly Liberal | [2] |
| <input type="checkbox"/> Slightly Conservative | [3] |
| <input type="checkbox"/> Conservative | [4] |

Do you have a valid driver's license?

- | | |
|------------------------------|-----|
| <input type="checkbox"/> No | [1] |
| <input type="checkbox"/> 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
<i>very slightly or not at all</i>	<i>a little</i>	<i>moderately</i>	<i>quite a bit</i>	<i>extremely</i>

_____ attentive	_____ strong
_____ irritable	_____ inspired
_____ afraid	_____ alert
_____ upset	_____ active
_____ guilty	_____ nervous
_____ excited	_____ hostile
_____ proud	_____ jittery
_____ ashamed	_____ scared
_____ enthusiastic	_____ distressed
_____ determined	_____ interested

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			

For each of the statements below, please indicate whether or not the statement is characteristic of you or of what you believe. For example, if the statement is extremely uncharacteristic of you or of what you believe about yourself (not at all like you) please place a "1" on the line to the left of the statement. If the statement is extremely characteristic of you or of what you believe about yourself (very much like you) please place a "5" on the line to the left of the statement. You should use the following scale as you rate each of the statements below.

1	2	3	4	5
extremely uncharacteristic of me	somewhat uncharacteristic of me	uncertain	somewhat characteristic of me	extremely characteristic of me

_____ If I reflect on my past, I see that I tend to be afraid of feeling emotions.

_____ I prefer complex to simple problems.

_____ I like to dwell on my emotions.

_____ I have trouble telling the people close to me that I love them.

_____ I like to have the responsibility of handling a situation that requires a lot of thinking.

_____ I wish I could feel less emotion.

_____ I feel that I need to experience strong emotions regularly.

_____ Thinking is not my idea of fun.

_____ Avoiding emotional events helps me sleep better at night.

_____ Emotions help people get along in life.

_____ I would rather do something that requires little thought than something that is sure to challenge my thinking abilities.

_____ I am sometimes afraid of how I might act if I become too emotional.

_____ I am a very emotional person.

_____ I try to anticipate and avoid situations where there is a likely chance I will have to think in depth about something.

_____ I feel like I need a good cry every now and then.

_____ I think that it is important to explore my feelings.

- _____ I find satisfaction in deliberating hard and for long hours.
- _____ I would love to be like “Mr. Spock,” who is totally logical and experiences little emotion.
- _____ I approach situations in which I expect to experience strong emotions.
- _____ I only think as hard as I have to.
- _____ I like decorating my bedroom with a lot of pictures and posters of things emotionally significant to me.
- _____ I find strong emotions overwhelming and therefore try to avoid them.
- _____ I prefer to think about small daily projects to long term ones.
- _____ I would prefer not to experience either the lows or highs of emotion.
- _____ I like tasks that require little thought once I’ve learned them.
- _____ I do not know how to handle my emotions, so I avoid them.
- _____ The idea of relying on thought to make my way to the top appeals to me.
- _____ Emotions are dangerous—they tend to get me into situations that I would rather avoid.
- _____ I really enjoy a task that involves coming up with new solutions to problems.
- _____ Acting on one’s emotions is always a mistake.
- _____ Learning new ways to think doesn’t excite me very much.
- _____ We should indulge our emotions.
- _____ I prefer my life to be filled with puzzles I must solve.
- _____ Displays of emotion are embarrassing.
- _____ The notion of thinking abstractly is appealing to me.
- _____ Strong emotions are generally beneficial.
- _____ I would prefer a task that is intellectual, difficult, and important to one that is somewhat important but does not require much thought.
- _____ People can function most effectively when they are not experiencing strong emotions.
- _____ I feel relief rather than satisfaction after completing a task that requires a lot of mental effort.
- _____ The experience of emotions promotes human survival.
- _____ It’s enough for me that something gets the job done; I don’t care how or why it works.
- _____ It is important for me to be in touch with my feelings.
- _____ I usually end up deliberating about issues even when they do not affect me personally.
- _____ It is important for me to know how others are feeling.

