

IS MORE MITIGATION BETTER? A COMPARISON OF THE ADDITIVE AND AVERAGING MODELS IN CAPITAL CASES

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Two hundred forty venirepersons from the 12th Judicial Circuit in Florida completed a booklet that contained the following: 1) one question that measured their level of support for the death penalty; 2) one question that categorized their death-qualification status; 3) the ATDP; 4) the RLAQ; 5) a summary of the guilt and penalty phases of a capital case in which either strong or a combination of strong and weak mitigation was presented; 6) sentence preference; 7) five questions that measured participants' evaluations of the mitigation presented in a hypothetical capital case vignette; and 8) standard demographic questions. Results indicated that level of mitigation, level of support for the death penalty, death-qualification status, and scores on the ATDP and RLAQ were related to sentence preference and evaluations of mitigation.

Capital trials are bifurcated by law; that is, they consist of a guilt phase and a penalty phase. If a conviction occurs in a capital case, the jury then determines the penalty by weighing the aggravating circumstances (i.e., arguments for death) against the mitigating circumstances (i.e., arguments for life). If the aggravators outweigh the mitigators, the jury is to recommend the death sentence; if the mitigators outweigh the aggravators, then the jury is to recommend life in prison without the possibility of parole (i.e., LWOP).

The U.S. Supreme Court ruled in *Lockett v. Ohio* (1) that aggravating circumstances are limited by statute; mitigating circumstances are not. Although the judge has the final word on which, if any, mitigation will be considered, statutory mitigating circumstances are merely suggestions. The jury may consider any aspect of the defendant's background or character in mitigation.

Since life-and-death decisions are determined by the aforementioned weighing process, defense attorneys are often encouraged to present as many mitigating circumstances as possible during the penalty phase of a capital case. While this may appear to be a logical approach to garnering a life sen-

tence, previous research has suggested that all mitigation is not created equally (2-4). In other words, certain mitigating factors are viewed by jurors as more persuasive arguments for a life sentence (e.g., presence of severe mental illness at the time of the crime) and other mitigating factors are viewed by jurors as less persuasive arguments for a life sentence (e.g., presence of substance addiction) (3, 4). To compound matters, Haney (5) has found that jurors tend to have more difficulty with the concept of "mitigation" than the concept of "aggravation." Thus, the scales of justice appear to be off-kilter before the penalty phase of a capital trial even begins.

In addition, earlier studies have also concluded that jurors tend to average, rather than add, testimony of varying strengths (6-8). Specifically, weak testimony tends to minimize the impact of strong testimony. Since mitigation is a form of testimony presented during the penalty phase of capital trials, it stands to reason that mitigating circumstances that have been characterized as "weak" might detract from mitigating circumstances that have been characterized as "strong." However, this assumption has yet to be empirically examined.

Previous research has also found that certain individual-difference variables appear to impact the way jurors evaluate mitigating circumstances. For example, one of the most salient personality characteristics that has been repeatedly proven to affect decision-making in capital trials is level of support for the death penalty. Specifically, as level of support for the death penalty increases, people appear to be less receptive to the mitigation presented during capital trials (3, 9). On a similar note, death-qualification status (i.e., prospective jurors' eligibility for capital jury service based on their willingness to impose either a death or life sentence as an appropriate form of punishment) has also been proven to strongly correlate with evaluations of special circumstances (10). Particularly, people who are excluded from capital jury service because of their unwillingness to consider both legal penalties as appropriate forms of punishment (i.e., "excludable" jurors) are more receptive to mitigating circumstances than those who are not excluded from capital jury service because of their beliefs about the death penalty (i.e., "death-qualified" jurors) (3, 9, 11-13). However, the role of level of support for the death penalty and, its counterpart, death-qualification status, in venireper-

sons' evaluations of different combinations of mitigation has yet to be explored.

An additional personality variable that has been demonstrated to impact verdicts in capital cases is venirepersons' attitudes toward the death penalty. While previous research has demonstrated that people who espouse positive attitudes toward the death penalty are more willing to impose the death sentence, a study of the correlation between attitudes toward the death penalty and evaluations of mitigation has yet to be conducted (14).

