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COMPETENCY FOR EXECUTION: FACTORS AFFECTING THE JUDGEMENT  
OF FORENSIC PSYCHOLOGISTS

By

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Bachelor of Science, University of North Dakota, 1987

Master of Arts, University of North Dakota, 1989

A Dissertation

Submitted to the Graduate Faculty

of the

University of North Dakota

in partial fulfillment of the requirements

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This dissertation, submitted by Sharon R. Brown in partial fulfillment of the requirements for the Degree of Doctor of Philosophy from the University of North Dakota, has been read by the Faculty Advisory Committee under whom the work has been done and is hereby approved.

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Signature Sharon R. Brown

Date June 10, 1991

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## ABSTRACT

The determination of a death-row inmate's competency to be executed is a compelling ethical issue for mental health professionals. It has been suggested that forensic psychologists who offer such services to the courts may tend to approach the problem of determining competency by diverse and unstandardized methods (Grison, 1986). Heilbrun (1986) has questioned the effect of the psychologist's potential death penalty bias on the outcome of the evaluation process.

Death penalty attitudes have a demonstrated effect on the decision-making processes of capital jurors who are death-qualified, (willing to impose the death penalty under some circumstances) or excludable (unwilling to consider the death penalty under any circumstances) (Fitzgerald & Ellsworth, 1984).

The present study surveyed Ph.D. clinical psychologists specializing in forensic services to the courts to determine which characteristics associated with the inmate (mitigating factors and behavior on death-row); the capital crime (aggravating factors); or the evaluating psychologist (death-qualified or excludable) might be related to the final decision of the inmate's competency to be executed.



Results indicated that death-qualified but not excludable psychologists were significantly more likely to assess an inmate as competent for execution when the inmate had committed a premeditated or a heinous crime or when the inmate had been diagnosed as a sociopath. The competency decisions of the death-qualified psychologists were not affected by the presence of any mitigating factors, whereas the excludable psychologists appeared more likely than the death-qualified to consider mitigating circumstances, although the relationship did not achieve statistical significance.

The results were interpreted within Wrightsman's (1991) assertion that the "first dilemma" between law and psychology is belief in the protection of the rights of the accused versus protection of society at large. The sensitivity of death-qualified psychologists to aggravating factors may tend to indicate that they might align themselves on the side of protecting society at large while the excludable psychologists who are so strongly opposed to the death penalty that they would refuse to consider imposing it even under extraordinary circumstances of crime might tend to align themselves with protection of the rights of the accused.

## INTRODUCTION

For approximately a decade, from 1967 to 1976, the United States experienced a moratorium on capital punishment. When state statutes were revised in 1976 to make the death penalty "discretionary, after consideration of aggravating and mitigating circumstances" rather than mandatory for specified crimes, the United States Supreme Court held that such statutes no longer violated the Eighth Amendment's protection against cruel and unusual punishment (Gregg v. Georgia, 1976). With this intended safeguard in place, state after state reenacted death penalty laws that were eventually ruled constitutional, resulting in a rapidly increasing number of inmates under death sentence across the United States (Lewis, Pincus, Feldman, Jackson & Bard, 1986). This number grew by almost 200 during 1984 (Bureau of Justice Statistics Bulletin, 1985); totaled 1,714 as of May 1, 1986 (Ward, 1986), and the most recent estimate indicates that over 1800 men and women currently reside in United States prisons awaiting execution (Valeriani, 1987). Some of these individuals have lived under sentence of death for more than a decade while exhausting legal avenues of appeal. It has been widely noted that confinement on death row causes extreme physical and psychological stress (Gallemore & Panton, 1972; Bluestone & McGahee, 1962). For



example, it is estimated that half of the more than 200 condemned prisoners in Florida become intermittently psychotic (Sherill, 1984). Recently, the states have begun to hear pleas that prolonged confinement has rendered many inmates incompetent to be executed.

Ford v. Wainright, (1986) affirms the right of the condemned to be spared execution while mentally incompetent, and validates state laws requiring psychological/psychiatric evaluation and treatment of capital inmates who plead that they have become insane while awaiting execution (Mossman, 1987). With the rapidly increasing population under death sentence, the issue of competency for execution is likely to be raised with increasing frequency in the coming years. This creates some compelling ethical issues for the mental health professions.

The involvement of mental health professionals in the death penalty process has sparked a great deal of controversy concerning what ethical role, if any, they might have in these procedures. Two basic polarized positions have emerged (Appelbaum, 1986; Radelet & Barnard, 1986). The proinvolvement position regards such assessments as inevitable; pointing out that capital punishment is presently a social and political reality in this country. They make the case that assessments should be performed by psychiatrists and psychologists who are well-trained, experienced, highly skilled, and willing to do a thorough

evaluation while maintaining a sharp awareness of the need for legally and ethically relevant protection for the individual being assessed (Appelbaum, 1986). The consequence of abstaining from such evaluations, it is argued, is that the evaluations will then be performed by those who are less qualified and less likely to do a balanced job. In contrast, the anti-involvement position holds that involvement by clinicians in such assessments places them too close to the administration of punishment and threatens to compromise the public's perception of their primary treatment role (Radelet & Barnard, 1986). In view of the traditional commitment of mental health professionals to the practice of healing, some commentators have concluded that psychologists and psychiatrists who render such services are exceeding the scope of ethical practice. To date, however, there is nothing in the formal ethical codes of either profession to prevent psychologists and psychiatrists from participating in decision-making in this life-and death context.

The ethical debate surrounding the execution of an insane convicted capital defendant however, has not been limited to the medical/mental health professions. Since medieval times, the Anglo-American law has forbidden the execution of individuals "presenting insane" (Ewing, 1987). While the rationale for this ancient rule of law is somewhat obscure, the justifications cited by the courts and



commentators for excluding the incompetent from execution clearly appear to concern ethical issues in a broad context.

#### Justifications for Competency for Execution

The exclusion of the incompetent from execution is based in common law dating back to the 13th century. Among the reasons originally cited for this exclusion were:

a) religious (executing an incompetent prisoner did not allow him to put his spiritual affairs in order); b) humane (the notion that madness is punishment enough); and c) societal (executing the severely disturbed individual reflected badly upon society) (Broderick, 1979; Larkin, 1980).

In more recent times, the notion of retribution as justification for execution has been impugned where the incompetent inmate is concerned, since most states have ruled that retribution cannot be fully achieved when a convicted criminal is unaware of the relationship between his crime and his punishment (Ward, 1986). Additionally, the potential inability of the incompetent prisoner to provide information to or otherwise assist counsel in ongoing appeals has been cited as an exclusionary argument, based on the rationale that executions should not occur until all possible appeals have been exhausted (Heilbrun, 1987). A "psychological" exclusion has been adopted by many states as well, and is based on the argument that individuals have the right to progress through the various



"stages of death" as described by Kubler-Ross in 1969. When the convicted inmate cannot conceptually prepare for death, it is argued, the result is an inhumane fear without understanding (Heilbrun, 1987). As a result of considering the preceding arguments, the United States Supreme Court has recently ruled that execution of the incompetent would violate the Eighth Amendment ban on cruel and unusual punishment (Ford v. Wainwright, 1986).

#### The Impact of Ford v. Wainwright, (1986)

The procedural problems in determining competency for execution have been significant. The United States Supreme Court, in Ford v. Wainwright, (1986) ruled that the due process protections provided by Florida's procedure for determining competency for execution were inadequate.

Alvin Ford was convicted of murder and sentenced to death in 1974. Over the course of 8 years on Florida's death row, Ford became increasingly more bizarre in his ideations and behavior, resulting in his attorney formally raising the issue of his competency to be executed in 1983 (Heilbrun, 1987). The governor appointed the "commission of three psychiatrists" that was required under the state statute to assess Ford's competency. A joint interview one-half hour in length was conducted by the psychiatrists. They were provided with a portion of the trial transcript, a medical history, and the results of two previous psychiatric evaluations. Based on this limited data, two of the three

examining psychiatrists concluded that Ford was psychotic. The third believed that he was "grossly exaggerating his symptoms" but concurred that Ford was competent to be executed. Three separate reports, one from each examiner, regarding the findings and conclusions were submitted to the governor, who arbitrarily ruled that Ford was indeed competent and set in progress the motion for execution without any further evidence. Ford was not granted benefit of a hearing to challenge the findings or the basis of the governor's conclusion (Heilbrun, 1987). It was this procedure that the United States Supreme Court determined did not adequately protect the prisoner's right to due process guaranteed by the Fourteenth Amendment. Other inadequacies were cited as well, most notably, the nature of the mental health assessments and the selection process of the examiners who administer them (Heilbrun, 1987).

Regarding the former issue, the nature of mental competency exams, clear delineation of the questions examiners should be addressing to determine competency was not established by Ford v. Wainright. Recently, however, some investigators have given to the challenge and Grisso (1986) has proposed a model that delineates the following questions as essential for clarification if the competency process is ever to achieve a standardized format: 1) What functional abilities are necessary to be competent for execution? 2) What is the situation in which competency



must be demonstrated, i.e., does the relevant legal task involve only the act of execution or should it also include assisting counsel in post-sentence appeals? 3) What is the nature of the relationship between the observed deficits and the client's legal abilities? 4) What is the interaction between the client's particular abilities and specific demands of the situation? 5) What is the determination by the legal decision-maker regarding the person-situation incongruence and is it sufficient to warrant a finding of incompetence? 6) How will the authorized decision-maker's findings impact on the client? The potential utility of such a model has directed attention to how the current legal standard's among states fit into its' framework. A survey of statutes and procedures on competency for execution in the 41 states permitting capital punishment revealed that 23 have statutory proscriptions against executing the incompetent, of these 23, two require the inmate "understand", another four have judicially adopted the common law proscriptions, i.e., that the inmate "understand and assist", four have recently repealed statutes, leaving case law supporting the common law rule, and six more have general statutes requiring the transfer of mentally ill inmates to a mental hospital if they become "insane", "incompetent", or "unfit." Two states have a death penalty but no law relating to competency for execution, and the final two remain "undetermined" (Ward, 1986). Clearly,

there is little existing consensus between states regarding the assessment of competency for execution. While the Ford decision did not provide an explicit standard on which questions of competency should be based, minimally, it has served to stimulate research into the formulation of such standards, such as Grisso's (1986) model.

Regardless of the standard used, the competency for execution question often falls into the hands of mental health professionals. The majority of state procedures require that psychiatrists and other mental health experts such as physicians and psychologists examine the inmate and make a determination as to competency for execution. These procedural codes, however, contain varying degrees of specificity regarding the thoroughness of the examination, their adversarial character, the independence of the evaluators, and whether the findings should be declared in writing. In four of the 16 states providing for psychiatric/psychological examinations, the examining body is the ultimate judge of competence (Ward, 1986). In the remaining 12 states, the ultimate decision-maker is the court, the governor, the governor and appointed council, or a jury (Ward, 1986). In two states the inmate is examined by an undefined commission. In three states the inmate is evaluated by state hospital officials who make the final determination, and the final three states have statutory provisions that the court will evaluate and decide the issue



(Ward, 1986). The past decade has witnessed the growing usage of mental health testimony and/or psychological evaluations in the courtroom. One recent report, for example, estimated that 25,000 evaluations of competency to stand trial were conducted by professionals in a single year in the United States (Steadman, Monahan, Hartstone, Davis, & Robbins, 1982). It seems reasonable to expect that mental health examiners will play an ever-increasing role in competency issues.

Unfortunately, investigators have yet to respond to the latter issue raised by the Ford decision: consideration of the selection process and independence of examiners who administer such evaluations. Certain empirical questions that merit attention have been raised by Heilbrun (1987), however. For example, Heilbrun points out that during the selection process, professionals who are "defense-oriented" may be excluded from consideration. Furthermore, professionals who perform competency evaluations may foster strong biases either in favor of or against capital punishment. The psychological literature is replete with studies indicating that death penalty attitudes do not exist in a vacuum, but are associated with a whole cluster of attitudes, experiences, and knowledge (Cowan, Thompson, & Ellsworth, 1984). Such attitudes, it appears, are a symptom of a more general cluster of social/political attitudes. One result of these robust findings has been the

constitutional guarantee that the sentiments of jurors regarding the death penalty shall play a central role in determining their competency to serve in capital cases (Witherspoon v. Illinois; Fitzgerald & Ellsworth, 1984). No such guarantees exist, however, that the mental health professional rendering expert testimony during trial proceedings or evaluating competency for execution will not harbor the same attitudes and biases that disqualify jurors from sitting in capital cases. A large body of literature has been generated to investigate the attitudes and biases of potential jurors. Yet, no study to date has attempted to measure or generalize these findings to a population with an equally substantial, if not greater impact on the outcome of capital cases.

Mental health professionals are increasingly being asked to provide expert testimony and psychological evaluations regarding the existence of aggravating and mitigating circumstances in capital offenses, as well as assessing the death-row inmate for competency for execution. Judges place a high value on the findings from these evaluations (Nicholson, Briggs & Robertson, 1988). Indeed, research suggests that the courts rarely disagree with the competency recommendations made by members of the mental health professions (Reich & Tookey, 1986; Roesch & Golding, 1978). In view of the emphasis given to mental health evaluations in court proceedings and the consequent impact



of those decisions on the lives of defendants, there is a pressing need for research to identify the relevant attitudinal variables which may influence the opinions, testimony, evaluations, and subsequent recommendations of mental health professionals. Given the absence of literature in this area, it may be prudent to extrapolate from the body of research developed to examine relevant attitudinal variables and biases in potential jurors.

#### The Impact of Death Penalty Attitudes: Death Qualification

Theoretically and empirically, attitudes of juries toward the death penalty have consistently shown powerful relationships with other crime control attitudes, and play an important role in defining people's ideological self-image in regard to their stand on criminal justice (Vidmar & Ellsworth, 1974; Ellsworth & Ross, 1983; Smith, 1976). These attitudes may influence either or both phases of the capital murder trial.

There are two stages in a death penalty proceeding. The first stage is the determination of guilt or innocence, and resembles any other criminal trial (Fitzgerald & Ellsworth, 1984). If this process results in the defendant's conviction of a potentially capital murder, then in most states the jury must deliberate again, to decide between life imprisonment and the death penalty (Woodson v. North Carolina, 1976). One consequence of this special arrangement is that death penalty trials differ from other

criminal trials in the questions asked during "voir dire"-- the examination of prospective jurors to determine their suitability for a particular case. Each member of a capital jury experiences, through voir dire questioning the process of "death qualification." Death qualification represents an extended discussion of penalty at the outset of a criminal trial, before any evidence has been presented (Haney, 1984). In essence, prospective jurors are asked to reflect upon and to predict their own behavior during a possible penalty phase of the trial. They are asked specifically whether they are so opposed to the death penalty that they cannot consider imposing it in any case. Prospective jurors who do express such an opinion are dismissed by the court and excluded from participation as jurors in that case. Thus, jurors who ultimately are seated in a capital case are deemed "death-qualified", i.e., willing to consider and impose the death penalty under some circumstances. Furthermore, they have been repeatedly exposed to the death penalty questioning of themselves and others, and typically have witnessed the dismissal of several prospective jurors on the basis of their death penalty attitudes (Haney, 1984). Critics have contended that this procedure creates juries that are more likely than ordinary criminal juries to favor the prosecution's point of view. Furthermore, they contend, these "death-qualified" juries are unrepresentative of the communities from which they are drawn (Fitzgerald &



Ellsworth, 1984). Subsequently, the first test-case of death-qualified jury bias was presented to the United States Supreme Court in Witherspoon v. Illinois, (1968).

The Impact of Witherspoon v. Illinois, (1968)

The defendant, Mr. William C. Witherspoon, contended that the jury that sentenced him to death had been biased in favor of conviction prior to sentencing (Gross, 1984). He argued that a juror who is undisturbed by sentencing a man to death is the kind of juror who would also tend to ignore the defendant's presumption of innocence and accept the prosecution's argument and reach a verdict of guilty. Witherspoon presented drafts of three unpublished empirical studies to support his argument. Each study suggested that those who favor the death penalty are more likely to vote for conviction during the determination of verdict phase of the two-phase capital offense trial. The Supreme Court, however, disagreed with Witherspoon's contention. They believed that the evidence presented by the defense was too fragmented and tentative to establish a relationship between death penalty attitude and conviction-proneness during the determination of guilt. Surprisingly, with no specific empirical backing, the same court readily concluded that Witherspoon's rights had indeed been violated; but in the determination of penalty phase. By excluding all opponents of the death penalty, they argued, the state had "crossed the line of neutrality" and created "a tribunal organized to

return a verdict of death." The Supreme Court's decision did not specifically rule on the constitutionality of the death-qualification process; rather it limited its usage. As a result, a standardized set of questions have emerged known as "Witherspoon Criteria" that is commonly employed during the voir dire procedure today (Gross, 1984). In accordance with the Supreme Court ruling, this criteria is designed to eliminate from capital juries only those jurors who make it unmistakably clear that: a) they would automatically vote against the imposition of capital punishment without regard to any evidence that might be presented during the trial; and, b) that their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's guilt (Gross, 1984). The Witherspoon decision was a landmark case in that the Supreme Court suggested that the conviction-proneness of death-qualified juries was an open empirical question, susceptible to scientific resolution. Moreover, the Justices concluded "a defendant convicted by such a jury in some future case might still attempt to establish that the jury was less than neutral with respect to guilt. If he were to succeed in that effort, the question would then arise whether the State's interest in submitting the penalty issue to a jury capable of imposing capital punishment may be vindicated at the expense of the defendant's interest in a completely fair determination of guilt or innocence"



(Bersoff, 1987). It is very rare for the Supreme Court to leave open an issue in this way, and rarer still for the Court to issue such an invitation to social scientists to develop data to help it in resolving a crucial point of constitutional law. Investigators swiftly responded to this challenge, and by 1986 a far larger body of data and studies on the subject was available. The scientific soundness of three decades of social science research that indicated that the absence of jurors with moral or religious scruples against imposing the death penalty created a jury that was pro-prosecution and therefore conviction-prone was at issue when the Supreme Court ruled on Lockhart v. McCree, (1986).