Appendix C

SUMMARY OF GUILT PHASE IN THE CASE OF:

State v. Humphries, 325 S.C. 28, 479 S.E.2d 52, 53 (1996)

On the morning of January 1st, 1994 Shawn Paul Humphries, then age 22, and Eddie Blackwell, then age 19, had been drinking beer when they decided to rob a convenience store, owned and operated by Mendal “Dickie” Smith. Upon entering Smith’s store, Humphries revealed a stolen gun, and demanded Smith’s money. Smith reached under the counter, appearing to grab a stored gun; Humphries responded by firing one fatal shot at Smith. On August 5th, 1994, Humphries was charged with attempted armed robbery, possession of a firearm during the commission of a violent crime, criminal conspiracy, and the murder of “Dickie” Smith. The events of the crime were captured by the store’s surveillance camera.

As a result of reading the facts of the case, do you find Shawn Paul Humphries guilty or not guilty of the murder of “Dickie” Smith?

☐ Not Guilty [1]

☐ Guilty [2]

Appendix D

PRE-SENTENCING PHASE JUDGE'S INSTRUCTION

Ladies and Gentlemen/Members of the Jury: As a juror in the sentencing phase of the capital trial of Shawn Paul Humphries, you will hear evidence from both the Prosecution and the Defense. After you have heard evidence from each side, you will be asked to recommend a sentence of either life in prison without parole, or death by lethal injection. "Murder" is the killing of any person with malice aforethought, either express or implied. When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. A separate sentencing proceeding is conducted to determine whether sentence should be death or life imprisonment. In this proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. In this sentencing proceeding, you will hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial has been deemed admissible. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed. At the close of this proceeding, I will instruct you on the law in this case and the application of aggravating and mitigating circumstances to your recommendation of a sentence of either life in prison without parole, or death by lethal injection.

Appendix E
Stimulus Materials

VA/B/CL

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

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Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principle even provided Shawn with a reference letter for college.

Defense Attorney: Can you describe an instance when the principle recognized Shawn's success?

Witness: The principle gave a speech at an annual award ceremony commending Shawn for his academic achievement and community involvement. Shawn definitely earned the school's community service award, which he won that year. I was very proud of him.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of

Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant’s life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries’ life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody’s description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That’s the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That’s the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That’s the same year Shawn Paul Humphries went to jail for two years. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted. When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances. When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim’s family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he’s defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that’s what you are here for. It’s up to you. Thank you.

VA/B/CW

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

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Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

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DEFENSE ATTORNEY CLOSING ARGUMENT

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Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

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VA/N/N

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

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Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

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Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

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Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

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Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

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VA/SV/CL

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PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

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Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as family and spent most of our childhood together. We remained close as adults. Shawn came from a very close and loving family, and I spent a lot of time at his house.

Defense Attorney: Can you describe his family?

Witness: Shawn's family spent most of their free time together; they hardly ever fought. My aunt and uncle worked very hard, and did their best to take the family on day trips and vacations as often as possible. My aunt and uncle owned a family pizza restaurant, and it was always fun for Shawn and I to go there after school and sit at the counter, or help out making pizzas.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We

would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

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Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principal even provided Shawn with a reference letter for college.

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Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

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on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That's the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted. When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances. When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. Thank you.

VA/SV/CW

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PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

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Prosecutor: Thank you for your testimony.

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Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

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Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

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Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as family and spent most of our childhood together. We remained close as adults. Shawn came from a very close and loving family, and I spent a lot of time at his house.

Defense Attorney: Can you describe his family?

Witness: Shawn's family spent most of their free time together; they hardly ever fought. My aunt and uncle worked very hard, and did their best to take the family on day trips and vacations as often as possible. My aunt and uncle owned a family pizza restaurant, and it was always fun for Shawn and I to go there after school and sit at the counter, or help out making pizzas.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out

on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

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VA/TL/CL

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Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

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Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about disciplinary problems he experienced at school. He had a lot of anger toward the school administration because the principle reprimanded him so often. It seemed that Shawn could barely get through a school day without somehow getting the principle's attention. The principle never seemed to notice Shawn's efforts to comply with school rules, but disciplined him for every mistake.

Defense Attorney: Can you describe an instance when Shawn was disciplined by the principle?

Witness: Shawn received detention afterschool so often, it didn't seem to bother him by his second year. However, when the principle suspended Shawn during his third year, for a fight Shawn insisted was not his fault, Shawn became furious with the school administration. I explained the school's zero-tolerance violence policy – both students involved are suspended regardless of who claims to be responsible. After that incident, Shawn's attitude toward school took a downward spiral.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

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Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant’s life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries’ life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

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Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about disciplinary problems he experienced at school. He had a lot of anger toward the school administration because the principle reprimanded him so often. It seemed that Shawn could barely get through a school day without somehow getting the principle's attention. The principle never seemed to notice Shawn's efforts to comply with school rules, but disciplined him for every mistake.