Another individual-difference variable that has been demonstrated to impact the way jurors view arguments for life and death is that of legal authoritarianism (15, 16). Legal authoritarians are more likely to feel that the rights of the government outweigh the rights of the individual with respect to legal issues and are more likely to be conviction- and death-prone than their civil-libertarian counterparts (4, 9, 14, 16, 17). Legal authoritarians have also been proven to be more receptive to aggravating circumstances and less receptive to mitigating circumstances (3, 9). However, the role of legal authoritarianism in jurors' evaluations of different strengths of mitigation in capital trials has yet to be empirically examined.

The primary purpose of the current study is to determine whether jurors employ the additive or the averaging model when evaluating the mitigation presented during a capital trial. The secondary purpose of the current study is to correlate level of support for the death penalty, death-qualification status, attitudes toward the death penalty, and legal authoritarianism with sentence preference and evaluations of different strengths of mitigation presented during a capital trial.

Based on the findings of similar studies, it is hypothesized that participants presented with a combination of strong and weak mitigation will be more likely to sentence the defendant to death and exhibit more negative evaluations of the mitigating factors presented during a hypothetical capital trial than participants presented with only strong mitigation. It is also hypothesized participants who support the death penalty will be more likely to sentence the defendant to death and exhibit negative evaluations of the mitigating factors presented during the hypothetical capital trial. In addition, it is hypothesized that death-qualified jurors will be more likely to sentence the defendant to death and exhibit negative evaluations of the mitigating factors

presented in the hypothetical case vignette. It is also hypothesized that participants who have positive attitudes toward the death penalty will be more likely to sentence the defendant to death and exhibit negative evaluations of the mitigation presented in the hypothetical criminal case summary. Finally, it is hypothesized that legal authoritarian jurors will be more likely to sentence the defendant to death and exhibit more negative evaluations of the mitigation than their civil libertarian counterparts.

METHOD

Participants

Participants consisted of 240 venirepersons who had been called for jury duty (via a random selection of driver's licenses and voter's registrations) at the Twelfth Judicial Circuit in Florida. Fifty-five percent of participants were women; 45% were men. The median age was 54; the median income was \$65,000.

The ethnic origin of the sample was as follows: 2% were African-American; 0% were Asian; 95% were Caucasian; 2% were Hispanic; and 1% were of an ethnic origin other than what was specified on the questionnaire. Although a disproportionately large percentage of the sample was Caucasian, participants were comprised of venirepersons. Therefore, the venirepersons in this sample are, by definition, representative of this venue.

All of the respondents had completed high school; 28% had some college or junior college; 33% had a college degree; and 22% had a post-graduate or professional degree. Thirty-one percent of the jurors had served on a jury before.

Level of Support for the Death Penalty. First, participants were asked to circle the statement that they agreed with most: 1) The death penalty is never an appropriate punishment for the crime of first-degree murder; 2) I am opposed to the death penalty, but would consider it under certain circumstances for the crime of first-degree murder; 3) I favor the death penalty, but would not consider it under certain circumstances for the crime of first-degree murder; and 4) The death penalty is the only appropriate punishment for the crime of first-degree murder.

Death-Qualification Status. Venirepersons were then asked to indicate if they felt so strongly about the death penalty (either for or against it) that their

views would prevent or substantially impair the performance of their duties as a juror in a capital case (10). Participants who answered "No" to the aforementioned question were classified as death-qualified; those who answered "Yes" were classified as excludable.

Attitudes Toward the Death Penalty. Twenty-three questions that measured their attitudes toward the death penalty (ATDP) were included in the survey. Items were measured on a 5-point Likert scale ranging from 1 = Strongly Disagree to 5 = Strongly Agree (18).

Revised Legal Attitudes Questionnaire. Kravitz, Cutler, and Brock's Revised Legal Attitudes Questionnaire (RLAQ) (15) was used to measure participants' level of legal authoritarianism. This measure is comprised of 23 items measured on a 6-point Likert scale ranging from 1 = "Strongly Disagree" to 6 = "Strongly Agree." Previous research has found that the RLAQ has acceptable levels of validity and reliability with respect to measuring legal authoritarianism (15).