#### The Impact of Lockhart v. McCree, (1986)

McCree, the defendant in the base, was convicted of capital murder in Arkansas in 1978 and sentenced to life without parole (Bersoff, 1987). Because the state originally sought the death penalty, eight prospective jurors were excluded from McCree's jury because they revealed that they had scruples preventing them from imposing the death penalty under any circumstances. The death-qualified jury convicted him, but at the penalty state of the trial the prosecution changed its mind and sought only the life sentence it obtained. After McCree's conviction was affirmed in the Arkansas Supreme Court, he sought a writ of habeas corpus from the federal district court. His argument was that social science data now

provided that the death-qualified jury that convicted him was "conviction-prone," in violation of his constitutional rights. He called three expert witnesses in his behalf, two of whom were psychologists. The district court, and then the Court of Appeals, relied extensively on their testimony as well as on numerous published studies regarding death-qualified juries, many by psychologists. The Court of Appeals concluded that "the consistency among all of the studies over a wide range of survey methods and respondents is impressive" and invited the Supreme Court to review the case (Bersoff, 1987). The petition was granted. The American Psychological Association (APA), after a strong recommendation by its Committee on Legal Issues and consultation with social scientists involved in the issues, decided to enter the case as a Friend of the Court and prepare a brief in which APA would fairly, fully, and objectively inform the Court concerning the three decades of research on the prosecution-proneness of death-qualified juries.

In its brief APA abstracted and critiqued the methodology and major empirical findings of the relevant research on the conviction proneness of death-qualified jurors. Two major arguments were asserted (Bersoff, 1987). In the first argument, APA stated that the social science data presented by the defendant demonstrated that death-qualified juries are more pro-prosecution and



unrepresentative than typical criminal juries and that death-qualification impairs jury functioning. The second argument asserted that contrary to criticism, the social science data presented satisfied applicable criteria for evaluating the soundness of scientific research. It rebutted arguments condemning the use of statistical significance, provided evidence that the data were not limited to simulation studies, answered the claim that the data were suspect because researchers had used different methodologies to examine their hypotheses, and responded to the claim that the positive results were mainly the result of experimenter bias. APA concluded that the research in question was methodologically sound, reliable, and useful in adjudicating the central issues in the case (Bersoff, 1987).

There were two legal issues before the court. The first was whether the exclusion during the guilt/innocence phase, of jurors, who are adamantly opposed to the death penalty but who could be fair and impartial as to guilt in the latter phase of the capital trial creates a less-than-neutral, prosecution-prone jury. Were this the case, then the defendant would be denied due process, in violation of the Sixth and Fourteenth Amendments. The second issue was whether the exclusion of these same jurors created a jury that was unrepresentative of the community and less than properly diverse, violating the Sixth Amendment's requirement that juries represent a fair cross-section of

the community. The Supreme Court refused to hold for the defendant on either claim. The Court rejected as "illogical and hopelessly impractical" the defendant's claim that juries that exclude those who are adamantly opposed to the death penalty violate due process because the resulting juries are less than neutral with respect to guilt and favor the prosecution. An impartial jury, the Court said, "consists of nothing more than jurors who will conscientiously apply the law and find the facts." The defendant had conceded that each of the death-qualified jurors that convicted him had met that criteria. Regarding the latter claim of a fair cross-section, the Court ruled that the Sixth Amendment requirement of a fair cross-section of the community does not preclude exclusion of groups who are "defined solely in terms of shared attitudes." Only the exclusion of groups defined by immutable characteristics such as race or gender, and thus rejected on grounds "completely unrelated to the ability of members of the group to serve as jurors in a particular case gives rise to an appearance of unfairness" (Bersoff, 1987).

APA was concerned that the Supreme Court would use this case as a vehicle for condemning social science evidence in judicial decision making. While that did not occur, the majority did find "several serious flaws" in the social science evidence introduced. Of the 15 studies cited by the defendant and relied on by the lower courts, the majority



found that only six "even purported to measure the potential effects on the guilt-innocence determination of the removal from the jury of those adamantly opposed to the death penalty. "It called eight of the nine remaining studies "only marginally relevant" to the constitutional questions are issue, because they dealt solely with "generalized attitudes and beliefs about the death penalty and other aspects of the criminal justice system." Of the 6 studies perceived by the Court as relevant, three had been introduced in 1968 in Witherspoon v. Illinois and rejected as "too tentative and fragmentary" at that time and, according to the Court, remained so. The Court complained that the three new studies did not use actual juries deliberating in actual capital cases. Finally, the majority indicated that only one of the six relevant studies included jurors who could not be fair and impartial as to guilt because of their adamant opposition to the death penalty, calling the rest "fatally flawed" as a result. At the end of its critique of the social science data, the Court said, "We will assume for purposes of this opinion that the studies are both methodologically valid and adequate to establish that death-qualification in fact produces juries somewhat more conviction-prone than non-death-qualified juries. We hold, nonetheless, that the Constitution does not prohibit the states from death-qualifying juries in capital cases" (Bersoff, 1987).

Death Qualification and Jury Attitudes: A Review of the Literature

Critics believe that the death-qualification process creates juries that are more likely than ordinary criminal juries to favor the prosecution. Fitzgerald and Ellsworth tested this hypothesis in 1984. A survey was administered to persons eligible for jury duty in Alameda County, California. The respondents were contacted by phone using random digit ceiling. An interview was then conducted on these respondents for the purpose of achieving a reliable estimate of the size of the group whose opposition to the death penalty would exclude them from capital juries under Witherspoon Criteria, and to assess the effects of their exclusion on the attitudes and demographic characteristics of prospective jurors at the start of a capital trial. Specifically, it was hypothesized that Witherspoon-excludable jurors would be more likely to support due-process values, while "death-qualified" jurors would be more likely to emphasize crime control values. Due process values emphasize the fallibility of the criminal justice system in apprehending, trying, and convicting lawbreakers. Due-process also emphasizes the rights of the accused individual and stresses the fact that a defendant is innocent until proven guilty. Those who adhere to crime control values, on the other hand, believe that the most important function of the criminal justice system is



repressing crime. They believe that laws require strict enforcement, and that the criminal system should deal swiftly and efficiently with large numbers of criminal suspects. They contend that the effectiveness of the system hinges on the efficiency of the police and prosecutors. To them, the presumption of innocence is seen as an obstacle to the punishment of those assumed to be guilty (Fitzgerald & Ellsworth, 1984). Furthermore, these authors speculated that excludable jurors would have less punitive attitudes than "death-qualified" jurors, and that they would be more open to certain criminal defenses.

To classify the respondents in the study as death-qualified or excludable, three questions were used to determine attitude toward the death penalty and Witherspoon eligibility. the first question asked respondents to rank themselves on a four-point continuum, from strongly opposed to strongly favoring the death penalty. The next question required the respondents to assume that they had been called as possible jurors for a case in which the prosecution was asking for the death sentence. A question was also asked which would indicate which respondents would be classified as disqualified because they could not be fair and impartial in deciding guilt because of his/her attitude toward the death penalty. These jurors are known as "nullifiers" and were eliminated from the sample before the death-qualified and excludable jurors were compared. Thus, the survey

consisted of an examination of the population of jurors who could make up their minds about the guilt of a defendant in a fair and impartial manner. Within this population, jurors who would be willing to consider imposing the death penalty were compared to those who would not.

Likert-format items were designed to measure due process and crime control beliefs by testing specific attitudes toward the right to protection from self-incrimination, the presumption of innocence, the burden of proof, the exclusion of inadmissible evidence, and prejudicial pretrial publicity. Measures were also obtained to indicate the respondent's punitiveness, willingness to consider the insanity defense, and feelings about the opposing counsel.

Demographic data was also collected, in order to determine whether or not death qualification disproportionately eliminates minorities and other distinct groups from capital cases.

Results indicated that 17.2% of the total 717 fair and impartial jurors were considered excludable under Witherspoon. Furthermore, the excludable respondents were more likely than the death-qualified respondents to agree that it is better for society to let some guilty defendants go free than to risk convicting an innocent person. Death-qualified respondents were more punitive than excludable respondents and were more likely to favor harsh punishment



in reducing crime. The death-qualified were also more likely to believe in strict enforcement of all laws, no matter what the consequences.

Based on other survey questions, death-qualified respondents were significantly more likely to trust district attorneys and to distrust defense attorneys than were the excludable respondents. On the question of insanity; death-qualified subjects consistently reported that it was a loophole designed to allow the guilty to go free.

Demographic data revealed that blacks were more likely to be excluded under Witherspoon than were any other racial group. Women were excluded more often than men, and both the less educated and the well educated were excluded more often than respondents having some high school education or a high school diploma.

While Fitzgerald and Ellsworth's 1984 study indicated that jury attitudes have the potential to predict verdicts in capital cases, the mystery of why this was true was not unraveled. Consequently, Thompson, Cowan, Ellsworth and Harrington (1984) designed two investigations to further examine the phenomenon. Initially, they hypothesized that jurors who favor the death penalty may tend to interpret evidence in a way more favorable to the prosecution than do jurors who oppose the death penalty.

Subjects were drawn from a pool of individuals who were eligible for jury service in the state of California and who



also had participated and been determined death-qualified or excludable in a previous study conducted by Cowan, Thompson and Ellsworth (1984). A video tape of a simulated trial was created that showed a prosecution witness and a defense witness giving contradictory accounts of the same incident. After watching the tape, subjects completed a 16-item self-administered questionnaire which included four types of questions. Questions 1 through 3 measured the subject's perception of the credibility and truthfulness of the two witnesses. Questions 4 through 9 asked which witnesses' story was most plausible with respect to specific facts about which there was conflicting testimony. Questions 10 through 13 asked subjects about what inferences they had drawn about events leading to the trial that occurred in the tape. Questions 14 through 16 asked about subject's attributions regarding the character and personality of the two witnesses in the tape. Subjects indicated their responses on a 6-point Likert-type scale.

Results indicated that the death-qualified subjects evaluated the evidence in a way more favorable to the prosecution than did the excludable subjects. Death-qualified subjects were significantly more favorable to the prosecution witness on two of the three questions dealing with the credibility of the witness, two of six questions about the plausibility of specific factors, all four questions regarding inferences drawn from facts, and two of

three questions regarding attributions about the witnesses.

The second phase of the study tested the hypothesis that death-qualified jurors have a lower threshold of conviction. This was based on a theoretical model of decision making by jurors which assumes that a juror's threshold of conviction is related to the amount of regret he or she associates with erroneous convictions and erroneous acquittals. The model assumed that the greater the regret associated with erroneous convictions, relative to erroneous acquittals, the higher the threshold of conviction. Subjects who had participated in study one also participated in study two.

The "Regret Scale" questionnaire asked subjects to indicate how much regret they would feel in 16 hypothetical situations. The scale was numbered from 0 to 100, 0 indicating no regret and 100 indicating the most regret. In each of the 16 situations, the subjects were asked to imagine their jury had reached one of four verdicts in a homicide case (guilty of first degree murder, guilty of second degree murder, guilty of manslaughter, or not guilty) and that the defendant was later proven actually to have been guilty of one of three levels of homicide or not guilty. Among the 16 situations there were four correct verdicts, where the jury convicted the defendant of the crime he actually committed and 12 errors. Six of the errors were on the side of leniency (acquittal or conviction



of a guilty defendant of a lower-level crime than he had actually committed). Six of the errors were on the harsher side (defendant was innocent but found guilty, or was convicted of a higher offense than was actually committed).

Results indicated that excludable jurors expressed more regret when a mistake was made which resulted in a harsher decision than did the death-qualified jurors. Additionally, excludable jurors showed less regret when an error was made which resulted in a more lenient decision than did those jurors classified as death-qualified.

The preceding studies tend to indicate that generally, death-qualified jurors tend to hold crime-control rather than due-process values, and thus believe in a system of justice that convicts large numbers of criminals without regard to the legitimacy of the insanity defense (Fitzgerald & Ellsworth). Furthermore, the studies suggests that one reason for this propensity lies in the way death-qualified jurors evaluate and respond to the presentation of evidence (Thompson, et al., 1984). It is during the penalty phase of a capital trial that such evidence is presented and considered, and it is often the role of the mental health professional to provide expert testimony and psychological evaluations regarding these aggravating and mitigating circumstances. Therefore, it seems plausible that the existing literature examining death penalty attitudes and juror's responses to aggravating and mitigating circumstances



in capital trials has a bearing on attitudinal biases professionals may hold which could conceivably influence their testimony.

Death Qualification and Juror's Responses to Aggravating and Mitigating Circumstances

In the penalty phase of a capital trial, the jury hears evidence regarding aggravating circumstances that make a particular murder even worse than the "typical" first degree murder. Evidence pertaining to mitigating circumstances is presented as well, i.e., factors that could be seen as lessening the responsibility of the defendant.

Luginbuhl and Middendorf (1988) tested the hypothesis that death-qualified individuals would be more influenced by aggravating circumstances, while excludable jurors would be more influenced by mitigating circumstances. Two studies were conducted; the first consisted of 157 males and 168 females who had been called for jury duty in the Superior Court of Wake County, North Carolina. The subjects were first asked to express agreement or disagreement with one of four positions concerning the death penalty, assuming that the defendant had already been convicted of first degree murder. The positions were as follows: 1) the juror would never consider the death penalty under any circumstances; 2) the juror was opposed to the death penalty but would consider it under some circumstances; 3) the juror favored the death penalty, but would consider not imposing it under

some circumstances; and finally, 4) the juror would always impose the death penalty for first degree murder.

Twenty items were used for testing the hypothesis. Ten aggravating and ten mitigating circumstances were taken from the North Carolina Criminal Procedures Act (15a-200), and reworded into a six-point Likert format with responses ranging from strong agreement to strong disagreement. The circumstances employed were the ten most often used aggravating and mitigating circumstances. Examples of aggravating circumstances were: "It is worse to kill someone for money than it is to kill someone out of anger or passion"; and, "The sentence should be greater for someone with a long record." Examples of mitigating circumstances were: "It would be reasonable to give a person a lighter sentence if he or she committed murder under the influence of mental or emotional stress"; and, "We probably should not treat a 13-year-old boy who intentionally kills someone the same as we would an adult."

The result revealed significant sex, race, age, and education effects on attitude toward the death penalty. Females were significantly more opposed to the death penalty than were males. Blacks opposed the death penalty more than whites, and subjects under the age of 45 were significantly more opposed to the death penalty than those over the age of 45. Subjects with post-college education were significantly less in favor of the death penalty than those with less than



a high school education. The results also indicated a strong relationship between level of belief in the death penalty and acceptance of mitigating circumstances, but no relationship between level of belief in the death penalty and acceptance of aggravating circumstances.

The second study was a replication of the first. Subjects were 151 male and 166 female jurors serving on jury duty. The materials were identical to those in study one, except for the addition of a death-qualification procedure adopted, with minor changes from the official Witherspoon Criteria.

With respect to aggravating circumstances, results indicated a significant difference between death-qualified and excludable jurors over all aggravating circumstances. There was not, however, a significant overall difference between death-qualified and excludable jurors with respect to mitigating circumstances. With regard to one specified mitigating circumstance, however, excludable jurors did show significant agreement as compared to death-qualified jurors. The item dealt with the issue of showing leniency to a defendant who may have had some type of emotional disturbance at the time of the crime, an important factor often presented in capital hearings. Excludable jurors were significantly more willing to accept emotional disturbance as a mitigating circumstance than were the death-qualified jurors. Luginbuhl and Middendorf (1988) therefore suggested



that individuals with a death penalty bias foster differing receptivity to evidence supporting aggravating and mitigating circumstances, than individuals who are fundamentally opposed to the death penalty. The death-qualified individual appears to be oriented toward accepting the idea of aggravating circumstances and rejecting the idea of mitigating circumstances.

The mounting of a mental illness defense is a frequently employed mitigating circumstance, and the mental health professional plays an integral role in this process. The professional providing expert testimony and psychological evaluations appears to have a powerful influence in insanity acquittals (Boehnert, 1985). Research demonstrating the correlates of insanity acquittals reveals that the professional's recommendation appears to be the single most important factor (Baunach, 1983). If a clinician recommends a finding of insanity, a defendant has about an 80% chance of either being adjudicated "not guilty by reason of insanity" or having his case dismissed (Steadman, Keitner, Braff & Arvanities, 1983). In contrast, when a professional recommends against a finding of insanity, a defendant has only a 1% to 2% chance of such adjudication or dismissal (Howard & Clark, 1985).

#### Death-Qualification and the Insanity Defense

Based on Fitzgerald and Ellsworth's 1984 findings previously reviewed suggesting that death-qualified

individuals regard the insanity defense as a loophole allowing too many guilty people to go free, Ellsworth, Bukaty, Cowan, and Thompson (1984) conducted a study to further examine the tendency of death-qualified and excludable jurors to vote for conviction in cases in which the defendant's sanity was the major defense. Furthermore, these authors wished to determine whether or not the origin of the insanity would be considered by the subjects. Would organically based mental illness be viewed as more legitimate than a mental illness with a purely psychological basis? It was hypothesized that the death-qualified jurors would be less likely to accept an insanity defense than would the excludable jurors.

Thirty-three adults eligible for jury duty in California participated. They were determined death-qualified or excludable based on Witherspoon Criteria. Each subject read four summaries, each one page long of homicide cases in which the defendant pleaded not guilty by reason of insanity. Order of presentation was randomized. Two of the case summaries involved non-organic disorders (acute schizophrenia and paranoid schizophrenia) and two of the cases involved organic disorders (limited intelligence and psychomotor epilepsy). After reading each case, the subject answered questions about the applicability of the five elements of the American Law Institute (ALI) test of legal insanity then in use in California courts: 1) presence of



substantial mental disease or defect, 2) at the time of the crime, 3) causing the crime, due either to 4) the defendant's inability to appreciate the criminality (wrongfulness) of his/her conduct, or to 5) the defendant's inability to control his or her actions well enough to obey the law.

Subjects were asked to assume that they were jurors in this case, and were to follow the law set forth to them by the judge. For three of the cases, the instructions required the subject to find the defendant not guilty if he or she was legally insane according to the ALI criteria.

