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Considering Constitutionally Relevant Evidence:

An Assessment of Childhood Physical Abuse as a Non-Statutory Mitigating Circumstance

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Abstract

The present study examines the role of a specific instruction designed to guide jurors on non-statutory mitigating circumstances in determining sentence recommendation. To date, there is no research examining whether specific instructions provide more guidance, and improve jurors' discretion compared to the current general instructions. We predicted that specific mitigating instructions would increase confidence in life sentencing compared to generic instructions as well as revised instructions. We also predicted that expert testimony of childhood physical abuse would minimize death penalty recommendations. Contrary to our predictions, we found that exposure to generic instructions increased confidence in a life sentence. In addition, perceptions of the defendant and mood predicted confidence in sentence. Positive mood predicted high levels of confidence in a death sentence.

Keywords: mitigating circumstances, capital trial, sentencing instructions

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Capital Sentencing Scheme

In *Furman v. Georgia* (1972), the U.S. Supreme Court overruled all death penalty statutes acknowledging that under the current guidelines the death penalty was imposed in a capricious, indiscriminate manner, thus violating the Eight Amendment prohibition against cruel and unusual punishment (Latzer, 1998, Palmer, 1998, Ogloff & Chopra, 2004). Four years later in *Gregg v. Georgia* (1976), the Court revised the death penalty statutes. The revised statutes addressed the arbitrariness as characterized by the pre-Furman era by bifurcating the capital trial. During the sentencing phase, jurors' attention is shifted from factual evidence presented in the guilty phase towards the specific aggravating and mitigating circumstances surrounding the capital offense (Haney, 2005, Kelly, 1992). Aggravating circumstances render the death sentence more appropriate and mitigating circumstances render a life sentence as more appropriate (Haney, 2005, Sandys, Pruss & Walsh, 2009). The intention of the presentation of each set of circumstances was to guide jurors' judgments in considering sentence recommendation.

In the present study, we examine how jurors perceive evidence of childhood physical abuse in the context of a capital sentencing hearing. Although constitutionally relevant, this type of mitigating evidence has the potential to act as an aggravating circumstance, thus rendering the death sentence as more appropriate than a life sentence. In addition, we expect that the method utilized by the Court to present this type of evidence also has the potential to interact with sentence preference. We propose that the current method of including all mitigating evidence of the same nature in one category (*catchall* instruction) is insufficient and propose a more efficient method of presenting each factor separately to the jury. This method is consistent with the US

Supreme Court's expectations that guided discretion would increase fairness in the sentencing hearing (*Gregg v. Georgia*, 1976).

Aggravation and Mitigation in Capital Sentencing

Aggravating circumstances. Reasoning that the penalty of death is qualitatively different from any other sentence (*Furman v. Georgia*, 1972) and in an effort to secure the constitutionality of the capital procedure, a defendant is only qualified for a death sentence when the jury unanimously decides that the state has proven at least one aggravating circumstance beyond a reasonable doubt against him (*Brown v. Sanders*, 2006, *Zant v. Stephens*, 1983).

Aggravating statutory circumstances are constitutionally permissible when they are specific to the case, and when they are set out in a clear and understandable manner (*Tuilaepa v. California*, 1994). They constitute irrefutable factual evidence dependent on the guilty phase of the capital trial, such as those reliant on the criminal offense (i.e., murder during the context of another crime: e.g., robbery, burglary, kidnapping), type of victim (correction officer, law enforcement officer, judge) and others including multiple homicides, heinousness of the crime, and a previous conviction of murder (Palmer, 1998). Aggravating circumstances must be proved beyond a reasonable doubt and must be agreed upon unanimously by jury members (Turlington, 2008).

Apart from the enumerated statutory aggravating circumstances, there are also non-statutory aggravating circumstances, which neither prove a statutory aggravating circumstance nor qualify a defendant for a death sentence. Their existence however, can heavily support the imposition of a death penalty verdict (Palmer, 1998; Turlington, 2008). Among the non-statutory aggravating circumstances a jury is allowed to consider consist of: lack of remorse (*State v. Hargrove*, 1991, *State v. Parker*, 1985), evidence of the defendant's prior bad acts (*State v. Forrest*, 2006) and victim impact evidence (*Payne v. Tennessee*, 1991). Victim impact evidence

is the tool most commonly employed by the prosecutor in the penalty phase of the capital trial, and aims to divert juror's attention from the defendant and the circumstances of the offense toward the victim and the pain inflicted by his death (*Booth v. Maryland*, 1987). Tsoudis and Smith- Lovin (1998) found that when jurors were exposed to victim impact statement in the context of a robbery they rendered more punitive verdicts. The prejudicial nature of this type of non-statutory evidence impedes the juror decision-making process (Myers & Greene, 2004, Salerno & Bottoms, 2009) and discourages the consideration of key aspects of the defense. The rationale seems to be that the more jurors identify themselves with the victim the more they distance themselves from the defendant (Nussbaum, 2001).

Mitigating circumstances. Although the concept of mitigation was central in the Gregg decision, it wasn't until 1978 (*Lockett v. Ohio*), that the court ruled that "the sentencer in all but the rarest kind of the capital case not be precluded from considering, as mitigating factor, any aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death" (p. 864). Unlike aggravating factors where capital jurisdictions demand proof beyond a reasonable doubt, the majority of capital punishment jurisdictions rule that mitigating circumstances must only be proven to the juror's satisfaction. According to Haney (1995), mitigating evidence is not intended to excuse, justify, or diminish the significance of what the defendants have done, but to help explain it in a manner that provides guidance and relevance to capital jurors' decision-making. A majority of capital jurisdictions have created a list of statutory mitigating factors among which include: the circumstances of the crime, the absence of significant criminal history, mental or emotional disturbance which resulted in diminished capacity to conform with the conducts of the law, whether the defendant acted under extreme duress or under the substantial domination of another

person, the age of the defendant at the time of offense, whether the defendant was an accomplice to the offence, victim participation or consent, intoxication, and character and background of the defendant (Acker & Lanier, 1994).

In addition to statutory mitigating circumstances, most statutes include a specific list of statutory mitigators. In accordance with the *Lockett* decision, they provide an additional *catchall* instruction, which directs juries in considering as mitigating any other relevant evidence presented by the defense not listed in the sentencing instruction. The catchall instruction includes a cluster of non-defined character and background evidence referred to as non-statutory mitigating evidence. This evidence includes: childhood abuse (*Penry v. Lynaugh*, 1989), evidence of difficult family history and emotional disturbance (*Eddings v. Oklahoma*, 1982), post-crime evidence related to well adjustment and good behavior in jail (*Skipper v. South Carolina*, 1986). In *Hitchcock v. Dugger* (1987) for example, the sentence of death was ruled unconstitutional as the judge refused to take non-statutory mitigating factors into consideration and instead he instructed the jury to consider only those enlisted by the state statute. Even though statutory and non-statutory mitigating circumstances are of equal paramount importance from a constitutional standpoint, juries are guided towards that challenging and unfamiliar concept only through a broad and vague catchall instruction. This becomes a serious issue considering that in most cases the defense rests in whole or part on non-statutory mitigating circumstances (Ellman, 1986).

In *Boyde v. California* (1990), it was argued that California's catchall mitigation instruction, which directs jurors to consider "any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime", precluded jurors from considering evidence of the defendant's background and character, giving rise to only crime-

related evidence. The judge in *Boyd* ruled that there was no reasonable likelihood that the jury felt precluded by the catchall instruction from considering mitigating evidence related to the offender's background and character. As a result, the decision applied the same standard as an earlier case (*Buchanan v. Angelone*, 1998) - the sentencing Court did not constitutionally err by telling jurors to reach a death verdict by considering all the evidence without providing any further instruction on mitigation. In other words, a death penalty jury does not have to be given specific instructions by the judge on mitigating factors. The court upheld the constitutionality of the catchall instruction in *Ayers v. Belmontes* (2006), when the trial judge refused to specifically enumerate non-statutory mitigating evidence consisting of the defendant's ability to be a productive individual, survive in a structured setting, and used good adjustment while incarcerated (Williams, 2006). Legal scholars have criticized the catchall instruction for its lack of explicitness (Turlington, 2008). The notion is that the catchall instruction lacks the specific guidance offered through the presentation of the circumstances in a list as in statutory aggravating and mitigating circumstances. To date there are no studies that examine the alleged superiority of the catchall instruction over specifically enumerated non-statutory mitigating circumstances. In the present study, we will examine the relative efficacy of a generic catchall instruction versus a specific non-statutory instruction on capital jurors' sentencing decisions. It is expected that presenting a specific list of non-statutory mitigating circumstances will lead to decreased penalty recommendation compared to the state approved *catchall* instruction.