Defense Attorney: Can you describe an instance when Shawn was disciplined by the principle?

Witness: Shawn received detention afterschool so often, it didn't seem to bother him by his second year. However, when the principle suspended Shawn during his third year, for a fight Shawn insisted was not his fault, Shawn became furious with the school administration. I explained the school's zero-tolerance violence policy – both students involved are suspended regardless of who claims to be responsible. After that incident, Shawn's attitude toward school took a downward spiral.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of

Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant’s life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries’ life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody’s description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. In 1986, Dickie Smith starts building homes in the community he had grown up in. Then in 1988, the victim and his wife have a little baby girl. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. Dickie Smith had values; x everyone in the community felt his values. I am talking about values, because a jury verdict is a statement of values. And I am not talking about dollars and cents as far as what the life of Dickie Smith is worth, but nevertheless it is a question of values. What is the life of this victim worth? Is it worth the life of this man, this killer? When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this Defendant, and when you look at Dickie Smith, you will realize that the reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die. Whose life is more important to you? Whose life has more value – the defendant’s or the victim’s? When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim’s family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he’s defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that’s what you are here for. It’s up to you. If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim’s. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because he is a convicted killer.

VP/B/CL

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

VICTIM IMPACT WITNESS ONE: LARRY MARTINS

Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a

basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principle even provided Shawn with a reference letter for college.

Defense Attorney: Can you describe an instance when the principle recognized Shawn's success?

Witness: The principle gave a speech at an annual award ceremony commending Shawn for his academic achievement and community involvement. Shawn definitely earned the school's community service award, which he won that year. I was very proud of him.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant's life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That's the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the

same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted. When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances. When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. Thank you.

VP/B/CW

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

VICTIM IMPACT WITNESS ONE: LARRY MARTINS

Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing

sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn

was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principle even provided Shawn with a reference letter for college.

Defense Attorney: Can you describe an instance when the principle recognized Shawn's success?

Witness: The principle gave a speech at an annual award ceremony commending Shawn for his academic achievement and community involvement. Shawn definitely earned the school's community service award, which he won that year. I was very proud of him.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant's life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that

justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. In 1986, Dickie Smith starts building homes in the community he had grown up in. Then in 1988, the victim and his wife have a little baby girl. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. Dickie Smith had values; x everyone in the community felt his values. I am talking about values, because a jury verdict is a statement of values. And I am not talking about dollars and cents as far as what the life of Dickie Smith is worth, but nevertheless it is a question of values. What is the life of this victim worth? Is it worth the life of this man, this killer? When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this Defendant, and when you look at Dickie Smith, you will realize that the reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die. Whose life is more important to you? Whose life has more value – the defendant's or the victim's? When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because he is a convicted killer.

VP/SV/CL

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

VICTIM IMPACT WITNESS ONE: LARRY MARTINS

Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing

sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as family and spent most of our childhood together. We remained close as adults. Shawn came from a very close and loving family, and I spent a lot of time at his house.

Defense Attorney: Can you describe his family?

Witness: Shawn's family spent most of their free time together; they hardly ever fought. My aunt and uncle worked very hard, and did their best to take the family on day trips and vacations as often as possible. My aunt and uncle owned a family pizza restaurant, and it was always fun for Shawn and I to go there after school and sit at the counter, or help out making pizzas.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principle even provided Shawn with a reference letter for college.

Defense Attorney: Can you describe an instance when the principle recognized Shawn's success?

Witness: The principle gave a speech at an annual award ceremony commending Shawn for his academic achievement and community involvement. Shawn definitely earned the school's community service award, which he won that year. I was very proud of him.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant's life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to

you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That's the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted. When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances. When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. Thank you.

VP/SV/CW

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

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PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

VICTIM IMPACT WITNESS ONE: LARRY MARTINS

Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did

everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

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Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

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Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as family and spent most of our childhood together. We remained close as adults. Shawn came from a very close and loving family, and I spent a lot of time at his house.

Defense Attorney: Can you describe his family?

Witness: Shawn's family spent most of their free time together; they hardly ever fought. My aunt and uncle worked very hard, and did their best to take the family on day trips and vacations as often as possible. My aunt and uncle owned a family pizza restaurant, and it was always fun for Shawn and I to go there after school and sit at the counter, or help out making pizzas.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

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Defense Attorney: Thank you for testifying on your cousin's behalf.