In the case of the epileptic, the judge's instructions consisted of the legal test of unconsciousness, adapted from the Standardized California Judges Instruction Manual. The defendant was to be judged not guilty if he or she was unconscious at the time of the crime. This would be the case if the person's conscious mind was not functioning even though the person may appear to be conscious. If evidence raised a reasonable doubt about the consciousness of the defendant at the time of the crime, then the person should be deemed unconscious.

Following the judge's instructions, the subject was to reach a verdict of guilty or not guilty. The subject was also asked to indicate his or her response on a 40-point verdict scale with labels ranging from "Defendant should certainly be acquitted" to "Defendant should certainly be



convicted." Finally, subjects were asked: a) what percentage of the defendants who plead not guilty by reason of insanity really were insane, and, b) In general, how reliable is psychiatric testimony. Responses were rated on a 7-point Likert scale.

Results clearly indicated that subjects who would be excluded from jury service were more likely than the death-qualified subjects to vote for a verdict of "not guilty by reason of insanity" in the two cases involving non-organic defendants (acute and paranoid schizophrenics). The difference clearly disappeared in the cases in which insanity was based on a purely organic disorder (limited intelligence and psychomotor epilepsy). There was a significant difference between the death-qualified and excludable individuals in response to the question asking: What percentage of defendants who plead guilty by reason of insanity really are insane? Subjects who were excludable estimated that on the average, 55% are "really" insane, while death-qualified individuals estimated that 30% met that criteria.

In a number of states, a convicted capital defendant may not be sentenced to death unless the state proves to a jury that the defendant is "dangerous", i.e., likely to commit further acts of criminal violence, thereby posing a risk to the community in the long run (Warrell, 1987). Typically, such proof has been presented in the form of

written evaluations or expert psychiatric/psychological testimony that the convicted defendant is in fact, dangerous--a practice the United States Supreme Court has held to be constitutional (Ewing, 1987). This raises the issue of which defendant characteristics or crime characteristics the mental health professional may believe indicates dangerousness on the part of the defendant, and contributes to the professional's willingness to conclude that the defendant should indeed be considered for the death penalty, if convicted. Although the literature is scant concerning this issue, two studies suggest that heinousness of the crime and impulsivity on the part of the perpetrator may contribute to the perception of dangerousness.

Hester and Smith (1973) studied the effects of a mandatory death penalty on the decisions of simulated jurors as a function of heinousness of the crime. Differences between death-qualified and excludable jurors were not assessed in this case. The subjects were 70 male and 81 female students enrolled in afternoon and evening classes at a community college in Seattle, Washington. A possible confound in this study existed in that the potential jurors were not tested according to Witherspoon or any other criteria determining eligibility to sit in capital offenses. Therefore, it is possible that any number of the students would be disqualified from jury duty due to their personal death penalty attitudes.



A 2x2x2 factorial design was employed. The independent variables were heinousness of crime, presence of a mandatory death sentence, and sex of the simulated juror. Two scenarios were generated to allow for control of evidence, extraneous information, and characteristics of the individuals involved. The heinous condition involved the repeated shooting of a child on a school playground. The non-heinous condition involved a single gunshot wound to a gang member during a gang war. After reading the scenarios of the crime and the details of the murder trial (identical statements made by the defendants) the subjects were told to assume they were members of a jury and were asked to render a verdict. Following their verdict, the subjects were asked to rate on 5-point scales: a) their degree of confidence in their verdict (ranging from "not at all confident" to "certain"); b) how potentially dangerous they considered the defendant to be (ranging from "not at all" to "extremely dangerous"); c) if guilty, how personally responsible they consider the defendant to be (ranging from "not at all" to "completely responsible") and d) in the imprisonment condition, which sentence they would recommend on the following scale: (1) not guilty, (2) 20 years, (3) 25 years, (4) 30 years, (5) 35 years, and (6) life imprisonment.

Results indicated that subjects in the mandatory death penalty condition rendered an overall rate of 30% guilty verdicts compared with 50% in the imprisonment condition.



Within the gang war murder condition, the imprisonment condition resulted in 48% guilty verdicts compared with 20% in the death penalty condition. Within the heinous murder condition, the imprisonment condition had a 50% conviction rate as compared with 39% guilty verdicts in the death-penalty condition. This difference was not significant. The only sex difference found was in the gang war imprisonment condition. The females' conviction rate was 30% compared with a 73% rate by the males. A post verdict questionnaire revealed that men were more confident of their verdicts. A separate 2x2x2 analysis of variance was computed on the questionnaires of only those who had judged the defendant guilty. The results showed that subjects perceived the defendant in the heinous murder to be significantly more dangerous to society than the defendant in the gang-war murder condition. These results support the contention that in the case of a truly heinous crime, feelings of outrage and anger toward the defendant, as well as the perception of him as being highly dangerous to society attenuates strong biases of opposition to the death penalty among potential jurors. Thus, heinousness of the crime may be one variable that tends to influence the perceptions of dangerousness among mental health professionals. At least this contention has some intuitive, if little empirical support.

Paradoxically, numerous studies published over the past

half century have consistently reported that violent criminals were better--not worse--parole risks than were nonviolent criminals (Heilbrun, Heilbrun & Heilbrun, 1978). Furthermore, one study found that the rated impulsivity index of the crime was a positive predictor of parole success (Heilbrun, Knopf, & Bruner, 1973). In fact, Stanton (1969), actually identified the impulsive nature of the violence involved as the theoretical basis for explaining why murderers were especially good parole risks. He concluded that their criminal acts were motivated by momentary passion, aroused under extraordinary conditions, and the loss of control involved in the murder was an exceptional circumstance unlikely to be repeated. One aspect of the methodology common to all of these parole outcome studies, however, has been the use of a limited time frame within which parole outcome was determined. While the tracking period ranged from 6 months to several years, in no study were all parolees followed until the outcome was confirmed by discharge (success) or a return to prison because of criminal recidivism (failure). Heilbrun, Heilbrun, & Heilbrun (1978) designed a study to rectify this methodological flaw and to investigate more directly the relationship between criminal impulsivity, and parole risk. Several predictions were made based upon prior theoretical proposals and empirical evidence relating deficits in self-control to violence and parole failure, among them:



a) criminals committing more impulsive murders while represent poorer parole risk than criminals committing more premeditated murders; b) impulsive murderers will be more likely to violate parole by committing another violent crime than premeditated murderers.

The records of 164 male criminals were examined with each subject meeting three criteria: 1) incarceration in the Georgia prison system following conviction for murder, 2) subsequent parole from prison and 3) parole completion, either by successful discharge or by termination due to a technical violation or commission of a new crime. The sample included 58 whites and 106 blacks and represented all paroled murderers for whom there were final parole decisions in the three year period between 1973 and 1976.

The impulsivity-premeditation variable was measured by means of ratings by the two junior investigators from the circumstances surrounding the crimes, gathered by the arresting authorities at the time of the crime's commission and contained within the parole board files. Impulsive murder was defined as the killing of another in which the thought or instigation to act did not arise prior to the immediate commission of the fatal aggression. Premeditated murder was defined as the killing of another in which the thought and instigation to act had occurred before the immediate situation involving the homicide.

The ratings were made along a four-point scale ranging

from "clearly not planned and clearly a spontaneous act" (score = 1) at one end to "clearly planned and clearly not a spontaneous act" (score = 4) at the other. The intervening points were intended to convey less clear situations in which the killings were probably spontaneous (score = 2), or were probably planned (score = 3). The reliability of the impulsivity ratings was ascertained by having the judges rate 20 of the records in common. The high correlation between the 2 independent sets of judgments ( $r = .94$ ) indicates a very satisfactory level of agreement for the impulsivity scores.

Success on parole was defined by discharge, whereas failure involved return to prison following either technical violation of parole or criminal recidivism.

Factor analysis revealed that those who failed on parole had committed more impulsive homicides than those who subsequently were successful. The predicted relationship between prior impulsive violence and parole failure was confirmed. Over twice the number of impulsive criminals failed on parole than were successful, whereas, almost equal numbers of premeditated murders were successful and unsuccessful.

To answer the question "Does the impulsivity of the prior homicide bear a relationship to the occurrence of violent crime?" The impulsivity scores for the violent recidivists were compared to those obtained for the



remaining parole violators. The violent recidivists received a mean impulsivity rating of 2.83 compared to a mean score of 1.97 for all other parole violators. This difference is highly significant: men who broke parole by committing another violent crime had more likely performed a premeditated act of murder than other parole violators, a finding opposite the author's predictions.

The mixed results of this study accentuate the lack of precision and uncertainty of predicting "dangerous" in the violent offender. Whereas there was a tendency for murderers who had failed on parole to have committed more impulsive acts of homicide than murderers who were successful, murderers who subsequently were arrested for another violent crime while on parole had engaged in more premeditated acts of homicide than had murderers who breached parole by committing a nonviolent crime or by technical violation. It appears that at present, the question of the relationship between impulsivity and dangerousness remains unanswered.

### Implications of the Jury Literature for Competency

#### Assessments

Ellsworth and her colleagues have developed the main body of research on death-qualified juries and the Supreme Court has acknowledged that her findings appear valid (Bersoff, 1987). These findings have repeatedly demonstrated that individuals who favor the death penalty

tend to be more conviction-prone, favor the prosecution, be more concerned with crime control than due process, and mistrust the insanity defense. Heilbrun (1987) has implied that "defense-oriented" and "prosecution-oriented" psychologists exist as well and has expressed concern that professionals who perform competency for execution evaluations may foster strong biases either in favor of or against capital punishment. Death penalty biases have also been found to influence what has traditionally been considered the domain of the psychologist providing expert testimony and written evaluations, that is, the willingness to accept aggravating and mitigating circumstances and the insanity defense.

Empirical studies have frequently relied on measures of heinousness and premeditation to present aggravating circumstances and measures of impulsivity and pathology ranging from "emotional disturbances" to "insanity" to represent mitigating circumstances (Luginbuhl & Middendorf, 1988). The results have generally suggested that individuals who favor the death penalty are more oriented toward accepting the idea of aggravating circumstances (e.g., heinousness and premeditation of the crime) as justification for executing the defendant and rejecting the idea of mitigating circumstances (e.g., impulsivity and pathology) for finding the defendant not guilty by reason of insanity (Luginbuhl & Middendorf, 1988; Ellsworth, et al., 1984).



Proposal

The precise influence of the perceptions of heinousness, premeditation versus impulsiveness of the crime, and pathology of the defendant on the willingness to accept the insanity defense has not been clearly established. Not has the role these factors play in the decision-making processes of psychologists been systematically investigated. The current body of literature, however, in demonstrating relationships between death penalty attitudes and willingness to accept or reject aggravating (heinousness and premeditation) and mitigating (impulsiveness and pathology) circumstances tends to suggest that these factors are all interrelated and influential in the decisions made by jurors. It seems possible that these same variables may be heavily weighted in the decisions of psychologists rendering services to the courts, such as evaluating death-row inmates for competency for execution.

The present study was designed to investigate attitudinal death penalty beliefs held by psychologists and examine the variables that may affect their decisions regarding the insanity defense and competency for execution. To achieve this end, the following research questions were addressed:

1. Are the mental health professionals who are qualified to perform competency for execution evaluations death-qualified according to current

legal standards, or would they be disqualified from jury duty in a capital offense due to death penalty bias?

2. Do death penalty attitudes and death-qualification affect the decisions of psychologists in evaluating competency for execution?
3. How does psychopathology of the defendant affect the decisions of psychologists in determining competency for execution?
4. Are there interactions among impulsivity, heinousness of crime, premeditation, and the defendant's known psychopathology with regard to the clinicians' decisions regarding competency for execution?



## METHOD

### Subjects

Ph.D. Clinical Psychologists specializing in forensic services were identified from the 1989 National Register of Health Service Providers. A total of 2353 psychologists met this criteria. Of this number, 1976 (84 percent) were male and 376 (16 percent) were female. Based on this wide discrepancy in number, and demonstrated sex differences pertaining to death penalty attitudes (Luginbuhl & Middendorf, 1988), male subjects only were identified and then randomly selected using a table of random numbers between 1 and 22.

### Materials

All subjects received a questionnaire packet with a self-addressed, stamped, return envelope. A consent from invited participation on a voluntary basis and provided an explanation as to the nature of the investigation (See Appendix A).

Selected items from the Witherspoon criteria for death-qualification developed by Fitzgerald and Ellsworth (1984), was included in each packet as part of the questionnaire (See Appendix B). Item 1 required subjects to indicate their view of the death penalty and was on a scale from 1

(strongly favor) to 4 (strongly oppose). Item 2 required subjects to indicate their willingness to vote to impose the death penalty and was on a 2-point scale, with 1 indicating an unwillingness to impose the death penalty and 2 indicating that the subject would be willing to impose the death penalty. The third Witherspoon item was omitted from the questionnaire due to its potentially inflammatory nature and response-biasing effect. It would require subjects to indicate whether or not they could remain fair and impartial when determining the guilt or innocence of a defendant.

A brief social history of a capital murder defendant with one of the following four diagnoses was included:

- a) Paranoid Schizophrenia (See Appendix C);
- b) Anti-Social Personality Disorder (See Appendix D);
- c) Organic Brain Syndrome (See Appendix E), and
- d) Adjustment Disorder with anxious mood (no psychopathology) (See Appendix F).

The social histories were developed by Deitz and Brown (1990). To validate each diagnosis, four licensed clinical psychologists and one psychiatrist were asked to read each social history and attach the most appropriate diagnosis.

A description of the capital crime for which the defendant had been incarcerated followed. The descriptions were varied from: a) Heinous/Impulsive (See Appendix G); b) Heinous/Premeditated (See Appendix H); c) Non-heinous/Impulsive (See Appendix I) to d) Non-heinous/Premeditated (See Appendix J). The crime descriptions were developed by



Deitz and Brown (1990).

Finally, the defendant's current behavior on death row was described (See Appendix K), including the defendant's test scores from the Weschler Adult Intelligence Scale-Revised (WAIS-R) and the Minnesota Multiphasic Personality Inventory (MMPI). While the current behavior remained the same for all four death-row inmates, their WAIS-R and MMPI test scores were varied according to the defendant's diagnosis; a) paranoid schizophrenia (See Appendix L); b) antisocial personality disorder (See Appendix M); c) organic brain syndrome (See Appendix N); and d) adjustment disorder with anxious mood (See Appendix O). The test scores were developed by Deitz (1990) and were designed according to examples of "typical" scores found among individuals with the same diagnoses listed above (Greene, 1980).

A questionnaire was developed by Deitz and Brown (1990) consisting of 11 items which were designed to answer the proposed research questions (See Appendix P). The subjects were asked to respond to each item based on the conclusions they had drawn from the defendant's social history, crime description, current death row behavior, and test scores (WAIS-R and MMPI). Item 1 required the subjects to rate how heinous they felt the defendant's crime had been on a 7-point Likert scale. One indicated not heinous at all and 7 indicated extremely heinous. Item 2 asked the subjects to

respond to know impulsive they believed the defendant's behavior had been during the commission of the crime. On a 7-point Likert scale, 1 indicated not at all impulsive and 7 indicated extremely impulsive. Item 3 requested the subjects to rate how much impact they believed the defendant's prior diagnosis had on the defendant's commission of the crime in question. On a 7-point Likert scale, 1 indicated no impact and 7 indicated extreme amount of impact. Item 4 asked the subject to assess the defendant's legal responsibility for his actions during the commission of the crime. A 7-point Likert scale was provided with 1 indicating not legally responsible and 7 indicating legally responsible. Item 5 requested the subject to rate how likely he felt it was that the defendant' death row behavior was malingering. On a 7-point Likert scale, 1 indicated not at all likely and 7 indicated very likely. Item 6 required the subject to determine whether or not the defendant was competent to be executed, based on the information provided. Competent was defined as awareness of the impending execution and the reasons for it (Ford v. Wainright, 1986). A yes or no response was required. Item 7 asked the subject to rank order the following information sources according to the effect it had on his judgement regarding competency of the prisoner for execution: a) social history, b) crime description, c) current behavior on death row, and d) WAIS-R



and MMPI test scores. A ranking of 1 indicated the source of information was not at all important to his decision while a ranking of 7 indicated that the source of information was very important. Item 8 asked the subject how many times in the last 5 years he had testified or submitted written evaluations regarding the legal competency of a defendant. Item 9 asked the subject to indicate with a year or no whether or not he had ever been involved in the assessment of competency for execution and if "yes", how many times. Item 10 was the Witherspoon criteria asking subjects to indicate their attitude concerning the death penalty. A score of 1 indicated strongly in favor, 2 indicated somewhat in favor, 3 indicated somewhat opposed and 4 indicated strongly opposed. Item 11 was the Witherspoon criteria that classifies potential jurors as death-qualified or excludable. The subjects were asked whether or not they would be unwilling to vote to impose the death penalty in any case (classified as excludable) or would be willing to consider voting to impose it in some cases (classified as death-qualified).

#### Procedure

A packet was sent to each subject which included the following: a) consent form, b) social history of a death-row inmate; c) crime description of a capital offense; d) the inmate's current behavior on death row, including WAIS-R and MMPI test scores, and e) a questionnaire designed

to answer specific research questions. Also included was a stamped envelope addressed to the researcher for convenience in returning the consent form and questionnaire.

Subjects were invited to participate in the study by signing the consent form.

Next, subjects were asked to read the social history, crime description, test scores, and current death row behavior of a capital felon. Based on this information, subjects then were requested to answer a number of questions dealing with the prisoner's competency to be executed.

Subjects were requested to return the consent form and questionnaire. Three weeks after the materials were mailed to the subjects, a reminder letter (See Appendix R) was sent to each subject who had not responded. An additional eight weeks were allowed for subject response before analyses of data.



## RESULTS

### Return Rate and Distribution of Subjects Across Conditions

Eight hundred male Ph.D. clinical psychologists specializing in forensic services were randomly selected to receive survey material. The material consisted of manipulated variables to include 4 conditions of inmate pathology: paranoid schizophrenia, antisocial personality disorder, organic brain syndrome, and adjustment disorder with anxious mood (normal control), and 4 conditions of crime: heinous, non-heinous, impulsive, and premeditated. Fifty psychologists were randomly assigned to each condition.