Finally, the process of weighing aggravating and mitigating circumstances differs across jurisdictions, with some requiring that statutory aggravating circumstances outweigh mitigating circumstances either by a preponderance of evidence or beyond a reasonable doubt, and others requiring that mitigating outweigh aggravating, and still others not requiring weighing mitigating

and statutory aggravators at all (Palmer, 1998). Consequently, capital sentencing juries must be allowed to weigh mitigating evidence independently, as opposed to unanimously, mitigating evidence including character, background information, or any other circumstances that renders the death sentence less appropriate (*Jurek v. Texas*, 1976). Only in this manner, will a capital defendant receive a fair and impartial sentencing hearing.

Capital Defense Counsel, Mitigating Evidence and Expert Testimony

The movement towards individualizing the sentencing process has necessitated the presence of re-examining how mitigating evidence is utilized in the sentencing phase and has highlighted the role of defense counsel in presenting such evidence (Kelly, 1992). The Court in *Williams v. Taylor* (2000) as well as *Wiggins v. Smith* (2003) reversed the capital defendant's death sentence on the grounds that their attorneys did not fulfill their obligation to effectively assist their client. The specific reasons included failing to investigate mitigating evidence of the defendant's childhood abuse, neglect, and severe mental problems that could have potentially impacted jurors' appraisals of his moral culpability. That said, defense counsel has the duty to investigate and obtain mitigating evidence, even when the defendant and his/her family state the unavailability of mitigating evidence (*Rompilla v. Beard*, 2005).

A particularly problematic area for the defendant in a capital trial is the order of evidence. Presenting mitigating testimony at the last stage of the penalty phase creates a difficult juxtaposition for the jurors. The prosecution presents a plethora of aggravating evidence such as defendant's past criminal acts, victim impact evidence and expert testimony on additional aggravating circumstances (e.g. future dangerousness), before the presentation of mitigation evidence. This leaves the defense very little latitude in presenting mitigating evidence that could potentially counterbalance any negative reactions to the presentation of aggravating evidence

(Haney, 2005). According to research (e.g., Haney & Greene, 2004), jurors enter trial with preexisting beliefs and attitudes. When these attitudes are negative, the likelihood they will more readily adopt aggravating evidence increases. As a result, their decisions will be congruent with the negative emotions inflicted by the prosecutorial narrative in the guilt phase of the trial. Those beliefs are created and reinforced by the media, which demonize the defendant, depicting their act as a product of irreversible and inherent personal traits. Importantly, this media blitz, fails to report information of abusive upbringings and past trauma, often underlying the alleged criminal offense. Under those circumstances, the defense attorney has a greater burden to meet at capital trials (Haney, 2005).

A common strategy employed by defense attorneys, is the recruitment of an expert witnesses who will identify mitigating factors of the case, by thoroughly investigating the defendant's childhood, upbringing, school records, medical records, relationships and traumatic experiences (Goodpaster, 1983). Even though the law does not require a direct connection between mitigating evidence and the offense (*Tennard v. Dratke*, 2004), research has found that such testimony is important to jurors since it provides a context for understanding the criminal offense (Sundby, 1997). Presenting evidence of the defendant's troubled life however, is not enough to invoke empathy on behalf of the juries. This is because they experience difficulty relating to relatively specific aspects of a capital defendant's life such as violence, abuse, drugs, access to weapons, and victimization (Fabian, 2009). In this regard, the fundamental role of expert testimony is to provide a contextual framework that links the defendant's criminality with his/her negative upbringing and depriving social environment. The goal of the expert testimony in this context is to facilitate deliberation discussion framing the crime in terms of the

defendant's life events and also to provide an understanding of why he committed the crime (Fabian, 2003).

Overall, the influence of expert testimony is related to any number of factors; namely, the physical appearance of the expert, their credentials, the complexity of the expert testimony, jurors' prior beliefs about the case, the specific link between the expert testimony and the facts of the case, and the confidence portrayed by the expert (Krauss & Sales, 2001). In the current study, our interest is focused on the presentation of expert testimony of childhood physical abuse. The next section will describe the role of testimony of abuse on juror decision-making.

Childhood Abuse and the Capital Defendants

Research finds that a great majority of individuals facing capital offenses were raised in environments deprived of secure attachments, nurturing, protection, and stimulation. Rather, we find they share a common pattern of childhood trauma and maltreatment (Sarat, 1993).

Recognizing the significant impact of childhood abuse, The US Supreme Court in *U.S. v. Rivera* (1999) stated "it seems beyond a question that abuse suffered during childhood – at some level of severity- can impair a person's mental and emotional condition" (p. 85). Similarly, in *Santosky v. Kramer* (1982), the court stated "it requires no citation of authority to assert that children who are abused in their youth generally face extraordinary problems developing into responsible, productive citizens" (p. 673). Indeed there is substantial evidence that supports the notion that abused children are much more likely to commit crimes as adults compared to individuals without such an abused past (Haney, 1995; Widom, 1989). Literature on child abuse identifies possible psychological, physiological and developmental long-term impairments caused by childhood abuse such as impaired impulse control, poor social skills, self injurious and suicidal behaviors, poor emotional and behavioral regulation (Malinosky-Rummell & Hansen, 1993).

This literature states that an individual's ability to form rational judgments and appreciate the consequences of his actions is significantly impaired in stressful and threatening situation. Consequently, he/she is more likely to overreact and engage in inappropriate, aggressive behaviors. The long term consequences of childhood abuse empowers the mitigating quality of that factor, providing an important reason for a juror to believe that life imprisonment is more appropriate for that defendant compared to a death sentence. Despite the fact that expert testimony will rest solely on providing a context for these impairments, it is equally important for the expert witness to identify the rehabilitative capacity of the defendant since research finds that prosecutors will attempt to use impairments as aggravating circumstances: e.g., claiming either that damage to the defendant is so irreversible that the defendant poses a continuous threat to the society, or that childhood abuse is not an 'excuse' for committing capital murder (Platania & Small, 2010; Platania & Moran, 1999).

Instructional Confusion: The Presumption of Juror Comprehension

Given the fact that the application of legally faulty instructions is grounds for reversal of a death sentence, across jurisdictions judges adhere to standardized, pattern instructions. Pattern instructions are intended to increase juror comprehension of judicial instructions, decrease the time that judges and lawyers spent drafting instructions for each case, and limit potential biases among jurists (McBride, 1969). However, literature suggests that pattern instructions have tragically failed to effectively guide jurors in capital sentencing (Elwork, Sales, & Alfini, 1977, 1982a; Strawn & Buchanan, 1976). In addition, data obtained from the National Assessment of Adult Literacy (NAAL, 2003) indicate that 29% of adults possess a *Basic* level of prose literacy. According to NAAL, prose literacy refers to the knowledge and skills needed to comprehend and use information from continuous texts, for example, editorials, news stories, and instructional

materials. Research finds that reading levels associated with instructions significantly surpassed the reading comprehension abilities of American adults. In addition, legal principles embedded within the weighing language instruction were significantly more difficult to comprehend compared to the language describing the aggravating factors component of the instructions (Platania, Small, & Cutler, 2011). Although the Court reinstated the death penalty with the hope that specific instructions provided in the sentencing phase will safeguard against the arbitrariness and capriciousness of the death penalty imposition (*Gregg v. Georgia*, 1976), research consistently points to the need for states to re-evaluate the language of capital sentencing instructions. At issue is the type of instructions intended to facilitate and guide the jury deliberation. The vast majority of the psycho-legal research has mapped two particularly problematic areas: poor comprehension of instructions intended to guide them in the legal threshold of mitigation and aggravation (see Blankenship, Luginbuhl, Cullen & Reddick 1997; Bowers, 1995; Diamond & Levi, 1996; Luginbuhl, 1992; Luginbuhl & Howe, 1995, Ritter, 2004; Wiener et al., 2004) and poor understanding and evaluation of the concepts of mitigation and aggravation (Haney & Lynch, 1994; Tiersma, 1995; Stetler, 2008).

