Impressions Capital Jurors Form of Attorneys During Voir Dire

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Impressions Capital Jurors Form 2

Introduction

The criminal justice system of the United States maintains of a very unique death qualification process. The process occurs during the voir dire portion of the jury selection phase of capital trials (Butler & Moran, 2002). Death qualification is designed to ensure only fair and impartial individuals are seated on capital juries. However, the process is very controversial. Death qualification is a process that is not used in any other trials and evidence suggests it moves prospective jurors to believe the defendant is guilty. It is also controversial because death qualification coincidently results in a pro-death juries due to the biases formed during the process.

Literature Review

Capital trials are unlike other trials in that they go through a bifurcated process. The first phase is the guilt proceeding in which the prosecutor and defense attorney present inculpatory and exculpatory evidence. The jury then decides to not convict and the case is dropped or the defendant is convicted and they move on to the sentencing phase. In this phase, mitigating and aggravating factors are presented and the jury decides whether to sentence the defendant to death. Prior to both trial phases, a process occurs that involves asking the potential jurors questions about their beliefs on capital punishment, which is referred to as death qualification (Butler & Moran, 2002). Death qualification is used by the prosecuting and defense attorney to identify which potential jurors would be impartial in determining the appropriate penalty (Sandys & McClelland, 2003).
The U.S. Supreme Court has set minimum standards that capital jurors must meet (Sandys & McClelland, 2003). There have been three specific standards formed thanks to Supreme Court cases. Under the first standard, commonly known as the "pre-Witherspoon standard," potential jurors were asked if they had any conscientious scruples against the death penalty (Witherspoon v. Illinois, 1968). Prospective jurors who answered in the affirmative were excused. This standard yielded capital jurors who were disproportionately supportive of the death penalty.

In Witherspoon v. Illinois (1968), the Supreme Court found that this standard violated the Sixth and Fourteenth Amendments. Juries were not comprised of impartial individuals. Rather, capital jurors were predominately pro-death. The Court decided that a potential juror could not be excused because of their conscientious scruples against the death penalty. The standard claimed that a potential juror must make it "unmistakably clear" that they would "automatically vote against" the death penalty before they can be excused from the jury pool (Witherspoon v. Illinois, 1968). Ever since this case was decided, any juror who was unable or unwilling to consider the merits of a death sentence was dismissed from capital cases (Sandys & Trahan, 2008).

The third standard was established in Wainwright v. Witt (1985). The decision in this case caused a stir because it did differ from the Witherspoon decision. The Court decided that a potential juror must be excluded if their view on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath (Wainwright v. Witt, 1985). Therefore, unlike Witherspoon, now an increased range of potential jurors may be dismissed. This standard established that attorneys could deselect
Impressions Capital Jurors Form 4

Impressions Capital Jurors Form 4

ejurors who may be “automatic death penalty (ADPs) voters,” meaning they will vote for a death sentence every time they find a defendant guilty (Wainwright v. Witt, 1985). Also, the Witt case gave judges more latitude in evaluating challenges for cause (Sandys & McClelland, 2003). However, many studies found this standard ineffective (e.g., Dillehay, 1996; Butler & Moran, 2002). These studies found that the standard failed to determine who could perform the duties of a juror and that it yielded capital jurors who were predisposed to favor death sentences. However, the Witt standard “has remained the general standard for death qualification” (Sandys & McClelland, 2003: 399).

Death qualification reached a new level when the Lockhart v. McCree (1986) case came before the U.S. Supreme Court. The case focused on whether potential jurors can be deselected if their opposition to the death penalty was so strong that it interferes with being able to consider other punishment options (Lockhart v. McCree, 1986). Studies were presented to the Court which showed that death qualified jurors were more conviction-prone than those deselected for cause. The Supreme Court found many of these studies to be invalid and full of flaws (Sandys & McClelland, 2003). The Court then questioned what it meant to be impartial. They concluded “that an impartial jury consists of nothing more than jurors who will conscientiously apply the law and find the facts” (Sandys & McClelland, 2003:398). This disqualified the standard for Witherspoon. Since then, the Court has decided no other conviction-prone case (Sandys & McClelland, 2003).

Jury selection is a long, diligent, and selective process as expected since the jury plays such a vital role in capital trials when deciding to sentence defendants to life or death (Butler & Moran, 2002). The jury selection process was declared constitutional in the case of Lockhart v.
Impressions Capital Jurors Form 5

McCree (1986). It is important to note that the jury is never actually selected, some members are deselected and those that are left make up the jury. Through their questions, the attorneys find which potential jurors are impartial to the death penalty. The jurors must be able to vote for life or death sentence as well as be able to follow the law in determining which is the appropriate sentence for the case at hand (Sandys & McClelland, 2003). The jury pool is to consist of those who can vote for either a death or life sentence depending on the aggravating and mitigating factors presented at trial.