Three hundred twenty-two of the 800 selected psychologists (40%) agreed to participate as subjects and returned completed questionnaires. The frequency distribution of subjects across conditions is depicted in Table 1.

Of those who participated in the paranoid schizophrenic condition, 42 subjects were in the heinous condition, 36 subjects were in the non-heinous condition, 42 subjects were in the impulsive condition and 36 subjects were in the premeditated condition.

Of those who participated in the antisocial personality

Table 1

Frequency Distribution

	Impulsive	Premeditated	Heinous	Non-Heinous
Paranoid Schizophrenic	42	36	42	36
Antisocial Personality	39	42	37	44
Organic Brain	39	42	46	35
Normal	39	43	40	42
Total	159 49.4%	163 50.6%	165 51.2%	157 48.8%

disorder condition, 37 subjects were in the heinous condition, 44 subjects were in the non-heinous condition, 39 subjects were in the impulsive condition and 42 subjects were in the premeditated condition.

Of those who participated in the organic brain syndrome condition, 46 subjects were in the heinous condition, 35 subjects were in the non-heinous condition, 39 subjects were in the impulsive condition and 42 subjects were in the premeditated condition.

Of those who participated in the adjustment disorder with anxious mood condition (normal condition), 40 subjects were in the heinous condition, 42 subjects were in the non-heinous condition, 39 subjects were in the impulsive condition, and 43 subjects were in the premeditated condition.



Fourteen of the 322 subjects (4%) chosen not to respond to the survey item requiring the psychologist to rate the death-row inmate as competent or incompetent for execution. Data obtained from these 14 psychologists were eliminated from the sample and subsequent statistical analyses, resulting in completed data from a total of 309 psychologists.

#### Effect of Death Penalty Attitude on Competency Judgements

A total of 309 psychologists responded to the Witherspoon criterion variable regarding their personal attitude toward the death penalty and rated the inmate's competency for execution (see Table 2). Of this number 57 (18%) were "strongly in favor", 114 (37%) were "somewhat in favor", 65 (21%) were "somewhat opposed", and 73 (24%) were "strongly opposed." Of the 57 psychologists who strongly favored the death penalty, 43 (75%) rated the prisoner as competent to be executed while 14 (25%) rated him incompetent. Eighty-two (72%) of the 114 psychologists who somewhat favored the death penalty rated the prisoner as competent for execution and 32 (28%) rated him incompetent. Thirty-eight (58%) of the 65 psychologists who were somewhat opposed to the death penalty rated the inmate as competent to be executed and 27 (42%) rated him incompetent. Forty-three (59%) of the 73 psychologists who were strongly opposed to the death penalty believed the prisoner was competent for execution as opposed to 30 (41%) who found him

not competent. Chi-square analysis of attitude toward the death penalty and whether or not the prisoner was competent to be executed was marginally nonsignificant,  $X^2 (3) = 7.34$ ,  $p = .06$ . This suggests that the personal attitude of the psychologist regarding the death penalty was unrelated to his judgement of the prisoner's competency to be executed.

Table 2

Effect of Death Penalty Attitude on Competency for Execution Judgement

Judgement for Execution	Strongly Favor	Death Penalty Attitude		
		Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	43(75%)	82(72%)	38(58%)	43(59%)
Incompetent	14(25%)	32(28%)	27(42%)	30(41%)
Total	57	114	65	73

The results of a One-Way Analyses of Variance, however, did reveal that the psychologists who rated the inmate as competent for execution were significantly more in favor of the death penalty than were the psychologists who assessed the inmate as incompetent for execution [  $F (1, 308) = 6.35$ ,  $p < .01$ ]. Cell means and standard deviations are presented in Table 3.

An additional One-Way Analyses of Variance demonstrated that the psychologists who were currently residing in states that practice the death penalty were also significantly more in favor of the death penalty than were psychologists who



were currently residing in states that have no death penalty at this time [  $F(1, 321) = 9.51, p < .002$ ].

When the responding psychologists were classified as death-qualified or excludable based upon their willingness (death-qualified) or unwillingness (excludable) to impose the death penalty, a One-Way Analyses of Variance revealed that the death-qualified psychologists were significantly more in favor of the death penalty than were the excludable psychologists [  $F(1, 321) = 226.24, p < .001$ ].

Table 3

ANOVA Death Penalty Attitudes: Cell Means and Standard Deviations

Judgement for Execution	Death Penalty Attitude <sup>a</sup>			F	P
	Mean (Std. Dev.) Scores	df			
Competent	2.39 (1.03)				
Incompetent	2.70 (1.03)				

<sup>a</sup>A score of "1" indicated strongly favored the death penalty, "2" somewhat favored the death penalty, "3" somewhat opposed the death penalty, "4" strongly opposed the death penalty.

Effect of Death Penalty Attitude on Competency Judgement:  
As Related to Prior Psychopathology

Four separate social histories described the death-row inmate as suffering from one of four psychopathologies prior to the commission of the capital offense. These disorders were: paranoid schizophrenia, antisocial personality disorder, organic brain syndrome, and adjustment disorder

with anxious mood (normal control).

Four 4x2 Chi-square analyses, one for each history of disorder, were conducted to determine if the psychologist's attitude toward the death penalty (strongly in favor, somewhat in favor, somewhat opposed, and strongly opposed) was related to whether or not the prisoner was assessed as competent for execution.

Within the prior history of paranoid schizophrenia, Chi-square analysis of the psychologists' view of the death penalty and the psychologists' rating of whether or not the prisoner was competent for execution was nonsignificant,  $X^2(3) = 1.80$ ,  $p = .61$ . Frequency distributions for the 4 partitions are depicted in Table 4. These findings indicate that within the group of paranoid schizophrenia, psychologists' view of the death penalty was unrelated to psychologists' determination of whether or not the prisoner was competent for execution.

Table 4

Effect of Death Penalty Attitude on Competency for Execution Decisions: As Related to Paranoid Schizophrenia

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	7(64%)	13(46%)	10(48%)	6(37%)
Incompetent	4(36%)	15(54%)	11(52%)	10(63%)
Total	11	28	21	16



Within the prior history of antisocial personality disorder, Chi-square analysis of the subjects' view of the death penalty (see Table 5) and whether or not the prisoner was rated competent for execution was nonsignificant,  $X^2 (3) = 6.40, p < .09$ . This indicates that within the antisocial personality disorder, subjects' view of the death penalty was unrelated to subjects' determination of whether or not the inmate was competent for execution.

Table 5

Effect of Death Penalty Attitude on Competency for Execution Decisions: As Related to Antisocial Personality Disorder

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	12 (85%)	24 (92%)	10 (62%)	16 (73%)
Incompetent	2 (15%)	2 (8%)	6 (38%)	6 (27%)
Total	14	26	16	22

Within the prior history of organic brain syndrome, Chi-square analysis of the psychologists' view of the death penalty (See Table 6) and whether or not the prisoner was judged competent for execution was nonsignificant,  $X^2 (3) = 4.20, p = .23$ . This indicates that within the organic brain syndrome disorder, the psychologists' attitude toward the death penalty was unrelated to the psychologists' judgement as to whether or not the inmate was competent for execution.

Table 6

Effect of Death Penalty Attitude on Competency for ExecutionDecisions: As Related to Organic Brain Syndrome

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	16(80%)	17(63%)	6(46%)	10(59%)
Incompetent	4(20%)	10(37%)	7(54%)	7(41%)
Total	20	27	13	17

Within the prior history of adjustment disorder (normal), Chi-square analysis of the psychologists' view of the death penalty (See Table 7) and whether or not the prisoner was competent for execution was nonsignificant,  $X^2(3) = 4.02$ ,  $p = .25$ . This indicates that within the adjustment disorder condition, the death penalty attitude of the psychologists was unrelated to whether or not the psychologist determined the inmate competent for execution.

Table 7

Effect of Death Penalty Attitude on Competency for ExecutionDecisions: As Related to Adjustment Disorder

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	8(67%)	27(84%)	12(80%)	11(61%)
Incompetent	4(33%)	5(16%)	3(20%)	7(39%)
Total	12	32	15	18



Effect of Death Penalty Attitude on Competency Judgement:  
As Related to Crime Condition

Four separate crime scenarios described the death row inmate's crime as occurring under one of our conditions. These conditions were: impulsive, premediated, heinous, or non-heinous.

Four 4x2 Chi-square analyses were performed, one for each crime condition to determine if the psychologists' view of the death penalty (strongly favor, somewhat favor, somewhat oppose, or strongly oppose) was related to whether or not they assessed the inmate as competent for execution.

Within the impulsive crime condition (See Table 8), Chi-square analysis of death penalty attitude and competency judgement was nonsignificant,  $X^2 (3) = .44, p = .93$ . This indicates that for the impulsive crime, the psychologists' attitude pertaining to the death penalty and his determination as to the competency of the prisoner to be executed was unrelated.

Table 8

Effect of Death Penalty Attitude on Competency for Execution  
Decisions: As Related to Impulsive Crime

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	27(71%)	36(67%)	16(67%)	23(64%)
Incompetent	11(29%)	18(33%)	8(33%)	13(36%)
Total	38	54	24	36

Within the premeditated crime condition (See Table 9), Chi-square analysis of the psychologists' death penalty attitude and competency judgement was significant,  $X^2 (3) = 10.72$ ,  $p < .01$ . This indicates that in the case of premeditated crime, the psychologists' assessment of whether or not the prisoner was competent for execution was affected by the psychologists' attitude toward the death penalty. The psychologists who rated themselves as strongly in favor or somewhat in favor of the death penalty were more likely to assess the prisoner as competent rather than incompetent for execution than were the psychologists who were somewhat opposed or strongly opposed to the death penalty.

Table 9

Effect of Death Penalty Attitude on Competency for Execution Decisions: As Related to Premeditated Crime

Judgement for Execution	Death Penalty Attitude			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	16 (84%)	45 (76%)	22 (54%)	20 (54%)
Incompetent	3 (16%)	14 (24%)	19 (46%)	17 (46%)
Total	19	59	41	37

Within the heinous crime condition (See Table 10), Chi-square analysis of the psychologists' attitude pertaining to the death penalty and their assessment as to whether or not the inmate was competent for execution was significant,  $X^2 (3) = 7.73$ ,  $p < .05$ . This indicates that when the prisoner



Table 10

Effect of Death Penalty Attitude on Competency for Execution  
Decisions: As Related to Heinous Crime

Judgement for Execution	<u>Death Penalty Attitude</u>			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	29(81%)	37(71%)	22(58%)	18(53%)
Incompetent	7(19%)	15(29%)	16(42%)	16(47%)
Total	36	52	38	34

had committed a heinous crime, the attitude of the psychologists toward the death penalty affected their assessment of the inmate's competency to be executed. The psychologists who rated themselves as strongly in favor or somewhat in favor of the death penalty were more likely to judge the inmate as competent rather than incompetent compared to the psychologists who rated themselves as somewhat or strongly opposed to the death penalty.

Within the non-heinous crime condition (See Table 11),  
 Table 11

Effect of Death Penalty Attitude on Competency for Execution  
Decisions: As Related to Non-heinous Crime

Judgement for Execution	<u>Death Penalty Attitude</u>			
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose
Competent	14(67%)	44(72%)	16(59%)	18(53%)
Incompetent	7(33%)	17(28%)	11(41%)	14(36%)
Total	21	61	27	39

Chi-square analysis of the psychologists' attitude regarding the death penalty and whether or not the prisoner was competent for execution was nonsignificant,  $X^2 (3) = 1.60$ ,  $p = .65$ . This indicates that when the inmate's crime was non-heinous, the attitude of the psychologist pertaining to the death penalty did not affect the psychologists' assessment of whether or not the inmate was competent for execution.

#### Effect of Death-Qualification on Competency Judgements

A total of 309 psychologists responded to the Witherspoon criterion variable regarding their willingness or unwillingness to impose the death penalty under any circumstances and rated the inmate's competency for execution. Of this number, 249 (80%) psychologists indicated that they were willing to consider imposing the death penalty, and were therefore classified as death-qualified according to current legal standards. Sixty psychologists (20%) indicated that they would be unwilling to impose the death penalty under any circumstances, and were therefore classified as excludable under current legal standards.

Among the 249 death-qualified psychologists, 173 respondents (69%) indicated that they believed the death row inmate was competent for execution. Seventy-six death-qualified psychologists (31%) indicated that they believed the prisoner was incompetent for execution.



Among the 60 excludable psychologists, 33 respondents (55%) indicated that they believed the death row inmate was competent for execution, whereas 27 (45%) of the excludable psychologists believed that the inmate was incompetent for execution.

Chi-square analysis of death-qualification (willingness to impose the death penalty) or excludable (unwilling to impose the death penalty) and whether or not the inmate was found competent or incompetent for execution was significant,  $X^2 (1) = 4.56, p < 4.56, p < .03$  (see Table 12). This indicates that death-qualification (i.e., the willingness to impose the death penalty under some circumstances) was related to the psychologists' decision as to competency of the inmate. Specifically, within the group of death-qualified psychologists, the prisoner was more likely to be assessed as competent rather than incompetent for execution when compared to the competency ratings in the group of excludable psychologists, i.e., those psychologists who would be unwilling to impose the death penalty under any circumstances.

Effect of Death-Qualification on Competency Judgement: As Related to Prior Psychopathology

Four 2x2 Chi-squares, one for each of the four histories of psychopathology (paranoid schizophrenia, antisocial personality disorder, organic brain syndrome, and

Table 12

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	33(55%)	73(69%)
Incompetent	27(45%)	76(31%)
Total	60	249

adjustment disorder) were conducted to determine if the psychologists' willingness (death-qualified) or unwillingness (excludable) to impose the death penalty was related to whether or not the psychologists assessed the inmate as competent or incompetent for execution.

Within the prior history of paranoid schizophrenia, 16 excludable psychologists responded. Of this number, 6 (38%) rated the prisoner as competent for execution while 10 (62%) rated him incompetent. A total of 60 death-qualified psychologists responded. Of this number, 30 (50%) rated the prisoner as competent for execution and 30 (50%) rated him incompetent for execution (see Table 13). Chi-square analysis of the psychologists' willingness to impose the death penalty and whether or not the prisoner was assessed as competent or incompetent for execution was nonsignificant,  $X^2 (1) = .79, p = .37$ . This indicates that when the prisoner was previously diagnosed as paranoid



Table 13

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Paranoid Schizophrenia

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	6 (37%)	30 (50%)
Incompetent	10 (63%)	30 (50%)
Total	16	60

schizophrenic, the psychologists' classification as excludable or death-qualified was not related to their assessment of competent or incompetent for execution.

Within the prior history of antisocial personality disorder, 15 excludable psychologists indicated their decisions. Of this number, 9 (60%) rated the inmate as competent for execution whereas 6 (40%) rated him incompetent. A total of 63 death-qualified psychologists indicated their decisions. Of this number, 53 (84%) rated the prisoner as competent for execution while 10 (16%) rated him incompetent (see Table 14). Chi-square analysis of death-qualified or excludable and ratings of competent or incompetent was significant,  $X^2 (1) = 4.32$ ,  $p < .03$ . This indicates that when the prisoner was previously diagnosed as antisocial personality disorder, whether or not the psychologist was death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death

penalty) was related to the psychologists' determination of Table 14

Effect of Willingness to Impose the Death Penalty on Competency Decisions: As Related to Antisocial Personality Disorder

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	9 (60%)	53 (84%)
Incompetent	6 (40%)	10 (16%)
Total	15	63

whether or not the prisoner was competent or incompetent for execution. The death-qualified psychologists were more likely than the excludable psychologists to assess the inmate with a previous diagnosis of antisocial personality disorder as competent rather than incompetent for execution.

Within the organic brain syndrome condition, a total of 9 excludable psychologists responded. Of this number, 4 (44%) rated the inmate as competent for execution and 5 (56%) rated him incompetent. Sixty-eight death-qualified psychologists responded. Of this number, 45 (66%) rated the inmate as competent for execution while 23 (34%) rated him incompetent (see Table 15). Chi-square analysis of death-qualified or excludable and assessment of competency was nonsignificant,  $X^2 (1) = 1.62, p = .20$ . This indicates that when the prisoner was previously diagnosed as organic brain



Table 15

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Organic Brain Syndrome

Judgement for Execution	Winterspoon Criteria	
	Excludable	Death Qualified
Competent	4 (44%)	45 (66%)
Incompetent	5 (56%)	23 (34%)
Total	9	68

syndrome, the classification of death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) was unrelated to the competency judgement for execution.

Within the adjustment disorder condition, there were 20 excludable psychologists. Of this number, 14 (70%) rated the inmate as competent for execution and 6 (30%) rated him incompetent. There were 57 death-qualified psychologists. Of this number, 44 (77%) rated the prisoner as competent for execution as opposed to 13 (23%) who rated him incompetent (see Table 16). Chi-square analysis of death-qualified or excludable was nonsignificant,  $X^2 (1) = .41, p = .52$ . This indicates that when the prisoner was previously diagnosed with adjustment disorder, the classification of death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) was

unrelated to whether or not the inmate was judged as competent or incompetent for execution.

Table 16

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Adjustment Disorder

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	14 (70%)	44 (77%)
Incompetent	6 (30%)	13 (23%)
Total	20	57

Effect of Death-qualification on Competency Judgement: As  
Related to Crime Condition

Four 2x2 Chi-squares, one for each crime condition (impulsive, premeditated, heinous and non-heinous) were conducted to determine if the willingness (death-qualified) or unwillingness (excludable) of the psychologists to impose the death penalty was related to the psychologists assessment of whether or not the inmate was competent or incompetent for execution.

Within the impulsive crime condition, 27 excludable psychologists responded. Of this number, 17 (63%) rated the inmate as competent and 10 (37%) rated him as incompetent for execution. A total of 125 psychologists who were death-qualified responded. Of this number, 85 (68%) rated the prisoner as competent and 40 (32%) rated him incompetent



(see Table 17). Chi-square analysis of death-qualified or excludable and whether or not the inmate was rated as competent or incompetent was nonsignificant,  $X^2 (1) = .07$ ,  $p = .77$ . This indicates that when the inmate had committed an

Table 17

Effect of Willingness to Impose the Death Penalty on Competency Decisions: As Related to Impulsive Crime

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	17(63%)	85(68%)
Incompetent	10(37%)	40(32%)
Total	27	125

impulsive crime, whether or not the psychologist was death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) was unrelated to whether or not the inmate was rated as competent or incompetent for execution.