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Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

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Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about his achievements. Shawn was highly concerned with developing a competitive application to the universities he found most desirable. He was a strong student and didn't have much to worry about. Not only did he have excellent grades, he completed many more hours of volunteer work than most schools require, and had glowing references from several teachers. The school principle even provided Shawn with a reference letter for college.

Defense Attorney: Can you describe an instance when the principle recognized Shawn's success?

Witness: The principle gave a speech at an annual award ceremony commending Shawn for his academic achievement and community involvement. Shawn definitely earned the school's community service award, which he won that year. I was very proud of him.

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wife, and they fell in love, and they got married. In 1986, Dickie Smith starts building homes in the community he had grown up in. Then in 1988, the victim and his wife have a little baby girl. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. Dickie Smith had values; x everyone in the community felt his values. I am talking about values, because a jury verdict is a statement of values. And I am not talking about dollars and cents as far as what the life of Dickie Smith is worth, but nevertheless it is a question of values. What is the life of this victim worth? Is it worth the life of this man, this killer? When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this Defendant, and when you look at Dickie Smith, you will realize that the reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die. Whose life is more important to you? Whose life has more value – the defendant's or the victim's? When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because he is a convicted killer.

VP/TL/CL

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

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PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

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Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did

everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn

was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about disciplinary problems he experienced at school. He had a lot of anger toward the school administration because the principle reprimanded him so often. It seemed that Shawn could barely get through a school day without somehow getting the principle's attention. The principle never seemed to notice Shawn's efforts to comply with school rules, but disciplined him for every mistake.

Defense Attorney: Can you describe an instance when Shawn was disciplined by the principle?

Witness: Shawn received detention afterschool so often, it didn't seem to bother him by his second year. However, when the principle suspended Shawn during his third year, for a fight Shawn insisted was not his fault, Shawn became furious with the school administration. I explained the school's zero-tolerance violence policy – both students involved are suspended regardless of who claims to be responsible. After that incident, Shawn's attitude toward school took a downward spiral.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant's life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That's the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted. When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances. When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. Thank you.

VP/TL/CW

OPENING STATEMENT: PROSECUTION

Ladies and Gentlemen of the jury, it is your duty today to decide upon the appropriate sentence for the defendant, Shawn Paul Humphries. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. The jury has already found the defendant guilty of first-degree murder of the victim in the course of a robbery with a deadly weapon. The prosecution will present evidence that the murder of the victim was premeditated. I trust that after hearing the evidence presented today, you will arrive at the only appropriate sentence for this defendant – death by lethal injection. Thank you.

OPENING STATEMENT: DEFENSE

Members of the jury, today you will hear testimony from two witnesses who spent considerable time with the defendant, Shawn Paul Humphries. These two witnesses are here today to speak on behalf of the defendant, and to inform the jury of grounds for you to spare his life. In determining which penalty is appropriate for Shawn Paul Humphries, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. You may hear evidence from the witnesses regarding the defendant's troubled life or social value. This is considered appropriate evidence for you to consider in favor of a life sentence. I am confident that the testimony presented today will lead you to recommend the appropriate sentence – life imprisonment without parole. Thank you.

PROSECUTION WITNESS ONE: DENNIS CONWAY

Prosecutor: I call my first witness to the stand, the arresting officer. Please state your full name for the court.

Witness: My name is Officer Dennis Conway and I have been with the city police force for almost ten years.

Prosecutor: How are you involved in the case at hand?

Witness: I was the first to respond on the morning of January 1st, 1994 when I received the call that there was robbery in progress at Dickie Smith's convenience store. Dickie Smith had been shot in the course of the robbery.

Prosecutor: Can you describe for the court the circumstances surrounding the crime?

Witness: After I had arrested Shawn Paul Humphries, and read him his rights, he said, "Someone's gonna get it tonight." There was quite a bit of noise and I wasn't sure I heard him correctly, so I asked him to repeat what he just said.

Prosecutor: And he repeated himself.

Witness: Correct.

Prosecutor: What did he say again?

Witness: He said, "Someone's gonna get it tonight."

Prosecutor: Thank you for your testimony.

VICTIM IMPACT WITNESS ONE: LARRY MARTINS

Judge: The court calls Larry Martins to the stand; you may now read your written statement.