Research in the area of instruction comprehension has not gone completely unnoticed by the Court. For example, one of the first studies to challenge the presumption that jurors understand instructions (Zeisel, 1991) was dismissed by the 7th Circuit. The Court declared that the absence of a control group invalidated the data in several post-conviction hearings (*Free v. Peters*, 1991; *Gacy v. Wellborn*, 1993). Diamond and Levi (1996) maintained Zeisel's format and replicated the study by revising the pattern instructions and adding a control group. More specifically, that survey attempted to assess juror understanding of key legal concepts for the capital sentencing phase such as unenumerated mitigators - particularly jurors' ability to

understand that they are allowed to consider as mitigating factor evidence that is not specifically pinpointed by the judge. In addition, non-unanimity of decisions involving mitigating circumstances (i.e., independent consideration can be awarded any factor as a mitigator without unanimous consent) and the process of weighing aggravating and mitigating factors (i.e., death is not the only appropriate sentence unless mitigating evidence are sufficient to overcome this assumption) were also examined. The results of this study yielded the most significant improvement in comprehension was in the enumeration of the mitigating factors, with the participant-jurors averaging 58% correct when presented with revised instructions while only 41% when presented with the pattern instructions. The researchers concluded that the better the jurors comprehend the existence of mitigating factors the less likely it was to vote for the imposition of the death penalty. Similarly, Luginbuhl (1992) found that when mock jurors were grappling with concepts of mitigation, their comprehension significantly decreased. Results specifically indicated that jurors understand un-enumerated mitigators, with over half of the participant-jurors considering any evidence as mitigating, however, almost half of the participant-jurors incorrectly believed that mitigating evidence should be proven beyond a reasonable doubt, and that they should be decided unanimously, concluding that even when jurors properly considered any evidence as mitigating, there were likely to dismiss them due to the confusion related to the burden of proof attached to them.

On the other hand, when considering aggravating circumstances, almost half of the participant-jurors inaccurately considered as aggravating any factor that deemed the crime more severe. However, more than half correctly understood that an aggravating factor need to be proven beyond a reasonable doubt and voted unanimously by the jury. Bentele and Browers (2001) found that when considering aggravating factors, jurors mistakenly believed that

establishing the existence of an aggravating factor requires the imposition of death penalty. Otto, Applegate and Davis (2007) suggested that even by improving the comprehensibility of the instructions the level of understanding of mitigation still remains under question. Although the correct responses regarding non-statutory/non-enumerated factors increased with the addition of a clarification to the pattern instructions, the level of comprehension remained low (58.8% v. 38.1% with pattern instructions only). Along the same lines, Smith and Haney (2001) reported that despite the significant improvement in comprehension as a product of instructional modification, the problematic asymmetry of better identifying aggravation and mitigation was reflected in the survey's results.

Addressing the confusion surrounding the terms of mitigation and aggravation, a study conducted by Haney and Lynch (1994) found that only 8% of college students provided totally correct definitions for aggravation and mitigation, while 64% of the participant-jurors provided partially correct definition for aggravation and only 47% for mitigation. In the same study when participant-jurors were asked to categorize a variety of factors as either mitigating or aggravating, 36% of them listed the *catchall* instruction ("any other circumstances appropriate for consideration") as aggravating evidence. Overall, the majority of studies have demonstrated significant improvement in comprehension, when instructions are rewritten or simplified (see Charrow & Charrow, 1979; Elwork, Sales, & Alfini, 1982b; Severance, Greene, & Loftus, 1984; Wiener, Pritchard, & Weston, 1995).

Several empirical studies have assessed the inefficacy of California's penalty pattern instructions (Haney & Lynch, 1994, 1997; Lynch, & Haney, 2000, 2009). Haney and Lynch for example, assessed the comprehensibility of the terms mitigation and aggravation, and specifically how jurors are evaluating capital trial evidence when they are instructed with

California's pattern penalty instruction. California's pattern instructions have drawn attention by researchers due to the manner in which they differ from other states' instructions. First, they fail to clarify the mitigating or aggravating weight that the jurors should give to the enlisted factors, and secondly, the vocabulary of the *catchall* instruction has the potential to be particularly confusing to jurors (use of the term "extenuating" in relation to the severity of the crime). Keep in mind that the *catchall* instruction, although intended to guide jurors in non-statutory mitigating circumstances such as character evidence, background information and other circumstances, does not include an enumerated list of circumstances. Rather, non-statutory mitigating circumstances are presented wholly, usually in the following language: Any other circumstance, whether related to these charges or not, extenuates the gravity of the crime[s] even though the circumstance is not a legal excuse or justification (*Ayres v. Belmontes*, 2006). The results indicated that jurors exhibited significant difficulty understanding the definition of the term "extenuates" with more than half interpreting the word as "actually being caught in the crime without a doubt" with only 3% offering a definition that would suggest the opposite of the term aggravation. The second alarming finding was that after "victim participated in his own homicide", this language was the second most misunderstood by the jurors with 28% identifying this factor as aggravating rather than mitigating. In the same study, through a content analysis on the penalty phase attorney arguments for California capital cases, it was revealed that only in 3 out of 10 cases, attorneys correctly redefined in nonrealistic term the instruction provided for the non-statutory mitigating circumstances. Consistent with those findings, a similar study found that in 8 out of 10 actual capital trials, jurors dismissed non-criminal background character evidence when this evidence was not directly related to the nature of the crime (Haney, Sontag & Costanzo, 1994).

According to Garvey (1998), the most powerful mitigating circumstances are residual doubt evidence which is related to the extent to which the defendant is involved in the crime, followed by reduced culpability factors such as mental retardation (*Atkins v. Virginia*, 2002), and age of the defendant (*Roper v. Simmons*, 2005). Finally, the least powerful evidence were remote culpability factors which fall in the cluster of non-statutory mitigating circumstances, such as the defendant having experienced childhood abuse, raised in poverty and never having received help for his problems. Barnett, Brodsky and Davis (2004) found that jurors were significantly more likely to vote for a life sentence in the presence of mitigating factors. More specifically, evidence of mental retardation and major mental illness (schizophrenia) rendered more life sentences compared to evidence of defendant's childhood abuse and substance abuse which still yielded significantly higher portions of life verdicts compared to the condition where mitigating evidence where absent. In a similar study, Barnett, Brodsky and Price (2007) found that jurors considered as most mitigating: mentally retardation (64%), hospitalized with a mental illness (41%), no prior criminal record (40%), major head injuries (37%), schizophrenia (35%), childhood physical abuse (21%) and childhood sexual abuse (20%). As seen in the literature, childhood physical abuse possesses rather poor mitigating power, especially in the eyes of death-qualified jurors who, compared to excludable jurors, are less receptive to mitigating evidence, more receptive to aggravating, and more likely either to either dismiss childhood abuse evidence or attribute weak mitigating effect (Butler & Moran, 2002; Butler & Moran, 2007; Luginbuhl & Middendorf, 1988). Although Stalin's and Henry (1994) found that individuals are more likely to allocate less punitive sentences to abused offenders compared to non-abused offenders, more recent studies suggest that jurors perceive specific types of mitigating evidence (childhood abuse and drug abuse) as aggravating (Barnett, Brodsky & Price, 2007; Brodsky, Adams & Tupling, 2007;

Garvey, 1998; Logan, 1989). Research has also found rather permanent, irreversible effects for the defendant (Grisso, 2002). More specifically, Stevenson, Bottoms, and Diamond (2010) found that in the context of a child abuse history, jurors made more controllable attributions for the defendant - suggesting that he could have controlled the negative effects of his abuse and that perhaps he caused his abuse. They also found more stable attributions on the part of the defendant; i.e., that he/she may be permanently damaged by the abuse. This finding is particularly disturbing considering that jurors' perceptions of future dangerousness followed by lack of remorse is a leading factor in death penalty recommendations (Garvey, 1998).