Within the premeditated crime condition, 33 excludable subjects responded. Of this number, 16 (48%) rated the inmate as competent for execution while 17 (52%) rated him incompetent. A total of 123 death-qualified subjects responded. Of this number, 87 (71%) assessed the inmate as competent for execution and 36 (29%) assessed him as incompetent for execution (see Table 18). Chi-square analysis of death-qualified or excludable and competency

Table 18

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Premeditated Crime

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	16(48%)	87(71%)
Incompetent	17(52%)	36(29%)
Total	33	123

assessment of the inmate was significant,  $X^2 (1) = 5.74$ ,  $p < .01$ . This indicates that whether or not the psychologist was death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) was related to whether or not the inmate was assessed as competent or incompetent for execution. In the case of premeditation in crime, those psychologists who were willing to impose the death penalty (death-qualified) were more likely than those psychologists who were unwilling to impose the death penalty (excludable) to assess the prisoner as competent rather than incompetent for execution.

Within the heinous crime condition, there were a total of 29 excludable psychologists. Of this number, 15 (52%) rated the inmate as competent for execution while 14 (48%) rated him incompetent. A total of 131 death-qualified psychologists were in this condition. Of this number, 91 (69%) respondents rated the prisoner as competent and 40 (31%) respondents rated him incompetent (see Table 19).



Table 19

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Heinous Crime

Judgement for Execution	<u>Witherspoon Criteria</u>	
	Excludable	Death Qualified
Competent	15(52%)	91(69%)
Incompetent	14(48%)	40(31%)
Total	29	131

Chi-square analysis of death-qualified or excludable and competent or incompetent was marginally nonsignificant,  $X^2(1) = 3.34$ ,  $p = .06$ . This indicates that when the capital crime was heinous, the willingness (death-qualified) or unwillingness (excludable) of the psychologist to impose the death penalty was unrelated to whether or not the inmate was assessed as competent or incompetent for execution.

Within the non-heinous crime condition, of the 31 excludable psychologists, 18 (58%) rated the prisoner as competent for execution and 13 (42%) rated him incompetent. Of the 117 death-qualified psychologists, 81 (69%) rated the prisoner competent and 36 (31%) rated him incompetent (see Table 20). Chi-square analysis was nonsignificant,  $X^2(1) = .92$ ,  $p = .33$ . This indicates that in the non-heinous crime condition, willingness to impose the death penalty (death-qualified) or the unwillingness to impose the death penalty (excludable) was unrelated to whether or not the prisoner

was assessed as competent or incompetent for execution.

Table 20

Effect of Willingness to Impose the Death Penalty on  
Competency Decisions: As Related to Non-heinous Crime

Judgement for Execution	Witherspoon Criteria	
	Excludable	Death Qualified
Competent	18(58%)	81(69%)
Incompetent	13(42%)	36(31%)
Total	31	117

Effect of Type of Disorder on Competency Judgement

One 4 (type of disorder) x 2 (competent or incompetent). Chi-square analysis was conducted to determine if the prisoner's previous type of psychopathology was related to whether or not the psychologists rated the prisoner as competent or incompetent for execution independent of death-qualified or excludable classification. A relationship emerged between these variables (see Table 21).

Table 21

Effect of Type of Disorder on Competency Decision

Judgement for Execution	Type of Disorder			
	Paranoid Schizophrenia	Antisocial Personality Disorder	Organic Brain Syndrome	Adjustment Disorder
Competent	36(47%)	62(79%)	50(64%)	58(75%)
Incompetent	40(53%)	16(21%)	28(36%)	19(25%)
Total	76	78	78	77



When the prisoner was described as previously diagnosed as paranoid schizophrenia, 36 (47%) of the respondents rated him as competent for execution and 40 (53%) rated him incompetent. In contrast, when the prisoner was previously diagnosed as antisocial personality disorder, organic brain syndrome, or adjustment disorder, he was rated as competent rather than incompetent more often. Specifically, when diagnosed as antisocial personality disorder, 62 (79%) of the psychologists rated him as competent compared to 16 (21%) who rated him as incompetent. In the case of organic brain syndrome, 50 (64%) of the psychologists rated him competent while 28 (36%) rated him incompetent. When the previous diagnosis was adjustment disorder, 58 (75%) of the psychologists rated the inmate competent for execution and 19 (25%) rated him incompetent. Chi-square analysis of the prisoners type of prior psychopathology and the psychologist's judgement regarding the prisoner's competency to be executed was significant,  $X^2 (3) = 21.33, p < .001$ . This indicates that the psychologist's judgement was affected by the prisoner's previous clinical condition. Paranoid schizophrenia was the only disorder that was more often rated not competent rather than competent for execution.

Main Effects of Psychopathology: On Impact of Disorder During Crime Commission

A One-Way Analysis of Variance revealed that the prisoner's prior type of disorder significantly affected the

amount of impact the psychologists believed the disorder had on the commission of the crime [  $F(3, 315) = 10.56, p < .05$ ]. Cell means and standard deviations for the dependent variables impact of clinical condition, legal responsibility, and malingering are presented in Table 22. Neuman-Keuls' procedure indicated that the prisoner diagnosed an adjustment disorder with anxious mood was rated as significantly less affected ( $p < .05$ ) by his clinical condition during the commission of the crime than when the diagnosis was paranoid schizophrenia (3.17 vs. 4.61), organic brain syndrome (3.17 vs. 4.41), or antisocial personality disorder (3.17 vs. 4.28).

#### On Legal Responsibility for the Crime

Results of a One-Way Analysis of Variance also revealed a main effect of type of psychopathology on how legally responsible for his crime the inmate was believed to be [  $F(3, 314) = 18.13, p < .001$ ]. Neuman-Keuls analysis revealed that the psychologists rated the prisoner with the previous diagnosis of paranoid schizophrenia as significantly less legally responsible ( $p < .001$ ) for committing the capital offense than they rated the prisoner diagnosed as adjustment disorder (4.88 vs. 6.26). The prisoner with paranoid schizophrenia was also rated as significantly less legally responsible for the crime ( $p < .001$ ) than the prisoner with antisocial personality disorder (4.88 vs. 6.30). The prisoner diagnosed as organic brain syndrome was rated by



Table 22

ANOVA Main Effects of Psychopathology

<u>Impact of Clinical Condition<sup>a</sup></u>				
Type of Disorder	Mean (Std. Dev.) Scores	df (3,315)	F 10.56	P .001
Paranoid				
Schizophrenic	4.61 (1.66)			
Antisocial				
Personality Disorder	4.18 (1.98)			
Organic Brain				
Syndrome	4.41 (1.62)			
Adjustment Disorder	3.17 (1.70)			

  

<u>Legal Responsibility<sup>b</sup></u>				
Type of Disorder	Mean (Std. Dev.) Scores	df (3,314)	F 18.13	P .001
Paranoid				
Schizophrenic	4.88 (1.91)			
Antisocial				
Personality Disorder	6.30 (1.14)			
Organic Brain				
Syndrome	5.29 (1.59)			
Adjustment Disorder	6.26 (1.15)			

  

<u>Malingering Likelihood<sup>c</sup></u>				
Type of Disorder	Mean (Std. Dev.) Scores	df (3,311)	F 16.11	P .001
Paranoid				
Schizophrenic	3.24 (1.59)			
Antisocial				
Personality Disorder	4.80 (1.73)			
Organic Brain				
Syndrome	3.50 (1.48)			
Adjustment Disorder	4.41 (1.67)			

<sup>a</sup>A Score was obtained between "1" and "7"; "1" indicating "Had No Impact" and "7" indicating "Had Extreme Impact".

<sup>b</sup>A Score was obtained between "1" and "7"; "1" indicating "Not at All Responsible" and "7" indicating "Completely Responsible".

<sup>c</sup>A Score was obtained between "1" and "7"; "1" indicating "Not at All Likely" and "7" indicating "Extremely Likely".

the psychologists as significantly less legally responsible for his crime ( $p < .001$ ) than the prisoner with adjustment disorder (5.29 vs. 6.26) and those previously affected with organic brain syndrome were also rated as less legally responsible for their actions during the crime ( $p < .001$ ) as those previously affected with antisocial personality disorder (5.29 vs. 6.30). No other significant differences between the four psychopathologies were demonstrated.

#### Likelihood of Malingering on Death Row

A main effect of type of disorder emerged by One-Way Analysis of Variance on the dependent variable of likelihood that the prisoner's current behavior on death row was malingering [ $F(3, 311) = 16.11, p < .001$ ]. Neuman-Keuls analysis demonstrated that the psychologists rated the prisoner previously diagnosed as antisocial personality disorder significantly more likely to be malingering on death row ( $p < .001$ ) than the prisoner formerly diagnosed as paranoid schizophrenic (4.80 vs. 3.24). The subjects also believed that the inmate formerly diagnosed as adjustment disorder was significantly more likely to be malingering on death row ( $p < .001$ ) than was the paranoid schizophrenic (4.41 vs. 3.24). The psychologists rated the prisoner previously diagnosed as antisocial personality disorder as significantly more likely to be malingering ( $p < .001$ ) than the prisoner formerly diagnosed as organic brain syndrome (4.80 vs. 3.50) and also believed that the prisoner



diagnosed as adjustment disorder was significantly more likely to be malingering on death row ( $p < .001$ ) than was the prisoner formerly diagnosed as organic brain syndrome (4.41 vs. 3.50). No other significant differences in likelihood of malingering occurred between any of the four groups.

#### Main Effects of Type of Crime

Six One-Way Analyses of Variance was conducted to investigate the possible effects of type of crime (heinous/non-heinous; impulsive/premeditated) on the dependent variables of a) impact of the clinical condition on the commission of the crime, b) legal responsibility of the inmate for the crime, and c) likelihood that the defendant was malingering on death row.

Results indicated that a main effect of heinous crime was evident on the dependent variable of impact the clinical condition of the inmate had on the inmate's behavior during the crime [ $F(1, 315) = 4.85, p < .02$ ]. The analysis revealed that the prisoners who had committed a heinous crime were rated by the psychologists as significantly more affected by their clinical condition (paranoid schizophrenia, antisocial personality disorder, organic brain syndrome, or adjustment disorder) than those prisoners who had committed a non-heinous crime.

An additional One-Way Analysis of Variance demonstrated that the crime committed under the premeditated crime

condition was rated as significantly more heinous [  $F(1, 321) = 4.15, p < .04$ ] by the respondents than was the crime committed under the impulsive crime condition.

To assess the validity of the independent variables: heinous crime, impulsive crime, and premeditated crime, One-Way Analysis of Variance were conducted on the dependent measures of: a) perceived heinousness of the crime, b) impulsivity rating of the crime, and c) degree of premeditation of the crime. Results revealed that the crime committed under the heinous crime condition was perceived as significantly more heinous than was the crime committed under the non-heinous crime condition (  $F(1, 321) = 56.20, p < .001$ ]. The crime committed under the impulsive crime condition was rated as significantly more impulsive than the crime committed under the premeditated crime condition [  $F(1, 315) = 184.74, p < .001$ ], and the crime committed under the premeditated crime condition was rated as significantly more premeditated than was the crime committed under the impulsive crime condition (  $F(1, 315) = 190.67, p < .001$ ]. No other significant effects were obtained for type of crime.

#### Main Effects of Willingness to Impose the Death Penalty

Three One-Way Analyses of Variance were conducted to investigate the possible effects of death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) on the dependent measures of



a) impact of the disorder on the commission of the crime, b) legal responsibility for the crime, and c) likelihood of malingering. No significant differences were obtained between the two groups of death-qualified or excludable psychologists in their ratings of the three dependent measures. Additional One-Way Analyses of Variance were conducted to determine if differences were apparent between the death-qualified and excludable psychologists in their ratings of: a) how heinous they perceived the crime to be, b) how premeditated they believed the crime was, and c) how impulsive they believed the crime had been. No significant differences were obtained. The death-qualified and excludable psychologists demonstrated statistically equivalent mean scores on ratings of heinousness, premeditation, and impulsivity under every crime condition.

Main Effects of Competency: On Impact of the Disorder during Crime Commission

One-Way Analysis of Variance revealed that the psychologists who assessed the inmate as competent for execution rated the inmate as significantly less affected by his previous clinical diagnosis than did the psychologists who assessed the inmate as incompetent for execution [  $F(1, 306) = 26.07, p < .001$  ].

On Legal Responsibility for the Crime

One-Way Analyses of Variance demonstrated that the psychologists who assessed the inmate as competent for

execution rated the prisoner as significantly more legally responsible for his crime than the psychologists who assessed the inmate as incompetent for execution [  $F(1, 306) = 67.09, p < .001$ .

#### On Likelihood of Malingering Behavior on Death Row

It was also demonstrated by One-Way Analyses of Variance that the psychologists who assessed the inmate as competent for execution rated the inmate as significantly more likely to be malingering on death row than did the psychologists who assessed the inmate as incompetent for execution [  $F(1, 303) = 142.71, p < .001$ . Cell means and standard deviations for the three dependent measures of impact of the disorder on crime, legal responsibility for crime, and likelihood of malingering are illustrated in Table 23.

Each subject was presented with four different sources of information pertaining to the death-row inmate. These sources were: a) social history, b) crime description, c) current behavior on death-row, and d) test scores (WAIS-R and MMPI-1). The psychologists rated each source of information according to how much impact it had upon their judgement of the inmate's competency to be executed. The mean ratings for the psychologists who judged the inmate to be competent for execution and those who judged him to be incompetent for execution are presented in Table 24.



Table 23

ANOVA Main Effects of Competency

<u>Impact of Clinical Condition<sup>a</sup></u>				
Judgement for Execution	Mean (Std. Dev.) Scores	df (1,306)	F 26.07	P .001
Competent	4.75 (1.78)			
Incompetent	4.83 (1.70)			

  

<u>Legal Responsibility<sup>b</sup></u>				
Judgement for Execution	Mean (Std. Dev.) Scores	df (1,306)	F 26.07	P .001
Competent	6.16 (1.17)			
Incompetent	4.71 (1.91)			

  

<u>Malingering Likelihood<sup>c</sup></u>				
Judgement for Execution	Mean (Std. Dev.) Scores	df (1,306)	F 26.07	P .001
Competent	4.69 (1.58)			
Incompetent	2.59 (1.10)			

<sup>a</sup>A Score was obtained between "1" and "7"; "1" indicating "Had No Impact" and "7" indicating "Had Extreme Impact".

<sup>b</sup>A Score was obtained between "1" and "7"; "1" indicating "Not at All Responsible" and "7" indicating "Completely Responsible".

<sup>c</sup>A Score was obtained between "1" and "7"; "1" indicating "Not at All Likely" and "7" indicating "Extremely Likely".

On Importance of Social History

The subjects were requested to rate how important the information contained in the social history of the inmate was in formulating their assessment as to whether or not the inmate was competent or incompetent for execution. All information included in the social history was held constant

between groups except for the previous diagnoses of the inmate, which was varied between paranoid schizophrenic, antisocial personality disorder, organic brain syndrome, and adjustment disorder with anxious mood.

Table 24

Cell Means and Standard Deviations Denoting the Importance of Information Sources on Formulating Competency Decision

	<u>Source of Information</u>			
	Social <sup>a</sup> History	Crime <sup>a</sup> Description	Current <sup>a</sup> Behavior	Test <sup>a</sup> Scores
Judgement for Execution	Mean (Std.Dev.)	Mean (Std.Dev.)	Mean (Std.Dev.)	Mean (Std.Dev.)
Competent	5.05 (1.64)	5.26 (1.89)	4.74 (1.74)	5.46 (1.54)
Incompetent	4.66 (2.19)	4.05 (2.10)	6.04 (1.29)	4.78 (1.70)

<sup>a</sup>A Score was obtained between "1" and "7" with "1" indicating "Not at All Important", "7" indicating "Extremely Important."

One-Way Analyses of Variance indicated that there were no significant differences between the degree of importance attributed to information contained in the social history among the psychologists who rated the inmate competent and the psychologists who rated him incompetent.

On Importance of Crime Description

All subjects were asked to rate how important they believed the information contained in the crime description was in the formulation of their decision as to whether or not the prisoner was competent for execution.



A One-Way Analyses of Variance revealed that the psychologists who assessed the inmate competent for execution rated the crime description significantly more important in formulating their decision than did the psychologists who rated the inmate incompetent for execution [  $F(1, 306) = 25.64, p < .001$  ].

#### On Importance of Current Behavior on Death Row

The psychologists were requested to rate how important the inmate's current behavior on death row was in formulating their decision regarding the inmate's competency for execution.

A One-Way Analyses of Variance demonstrated that the psychologists who rated the inmate competent for execution attributed significantly less importance to the behavior the inmate was currently demonstrating on death row than did the psychologists who rated the inmate incompetent for execution (  $F(1, 309) = 45.28, p < .001$  ).

#### On Importance of Test Scores

The subjects were asked to rate how important the inmate's psychological test scores (MMPI, WAIS-R) were in formulating their decision as to the competency of the prisoner to be executed.

One-Way Analysis of Variance revealed that the psychologists who assessed the inmate competent for execution rated the test scores as significantly more important in their decision than did the psychologist who

determined that the inmate was incompetent for execution ( $F(1, 305) = 12.41, p < .001$ ).

The mean impact ratings of the social history, crime description, current behavior on death-row, and test scores were compared using standard  $t$ -tests for the two groups of psychologists, i.e., the group of psychologists who assessed the inmate as competent for execution and the group that assessed the inmate as incompetent for execution. All significant effects were observed with a  $p < .05$ . Within the group who judged the inmate to be competent, the psychologists rated the test scores as significantly more important to the formulation of their competency decision than the inmate's current behavior on death-row (5.46 vs. 4.74),  $t(205) = -4.46$ . They also rated the crime description as significantly more important to the issue of competency than the inmate's current death-row behavior (5.26 vs. 4.74),  $t(205) = 2.92$ . The inmate's test scores were rated by this group as significantly more important than the inmate's social history for the determination of competency (5.46 vs. 5.05)  $t(205) = -2.60$ . No other significant differences in the mean importance ratings for the four sources of information were determined within the group of subjects that judged the inmate to be competent for execution.