Witness: My name is Larry Martins, I am the victim's cousin. The defendant murdered my cousin while he was working at the convenience store he owned. My cousin Dickie and I were very close; we were like brothers. We did

everything together. Dickie was a real athlete when he was younger. I have so many fond memories of us playing sports together. He used to beat me at every sport growing up. As adults we still had fun challenging each other to a basketball game or some street hockey on the weekend. Even though Dickie always won, he always showed humility and was never a bragger. Since I have been married and started raising a family, Dickie has always been welcome at my home. I would frequently invite Dickie over to barbeque at my house. Dickie was famous for his barbeque recipe. Many things Dickie and I did together will never be the same now that he is gone. It will be too painful to go back on the basketball court without my cousin. Dickie was always there for me. I just don't think I could enjoy our old interests alone. And the family barbeques will definitely not be the same; his presence will be greatly missed.

Judge: Thank you for your testimony today.

VICTIM IMPACT WITNESS TWO: SUSAN FELDMAN

Judge: The court calls Susan Feldman to the stand; you may now read your written statement.

Witness: My name is Susan Feldman. I lived next door to the victim, Dickie Smith, prior to this unfortunate event. After the incident a police officer came to my house and notified me that Dickie had been murdered while working. Dickie was a very friendly and generous neighbor. We came to know each other quite well; we lived next door to one another for over ten years. We were both avid gardeners; we would often share gardening tips and exchange vegetables, or other things we had grown in our gardens. He would always invite me over to his cousin's family barbeques. Since I live alone, I always appreciated having such a cordial neighbor. I will definitely miss his company. Gardening will always remind me of warm memories of Dickie, but it will also bring me some sadness.

Judge: Thank you for your testimony today.

DEFENSE WITNESS ONE: ANGELA CRAWFORD

Defense Attorney: I call my first witness to the stand. Please state your full name for the court.

Witness: My name is Angela Crawford.

Defense Attorney: How do you know the defendant?

Witness: I have been a community based youth counselor for the last fifteen years. Shawn Paul Humphries was one of my clients for several years.

Defense Attorney: Can you describe what type of community member he is?

Witness: Shawn was a reserved young man. In our meetings he was always polite, although he sometimes seemed a little uncomfortable when I ask him to discuss personal problems.

Defense Attorney: Can you describe for the Court the circumstances surrounding the crime?

Witness: At the time Shawn committed the crime he was an inexperienced young man and was somewhat immature. Additionally, Shawn had no significant history of violent crime prior to this crime.

Defense Attorney: How is it that you would have knowledge of this information?

Witness: Due to the nature of our work at the Center, it is mandatory that I look into this before meeting with my clients.

Defense Attorney: How do you specifically look into this?

Witness: I check with the local probation office. They do not release any specific information. I simply asked if there were any record of any significant history of violent crime for Shawn. I was told there was not.

Defense Attorney: Thank you for your testimony.

DEFENSE WITNESS TWO: JOSEPH GLENN

Defense Attorney: I call my first witness to the stand, the cousin of the defendant. Please state your full name for the court.

Witness: My name is Joseph Glenn.

Defense Attorney: How are you acquainted with the defendant?

Witness: I am the defendant's cousin.

Defense Attorney: Are you aware of the crime your cousin has been convicted of?

Witness: Yes, my cousin was convicted of the murder of the convenience store owner, Mr. Smith.

Defense Attorney: Were you and your cousin close?

Witness: Yes, we were very close. We were raised as if we were siblings and spent most of our childhood together. We remained close into adulthood. Shawn came from a very troubled home-life, and he spent a lot of time at my house.

Defense Attorney: Can you explain what you mean by troubled home-life?

Witness: Well, my aunt and uncle had a lot of problems with their marriage, stemming from my uncle's alcohol abuse. Unfortunately he didn't give a lot of attention to give Shawn, unless it was to scream at him or hit him. My uncle always drank after work, and he had no control of his temper. When he was drunk he was verbally and physically abusive toward my aunt, and toward Shawn if he tried to stop the fight or intervene. Because his parents fought so much, Shawn and I spent a lot of time together after school.

Defense Attorney: Can you describe to the court some of the activities you and your cousin recently enjoyed?

Witness: Shawn and I go camping most weekends, especially when the weather is nice. During the day we fish out on the lake. At night we build a fire, and invite a few old friends over. Shawn and I also share a passion for cars. We would often fix up older cars and go to auto shows when they came to town.

Defense Attorney: Will you still enjoy these activities without your cousin?