The Present Study

In the present study we examined the role of a specific instruction designed to guide jurors on non-statutory mitigating circumstances in determining sentence preference. To date there is no research examining whether specific instructions provide more guidance, and improve juror discretion compared to the current general *catchall* instructions. We expected that specific mitigating instructions would minimize death penalty recommendations compared to generic instructions and revised instructions. We also expected that participant-jurors would be less likely to assign a death sentence when they are presented with expert testimony on the effects of childhood physical abuse on the defendant compared to the condition where expert testimony is absent. The instruction condition however, would moderate this effect. Namely, when evidence of childhood physical abuse is enumerated to jurors in the form of a specific jury instruction, death penalty recommendations will decrease but only in the expert testimony condition. Finally, we predict mood would mediate assessments of the defendant and perceptions of trial-specific factors.

Purpose and Hypothesis

The purpose of the present study was to examine the role of a specific instruction designed to guide jurors on non-statutory mitigating circumstances in determining sentence preference. Jurors are currently directed towards non-statutory mitigating circumstances through a *catchall* instruction, which directs them in considering as mitigating any other relevant evidence presented by the defense not listed in the sentencing instruction. To date there is no research examining whether specific instructions provide more guidance, and improve juror discretion compared to the current general *catchall* instructions. We were interested in examining the following hypothesis:

Hypothesis 1: We predict a moderating effect of instructions on jurors' confidence in sentence recommendations. Specifically, when evidence of childhood physical abuse is enumerated to jurors in the form of a specific jury instruction, death penalty recommendations will decrease but only in the expert testimony condition. We predict main effects of each factor: Jurors will be more confident in a life sentence when they are presented with expert testimony on the effects of childhood physical abuse on the defendant compared to the condition where expert testimony is absent. Jurors will be more confident in a life sentence when presented with a specific jury instruction compared to either a generic or revised version of instructions.

Hypothesis 2: We will investigate the effect of our trial factors on jurors' consideration of non-statutory mitigating circumstances. This investigation is exploratory as this is the first study to examine the specific set of circumstances chosen in the context of this trial scenario.

Hypothesis 3: We will examine the predictive utility of affect, perceptions of the defendant, and demographics on confidence in sentence.

Method

Participants

One hundred and eighty-five community members were recruited by StudyResponse project, hosted by the School of Information Studies at Syracuse University. StudyResponse exists as a resource for student and faculty researchers in the social sciences. All participant-jurors were pre-screened for basic jury eligibility according to the *Wainwright v. Witt* (1985) criterion which excludes jurors based on whether their attitudes towards the death penalty “significantly impairs” their ability to follow the law. After screening the sample consisted of one hundred and seventy death qualified participant-jurors (90% of sample) and fifteen non-death qualified participant-jurors (10% of sample) that did not continue with the study. Demographic characteristics revealed that 51% of the sample were male, and 49% were female ($n = 86$ v. 83). Forty-five percent were between the ages of 34 and 44, 88% were Caucasian, 34% were Catholic, 58% were married, 34% considered themselves slightly conservative, 51%, served on a jury 70% were employed full time, 61% had a college degree.

Our sample responded to items assessing degree of certainty associated with “reasonable doubt” and “preponderance of evidence” standards. Alarming, we discovered that 55% of respondents reported the standard used to consider a death sentence as “reasonable doubt; only 38% indicated the “preponderance of evidence” standard in order to consider a life sentence.

Materials

Pre-Trial Materials

Prior to administering the stimulus materials participant-jurors completed the death qualification status item, twelve items assessing basic demographic information and the abbreviated versions of the PANAS scale, which measures positive and negative affect.

Trial Materials

Case materials include the facts of the case, opening statements from both defense and prosecution, expert testimony, cross examination of the expert testimony, closing statements of the defense and prosecution and the judge's instructions on the law that is to be applied to the facts of the case.

Post-Trial Measures

After the completion of the trial stage participant-jurors completed post-trial measures consisting of sentence determination (life in prison v. death penalty), items measuring attitudes related to the trial, quality of the expert testimony, comprehension of the judicial instructions, assessments of the mitigating factors presented during the trial and mitigating factors considered in reaching their decision.

Items. Participant-jurors indicated whether they would recommend life in prison or death by lethal injection by checking a box next to their choice. Then they indicated how certain they were of their decision using a 7-point Likert scale. The main dependent variable "confidence in sentencing recommendation" was created by multiplying the sentencing decision (life in prison = -1, death by lethal injection= +1) with the confidence of their sentencing recommendation resulting in a scale from (-7= high confidence in life verdict to 7= high confidence in death verdict). This measure is a common practice in measuring jury decisions (see, e.g., Miller & Hayward, 2008).

Participant-jurors provided their opinion of the quality of the expert testimony on the following items: "*How credible the expert testimony was in the case?*" "*How scientific the expert testimony was in this case?*" "*How important was the expert testimony to this case?*" Participant-jurors were also asked "*How troubled was the defendant's life?*" "*To what extent do*

you believe the victims death was a unique loss to his family?" All items were measured on a Likert-type scale from 1 = Not at all to 8 = Completely.

Participant-jurors completed a series of 7 items on a scale of 0% to 100% measuring the extent to which trial factors influenced their sentencing decision. Two manipulation checks were included regarding the defendant (the defendant in this case was: physically abused/sexually abused/the witness of physical abuse/none of the above) and the expert witness (In this case you heard evidence presented by an expert witness: Yes/No)

Design and Procedure

We utilized a 2 Expert Testimony (Present v. Absent) x 3 Instructions (Catchall v. Revised v. Specific) between-subjects factorial design. Participant-jurors were instructed through a written form that the current study examines jurors' perceptions of the sentencing phase of a capital trial and that by participating they would be asked to review a segment of testimony in a death penalty case and fill out a questionnaire regarding aspects of trial. After participant-jurors electronically signed the informed consent, they proceeded to the survey where they read the case summary and the death qualification instruction. The respondents who indicated that they didn't find the defendant of the case guilty and that their views on the death penalty (either in favor or opposed) would prevent or substantially impair them from considering the both penalties in this case were thanked for their participation and did not continue to the next phase of the study. Participant-jurors who indicated otherwise proceeded with the study and were randomly assigned to one of the six conditions, completed the pre-trial instruments, read the trial materials and completed all the dependent measures. Upon completion of the entire study, participant-jurors were thanked, debriefed and awarded the \$10 research incentive. Participation

required approximately 30 to 40 minutes depending on the stimulus condition. See Appendix for copies of all stimulus materials as well as completed Human Subjects Review Board application.

Results

Manipulation Check

In order to assess the efficacy of our expert testimony independent variable, we measured participant-jurors' awareness of the experimental condition to which they were exposed.

Crosstabulation analysis revealed 84% of our participant-jurors reported not hearing from an expert in the Expert Testimony Absent condition, while 90% of our participant-jurors reported hearing evidence presented by an expert in the Expert Testimony Present condition.