Within the group of subjects who assessed the inmate incompetent to be executed, the psychologists endorsed the



inmate's current behavior on death-row as significantly more important to their determination of incompetency than the inmate's test scores (6.04 vs. 4.78),  $t(99) = 5.96$ . They further endorsed the current death-row behavior as significantly more important to their decision than the inmate's social history (6.04 vs. 4.66),  $t(99) = -5.47$ ; or the description of the crime (6.04 vs. 4.05)  $t(99) = -8.11$ . The inmate's test scores were rated significantly more important to the competency decision than the crime description (4.78 vs. 4.05),  $t(99) = -2.68$ , and the inmate's social history was rated as significantly more important than the crime description as well (4.66 vs. 4.05),  $t = 1.98$ . No other significant differences were illustrated in the mean impact ratings of the sources of information within the group of psychologists who judged the inmate to be incompetent for execution.

#### Effect of Willingness to Impose the Death Penalty

Four One-Way Analyses of Variance were conducted to investigate the possible relationships between whether or not the psychologist was death-qualified (willing to impose the death penalty) or excludable (unwilling to impose the death penalty) on the dependent measures of a) importance of social history, b) importance of crime description, c) importance of current behavior on death row, and d) importance of test scores.

Results indicated that the death-qualified psychologists rated the social history significantly more important to their decision regarding competency of the inmate than did the excludable psychologists [  $F(1, 312) = 4.74, p < .03$ ]. There were no significant differences between the ratings of the death-qualified or excludable psychologists on the importance they attributed to the crime description, current behavior on death row, or inmate's test scores (See Table 25).

The mean impact ratings of the social history, crime description, current behavior on death-row, and test scores were compared using standard  $t$ -tests for the two groups of psychologists, i.e., the group of psychologists who were death-qualified and the group that was excludable. All significant effects were observed with a  $p < .05$ . Within the group of death-qualified psychologists, the subjects rated the inmate's test scores significantly more important in the formulation of their competency for execution decision than the crime description (5.30 vs. 4.92),  $t(251) = -2.34$ . The death-qualified psychologists endorsed the inmate's current death-row behavior, social history, and crime description as having statistically equivalent value to their determination of whether or not the inmate was competent to be executed.



Table 25

Cell Means and Standard Deviations Denoting the Importance of Information Sources Between Death-Qualified and Excludable Subjects

Witherspoon Criteria	<u>Source of Information</u>			
	Social <sup>a</sup> History	Crime <sup>a</sup> Description	Current <sup>a</sup> Behavior	Test <sup>a</sup> Scores
	Mean (Std.Dev.)	Mean (Std.Dev.)	Mean (Std.Dev.)	Mean (Std.Dev.)
Death Qualified	5.03 (1.75)	4.92 (2.04)	5.16 (1.69)	5.30 (1.54)
Excludable	4.46 (2.12)	4.57 (2.04)	5.38 (1.81)	5.00 (1.89)

<sup>a</sup>A Score was obtained between "1" and "7" with "1" indicating "Not at All Important" and "7" indicating "Extremely Important."

Within the group of excludable psychologists, the current death-row behavior of the inmate was rated as significantly more important to their competency assessment than either the crime description (5.38 vs. 4.57),  $t(59) = -2.33$  or the inmate's social history (5.38 vs. 4.46),  $t(59) = -2.57$ . No other significant differences in the mean impact ratings of the four measures were observed within the group of excludable psychologists. Table 26 presents the rank-ordered mean value of the four sources of information (social history, crime description, current behavior, and test scores) as endorsed by the four groups of subjects

(determined inmate competent, determined inmate incompetent, death-qualified, and excludable).

Table 26

Rank-ordered Mean Value of the Information Sources as Endorsed by Psychologists Who Determined the Inmate Competent or Incompetent and Who Were Death-Qualified or Excludable

<u>Determined Competent</u>	<u>Determined Incompetent</u>	<u>Witherspoon Death-Qualified</u>	<u>Witherspoon Excludable</u>
Test Scores (5.46)	Current Behavior (6.04)	Test Scores (5.30)	Current Behavior (5.38)
Crime Description (5.26)	Test Scores (4.78)	Current Behavior (5.16)	Test Scores (5.00)
Social History (5.05)	Social History (4.66)	Social History (5.03)	Crime Description (4.57)
Current Behavior (4.74)	Crime Description (4.05)	Crime Description (4.92)	Social History (4.46)

Effect of Type of Disorder

Four One-Way Analyses of Variance were conducted to determine the effects of the type of disorder on the dependent variables of a) importance of social history, b) importance of crime description, c) importance of current behavior on death row, and d) importance of test scores.



A main effect of type of disorder was found on the dependent measure of crime description ( $F(3, 312) = 2.87, p < .03$ ). Neuman-Keuls analysis indicated that when the prisoner was described as previously affected by antisocial personality disorder the psychologists rated the crime description as significantly more important to their determination of competency to be executed ( $p < .03$ ) compared to when the prisoner was described as previously affected by paranoid schizophrenia (5.27 vs. 4.34). No other significant effects of psychopathology were demonstrated.

## DISCUSSION

The present study was designed to investigate the relationship between death penalty attitudes, death-qualification, and aggravating and mitigating circumstances on the competency for execution decisions made by forensic psychologists. The classification of death-qualified or excludable status among subjects was determined by the criteria developed by Fitzgerald and Ellsworth in 1984 and is the criteria that meets current legal standards for the selection of death-qualified jurors to serve on capital juries. Those who would consider imposing the death penalty under some circumstances are classified as death-qualified and eligible to serve as jurors in capital offenses. Those who are unwilling to consider imposing the death penalty under any circumstances are classified as excludable and are ineligible for jury duty in capital trials.

### Death-Qualified Versus Excludable Psychologists

The present study found that 258 of the 322 responding psychologists (80%) indicated that they would be willing to impose the death penalty, and would therefore be considered death-qualified under current legal standards. Sixty psychologists (20%) indicated that they would be unwilling to impose the death penalty under any circumstances and would therefore be classified as excludable. The percentage



of psychologists in the present study found to be death-qualified in slightly lower than the percentages commonly reported in the jury literature by Fitzgerald and Ellsworth (1984). These investigators have reported a death-qualified rate of 83% when the population examined was adult men and women eligible for jury selection. In contrast, the percentage of psychologists in the present study who can be classified as excludable is somewhat higher than the 17% Fitzgerald and Ellsworth report. These small discrepancies may be attributable to the characteristics of the two populations sampled. It could be argued that male forensic psychologists comprise a more homogeneous group than the male and female sample of adults eligible for jury selection in terms of sex, education level, and occupation. One might expect the number of excludable psychologists to be somewhat higher than the 20% reported in the present study, based on the robust findings that increasing levels of education tend to attenuate belief in the death penalty (Cowan, Thompson, & Ellsworth, 1984; Ellsworth, Bukaty, Cowan, & Thompson, 1984; Ellsworth & Ross, 1982). Three possible explanations could be considered for the relatively large differences between the number of death-qualified and excludable psychologists. The first lies in the chosen speciality of forensic psychology. The criminal justice system in the United States, based on English common law, is an adversarial one. Exhibits, evidence, and witnesses are introduced by one side

or the other with the sole purpose of convincing the fact-finder that a particular side's viewpoint is the truthful one (Wrightsmān, 1991). Jurors have to choose between two versions of the truth, both of which are probably inaccurate to some degree. Sheppard and Vidmar (1980) have claimed that lawyers with the adversarial orientation produce biased accounts of events and facts among witnesses. Other critics of the adversarial model have contended that it promotes a competitive atmosphere that often distorts the truth about a dispute (Lind, 1982). Psychology, in contrast, is empirical in its orientation. Graduate training in the spirit of the scientists/practitioner model advocates objectivity and impartiality when evaluating evidence. Clinically, the role of the psychologist is to understand and assist individuals to bring about therapeutic change by means of a supportive, helping relationship. Psychologists who find themselves in the midst of an adversarial arena, may then, experience moral dilemmas as they attempt to adhere to the profession's code of ethical conduct while being perceived by the courts as an advocate, rather than an unbiased scientist (Wrightsmān, 1991). It is possible that psychologists who seek careers within such a system may tend to possess personal characteristics that are inherently different from those psychologists who decline participation in forensic-related services. The field may attract or reward



individuals who are more comfortable with controversy and dispute associated with adversarial justice and ill-defined concepts such as "competency" and "insanity." Such individuals may be less likely to experience cognitive dissonance (e.g., the internal conflict associated with rendering an absolute judgment based on evidence that is inaccurate, imprecise, and often irrelevant) when placed in the adversarial arena of the courtroom or death-row.

Secondly, the present socio-political climate tends to foster a "get tough" policy in regard to the suppression of crime in the United States. "Law and order" was the rallying cry during the presidential campaign of 1968. The election of Richard Nixon in that year symbolized a shift in the sympathies of the general population and witnessed the Supreme Court rendering decisions aimed at redressing the imbalance between suspects' rights and society's rights (Wrightman, 1991). On one level, the reason the Supreme Court has moved toward restricting the rights of the accused over the last 20 years is that its newer members reflect the conservative political values of those who chose them (Nixon, Ford, Reagan, & Bush), yet shifts in the concerns of individual voters and society at large were responsible for the presidential elections and subsequent appointments (Wrightman, 1991). The public outcry against crime has continued to gain momentum over the last two decades and is reflected by the current administration's recent proposal of

a bill to Congress that would expand the death penalty to 30 more categories of crime. thus, there may be some sense of social responsibility, or concern for the protection of society at large that prompts forensic psychologists to support the death penalty for at least some capital offenses. The third possibility would be that a response-bias existed in the present sample and contributed to the large number of death-qualified psychologists reported in this study, i.e., those who were death-qualified were more inclined to participate as subjects or more interested in the topic of death penalty attitudes and competency for execution. This issue will be discussed in a later section.

A larger discrepancy between percentages of death-qualified and excludable psychologists occurred between the present study and a similar investigation by Wytucki (1990). Wytucki reported that 87% of the forensic psychologists included in his sample were death-qualified while 13% were excludable. Wytucki's population consisted of both male and female forensic psychologists, whereas the present study only sampled male forensic psychologists. The jury literature suggests that including females in the sample could likely increase the number of excludable individuals and decrease the number of death-qualified. The most likely explanation for Wytucki's higher percentage of death-qualified and lower percentage of excludable psychologists



may lie, therefore, in the differing sampling techniques rather than characteristics of the samples. The Wytucki study was not a random sample from all 50 states. Only those psychologists currently residing in the 36 states that provide for the death penalty were included. This represents 72% of all of the states. In the present study, 77% of the respondents were presently practicing in states that do authorize the death penalty (See Appendix Q), while 23% of the respondents practiced in the remaining 14 states (Bureau of Justice Statistics Bulletin, 1989). It seems possible that Wytucki's number of death-qualified psychologists may have been somewhat inflated by the nonrandom sample. This explanation is supported by the present study that found that the psychologists practicing in states that provide for the death penalty were clearly more in favor of the death penalty than psychologists who practiced in states where no death penalty existed. Future investigators, therefore, would be well-advised to consider this biasing potential when designing similar investigations.

#### Death Penalty Attitudes, Death-qualification, and Competency Decisions

The present study found that the relationship between death penalty attitudes and a finding of competent for execution approached, but did not achieve statistical significance ( $p < .06$ ). It was clearly demonstrated,

however, that the responding psychologists who did assess the death-row inmate as competent for execution were significantly more in favor of the death penalty than were the psychologists who determined that the inmate was incompetent for execution ( $p < .01$ ). Death-qualified psychologists were also found to be significantly more in favor of the death penalty than were excludable psychologists. Perhaps then, it is not so surprising that death-qualified psychologists in the present study were also more likely than excludable psychologists to assess the inmate as competent for execution. The basis for such a finding, however, is difficult to ascertain. Such results warrant great caution in their interpretation. A cause-effect relationship cannot be inferred based upon these data but a correlational relationship clearly is in evidence. The present findings are contradictory to the Wytucki (1990) study that reported no relationships between death penalty attitudes or death-qualification and competency for execution decisions made by forensic psychologists. Designs of the two studies were similar. The four DSM-III-R diagnoses were the same, as was the demonstrated symptomatology. The test scores were virtually identical, as was the description of the inmate's current behavior on death-row. An important difference between the two studies, however, was the amount of information provided in the crime description. The Wytucki (1990) design allowed for only one



crime description, and details were not elaborated. It was simply stated that the inmate had been convicted of shooting and killing a convenience store clerk during the course of an armed robbery. The present study, on the other hand, varied the crime description to include aggravating circumstances, such as a heinous description that portrayed the inmate not only stabbing the clerk to death, but then dismembering and burying the body parts. A clearly premeditated condition served as an aggravating factor as well. This was in contrast to an impulsive crime condition. Impulsivity has frequently been utilized in similar designs to suggest lessened responsibility on the part of the defendant, i.e., a mitigating circumstance (Luginbuhl & Middendorf, 1988). These manipulations did appear to affect the outcome of the study, and this effect is discussed at length in a later section. Briefly, the death-qualified psychologists who received the heinous and premeditated crime conditions evaluated the inmate as competent to be executed significantly more often than did the death-qualified psychologists who received the non-heinous and impulsive crime conditions or the excludable psychologists who received the same crime conditions. It does seem plausible, therefore, that all else equal, the contradictory findings of this and the Wytucki (1990) study may be in part attributable to the experimental manipulations undertaken in the present study. When the psychologists here had access

to additional information that did not pertain to the behavior in question (the inmate's current behavior on death-row), the death-qualified psychologists who received heinous or premeditated crime descriptions apparently were less able than the excludable psychologists to disregard this knowledge as irrelevant to the task at hand and assess only what was relevant to the issue of competency to be executed, i.e., the current mental status of the client. This tends to support the concerns of Heilbrun (1987), Grisso (1986), and other forensic psychologists who have pointed out the potential for a wide degree of variability in the way a psychologist may approach the problem of determining competency for execution. What is relevant to the issue of competency for execution and what is not has yet to be empirically determined, nor has the domain of behavior that is actually being assessed. These data reiterate the need for a standardized format that would: a) clearly elucidate the scope of information the examiner should have access to, and b) unmistakably define the parameters of the competency evaluation in terms of specific questions the examiner should address.

Death penalty attitudes and their correlates have been studied extensively among perspective jurors, but associated factors that have been examined have generally been conviction-proneness, favoring the prosecution, and rejection of the insanity defense. The issue of competency



has never been addressed. Fitzgerald and Ellsworth (1984) have suggested that the tendency for death-qualified jurors to trust the prosecution more than the defense, vote for conviction more often than acquittal and mistrust the insanity defense may be attributable to contrasting ideological orientations held by those who favor or oppose the death penalty. These authors and others, such as Ellsworth, Bukaty, Cowan, and Thompson (1984), postulate that excludable jurors tend to support due-process values that emphasize the fallibility of the criminal justice system in apprehending, trying, and convicting lawbreakers. Death-qualified jurors, they argue, tend to embrace crime-control values. Crime-control values support the contention that the most important function of the criminal justice system is repressing crime. The basic assumption of the crime-control ideology has been stated "anyone who breaks the law should pay the price, regardless of due-process guarantees, and that society must protect itself against criminals by means of swift, certain, and severe punishment." Unlike jurors, however, psychologists are trained and ethically obligated to evaluate clients in an objective, unbiased fashion. At no time in a psychologist's career will the burden of responsibility be so profound in its consequences to all parties directly and indirectly involved than in the case of assessing competency to be executed. It seems implausible, therefore, to consider that underlying

sociopolitical orientations could derail scientific objectivity. A more plausible explanation for the relationship between death-qualification and a determination of competency for execution demonstrated in the present study may be that death-qualified and excludable psychologists adhere to contrasting philosophical orientations on the issue that Wrightsman (1991) has called "the first dilemma" in the relationship between psychology and law: the rights of individuals versus the rights of the accused. Wrightsman has asserted that psychologists must choose between four contrasting roles they will play within the criminal justice system: "pure" scientist, applied scientist, policy evaluator, or advocate. If the psychologist perceives himself/herself to be an advocate, then they must decide which values the law should reflect: protection of the rights of specific individuals, or protection of society at large. The present study did not assess the respondents perceived role within the legal system, nor did it address the larger issue of the psychologists' value systems in terms of the rights of society versus the rights of the accused. Future investigators might consider that development of a scale that would quantify these perceptions would be an asset to research in this area. Although speculative, it seems plausible that psychologists who are so strongly opposed to the death penalty that they would refuse to impose it even



when aggravating circumstances, or those factors that make a particular murder even worse than a "typical" murder are involved (excludable psychologists) might tend to hold values consistent with protecting the rights of specific individuals, in this case, the accused. Psychologists who admit that they would consider aggravating factors in some cases and be willing to impose the death penalty accordingly (death-qualified psychologists) might tend to embrace values more consistent with protection of society at large, or the common good. Such a theory might predict that death-qualified psychologists could conceivably be more attentive or sensitive to aggravating factors than excludable psychologists. The present study tends to support this hypothesis.

#### Aggravating and Mitigating Circumstances

With respect to aggravating circumstances, results indicated a significant difference between death-qualified and excludable psychologists over all aggravating circumstances (heinous crime and premeditated crime). There was not, however, a significant overall difference between death-qualified and excludable psychologists with respect to mitigating circumstances (impulsive crime and psychopathology). Specifically, it was found that when the inmate's crime had been premeditated or heinous, the psychologists who rated themselves as favoring the death penalty (regardless of death-qualified or excludable

classification) and the psychologists who indicated they would be willing to impose the death penalty (death-qualified) were more likely to assess the inmate competent for execution than were the psychologists who rated themselves in opposition to the death penalty and those who indicated that they would be unwilling to impose the death penalty (excludable). In contrast, when the inmate's crime was impulsive or non-heinous, the competency ratings of the psychologists were statistically equivalent. It seems possible that cases in which the victim was treated in an extremely violent and heinous manner could intensify moral outrage and heighten feelings of social and moral obligation to the victim and society at large while accentuating the perception of dangerousness on the part of the perpetrator. The perceived need to protect society from such dangerous elements by the surest means available could conceivably reduce the dissonance associated with the implication or assessing that individual as competent to be executed. Thus, it may be that death-qualified psychologists tend to interpret evidence in a way that allows for a measure of consistency between their ideological orientations toward the death penalty and reduce any dissonance that might be associated with finding a death-row inmate competent to be executed, which some authors have claimed is tantamount to "assisting" with an execution (Radelet & Barnard, 1986).