The Morgan v. Illinois (1992) case presented a clearer stance on what makes a qualified juror. The focus of this case was whether potential jurors can be questioned about their ability to return a life sentence (Sandys & Trahan, 2008). The Court decided that any prospective juror who is unable to consider a sentence of less than death could be dismissed with challenge for cause (Morgan v. Illinois, 1992). Jurors who are always pro-death have already formed an opinion and are unable or unwilling to give meaning consideration to a life sentence; therefore any aggravating or mitigating factors are irrelevant to this juror (Sandys & Trahan, 2008).

In Lockett v. Ohio (1978), it was ruled that aggravating factors are “limited by statute” and mitigating factors are not. Aggravating factors are when the prosecutor shows that the crime committed is deserving of a death sentence. The prosecutor uses emotion and facts to show how the crime the defendant was convicted of was extraordinarily depraved. Mitigating factors are when the defense attorney shows how the defendant is deserving of life. The defense tries to show that the defendant is less culpable and that there is an explanation for the crime committed.

The judge must approve the dismissals of each potential juror challenged for cause. When one of the attorneys finds a potential juror unable to be impartial they ask the judge to excuse
them. The judge then decides to accept or deny the challenge. The Sixth Amendment gives all defendants the right to be tried by an impartial jury; therefore, the challenges for cause are limitless. From those who survived the questioning and were found to be impartial, the attorneys take a further step to deselect more potential jurors. The attorneys deselect based on who they think will be biased against them, even though they were found to be impartial. This is referred to as peremptory challenges. These exclusions are limited, but they do not require the judge’s approval. The only restrictions are that the attorneys do not dismiss any potential juror based on gender or race (Sandys & McClelland, 2003).

Examining what actually makes an impartial juror is important in death qualification. What does it mean to be an automatic death penalty voter or just in favor of capital punishment? What is required to become a qualified juror? As previously mentioned, Witt has been the guideline for death qualification. There are issues with making sure a juror understands what is being asked of them. Some may “not understand that they only time they would be asked to consider voting for a sentence of death is if they were convinced that the person was guilty of the murder plus the aggravating circumstances” (Sandys & McClelland, 2003: 400). The Court formed an opinion on this matter and stated that, “a juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating circumstances as the instructions require him to do” (Sandys & McClelland, 2003: 401). Therefore, an automatic death penalty voter is one who finds mitigating circumstances irrelevant (Sandys & McClelland, 2003). Due to such ambiguity in the process the jury has been looked at as not only the solution, but also the problem to the arbitrariness in capital sentencing (Sandys & McClelland, 2003).
Despite the three minimum standards that were established, issues regarding the impartiality of capital juries continued. In Hovey v. Superior Court of Alameda County (1980), the relationship between death qualification and conviction-proneness was examined. The petitioner claimed that the Witherspoon standard was ineffective and that potential jurors who would automatically reject a death sentence during the penalty phase cannot be dismissed from sitting in on the guilt phase if they can be impartial (Sandys & McClelland, 2003). Studies were presented to the court that demonstrated a relationship between death qualification and conviction-proneness. The studies found that those dismissed by the Witherspoon standard were significantly less conviction-prone than death qualified subjects. Findings showed that 34.5% of the dismissed jurors, compared to the 13.7% of the death-qualified jurors, voted not guilty. Furthermore, the studies showed that juries consisting of both dismissed and death qualified jurors were “more critical in their evaluations of the witnesses” (Cowan, Thompson, & Ellsworth, 1984).

Research further suggests that exposure to death qualification voir dire results in a bias against the defendant (Haney, 1984b: 145). The Haney study consisted of a control and an experimental group that watched a simulated voir dire. This study revealed that potential jurors in the experimental group were more likely to be convinced that the defendant was guilty of the crime compared to the control group (Haney, 1984b: 149). The Haney study gained further support with Allen at al.’s (1998) meta-analysis. This study looked at the relationship between potential jurors’ views about capital punishment and how likely they were to convict or evaluate a criminal legal proceeding (Allen, Mabry, & McKelton, 1998). The results showed that jurors
who favored the death penalty were more likely to favor conviction. Therefore, the use of death qualification increases jurors' predisposition toward guilt and death.

The Supreme Court has struggled to ensure that defendants' 6th Amendment rights are not violated and they receive a fair trial. However, the Supreme Court's attempt to establish laws to prevent bias views in death qualification has been unsuccessful. Research has shown that death qualification has a biasing effect on jurors’ evaluations of guilt and sentence. However, we know little about the impressions attorneys make on the jury. This study will investigate the influences that attorneys have on jurors during voir dire.