Scale Reliability and Assessment

Separate reliability analyses were conducted on items indicating positive and negative affect of the composite PANAS abbreviated 20-item measure. Positive item internal consistency measured $\alpha = .85$, negative item internal consistency measured $\alpha = .96$. As a result, no recoding was necessary. Perceptions of the expert were measured through a summated rating scale of items assessing the credibility, importance, and scientific relevance of the expert's testimony. Due to the limited number of items, bivariate correlations were observed rather than assessing Cronbach's alpha. Inter-item correlations ranged from $r = .67$ to $.80$, $p < .001$ (one-tailed), thus indicating the rationale for developing subsequent composite score for participant-jurors' perceptions of the expert. Perceptions of the defendant were assessed through

Hypothesis Testing Moderator Variables

A two way between-groups ANOVA was employed in order to explore the impact of instruction and expert testimony on confidence in sentence recommendation. There was a significant main effect of instructions: $F(2,158) = 3.47$, $p = .03$, partial eta squared = .04. Post hoc comparisons using the Scheffé's test indicated that the mean score for the catchall jury instruction ($M = -3.39$, $SD = 5.18$) was significantly different from the specific jury instruction

($M = -.40$, $SD = 6.40$) suggesting that when participant-jurors were exposed to catchall instructions they were more confident in a life verdict compared to specific instructions. The revised instructions condition ($M = -1.87$, $SD = 5.87$) did not differ significantly from either of the other groups. No significant main effect was found for the expert testimony. The interaction between expert testimony and instructions was not significant.

Hypothesis Test Mitigating Circumstances

In order to test the importance of the non-statutory mitigating circumstances as a function of our trial factors, a MANOVA was conducted. A MANOVA was determined the most appropriate choice after considering increased likelihood of inflating Type I error given the number of dependent measures (7) examined. The dependent measures included ratings of importance of each non-statutory mitigator to verdict on a scale of 0 = 0% to 10 = 100%. The 7 non-statutory mitigating circumstances included: abuse, treatment, psychological disturbance, remorse, no discipline issues, role model to his family, and the idea that he (the defendant) has not lured any member of his family into trouble. Results indicated a main effect of both instructions and expert testimony: For Instructions: *Wilks' Lambda* = .73; $F(14, 296) = 3.65$, $p < .001$; $\eta p^2 = .15$; For Expert Testimony: *Wilks' Lambda* = .70; $F(7, 148) = 9.02$, $p < .001$; $\eta p^2 = .30$. A test of between-subjects effects found the main effect of instructions significant for all 7 non-statutory mitigating circumstances, p values ranged from $< .001$ to $.004$. See Table 1 for display of findings for instruction effects. A test of between-subjects effects for the main effect of testimony also significant for all 7 non-statutory mitigating circumstances, p values ranged from $< .001$ to $.004$. See Table 2 for display of findings for expert testimony effects. A significant testimony * instruction was also observed: *Wilks' Lambda* = .78; $F(14, 296) = 2.82$, $p = .001$; $\eta p^2 = .12$. The interaction was found for the following non-statutory circumstances:

treatment, remorse, and the idea that he has not lured any member of his family into trouble. See Figures 1, 2, and 3 for a graphic depiction of each interaction effect. In each interaction affect, the revised instruction revealed the greatest between-group differences, with the greatest consideration given in the expert testimony present condition.

Hypothesis Predictive Ability of Measures

Hierarchical multiple regression was used to assess the ability of two control measures (PANAS Positive, PANAS Negative) to predict confidence in sentence after controlling for the influence of perceptions of the defendant, perceptions of the expert and age. Perceptions of the defendant and perceptions of the expert were entered at Step 1, PANAS scales were entered at Step 2, and age and gender were entered at Step 3. The first Model was not significant: $p = .098$, indicating that perceptions of the expert and defendant did not significantly predict confidence in sentence. However, at Step 2, the addition of mood found that perceptions of the defendant as well as positive mood were significant, explaining 10% of the Model's total variance of $R = .108$: $F(4, 149) = 4.48, p = .002$. For perceptions ($\beta = -.22, p = .009$) revealing positive defendant perceptions led to more confidence in a life sentence. For mood ($\beta = .26, p = .002$) indicating that positive mood predicted higher levels of confidence in death sentence. After entering gender and age at Step 3, the total variance explained by the Model was 14%: $F(6, 147) = 4.04, p = .001$. The inclusion of gender added an additional 2% to the Model's variance. Age was not significant. In this Model, defendant perceptions and positive and negative mood were also significant accounting for 13% of this Model's significance ($\beta = -.23, .28, \text{ and } .21, \text{ respectively}$). p values $< .05$.

Discussion

Instructions

The purpose of the present study was to examine the role of a specific instruction designed to guide jurors on non-statutory mitigating circumstances in determining sentence preference. The effect of the expert testimony on childhood physical abuse as the main non-statutory mitigating circumstance was also examined. Past research has consistently addressed the need for mitigating instructions that would specifically and concretely enumerate non-statutory mitigating circumstances in a way similar to the presentation of the aggravating ones. To date there is no research examining whether specific instructions provide more guidance, and improve juror discretion compared to the current general catchall instructions.

Specific instructions were developed under the rationale that mock jurors would attribute to trial factors the mitigating power they deserve when those would be clearly and concretely defined by the instructions. It was found that when participant-jurors were exposed to specific non-statutory mitigating circumstances they were more confident in a death verdict compared to the catchall instruction condition. The main effect of the instruction condition was predicted by our first hypothesis, however, in the opposite direction under which specific instructions would increase confidence in a life verdict.

A potential explanation for this contradictory finding is that even though the presence of specific instructions as expected sifted participants' attention towards specific negative events those however, they were not treated as mitigating circumstances, as required under the law. Perhaps instead of using that information to understand the contextual framework under which the defendant committed the crime and as dictated by the mitigating instructions, they viewed them as a "poor excuse" and justification for the commission of the crime. More specifically, the event of a defendant's childhood physical abuse may have cued jurors that he has been permanently damaged, leading them to make more stable and internal attributions for the

defendant causing a “backfire effect”. Even though Stalans and Henry (1994) found that on average people allocate less punitive sentences to abused rather than non-abused offenders there is a substantial amount of research (Brodsky, Adams, & Tupling, 2007, Barnett, Brodsky, & Price, 2007, Garvey, 1998, Lynch & Haney, 2000) that has addressed the perils of the “backfire effect” when jurors are confronted with evidence of defendant’s childhood physical or sexual abuse.

An interesting aspect of the backfire event is that negative perceptions of the defendant are accompanied by high emotionality, which has been found to be negatively correlated with mechanisms of cognitive processing including attention, perception and recall (Kunha, 1999). In the study conducted by Salerno and Bottoms (2009), the emotionality experienced by the participant-jurors negatively impacted the quality of effortful cognitive processing of the evidence and their ability to understand directions on how to apply those facts of the case (mitigating vs. aggravating use). The backfire effect has also been seen in the literature surrounding limited use evidence (Cox & Tanford, 1989) where jury eligible residents were shown a videotape reenactment of a civil negligence trial. Even though the presentation of limited use evidence did not by itself have an effect on the judgments, significantly harsher judgments occurred when the limited use evidence was accompanied by judicial admonitions to ignore it. Similar findings were reported in the study of Broeder (1959) which found that mock jurors awarded higher damages to a plaintiff after being instructed to disregard the information that the defendant has insurance compared to the treatment where no instructions were given.

Consistent with previous findings, the current study found that an alarming percentage of participant-jurors do not understand the burden of proof attached to the instructions. Only slightly more than half our sample believed that aggravating circumstances should be proven

beyond a reasonable doubt and mitigating circumstances should be proven beyond a reasonable doubt. The burden of proof is the level of confidence needed to convict a defendant in a criminal trial and is one of the most critical instructions provided to the jury. The concept of reasonable doubt is often not defined by the court and in the current study researchers did not attempt to define it in an effort to keep the external validity in satisfactory levels, and explore how the mitigating instructions would be processed in the context of the general series of instructions. The study treated instructions that pertain to the burden of proof the same across all treatments in order to avoid a possible confounding variable while at the same time maintaining a satisfactory level of external validity by not compartmentalizing the pattern instructions.