The present findings are in accordance with those of



Luginbuhl and Middendorf (1988) who demonstrated that in a sample of potential jurors, there was a significant difference between death-qualified and excludable jurors over all aggravating circumstances, but no overall difference in regard to mitigating circumstances, with the exception of one particular mitigating factor. The excludable jurors were significantly more likely to accept emotional disturbance as a mitigating circumstance than were the death-qualified jurors. Although no statistical relationship between willingness to impose the death penalty and any mitigating factors emerged in the present study, the majority of excludable psychologists found for "not" competent for execution on the part of the death-row inmate under two conditions of psychopathology: paranoid schizophrenia (63%) and organic brain syndrome (56%). The majority (66%) of death-qualified psychologists, however, found for "competent" for execution under the organic brain syndrome condition. Under the paranoid schizophrenia condition their decisions were evenly split with 50% determining the schizophrenic competent and 50% determining him not competent. The two studies, of course, are not directly comparable. The populations and research questions investigated were vastly different. It does appear, however, that the decisions of the death-qualified psychologists in the present study were influenced by similar variables (i.e., variables that represented

aggravating factors) that influenced the decisions of death-qualified jurors. The excludable psychologists in the present study also appeared more willing to accept pathology as a mitigating factor, similar to Luginbuhl and Middendorf's (1988) excludable jurors. These authors speculated that jurors with a death penalty bias foster differing receptivity to evidence supporting aggravating and mitigating circumstances than jurors who are fundamentally opposed to the death penalty.

The present study also found that when the prisoner had been previously diagnosed as antisocial personality disorder, death-qualification, but not death penalty attitude was significantly related to a finding of competent for execution, i.e., those psychologists who favored the death penalty were no more likely to evaluate the antisocial inmate as competent for execution as were those who opposed the death penalty, but the death-qualified psychologists were significantly more likely to evaluate the antisocial competent to be executed than were the excludable. Although speculative, it is conceivable that within the framework of the proposed hypothesis, a diagnosis of antisocial personality disorder could possibly be construed as an aggravating rather than mitigating factor, and an orientation denoting dangerousness that is enduring and intractable in nature. If so, such a diagnosis might serve to attenuate potential dissonance associated with allowing



the execution to proceed. In any case, it does seem possible that the psychologists in the present sample did not view the antisocial disorder as a mitigating circumstances that lessened the responsibility of the inmate, since they rated the prisoner with antisocial personality disorder as significantly more legally responsible for committing the crime than the prisoners with paranoid schizophrenia and organic brain disorder, and equally responsible for his crime as the inmate diagnosed previously as adjustment disorder (essentially, no psychopathology). Yet, when asked to evaluate the amount of impact the previous pathology had on the commission of the capital crime, the psychologists, both death-qualified and excludable, rated the inmate with antisocial personality disorder as much affected by the disorder as they believed the paranoid schizophrenic and organic brain syndrome inmates were affected by their pathologies. Making the distinction that sociopathy had an equal impact on behavior as paranoid schizophrenia and organic grain syndrome but equating it with no psychopathology with respect to legal responsibility for behavior tends to suggest that neither the death-qualified psychologists nor the excludable psychologists tended to view antisocial personality disorder as a mitigating circumstance.

#### Evaluation of Evidence

An interesting aspect of the present study was that

while death penalty attitude was marginally related and death-qualification was significantly related to the competency decisions of the psychologists, these variables were not related to any other decisions the psychologists were asked to make. When quantifying the impact the psychopathology of the inmate had on the commission of the crime, the inmate's legal responsibility for the crime, and the likelihood that the inmate was malingering on death row, the death-qualified and excludable psychologists were statistically equivalent in their determinations. Neither did the two groups differ in their perceptions of how heinous, impulsive, or premeditated the crimes were believed to be. they also rated the importance of the four information sources (social history, crime description, current behavior on death-row, and test scores) similarly. Thus, the null hypotheses could not be rejected for every decision the two groups of psychologists made with the exception of the decision relating to competency to be executed. When making this decision, the death-qualified psychologists were apparently more attentive to the crime description and more sensitive to it when it reflected the presence of aggravating factors. The diagnosis of sociopathy also appeared to affect the death-qualified's competency decisions.

#### Factors Associated with Competency for Execution

The inmate assessed as competent for execution was



generally believed by both the death-qualified and the excludable psychologists to be less affected by his previous psychopathology and more legally responsible for his actions during the commission of the crime than was the incompetent inmate. A large difference was demonstrated between the legal responsibility ratings given by the psychologists who later assessed the inmate incompetent for execution and the psychologists who later determined that he was competent. A score of 7.00 indicated that the psychologists believed the inmate was "completely" legally responsible for his actions during the commission of the crime. A score of 1.00 indicated that the inmate was determined to be "not at all" legally responsible. The mean score for the psychologists who later assessed the inmate competent for execution was 6.16, compared to 4.71 for the psychologists who later assessed the inmate as incompetent to be executed. This tends to raise the interesting notion that the psychologists in the present sample may have conceived of competency for execution as existing on a continuum with other legal competencies, e.g., the legal competency of the inmate at the time of the crime in question and during the trial proceedings. It was stated in the crime description that the defendant's competency was not raised as an issue at the time of the capital trial. These results tend to suggest that the psychologists who believed that the prisoner was legally competent when he committed the crime and when he

was tried in court also believed that he was competent at the time of the request for an evaluation for competency for execution. The psychologists who rated the prisoner incompetent or of questionable competency when he committed the crime also appeared to remain consistent in their belief that the prisoner was still incompetent and should not be executed under the circumstances. Further supporting evidence for such a contention is demonstrated by the self-rated importance the psychologists attached to the various information sources from which they formulated their competency decisions. Each subject was supplied with four sources of information related to the death-row inmate. They were asked to rate each information source in terms of its overall importance in their competency for execution decision-making process. The inmate's social history was unremarkable and depicted normal development until late adolescence, at which time the prisoner began to demonstrate symptomatology consistent with one of the four psychopathologies. A formal DMS III-R diagnosis was included. The crime description not only detailed the prisoner's crime but included the statement "the defendant's competency was not raised as an issue at the time of the trial." The test scores were designed to reflect the DSM III-R diagnosis contained in the social history. The WAIS-R indicated that the inmate was functioning in the average range of intellectual capacity, and the MMPI-1 was



consistent with moderate symptomatology. This information source pointed out, however, that the test battery had been administered 3 years prior to the currently requested competency evaluation, at the time of the inmate's admission to death-row. Thus, it was noted that the test scores were not current. Finally, a description of the inmate's current behavior, which had caused his attorney to question his competency to be executed was provided. This was designed to reflect a degree of ambiguity, in that at times the prisoner appeared lucid and oriented and at other times, frankly psychotic. Interestingly, the two groups of psychologists (those who determined competent versus those who determined not competent for execution) maintained a high degree of consistency in their decisions across different inmate behaviors related to the issue of competency. Those who rated the inmate as legally responsible at the time of the crime tended to also rate the prisoner as malingering on death-row and therefore attached little significance to the inmates questionable current behavior. Instead, they endorsed the three-year-old test scores and crime description as more important in formulating their competency decision, and in the end, assessed the inmate as competent to be executed. A rank ordering of means indicated that those psychologists who found for competency for execution considered first the prisoner's test scores, then the crime description, followed

by the social history, and finally, his current behavior on death-row. Those psychologists who apparently questioned the legal competency of the inmate at the time of the crime in question, however, did not appear to doubt the authenticity of the behavior on death-row, and indeed attached significantly greater importance to the inmate's current behavior than to any other source of information, and to finally conclude that the inmate was incompetent for execution. Rank ordering of means for the psychologists who found for incompetency to be executed demonstrated that they endorsed the inmate's current behavior on death row as the most important criteria for the formulation of their decision, followed by his test scores, then the social history, and finally, the crime description.

#### Limitations of the Present Study

The validity of this study's results and the extent to which they can be generalized to other populations are restricted primarily by sample characteristics and the limitations associated with survey methodology. More importantly, the present study was correlational in nature, and thus is limited in discerning causative factors or explaining directionality in existing relationships.

The present study investigated a sensitive and complex issue that required thoughtful self-examination. The survey format utilizing self-administered questionnaires appeared to be the most practical and appropriate means of obtaining



the research goals while ensuring the confidentiality of respondents. In the context of validity and reliability, survey research is frequently seen as generally weak on the former and strong on the latter (Babbie, 1979). There is an artificiality associated with the survey format. People's opinions on issues seldom take the form of strongly agreeing, agreeing, disagreeing, or strongly disagreeing with a specific statement. This, together with the potential differences between subjects who choose to respond to a survey and those who choose not to respond puts a strain on its validity. Survey research, however, by presenting all subjects with a standardized stimulus, helps in eliminating unreliability in observations made by the researcher. Moreover, careful wording and ordering of the questions can also reduce the subjects' own unreliability.

The overall response rate is one guide to the representativeness of the sample respondents. The present study achieved an overall response rate of 40%. Although adequate for analyses and within generally acceptable limits, this relatively low return is a serious limitation that raises the concern that a significant response bias may have occurred. It could be argued, however, that the professionals sampled in the present study may have perceived themselves as personally invested in its outcome, from both a professional and an economic vantage point. Therefore, one might expect that the respondents would

attempt to present themselves in an even more positive light than what research indicates most survey subjects do. This phenomenon, however, did not appear to occur. The responding psychologists did admit to strong biases either in favor of or against the death penalty. Furthermore, 45 (14%) of the respondents took the time from their busy schedules to include lengthy comments about their personal feelings related to the topic, or wrote separate letters. One respondent wrote the investigator a 3-page letter and included two examples of competency evaluations he had submitted to the courts. Another fed all the data describing the inmate's test scores into his personal computer program and generated a written profile of the inmate. He then personally called the investigator to discuss his opinions related to the design and the implications of psychologists participating in such areas of controversy. Still another participant called the investigator's advisor to express various concerns. The following examples are some of the psychologist's additional comments and attest to the high degree of emotional intensity the present study apparently generated among some participants: "I would guess that, on the basis of this study, you will try to publish a paper reaching conclusions about psychologists' judgements about competency. I believe that this is a good example of the triumph of a false 'scientism' in psychology....I also believe that 'analogue' studies are a waste of time."



Another psychologist wrote: "Please don't let me hurt your student efforts by requesting a response by sending me a reminder letter or a second mail-out... I can't support this survey as, as described, it is an unacceptable try at research for a psychology doctorate." Still another psychologist wrote: "You are presumptuous to undertake a study of such serious nature in a population of experts... Should you attempt to publish results in any reputable journal, critical analysis would be overwhelming. I would not waste my time on such a fruitless endeavor."

It is understandable that many psychologists demonstrated negative affective responses to the present topic. The participation of psychologists, psychiatrists, and other medical professionals in the execution process is highly controversial, with the two opposing sides elegantly arguing their ethical concerns. Fifty-nine psychologists (18%) of the 322 respondents in the present study had actually evaluated inmates on death-row to determine their competency. These psychologists were statistically as likely to be excludable as death-qualified. The 59 psychologists had completed a total of 260 competency for execution evaluations. Only five psychologists who included critical assessments of the study or the topic itself came from the group who had actually been a part of the competency for execution process. The remaining 40 comments came from psychologists who had never participated. Of the

total number of comments or feedback received (45), 69% came from death-qualified psychologists. The topic itself could be profoundly disturbing to many psychologists and their death penalty attitudes may be intensely personal. It is possible that some of the psychologists construed the present study as an attempt to challenge their credibility or moral character. This was not, however, the purpose of the investigation. The goal, rather, was to systematically determine the kinds of factors and information that psychologists consider salient to the issue of competency for execution, and to correlate death penalty attitudes with competency determinations.

On a more positive note, 45% of the respondents requested an abstract of the results, including most of the psychologists who attached negative comments and criticisms. A few respondents had favorable reactions to the study. One such psychologist wrote: "This is worthwhile research on a topic of utmost importance and interest in the world of forensic psychology." Considering the degree of emotional involvement evidenced by the relatively large number of psychologists who included unsolicited comments and material, it seems possible that response-bias did not significantly affect the study's outcome. Unbiased data would appear to be a more favorable attribute than a high response rate.

The present design provided limited data pertaining to



the death row inmate. This was done to facilitate the probability of a response and for reasons of economic feasibility. Many respondents attached comments to their returns indicating that the data provided was insufficient to make an adequate determination of competency. This point is well-taken. The cost of a "real world" non-analog design, however, would have been prohibitive and likely to lower the response rate, based on the time-consuming task of reading and interpreting extensive data. Future research, however, would do well to closely approximate the actual assessment procedures taking place on death row, and provide for the subjects the same information to which the evaluating psychologist has access. Whenever possible, actual material related to a "real world" situation should be used, i.e., videotaped interviews with death-row prisoners, and test batteries that have been administered to real, rather than fictitious inmates. Future surveys might attempt to elicit information that would clarify the role within the criminal justice system forensic psychologists perceive themselves to play: be it that of "advocate" or "pure" scientist. The latter role is rare within our present system (Wrightsman, 1991). Wrightsman has asserted that regardless of the professional's own viewpoint, the lawyers, jury and the judge tend to perceive the psychologist as an advocate, and as such, he/she is expected to align their loyalty with one side or the other i.e., the

prosecution or the defense, or more globally, the protection of the rights of specific individuals, or the common good of society at large. Collection of such data might help to disentangle the complex relationships between attitudes related to the death penalty and the various decisions psychologists are asked to make.

### Conclusion

More than three-fourths of United States citizens support the death penalty (Wrightsman, 1991). The percentage has increased in recent years, reflecting a national shift toward the crime-control model and away from the due-process model of criminal justice values (Walker, 1985). It does not appear likely that the Supreme Court will reject the death penalty in the near future. There will remain a conflict between law and psychology, based on the increasing demand for psychological services to defendants as well as prisoners facing sentences of death. The conflict is reflected in the preamble to the Code of Ethical Principles of Psychologists: "Psychologists respect the dignity and worth of the individual and strive for the preservation and protection of fundamental human rights. They are committed to increasing knowledge of human behavior and of people's understanding of themselves and others and to the utilization of such knowledge for the promotion of human welfare....." Each psychologist must decide for him/herself whether or not participation in competency for



execution evaluations is ethnically defensible. The dilemma will become more profound with the recent publication of Justice Sandra O'Connor's majority opinion stating: "There is insufficient evidence of a national consensus against executing mentally retarded people convicted of capital offenses for us to conclude that it is prohibited by the Eighth Amendment" (cruel and unusual punishment) (Wrightsmen, 1991). This opinion is in reference to a severely retarded black man with an IQ of 66 electrocuted in Virginia in 1985. In the only systematic clinical investigation of the neuropsychiatric status of individuals condemned to death, Lewis, Pincus, Feldman, Jackson, & Bard (1986) conclude that "the possibility exists that death-row inmates comprise an especially neuropsychiatrically impaired prison population whose pervasive inadequacies make them less capable than other defendants either of obtaining competent representation at the time of the trial or assisting their attorneys in the time-consuming work of documenting the kinds of neuropsychiatric impairments that would be significant for mitigation."

As the number of individuals who have lived for years on death row increases, so too will the number of pleas of execution incompetency. More and more capital inmates may be expected to develop serious mental illness, and psychologists will be called upon to evaluate or treat them in ever-increasing numbers. At present, there is little

consensus among states on the test for competency for execution (Heilbrun, 1987). The present study demonstrates a similar lack of consensus among psychologists in regard to the behavior of an inmate that may suggest incompetency. The competency decisions of the psychologists in the present sample appeared to be influenced by factors other than the current mental status of the inmate in question. This indicates a clear and pressing need to clarify the nature of competency for execution. Particularly relevant is the need to define and standardize the domain of behavior that is to be assessed. Further research should be directed toward disentangling the complex relationship between the examiner's own attitudes and potential biases and the objective decisions they are asked to render. Competency for execution presents far more compelling ethical questions for mental health professionals than do other legal competencies yet this area of research has been virtually ignored. Clearly, the topic is amenable to systematic scientific investigation and, sensitivities aside, further research is warranted to determine who is appropriate to administer such assessments and how they should proceed.



## APPENDICES

APPENDIX A  
CONSENT FORM

You are cordially invited to participate in a dissertation study that is intended to investigate attitudes among psychologists related to the death penalty, the insanity defense, and the question of competency for execution.

You have been selected randomly from all male Ph.D. clinical psychologists listing forensic services in the National Registry of Health Service Providers. Your name will never be attached to the data you provide, or used in any way. Your participation is strictly confidential and on a voluntary basis.

If you choose to participate, we feel you will contribute valuable data that will serve to clarify the complex and sensitive issues surrounding the insanity defense and competency of death-row inmates for execution.

While realizing that in real-life settings, your decisions regarding such profound issues would be based on a thoughtful and comprehensive review of any and all relevant information, we have elected to be sensitive to your time-demands by limiting the data we hope to collect from you. Fifteen minutes of your time would be required to read the enclosed material and complete a brief 11-item questionnaire based on the social history, crime description, and current behavior of a fictitious death-row inmate.

For your convenience, a self-addressed, stamped envelope is included for returning the consent form and questionnaire. Please respond and return the questionnaires as soon as possible. Results of the study will be mailed to you upon request.

Your time and cooperation is greatly appreciated.

I, \_\_\_\_\_ have read all of the above and willingly agree to participate in the study.

If you have any questions regarding the present study, feel free to direct them to Sharon Brown, M.A., Department of Psychology, University of North Dakota (701-777-3451).