Methods

The Capital Jury Project (CJP) was a national study of former capital jurors. The study was designed to measure how jurors made their life or death sentencing decisions. The three objectives were “to examine and systematically describe jurors' exercise of capital sentencing discretion, to identify the sources and assess the extent of arbitrariness in jurors’ exercise of capital discretion, and to assess the efficacy of the principal forms of capital statutes in controlling arbitrariness in capital sentencing” (Bowers, 1995:1077). There were 1,198 jurors interviewed through this project. All jurors that were selected for interviews were guaranteed confidentiality and offered twenty dollars as an incentive for their participation. The interviews lasted 3 to 4 hours on average. These jurors served on 353 different capital trials across 14 states. The study incorporated a three-stage sampling design. First, states that represented the principal variations in guided discretion capital statutes were chosen. Then, within each state, full capital trials since 1988 were selected that resulted in life and death sentences. Lastly, a minimum of four randomly selected jurors from each case were interviewed (Bowers, 1995).
During the interviews, jurors were asked about various aspects of the pre and post-trial procedures as well as their attitudes towards the legal and punishment system. The interviews were designed to “chronicle the jurors’ experiences and thinking over the course of the trial, to identify the points at which various influences (including aspects of arbitrariness) may come into play, and to reveal the ways in which jurors reach their sentencing decisions” (Bowers, 1995; 1082). A 50-page instrument was used to conduct the interviews (Bowers, 1995).

The current study includes a subsample of 40 CJP jurors. These jurors were asked “during jury selection, who made the most favorable and who made the least favorable impression on you?” Jurors indicated whether they formed more favorable impressions of the prosecutor, defense, or neither. The jurors’ responses to this item served as the independent variable and the sentence outcome as the dependent variable. The chi-square is used to measure the relationship between attorney impressions and the sentencing outcomes.

During the voir dire process, it is plausible that jurors will begin to form unequal impressions of the prosecutors or the defense attorneys. However, do these impressions ultimately affect the way jurors vote? Studies show that juries are pro-prosecution and there is a bias present; therefore, it is hypothesized that during death qualification the juries that form favorable impressions of the prosecutors will likely vote in favor of death and those more favorable of defense attorneys will likely vote in favor of life.

Results

The results show that the jurors favored the prosecutor. Of the 40 jurors included in the sample, 28 indicated that the prosecutor made the most favorable impressions. Conversely, zero jurors indicated that they favored the defense attorney. Ten jurors indicated neither made more
Impressions Capital Jurors Form 10

favorable impressions. There were 2 inconclusive results. The data on sentencing outcomes revealed that 25 ultimately returned a death sentence and 15 administered life. The chi-square results show that the relationship between attorney impressions and sentencing outcomes are not significant ($x^2=510, p=.475$).

Discussion and Conclusion

The findings shows that prosecutors garner much more favorable impressions during voir dire than defense attorneys. The findings suggest that bias is present since only 10 of 38 total jurors were neutral in their assessments of the attorneys and no one favored the defense attorney. These findings suggest that death qualification fails to yield impartial capital jurors.

The results of the chi-square suggest that the impressions jurors formed of the attorneys during death qualification are unrelated to sentencing outcomes. It is plausible that various other stimuli jurors came in contact with throughout the trial exerted a more powerful influence on their sentencing predilections.

The current study suffers from several limitations. First, the study had a relatively small sample size, and of those only 38 jurors provided valid data. This is not a sufficient sample for generalizing about the experiences of jurors during death qualification. The current study also did not control for possible spurious variables. Such variables could have been individual attributes such as the juror’s race, sex, gender, or political views. Also evidentiary controls such as the quality and quantity of evidence presented at the guilt phase and the aggravating and mitigating factors presented at the sentencing phase may have influenced the jurors’ impressions of the attorneys and their sentencing verdict.

It is clear that more research needs to be done on the impressions capital jurors form of
Impressions Capital Jurors Form 11

attorneys during death qualification and how those impressions influence sentencing outcomes. Future research should control for, or explore the interactions of, demographic and attitudinal and ideological factors. Further, future research must account for the evidence presented to jurors throughout the guilt and sentencing phases.

Our legal system is ideally based on fairness and justice, but research suggests otherwise. It can be concluded that there is no way to guarantee that a juror who made it through the death qualification will make fair and impartial decisions in capital cases. Evidence suggests that jurors are not only predisposed to favor the prosecution at trial, but also the prosecutor themselves.


Hovey v. Superior Court, 616 P.2d 1301 (Cal.) (1980).