When participants were exposed to specific instructions they reported that all seven non-statutory mitigating factors in the case scenario significantly positively influenced their decision. It appears that participants valued specific mitigating factors when presented with the revised instructions. A possible interpretation is that the catchall instructions used a complicated language (“any other circumstance, which extenuates the gravity of the crime though it is not a legal excuse for the crime”) whereas specific instructions brought their attention to the negative factors of the defendant’s life triggering a “backfire effect”. The revised instructions (“any other circumstances, other than the ones I have already read to you, that make the crime seem less serious, even though the circumstances are not a legal excuse. In this case do not limit yourself to considering just the crime itself, but any circumstances of the defendant’s life”) provided more concrete and simple language (the word extenuates is eliminated) and at the same time a more neutral instructional context (absence of specific non-statutory mitigating circumstances).

The fact that under the presence of specific instructions and expert testimony participants rated as more influential, factors unrelated to the effect of abuse is consistent with the “backfire

effect” and explains why participants instead of rating as influential abuse related factors (abuse, psychological disturbance) they focused on more neutral factors such as lack of treatment, that the defendant has exhibited remorse and that he has not lured anyone else in the family into trouble. Furthermore, the fact that all participants rated as influential the factor of remorse which was however, depicted only in the specific instruction condition confirms previous findings about the strong mitigating power of that factor (Garvey, 1998).

An interesting question yielded by these findings is the following: If participants who were exposed to our manipulations were significantly positively influenced by the aforementioned nonstatutory mitigating factors, why did the specific instructions and the presence of expert testimony fail to have a moderating effect in favor of confidence in a life verdict? A possible explanation for that discrepancy is that while statutory mitigating factors, and statutory aggravating factors were depicted throughout the trial script the aforementioned nonstatutory evidence were only presented in the specific instruction and the expert testimony condition. That fact may have resulted in the loss of their mitigating impact especially when those were presented in the context of a robbery case (low severity case). Researchers in the present study deliberately avoided distributing these non-statutory mitigating factors across the trial script in order to avoid a confounding variable and at the same time increase confidence that possible moderating effects of the instruction condition would be a product of participants being exposed to specific instructions that entailed in detail those non-statutory mitigating circumstances.

Prior research has been controversial regarding the influence of expert testimony on mock juror studies with some findings indicating that jurors tend to place great weight on scientific expert testimony (Kovera et. al., 1997) while others suggesting that jurors may not have the ability or the motivation to effectively evaluate evidence presented by the expert (Kovera,

Russano, & McAuliff, 2002). In the current study the hypothesized main effect of the expert testimony on childhood physical abuse was not confirmed. Interestingly however, the expert was rated as credible and scientific. There are several possible explanations for the absence of a main effect. First of all, the crime may not have been severe enough (robbery vs. sexual assault) for the testimony to be able to have a moderating effect. Furthermore the central key of the testimony (childhood physical abuse) may have not have been influential enough by itself in order to reach an appropriate mitigating threshold. For instance testifying on the effects of sexual childhood abuse might have been more persuasive for jurors who often have abusive histories in their own lives and yet lack of criminal behavior. Overall, the literature suggests that the most persuasive mitigators are those related to mental retardation, and mental illnesses (Barnet et al, 2004). Finally even though the expert in the case provided a detailed history of the defendant's life and attempted to tie all the evidence together and establish a link between the defendant's criminality and history of physical childhood abuse, it may have failed to do so effectively.

Study Limitations

As with many experimental studies on juror decision-making the current study also suffers from limitations of the external and ecological validity. The testimony in the present study was conveyed through a written transcript which is not representative of actual jury trial. However, research reports very little difference in the type of medium chosen for stimulus materials (Bornstein, 1999; Rose & Ogloff, 2001). Among other threats are the absence of the guilt phase of the trial before the sentencing hearing, the absence of past violent history in the aggravating factors, the use of one particular capital sentencing case (robbery), the lack of deliberation condition and the brevity of the sentencing hearing itself which lasted approximately one hour, did not include victim impact testimony, or testimony from defendants familial environment.

Even though in the absence of victim impact evidence mock jurors are more punitive when they hear a victim impact statement in the context of a robbery and assault case (Tsoudis & Smith – Lovin, 1998), in the current study it was purposefully omitted for the sake of protecting the study's internal validity. More specifically victim impact statement in the current design would be a confounding variable in the treatments where no expert testimony would exist to counterbalance its effects. Another important threat to the ecological validity is that mock jurors may not pay as close attention to judicial instructions as actual jurors due to the lack of consequence (i.e. no one dies). Reifman et al, (1992) suggested that the findings of empirical studies of instructional comprehension are overall representative of actual juror comprehension. In the present study in order to minimize perils related to the lack of participant attention, two manipulation checks were included that aimed to control for the central non-statutory mitigating circumstance and the presence of the expert witness. Participant-jurors in the present study responded positively to the aforementioned manipulation checks indicating that for the most part they actively paid attention to the trial factors.

Future Directions and Conclusions

Even after taking into account the weakness in the research design, this study's empirical findings do have several important policy implications that require further empirical exploration. According to Luginbuhl & Middendorf (1988) the more strongly opposed an individual was to the death penalty the more likely he or she was to endorse mitigating circumstances. Along the same lines, Blankenship and Luginbuhl (1994) indicated that mock jurors who showed the greatest comprehension of penalty phase instructions especially with regard to mitigating instructions, would have been ineligible to serve on jury because they were not "death qualified". That said it would be interesting to see if those differences would exist when comparing

participant-jurors' reactions towards catchall versus specific mitigating instructions, since findings from the current study are solely a product of death eligible participant-jurors. What affects people's motivation to evaluate scientific testimony is their need for cognition "tendency to engage on and enjoy in effortful cognitive activity" (Cacioppo et al., 1984) which makes them more likely to systematically process complex concepts. In the current study we did not explore the participant-jurors' "need for cognition" in relation to their receptiveness of the expert testimony, and for future reference it would be interesting to explore that correlation and possible variations in the ability of the "need for condition" to predict efficacy of differential types of testimony (physical abuse vs. witnessing abuse vs. drug abuse). Furthermore future research that would examine the superiority of specific over catchall instructions under different capital criminal cases (robbery, robbery with violence, physical assault, sexual assault) and under different content of the expert testimony (childhood physical abuse vs. sexual abuse) would shed more light in the current findings and contribute in making more generalized and confident statements about the superiority of the catchall over specific mitigating instructions.

Even in the context of specific and concrete written non-statutory mitigating circumstances mock jurors failed to understand the law because of the content, process and bias on their own information applying "commonsense justice" which is related to the "intuitive notions jurors bring with them to the jury box when judging both a defendant and the law" (Diamond 1993, Finkel, 1995). This seems to be the case even in light of the psychosocial literature, which suggests that in the absence of clear and accessible information decision makers are more influenced by irrelevant peripheral cues and more likely to fall back on simple judgment heuristics (Chaiken, 1987) the current study revealed that even in the presence of complete accounts of the causes of the capital crime, clarification of the role of social contextual

influences in the capital crime and concrete and specific mitigating instructions mock jurors are prone to similar biases. Expert witnesses and defense attorneys should be very careful in not cuing jurors in defendant's negative life events without providing a contextual framework, and even in the presence of a comprehensive social history "more" is not necessarily better. We run the risk that a juror's attention is focused on negative events; consequently, other important mitigating information is discarded. Finally, since mitigation is designed to protect the defendant from the ultimate penalty of death, it is essential for capital jurors to understand concepts of mitigation in order for the defendant to have a fair impartial and constitutionally appropriate trial.

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Appendix

Informed Consent Form

Principal Investigators: Fotine Konstantopoulou and Judith Platania, Ph.D.

Purpose of the Study: This study will examine jurors' perceptions of the sentencing phase of a capital trial. A minimum of 120 participant-jurors will be included in this study.

Procedures Experienced by Participant-jurors: By participating in this study, you will be asked to review a segment of testimony in a death penalty case. You will fill out a questionnaire regarding aspects of a trial. Participation should take approximately 30 minutes.