APPENDIX B

WITHERSPOON DEATH QUALIFICATION CRITERIA

Assume that you have been called as a possible juror in a capital case. Answer the following questions as accurately as possible.

Are you strongly in favor, somewhat in favor, somewhat opposed, or strongly opposed to the death penalty?

- STRONGLY IN FAVOR.....1
- SOMEWHAT IN FAVOR.....2
- SOMEWHAT OPPOSED.....3
- STRONGLY OPPOSED.....4

Now assume that you've been called as a possible juror in a first degree murder trial. The prosecutor is asking for the death sentence. Since this is a case where the death penalty may be imposed, the judge will ask you certain questions about your attitudes toward the death penalty before deciding whether you should be chosen to serve on the jury.

There are two parts to any trial where the death penalty may be imposed. In the first part, the jury decides whether the person on trial is guilty or not guilty. If the person is found guilty, there is a second part--a separate trial--in which the jury decides whether he or she should get the death penalty, or life in prison.

The judge will ask you the following question:

"Is your attitude toward the death penalty such that as a juror you would be unwilling to impose it in any case, no matter what the evidence was, or would you consider voting to impose it in at least some cases?"

How would you answer? Would you say...

(READ EACH ANSWER CHOICE)

I WOULD BE UNWILLING TO VOTE TO

IMPOSE IT IN ANY CASE..... 1

OR: I WOULD CONSIDER VOTING TO IMPOSE

IT IN SOME CASES..... 2

Now suppose that you were a juror in the first part of the trial, just to decide whether the accused person is guilty or not guilty of the crime. The judge instructs you that in reaching your verdict you are only allowed to consider the evidence presented in court, and must follow the law as he will state it to you. If the accused is found guilty, there will be a separate trial to decide whether or not he or she should get the death penalty.



Which of the following expresses what you would do if you were a juror for the first part of the trial?

(READ EACH ANSWER CHOICE).

I WOULD FOLLOW THE JUDGE'S INSTRUCTIONS AND  
DECIDE THE QUESTION OF GUILT OR INNOCENCE IN A  
FAIR AND IMPARTIAL MANNER BASED ON THE EVIDENCE AND  
LAW..... 1

OR: I WOULD NOT BE FAIR AND IMPARTIAL IN DECIDING THE  
QUESTION OF GUILT OR INNOCENCE, KNOWING THAT IF  
THE PERSON WAS CONVICTED HE OR SHE MIGHT GET THE  
DEATH PENALTY..... 2

## APPENDIX C

### SOCIAL HISTORY: PARANOID SCHIZOPHRENIC

The defendant, Mr. Anthony Jones, is a 24 year old, never married, Caucasian male. His parents own and operate a successful restaurant. They report that Mr. Jones progressed through all developmental milestones at a normal rate. There is no history of physical, sexual, or psychologist abuse. Mr. Jones graduated from high school with a 2.00 grade-point average and enrolled in a local business college. Shortly thereafter, Mr. Jones began to demonstrate social withdrawal, evidenced by long periods of seclusion in his dormitory room. His grades markedly deteriorated as his behavior became increasingly more bizarre. He reported that he was a messenger from God and that Satan and his disciples were trying to poison him. He maintained that he often heard the voice of Satan mocking him. Shortly after his twentieth birthday, Mr. Jones was hospitalized and diagnosed by a clinical psychologist as a paranoid schizophrenic. He was discharged after four weeks.



## APPENDIX D

### SOCIAL HISTORY: ANTI-SOCIAL PERSONALITY DISORDER

The defendant, Mr. Anthony Jones, is a 24 year old, never married, Caucasian male. His parents own and operate a successful restaurant. They report that Mr. Jones progressed through all developmental milestones at a normal rate. There is no history of physical, sexual, or psychologist abuse. At the age of 12, Mr. Jones began to demonstrate frequent truancy from school, cruelty to his peers, and a propensity to engage in frequent fighting. He graduated from high school with a 2.00 grade-point average and enrolled in a local business college. Shortly thereafter, Mr. Jones was arrested for minor property damage. Several other convictions followed, including shoplifting, and drunk driving. Shortly after his twentieth birthday, Mr. Jones was incarcerated for theft and underwent a court-ordered psychological evaluation. He was diagnosed by a clinical psychologist as anti-social personality disorder. He was released from jail after a period of four weeks.

## APPENDIX E

### SOCIAL HISTORY: ORGANIC BRAIN SYNDROME

The defendant, Mr. Anthony Jones, is a 24 year old, never married, Caucasian male. His parents own and operate a successful restaurant. They report that Mr. Jones progressed through all developmental milestones at a normal rate. There is no history of physical, sexual, or psychological abuse. He graduated from high school with a 2.00 grade-point average and enrolled in a local business college. Shortly thereafter, Mr. Jones was involved in a motorcycle accident which resulted in severe head trauma. He began to demonstrate affectively unstable behavior, marked by frequent fluctuations between depression, anxiety, and irritability. On occasion, he demonstrated aggressive outbursts and reported suspicion of the motive of others. He was hospitalized shortly after his twentieth birthday and diagnosed by a clinical psychologist as organic brain syndrome. He was discharged in four weeks.



## APPENDIX F

### SOCIAL HISTORY: ADJUSTMENT DISORDER WITH ANXIOUS MOOD

The defendant, Mr. Anthony Jones, is a 24 year old, never married, Caucasian male. His parents own and operate a successful restaurant. They report that Mr. Jones progressed through all developmental milestones at a normal rate. There is no history of physical, sexual, or psychological abuse. Mr. Jones graduated from high school with a 2.00 grade-point average and enrolled in a local business college. Shortly thereafter, Mr. Jones began to experience anxiety related to the demands of a current relationship and maintaining his academic goals. Shortly after his twentieth birthday, he voluntarily sought therapy from a clinical psychologist, who indicated that Mr. Jones demonstrated some features of adjustment disorder with anxious mood. Mr. Jones continued in therapy for a period of four weeks.

## APPENDIX G

### CRIME DESCRIPTION: HEINOUS/IMPULSIVE

On the night of September 14, 1987, Mr. Jones, by his own admission, entered a convenience store and demanded all of the money in the register. The clerk, alone in the store at the time, complied with this request. Upon receipt of the money, Mr. Jones gagged the victim with the victim's handkerchief and bound his hands with rope he found in the store. He led the victim to a wooded area behind the convenience store and proceeded to torture the victim until the victim appeared to lose consciousness. Mr. Jones admitted that he then dismembered the body with the victim's hunting knife and hid the remains in the convenience store dumpster. A diary found in Mr. Jones's possession at the time of the arrest indicated that he was concerned over his recent impulsive spending of a small inheritance and his increasing debt, but did not allude to the crime in question. The defendant was found guilty of armed robbery and first degree murder and sentenced to death. The defendant's competency was not raised as an issue at the time of the trial.



## APPENDIX H

### CRIME DESCRIPTION: HEINOUS/PREMEDITATED

On the night of September 14, 1987, Mr. Jones, by his own admission, entered a convenience store armed with a knife and demanded all of the money in the register. The clerk, alone in the store at the time, complied with this request. Upon receipt of the money, Mr. Jones bound and gagged the victim with rope he had purchased earlier in the day. He transported the victim in his own vehicle to a pre-selected secluded area outside the city limits, where he proceeded to torture the victim until the victim appeared to lose consciousness. Mr. Jones then admitted that he dismembered the victim and buried the dismembered body parts in several different locations. A diary found in Mr. Jones's possession at the time of the arrest contained a detailed description of the convenience store and the secluded location at which the dismembered body parts were later recovered. The entry was dated 3 days prior to the date the crime was committed. The defendant was found guilty of armed robbery and first degree murder and sentenced to death. The defendant's competency was not raised as an issue at the time of the trial.

## APPENDIX I

### CRIME DESCRIPTION: NON-HEINOUS/IMPULSIVE

On the night of September 14, 1987, Mr. Jones, by his own admission, entered a convenience store and demanded all the money in the register. The clerk, alone in the store at the time, complied with this request. Upon receipt of the money, Mr. Jones stabbed the victim with his own hunting knife and fled the scene. A diary found in Mr. Jones's possession at the time of arrest indicated that he was concerned over his recent impulsive spending of a small inheritance and his increasing debt, but did not allude to the crime in question. The defendant was found guilty of armed robbery and first degree murder and sentenced to death. The defendant's competency was not raised as an issue at the time of the trial.



## APPENDIX J

### CRIME DESCRIPTION: NON-HEINOUS/PREMEDITATED

On the night of September 14, 1987, Mr. Jones, by his own admission, entered a convenience store armed with a knife and demanded all the money in the register. The clerk, alone in the store at the time, complied with this request. Upon receipt of the money, Mr. Jones transported the victim in his own vehicle to a pre-selected secluded area outside the city limits. He stabbed the victim and buried the body in a shallow grave he had prepared earlier in the day. A diary found in Mr. Jones's possession at the time of arrest contained a detailed description of the convenience store and the secluded location of the victim's grave. The entry was dated 3 days prior to the date the crime was committed. The defendant was found guilty of armed robbery and first degree murder and sentenced to death. The defendant's competency was not raised as an issue at the time of the trial.

## APPENDIX K

### CURRENT BEHAVIOR ON DEATH ROW

Since the sentencing, Mr. Jones has spent 3 years on death row. During this time, he has been described by the guards as an "ideal inmate." His execution has been delayed due to ongoing appeals by his attorney. Recently Mr. Jones has demonstrated behavior that has caused his attorney to question his competency. His attorney has requested that a psychological evaluation be administered to determine if his client is competent for execution. The results of the evaluation indicated that while at times, Mr. Jones appears very lucid and oriented, he frequently becomes very withdrawn and refuses to speak. Occasionally, he will remain tightly curled in a fetal position for hours. During these times, Mr. Jones appears to be unaware of his impending execution, as he indicates to the examiner that he will be going home soon and that he has no idea why he is in prison. He voices the fear that prison guards are trying to kill him. Within the last month he has demonstrated one episode of unconstrained violence where he attacked a guard. The Weschler Adult Intelligence Scale-Revised and the Minnesota Multiphasic Personality Inventory were administered upon Mr. Jones's admission to prison. The scores were as follows:



APPENDIX L

TEST SCORES: PARANOID SCHIZOPHRENIC

WAIS-R SCALED SCORES

<u>Verbal Tests</u>		<u>Performance Tests</u>	
Information	13	Picture Completion	14
Digit Span	12	Picture Arrangement	14
Vocabulary	13	Block Design	10
Arithmetic	12	Object Assembly	10
Comprehension	9	Digit Symbol	10
Similarities	9		
<u>Total</u>	<u>68</u>	<u>Total</u>	<u>58</u>

VERBAL IQ 105

PERFORMANCE IQ  
107

FULL SCALE IQ 106

MMPI-1 PROFILE T SCORES

L	50	Hs+5K	53
F	80	D	57
K	52	Hy	55
		Pd+4K	64
		Mf	52
		Pa	75
		Pt+1K	52
		Sc+1K	80
		Ma+2K	64
		Si	53

APPENDIX M

TEST SCORES: ANTI-SOCIAL PERSONALITY DISORDER

<u>Verbal Tests</u>		<u>WAIS-R SCALED SCORES</u>		<u>Performance Tests</u>	
Information	12			Picture Completion	10
Digit Span	10			Picture Arrangement	14
Vocabulary	11			Block Design	11
Arithmetic	11			Object Assembly	10
Comprehension	11			Digit Symbol	9
Similarities	13				
<u>Total</u>	<u>68</u>			<u>Total</u>	<u>58</u>

VERBAL IQ                    105

PERFORMANCE IQ  
   105

FULL SCALE IQ                105

MMPI-1 PROFILE T SCORES

L	50	Hs+5K	52
F	70	D	58
K	48	Hy	55
		Pd+4K	75
		Mf	51
		Pa	53
		Pt+1K	52
		Sc+1K	67
		Ma+2K	74
		Si	40



APPENDIX N

TEST SCORES: ORGANIC BRAIN SYNDROME

WAIS-R SCALED SCORES

<u>WAIS-R SCALED SCORES</u>		<u>Performance Tests</u>	
<u>Verbal Tests</u>			
Information	13	Picture Completion	11
Digit Span	8	Picture Arrangement	11
Vocabulary	13	Block Design	7
Arithmetic	104	Object Assembly	8
Comprehension	13	Digit Symbol	10
Similarities	10		
<u>Total</u>	<u>66</u>	<u>Total</u>	<u>47</u>

VERBAL IQ 108

PERFORMANCE IQ

92

FULL SCALE IQ 100

MMPI-1 PROFILE T SCORES

L	60	Hs+5K	70
F	70	D	57
K	49	Hy	77
		Pd+4K	68
		Mf	51
		Pa	53
		Pt+1K	52
		Sc+1K	80
		Ma+2K	70
		Si	52

APPENDIX N

TEST SCORES: ADJUSTMENT DISORDER WITH ANXIOUS MOOD

WAIS-R SCALED SCORES

<u>Verbal Tests</u>		<u>Performance Tests</u>	
Information	12	Picture Completion	11
Digit Span	8	Picture Arrangement	10
Vocabulary	11	Block Design	9
Arithmetic	9	Object Assembly	11
Comprehension	12	Digit Symbol	11
Similarities	12		
<u>Total</u>	<u>64</u>	<u>Total</u>	<u>52</u>

VERBAL IQ                    104

PERFORMANCE IQ                    104

FULL SCALE IQ                    104

MMPI-1 PROFILE T SCORES

L	30	Hs+5K	70
F	70	D	75
K	45	Hy	56
		Pd+4K	57
		Mf	51
		Pa	52
		Pt+1K	65
		Sc+1K	53
		Ma+2K	53
		Si	52



APPENDIX P  
QUESTIONNAIRE

Based on the defendant's social history, crime description, current behavior, and test scores, please answer the following questions:

1. Given the information provided, how heinous do you feel the defendant's crime was?

Not at all						Extremely
heinous						heinous
1	2	3	4	5	6	7

2. Given the information provided, how impulsive was the defendant's behavior during the commission of the crime?

Not at all						Extremely
impulsive						impulsive
1	2	3	4	5	6	7

3. Given the information provided, how much impact did the defendant's clinical condition have on the commission of the crime?

No impact						Extreme impact
1	2	3	4	5	6	7

4. Given the information provided, what is your assessment of the defendant's legal responsibility for his actions during the commission of the crime?

Not legally						Legally
responsible						responsible

1	2	3	4	5	6	7
---	---	---	---	---	---	---

5. Given the information provided, how likely is it that the defendant's current behavior on death-row is malingering?

Not at all likely						Very likely
-------------------	--	--	--	--	--	-------------

1	2	3	4	5	6	7
---	---	---	---	---	---	---

6. Based on the information presented, do you believe the defendant is competent, in a legal sense, to be executed (i.e., is he aware of his impending execution and the reasons for it)?      Yes \_\_\_\_\_ No \_\_\_\_\_

7. Using numbers from the Likert format below, please indicate how important the following factors were in determining your decision regarding the defendant's competency to be executed:

Not at all important						Very important
----------------------	--	--	--	--	--	----------------

1	2	3	4	5	6	7
---	---	---	---	---	---	---

_____ Current Behavior on Death Row	_____ Social history
_____ Crime Description	_____ Test Scores (MMPI, WAIS-R)

8. How many times in the last 5 years have you, in your capacity as a psychologist, testified in court regarding the legal competency of a defendant? \_\_\_\_\_ times.



9. Have you ever been involved in the assessment of competency for execution?

Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, how many times" \_\_\_\_\_ times

10. Please indicate your attitude regarding the death penalty:

Strongly in favor.....1

Somewhat in favor.....2

Somewhat in favor.....3

Strongly opposed.....4

11. Is your attitude toward the death penalty such that, as a juror, you would be:

Unwilling to vote to impose it in any case..... 1

Willing to consider voting to impose it in some cases..... 2

YOUR TIME AND CONSIDERATION IN COMPLETING THIS QUESTIONNAIRE IS GREATLY APPRECIATED. PLEASE RETURN ALL THREE PAGES OF THE QUESTIONNAIRE AND YOUR CONSENT FORM IN THE ENCLOSED SELF-ADDRESSED, STAMPED ENVELOPE AS SOON AS POSSIBLE.

THANK YOU VERY MUCH!

APPENDIX Q  
 STATES (AND DISTRICT OF COLUMBIA) WITH AND  
 WITHOUT THE DEATH PENALTY

Alabama.....	Yes
Arizona.....	Yes
Arkansas.....	Yes
California.....	Yes
Colorado.....	Yes
Connecticut.....	Yes
Delaware.....	Yes
Florida.....	Yes
Georgia.....	Yes
Idaho.....	Yes
Illinois.....	Yes
Indiana.....	Yes
Kentucky.....	Yes
Louisiana.....	Yes
Maryland.....	Yes
Mississippi.....	Yes
Missouri.....	Yes
Montana.....	Yes
Nebraska.....	Yes
Nevada.....	Yes



New Hampshire.....	Yes
New Jersey.....	Yes
New Mexico.....	Yes
North Carolina.....	Yes
Ohio.....	Yes
Oklahoma.....	Yes
Oregon.....	Yes
Pennsylvania.....	Yes
South Carolina.....	Yes
South Dakota.....	Yes
Tennessee.....	Yes
Texas.....	Yes
Utah.....	Yes
Virginia.....	Yes
Washington.....	Yes
Wyoming.....	Yes
Alaska.....	No
District of Columbia.....	No
Hawaii.....	No
Iowa.....	No
Kansas.....	No
Maine.....	No
Massachusetts.....	No
Michigan.....	No

Minnesota.....	No
New York.....	No
North Dakota.....	No
Rhode Island.....	No
Vermont.....	No
West Virginia.....	No
Wisconsin.....	No



APPENDIX R  
REMINDER LETTER

11-23-90

MEMO:

This is just a reminder regarding the dissertation questionnaires sent concerning competency for execution. Your participation is very much appreciated, but strictly voluntary. Your contribution would provide valuable data. If possible, please respond.

Thank you for your time.

Sincerely,

Sharon R. Brown, M.A.

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