Stimulus Case. Venirepersons read the summary of testimony presented during the guilt and penalty phases of a hypothetical capital trial involving the robbery and murder of a convenience store clerk. The scenario was constructed with the assistance of an attorney experienced in capital cases and has been successfully used in three prior studies (3, 4, 9).

Level of Mitigation. Two prior studies asked 750 venirepersons in the state of Florida to evaluate a list of 26 aggravating and mitigating circumstances (3, 9). The mean evaluations of each mitigating circumstance were calculated and divided into quartiles. For the purposes of the current study, the three mitigators with the most favorable evaluations with respect to being legitimate reasons to sentence someone to life in prison without the possibility of parole were classified as "strong" mitigators. The three mitigators with the least favorable evaluations with respect to being legitimate reasons to sentence someone to life in prison without the possibility of parole were classified as "weak" mitigators.

Half of the scenarios contained a combination of strong and weak mitigation presented during the penalty phase; half of the scenarios contained only strong mitigation presented during the penalty phase. The scenarios were identical in all other respects. Surveys were randomly-assigned in a

between-subjects design, so each participant received and completed only one survey.

In the "strong + weak" mitigation condition, participants were presented with the following mitigating circumstances:

The defense attorney argues that:

1. Mr. Jones had been an alcoholic for over ten years.
2. Mr. Jones had been addicted to marijuana and cocaine for the past five years.
3. Mr. Jones was diagnosed with bipolar disorder (i.e., a psychiatric disorder characterized by extreme mood swings) and, as a result, was unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
4. Mr. Jones was an accomplice in the offense for which he is to be sentenced but the offense was committed by another person and the defendant's participation was relatively minor.
5. Mr. Jones acted under the extreme duress or substantial domination of another person.
6. Mr. Jones had honorable military service in the Gulf War.

In the "strong" mitigation condition, participants were presented with the following mitigators:

The defense attorney argues that:

1. Mr. Jones was diagnosed with bipolar disorder (i.e., a psychiatric disorder characterized by extreme mood swings) and, as a result, was unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.
2. Mr. Jones was an accomplice in the offense for which he is to be sentenced but the offense was committed by another person and the defendant's participation was relatively minor.
3. Mr. Jones acted under the extreme duress or substantial domination of another person.

Dependent Measures: Sentence Preference and Evaluation of Mitigation.
Participants were first asked to select a sentence preference: 1) death or 2)

life in prison without the possibility of parole. Venirepersons were then asked to evaluate the mitigation in terms of the following characteristics: 1) validity; 2) importance; 3) appropriateness; 4) credibility; and 5) quality. The aforementioned constructs were measured on 6-point Likert scales.

Procedure

Permission to collect data at the courthouse was obtained from the Court Administrator, under the assumption he had the opportunity to review the proposal before the research was undertaken. After the proposal was approved, the experimenter collected data during April-August of 2007. Volunteers were solicited from an area designated for prospective jurors who were waiting to be called randomly and assigned to particular cases.

Prior to their participation, venirepersons read an informed consent form, which described the nature of the study, ensured that their participation was completely voluntary and anonymous, and reiterated that they would not receive compensation for their participation. Venirepersons were also given a contact number in case they were interested in the final results of the study once the data were collected and analyzed.

Participants were then asked to complete a booklet of measures. Venirepersons were first asked to complete one question that measured their level of support for the death penalty as well as one question that categorized their death-qualification status. Venirepersons were then asked to complete the ATDP and RLAQ scales. Next, participants read a summary of the guilt and penalty phases of a capital case (in which either a combination of strong and weak mitigation or only strong mitigation was presented), selected a sentence (either death or life in prison without the possibility of parole), evaluated mitigating circumstances presented in the hypothetical case vignette, and answered standard demographic questions.

RESULTS

Eleven percent of venirepersons felt the death penalty is never an appropriate punishment for the crime of first-degree murder; 31% opposed the death penalty, but would consider it under certain circumstances; 47% favored the death penalty, but would not consider it under certain circumstances; and 11% said the death penalty is the only appropriate punishment for the crime of first-degree murder. Nineteen percent of participants felt so