Confidentiality and Anonymity: Only the investigators will have access to your responses, which will ensure your confidentiality. Additionally, your signature will only appear on your consent form, which is archived electronically. Thus, your responses will remain anonymous.

Your Rights: You have the right to decline participation without any penalties or prejudice because participation is strictly voluntary. Additionally, at any point in the study if you do not feel comfortable or no longer want to participate, you have the right to withdraw from the study without prejudice or penalty. You may contact the primary investigator at any time after you have participated in the study and if requested the results of the experiment will be made available to you.

Compensation for Participation: You will receive a \$5 incentive for completing this survey.

Risks and Benefits of being a Participant: No physical, psychological, or emotional risks are associated with this study. At any time during your participation, you are allowed to withdraw from this study without facing any penalties. A potential benefit is that you might have a better understanding of how psychological research is conducted. Your participation to this study is very important and greatly appreciated.

More Information: After participation, please feel free to contact Dr. Judith Platania in FCAS 104, by email at jplatania@rwu.edu, or telephone 401 254-5738 should you have any additional questions. By linking to the study, I certify that I have given my full consent to participate in this study. I am at least 18 years of age or older. I have read this form and fully understand the content.

Appendix B**Pre-Trial Materials**

(All participant-jurors will read this summary and render a verdict)

JUDGE: Ladies and Gentlemen, the defendant in this case, John Andrews is being charged with attempted armed robbery, possession of a firearm during the commission of a crime and the first-degree murder of Tom Allen. The evidence established that Andrews entered the grocery store on a Saturday night and tied up the victim, Tom Allen at gunpoint. While the defendant was emptying the store shelves, the victim freed himself and began running toward the door. The defendant, Andrews yelled for him to stop and when he didn't he shot and killed him. The events of the crime were captured by the store's surveillance camera.

As a result of reading the facts of the case, do you find John Andrews guilty or not guilty of the murder of Tom Allen:

Not Guilty [1]

Guilty [2]

Pre-Trial Jury Instruction

(all participant-jurors will read this death-qualification instruction)

JUDGE: Ladies and Gentlemen, as a juror in the sentencing phase of the capital trial of John Andrews, you will hear evidence from both the Prosecution and the Defense. After you have heard evidence from each side, you will be asked to recommend a sentence of either life in prison without parole, or death by lethal injection. “Murder” is the killing of any person with malice aforethought, either express or implied. When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. A separate sentencing proceeding is conducted to determine whether sentence should be death or life imprisonment. The Prosecution and the defense are permitted to present arguments for or against the sentence to be imposed. At the close of this proceeding, I will instruct you on the law in this case.

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

No [1]

Yes [2]

If respondent indicates Not Guilty and Yes, he/she will be thanked for their participation and awarded the \$5 research incentive. They will not move to the next phase of the study.

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

Your gender:

- Male [1]
 Female [2]

Into which of the following age categories do you fall:

- 18-24 [1]
 25-34 [2]
 35-44 [3]
 45-54 [4]
 55-64 [5]
 65 or older [6]

Which of the following characterizes your background?

- Caucasian [1]
 Hispanic [2]
 African-American [3]
 Other [4]

What is your religious affiliation?

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

Your marital status:

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

How would you evaluate your political views?

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

Do you have a valid driver's license?

- No [1]
- Yes [2]

Are you a registered voter?

- No [1]
- Yes [2]

Have you ever served on a jury?

- No [1]
- Yes [2]

What is your employment status? (Only check one)

- Not working now/unemployed [1]
- Retired [2]
- Student [3]
- Homemaker [4]
- Employed full-time [5]
- Employed part-time [6]

What is the highest year of education you have attained?

- Less than high school [1]
- Attended some high school [2]
- High school diploma [3]
- Partial college or junior college [4]
- College degree [5]
- Post-graduate college degree [6]

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

- Appropriate in all cases where someone has been murdered. [1]
- Generally appropriate with very few exceptions. [2]
- Generally opposed with very few exceptions. [3]
- Opposed in every possible case where someone has been murdered. [4]

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

1	2	3	4	5
<i>very slightly or not at all</i>	<i>a little</i>	<i>moderately</i>	<i>quite a bit</i>	<i>extremely</i>

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

Appendix C**Case Materials**

(all participant-jurors read this pre-trial instruction)

JUDGE: Ladies and Gentlemen of the jury, you have just convicted the defendant, John Andrews for attempted armed robbery, possession of a firearm during the commission of a violent crime and the first-degree murder of Tom Allen. The evidence established that that Andrews entered the grocery store on a Saturday night and tied up the victim, Tom Allen at gunpoint. While the defendant was emptying the store shelves, the victim freed himself and began running toward the door. The defendant, Andrews yelled for him to stop and when he didn't, he shot and killed him.

It is your duty now to decide upon the appropriate sentence for the defendant, John Andrews. The sentencing decision before you is certainly a difficult one; you must determine which penalty is the appropriate sentence for this crime: life imprisonment without parole, or the death penalty by lethal injection. This decision must be based upon the careful consideration of aggravating and mitigating circumstances. There are two aggravating circumstances in this case and those are that the murder was especially heinous, atrocious, or cruel and that the victim was killed in the course of a robbery with a deadly weapon. In determining which penalty is appropriate for John Andrews, you are permitted any aspect of the defendant, or his background. I trust that after hearing the evidence presented today, you will come to the appropriate sentence.

The prosecution and the defense will now present their cases. The prosecutor will argue that you should vote for the death penalty and the defense attorney will argue for mercy, asking you to spare the defendant's life. Finally, I will be providing you with sentencing instructions in this matter.

Opening Statements

Prosecution

Ladies and Gentlemen of the jury you have read the fact pattern that detailed how John Andrews cut Tom Allen's life short. The law in this state dictates that in this case, first-degree murder occurs when someone takes the life of another human being through a premeditated and intentional act, and the punishment for first-degree murder is death by lethal injection. While certain circumstances in an individual's life can bring forward sympathy, they certainly cannot explain or excuse taking another person's life. You should hold the defendant solely accountable for the commission of this extreme act of violence. It's not my purpose or intent to arouse you or cause you to make a decision based upon anything other than what is reasonable and what is required under the law and the evidence. I trust that after hearing the evidence presented today, you will come to the appropriate sentence – death by lethal injection.

Defense

Members of the jury, now you must consider the larger picture of the defendant's life as you decide the most extraordinary and extreme punishments – life in prison or death by lethal injection. The fact of his conviction for murder is not enough; you still have to consider whether this person is so beyond redemption that he should be eliminated from the human community. After all, he was 19 years old when he committed this crime and he did not have a significant prior history of other criminal activity. The defendant has hurt many individuals through this heinous act, however in determining which penalty is appropriate for John Andrews, you are permitted to identify any aspect of the defendant, or his background, which may lead you to recommend a sentence of life imprisonment. I am confident that the testimony presented today will lead you to recommend the appropriate sentence - life imprisonment without parole.

Testimony of Expert Witness

(Experimental Condition: Present)

JUDGE: Is the defense attorney prepared to present the first witness?

D (Defense Attorney): I am, your honor.

JUDGE: Please proceed.

D: Please state your name for the court.

E (Expert Witness): My name is Dr. Tyler Smith.

D: Dr. Smith, would you please state your credentials for the court?

E: Certainly, I have earned my undergraduate degree in Psychology at Brown University in 1987 and earned a Ph. D in Clinical Forensic Psychology at John Jay University in 1993. I completed my post-doctoral work at a major research university in New York City. I have been a consultant to a wide range of organizations including the National Committee to Prevent Child Abuse, the U.S. Advisory Board on Child Abuse and Neglect, and the FBI. I teach at a local university and continue to conduct research on the long-term effects of childhood abuse in adulthood and its connection to delinquency. I have written and contributed to dozens of articles and books on childhood maltreatment and delinquent behavior as also protective and aggravating factors along the developmental course.