Witness: No, I would not be able to go camping or work on cars without him. It would be very painful for me to do the things we loved doing together without him there. He is like an older brother to me; I will miss him very much if he is not around.

Defense Attorney: Thank you for testifying on your cousin's behalf.

DEFENSE WITNESS THREE: PATRICIA WILLIAMS

Defense Attorney: I call my second witness to the stand, the guidance counselor of the defendant. Please state your full name for the court.

Witness: My name is Patricia Williams.

Defense Attorney: How are you acquainted with the defendant?

Witness: For the last fifteen years I have been employed as a guidance counselor at the local high school; Shawn

was one of my students.

Defense Attorney: Are you aware of the crime your prior student was convicted of?

Witness: Yes, I read in the newspaper that Shawn was convicted of the murder of Mr. Smith.

Defense Attorney: How well do you know the defendant?

Witness: Shawn and I spoke frequently. The school requires every student to meet their guidance counselor twice a year, but Shawn would usually come to my office once or twice a week.

Defense Attorney: Can you describe to the jury what typically takes place during your meetings with Shawn?

Witness: Well, Shawn usually talked to me about disciplinary problems he experienced at school. He had a lot of anger toward the school administration because the principle reprimanded him so often. It seemed that Shawn could barely get through a school day without somehow getting the principle's attention. The principle never seemed to notice Shawn's efforts to comply with school rules, but disciplined him for every mistake.

Defense Attorney: Can you describe an instance when Shawn was disciplined by the principle?

Witness: Shawn received detention afterschool so often, it didn't seem to bother him by his second year. However, when the principle suspended Shawn during his third year, for a fight Shawn insisted was not his fault, Shawn became furious with the school administration. I explained the school's zero-tolerance violence policy – both students involved are suspended regardless of who claims to be responsible. After that incident, Shawn's attitude toward school took a downward spiral.

Defense Attorney: Thank you for your testimony today.

DEFENSE ATTORNEY CLOSING ARGUMENT

Good afternoon ladies and gentlemen of the jury. Today you have a difficult task before you – you must recommend a sentence for the defendant, Shawn Paul Humphries. Shawn Paul Humphries has been convicted of the murder of Mendal “Dickie” Smith, and it is your job to decide whether life imprisonment or death by lethal injection is the most appropriate punishment. You have read testimony from individuals who are close to the defendant. His cousin Joseph Glenn, and his neighbor Patricia Williams each offered testimony regarding aspects of the defendant's life. Their testimony describes the defendant as having been affected by circumstances in life as well as having an impact on the lives of the people he knew. Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others. However, as a result of his actions, this defendant has hurt himself as well as many others around him. This is not about whether the defendant will be excused. There is no excuse for what Shawn Humphries did. Nothing excuses or justifies his crime. 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. There are two mitigating circumstances to this crime you are allowed to consider: The defendant has no significant history of prior criminal conviction involving the use of violence against another person; and the age or mentality of the defendant at the time of the crime. In addition, if you find anything about Shawn Humphries' life and background 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, now that you are familiar with my points on this position, I ask, on behalf of the defense, that you put Shawn in prison 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.

PROSECUTOR CLOSING ARGUMENT

Shawn Paul Humphries comes into this courtroom asking you for mercy. I ask you what mercy did he give the victim - None. Shawn Paul Humphries comes in here and asks you for life, and he gave death. Is that fair? Is that justice? You have the right to look at the uniqueness of the individual when deciding this case and I would submit to you that Dickie Smith, by everybody's description to you was a unique individual. In 1984 Dickie Smith met his wife, and they fell in love, and they got married. In 1986, Dickie Smith starts building homes in the community he had grown up in. Then in 1988, the victim and his wife have a little baby girl. And in the spring of 1992, Dickie Smith, opens the doors to his new company, building a business – helping to sustain a community. Dickie Smith had values; x everyone in the community felt his values. I am talking about values, because a jury verdict is a statement of values. And I am not talking about dollars and cents as far as what the life of Dickie Smith is worth, but nevertheless it is a question of values. What is the life of this victim worth? Is it worth the life of this man, this killer? When you look at a case like this, when you look at the aggravation, when you look at the total lack of mitigation, I would submit, when you look at the character of this Defendant, and when you look at Dickie Smith, you will realize that the reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die. Whose life is more important to you? Whose life has more value – the defendant's or the victim's? When you decide this case you look a number of things: You look at the aggravating circumstances in the case – murder with robbery and premeditation. We have established that. You look at any mitigating factors the defense has presented to you. And the last thing you look at is the victim, his uniqueness and the suffering to the victim's family that this defendant caused? Those are the four things you look at. What punishment do you recommend when a man is defending his store, he's defending what he has built? What punishment do you recommend when someone like Dickie Smith is taken from us. Justice – that's what you are here for. It's up to you. If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because he is a convicted killer.

Appendix F

PRE-DELIBERATION JUDGE'S INSTRUCTION

Ladies and Gentlemen/Members of the jury: Now that you have heard the testimony and the arguments of the lawyers, it is my duty to instruct you on the law that applies to this case. It is your duty to accept the rules of law as I give them to you whether you agree with them or not. You must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathies in forming your decision. In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return - that is a matter entirely for you to decide. The evidence from which you are to decide what the facts are consists of: (1) the sworn testimony of witnesses, both on direct and cross-examination, regardless of who called the witnesses; (2) the existence of aggravating and mitigating circumstances in the case. In reaching your verdict, you may consider only the testimony received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list these things for you: arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they have said in their opening statements and closing arguments is intended to help you interpret the evidence, but it is not evidence. You must also decide the credibility of witnesses and which testimony you will believe. You are the sole judges of the credibility, or believability, of each witness. You may believe all or any part or nothing of what a witness said while on the stand. In determining whether to believe any witness, you should apply the same tests of truthfulness that you apply in your own everyday affairs. All of these are matters for you to consider in finding the facts.

“Murder” is the killing of any person with malice aforethought, either express or implied. When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. A separate sentencing proceeding is conducted to determine whether sentence should be death or life imprisonment. You have just heard the prosecution and defense opening statements, testimony from their witnesses, and each of their closing arguments in this case. If

you have found, during this proceeding, the existence of a statutory aggravating circumstance the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years.

The jury shall consider mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances, which may be supported by the evidence:

Statutory aggravating circumstances:

- (1) The murder was committed while in the commission of a robbery while armed with a deadly weapon.
- (2) The defendant committed the murder after substantial planning and premeditation.

Mitigating circumstances:

- (1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.
- (2) The age or mentality of the defendant at the time of the crime.
- (3) Any other mitigating matter concerning the background, character, or record of the defendant or the circumstances of his offense including evidence of a troubled life and evidence of the value of his life.

The statutory aggravating circumstance or circumstances, must be found beyond a reasonable doubt.

Unless at least one statutory aggravating circumstance is found, the death penalty must not be imposed.

The prosecution has introduced what is known as victim impact evidence. Victim impact evidence is not the same as evidence of a statutory aggravating circumstance. Introduction of victim impact evidence does not relieve the state of its burden to prove beyond a reasonable doubt the existence of a statutory aggravating circumstance. This evidence is simply another method of informing you about the harm caused by the crime in question. To the extent that you find that this evidence reflects on the defendant's culpability, you may consider it, but you may not use it as a substitute for proof beyond a reasonable doubt of the existence of a statutory aggravating circumstance and limit the scope of the evidence presented.

Appendix G

POST-TRIAL JUROR QUESTIONNAIRE

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

Please recommend a sentence for the defendant in this case.

- | | |
|--|-----|
| <input type="checkbox"/> Life in prison | [1] |
| <input type="checkbox"/> 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	

Using the following scale, please record the number that reflects your credibility rating of each person listed.

1	2	3	4	5	6	7	8
Not at all credible						Completely credible	
Prosecutor's first witness, Dennis Conway				_____			
Prosecutor's second witness, Larry Martins				_____			
Prosecutor's third witness, Susan Feldman				_____			
Defense's first witness, Angela Crawford				_____			
Defense's second witness, Joseph Glenn				_____			
Defense's third witness, Patricia Williams				_____			
The Prosecutor				_____			
The Defense Attorney				_____			

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

Based on the testimony, how troubled was the defendant's life?

1	2	3	4	5	6	7	8
Not at all troubled						Completely troubled	

Based on the testimony, how valuable was the defendant to society?

1	2	3	4	5	6	7	8
Not at all valuable						Completely valuable	

Based on the testimony, to what extent do you believe the victim's death was a unique loss to his family?

1	2	3	4	5	6	7	8
Not at all a unique loss				An extremely unique loss			

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			

Circle the number that most closely matches how much you weighed each statement in reaching your sentencing decision.

"Shawn Paul Humphries is a productive member of the community who reaches out and is quick to help others."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"If you find anything about Shawn Humphries' life and background 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."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"In 1984 Dickie Smith met his wife, and they fell in love, and they got married. That's the same year Shawn Paul Humphries committed two house break-ins at age 13. In 1986, Dickie Smith starts building homes in the community he had grown up in. That's the same year Shawn Paul Humphries is up for his second probation violation and consequently gets sent down to prison. Then in 1988, the victim and his wife have a little baby girl. That's the same year Shawn Paul Humphries went to jail for two years."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"So, at the very instant one life was being put to worthwhile use, the other was not. The defendant led a worthless life, the victim a worthy one, and in this case a death sentence is certainly warranted."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"I would submit, when you look at the character of this defendant, and when you look at the victim, how profane when you look at all the circumstances of this crime and of this defendant, how profane to give this man a gift of life under these circumstances."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"I am talking about values, because a jury verdict is a statement of values. And I am not talking about dollars and cents as far as what the life of Dickie Smith is worth, but nevertheless it is a question of values. What is the life of this victim worth? Is it worth the life of this man, this killer?"

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"The reason we have the death penalty is because the right of the innocent people to live outweighs the right of the guilty not to die. Whose life is more important to you? Whose life has more value? The defendant's or the victim's?"

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"If you let this murderer walk out of this courtroom with his life then you are saying that his life is worth more than the victim's. I urge you to assign the defendant his value on the basis that he committed an aggravated murder. He should be found less valuable because he is a convicted killer."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

"And the last thing you look at is the suffering to the victim's family that this defendant caused."

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

The murder was committed while in the commission of a robbery while armed with a deadly weapon.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

The defendant committed the murder after substantial planning and premeditation.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

The harm caused by the crime in question.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

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

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

Testimony that described the defendant as having a troubled life.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

Testimony that described the defendant has having a valued life.

1	2	3	4	5	6	7
Weighed in favor of life			Did not weigh in decision		Weighed in favor of death	

Please indicate whether or not the judge made the following statements in his instructions to the jury:

If you have found, during this proceeding, the existence of a statutory aggravating circumstance the defendant must be sentenced to death.

- ☐ The judge made this statement in his instructions to the jury [1]
☐ The judge did not make this statement in his instructions to the jury [2]

If you have found, during this proceeding, the existence of a statutory aggravating circumstance the defendant must be sentenced to either life imprisonment or death.

- ☐ The judge made this statement in his instructions to the jury [1]
☐ The judge did not make this statement in his instructions to the jury [2]

If you have found, during this proceeding, the existence of a statutory aggravating circumstance the defendant must be sentenced to life imprisonment.

- ☐ The judge made this statement in his instructions to the jury [1]
☐ The judge did not make this statement in his instructions to the jury [2]

If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years.

- ☐ The judge made this statement in his instructions to the jury [1]
☐ The judge did not make this statement in his instructions to the jury [2]

Victim impact evidence may be substituted for the existence of an aggravating circumstance in the case.

- ☐ The judge made this statement in his instructions to the jury [1]
☐ The judge did not make this statement in his instructions to the jury [2]

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
<i>very slightly or not at all</i>	<i>a little</i>	<i>moderately</i>	<i>quite a bit</i>	<i>extremely</i>

_____ attentive	_____ strong
_____ irritable	_____ inspired
_____ afraid	_____ alert
_____ upset	_____ active
_____ guilty	_____ nervous
_____ excited	_____ hostile
_____ proud	_____ jittery
_____ ashamed	_____ scared
_____ enthusiastic	_____ distressed
_____ determined	_____ interested

Using the following scale, please indicate to what extent you think people should be concerned about the following victims.

1	2	3	4	5
Not at all concerned				Extremely concerned
Victims of kidnapping	_____		Murder Victims	_____
Sexual Assault victims	_____		Female victims	_____
Victims of violent assault	_____		Victims of child molestation	_____
Child Victims	_____		Rape Victims	_____
Victims of domestic assault	_____		Victims of hate crimes	_____

Appendix H

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. For addition information about confession evidence, the following is an excellent resource:

Platania, J., & Moran, G. (1999). Due process and the death penalty: The role of prosecutorial misconduct in closing argument in capital trials. *Law and Human Behavior*, 23, 471-486.

If you have any concerns regarding this study, please feel free to contact Dr. Judith Platania in the Feinstein College of Arts and Sciences Building Office 104, 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.