D: Have you ever testified as an expert witness before?

E: I have on numerous occasions. I have served as an expert witness involving issues of trauma, violence and abuse in both civil and criminal trials.

D: How many of these assessments for the court have you conducted?

E: In this state?

D: Yes.

E: I have been conducting assessments for the courts in this state for the past seven years.

Starting in 2001, I would estimate that I have conducted between eighty to one-hundred of these assessments.

D: Have you conducted an assessment of the defendant?

E: Yes, I have.

D: What form of assessments did you conduct?

E: I have reviewed his records, and have contacted, met, and obtained information from family members. I have also met twice with the defendant.

D: Please describe to the court what you did exactly.

E: I reviewed all of Mr. Andrews' records including criminal and medical records, school records, military records, juvenile court records and prison records. I have talked to his sisters who are currently located out of state and I have met him twice at the prison for two hours each time.

D: What can you tell us about Mr. Andrews?

E: John Andrews was subject to persistent and brutal abuse throughout his childhood. He grew up in the absent of a nurturing environment, around explosive tempers who then became a model for him on how to behave.

D: Can you tell us as a professional what are the long-term effects of childhood physical abuse?

E: Literature suggests that among the damaging results of childhood physical abuse is a chronic inability to regulate emotions, behaviors and impulses, aggression against one's self or others.

The ability to understand one's own behavior and to understand how inappropriate their responses are to this behavior is quite limited.

D: Dr. Taylor are you saying in your professional opinion that there is a direct causal connection between child abuse and aggressive behaviors?

E: Yes I think that that is well established. The experience of being abused produces fear, anxiety and anger. It produces difficulty in relating to other people. It isolates the person from his peers and from other adults, and those kinds of feelings and social skills tend to lead a child into an escalating pattern of delinquent behavior.

D: What can you tell us about how the experience of childhood abuse has affected the defendant?

E: I believe that the experience of physical abuse has psychologically damaged Mr. Andrews, who does not possess the normal capacity to make accurate judgments, control his behavior or understand the consequences of his actions. The fact that these impairments may become more pronounced or debilitating in stressful situations could certainly play a role in circumstances that ended in murder.

D: Dr. Taylor can you explain for us in more detail how those childhood experiences influenced the course of his act?

E: The record indicates that the defendant's father was an alcoholic and abusive towards the family and especially the defendant. His mother worked constantly to keep her children and herself off of welfare. The defendant's father would come home drunk, and when upset he would take Andrews in a room, lock the door and he would beat him with belts, extension cords, coat hangers or whatever he could get his hands on. The defendant's sister used to come home and hear Andrews screaming. When the beating was done Andrews would come out of the room with his back bloody from the beatings. Such beatings were a daily event for five consecutive years. This continued until the Child Protective Custody Office removed the defendant from his natural family at the age of twelve. From that time the defendant has been in and out of foster homes and

since then he has changed six foster homes. Until now he has maintained contact with relatives and in his relationship with them he is considerate, generous and concerned. The defendant has not lured anyone else in his family into trouble with the law; he has actually discouraged family members from engaging in criminal behaviors and used himself as an example why they should not get involved in criminal activity. In spite of his personal problems the defendant has encouraged his cousins to do well and has been a mentor and a role model of integrity to his relatives. The defendant has been in state institutions but had never received any real help or treatment of his problems. At the time of the murder Andrews was under stress, suffered from an emotional and mental disturbance and possessed an impaired ability to conform his conduct to the requirements of law.

D: Dr. Taylor, according to your professional opinion, does John Andrews possess a continuous threat to the prison community if sentenced to life in prison?

E: I am confident that the defendant will benefit from therapeutic groups within the facility such as anger management, social skills and life skills groups and with support and professional help he can be a productive member of the facility.

D: No further questions.

Cross-Examination of the Expert Witness

JUDGE: Is the prosecutor prepared with cross-examination of this witness?

P (Prosecutor): Yes your Honor, I am prepared to move forward.

JUDGE: Proceed.

P: Dr. Is it true that most of the literature which examines the long term effects of childhood abuse throughout adulthood suffers from a variety of methodological problems such as lack of appropriated comparison groups and reliance on correlational studies?

E: Yes that has been addressed. There are many intervening factors between the event of childhood abuse and the present day that it makes it challenging to isolate only the factors related to the abuse.

P: Do you believe that we have the capacity to choose right from wrong?

E: Yes that can happen if one has a nurturing environment that would support that capacity and allowed it to be used.

P: How do you explain why some people who come from bad homes do well in life?

E: We all have different innate endowments and ability to tolerate frustration. One can't just look at people and know who will turn out good and who will turn out bad. Along the same lines we have seen people who have been brought up in good families but have turned out making bad choices with their lives. You have to look carefully at the environment and especially the family dynamics.

P: How would you explain that the defendant's sisters have lead a productive life even though they were brought up in the same dysfunctional environment?

E: As I mentioned before our tolerance to frustration is different. Additionally, different ages, gender and stages of development may have lessened the consequences of trauma for them, since the different stages create different experiences of abuse and different perceptions of options available on how to react. Possible explanations for why they may not have been as traumatized by the abuse as the defendant has, are age, personality characteristics, and critical moments of good fortune.

P: Are you saying that people are not responsible for what they do?

E: What John Andrews did was the product of the interaction between himself and his environment.

P: So was the defendant's childhood abuse the cornerstone of Chronic Anger Syndrome? Was violence inevitable?

E: He had no way of expressing what was happening to him. His feelings were just festering inside him. He could have learned to channel those feelings and the violence if he had gotten help. Events in his childhood caused problems that he needed professional help that he never received.

P: Whose fault is it that Andrews committed the robbery?

E: He would have to take responsibility for that.

P: And for all his other voluntary acts?

E: He would be responsible.

P: No further questions.

Closing Argument - Prosecutor

May it please the Court, and you, ladies and gentlemen of the jury, this is the last stage of the trial, but, this is an important part of the trial, just as important as the guilt or innocence stage of the trial, and we ask you to treat it as such. The purpose of punishment is to punish the guilty offender. Punishment is supposed to be adequate and appropriate. Now let's talk a minute about the circumstances of this crime. Tom Allen, the victim in this case, gets his regular morning coffee and was starting another day at work, at the convenience store. That morning the defendant entered the store robbed the victim and ended his life. This was a senseless crime, a crime that never should have happened. What makes this crime so horrible is its randomness. There was nothing Tom Allen could do about this. The defendant was targeting someone that day, it just happened to be Tom Allen. There are two aggravating circumstances in this case: (a) the murder was especially heinous, atrocious, or cruel, (b) the victim was killed in the course of a

robbery with a deadly weapon. In determining which penalty is appropriate for John Andrews, I trust you will apply those aggravating circumstances and sentence this defendant to death.

Closing Argument - Defense

Ladies and gentlemen of the jury I would like to point out that no matter what sentence you impose your decision will not bring back Tom Allen. You have to consider whether the defendant is so beyond redemption that he should be eliminated from the human community. Remember that life in prison has virtually the same outcome as the death penalty for the family of Allen's. Either outcome will not bring him back. Therefore, I submit to you that no good can come from a verdict for death. John Andrews will never be released from prison and therefore could never kill again. He is responsible for what he did although he was 19 years old at the time of the crime. That's why we are here, at the point of sentencing. Mitigating evidence is offered to help you understand what he did, not to excuse or justify it. There are two mitigating circumstances in this case: (a) the defendant was 19 years old when he committed this crime, b) The defendant did not have a significant prior history of other criminal activity. In determining which penalty is appropriate for John Andrews, I trust you will apply those mitigating circumstances and sentence this defendant to life imprisonment without parole.

Judge's Instructions Manipulation

Catchall Instruction Condition

You must decide whether the defendant will be sentenced to death or life in prison without the possibility of parole. In reaching your decision, consider all of the evidence. Do not allow bias, prejudice, or public opinion to influence your opinion in any way. In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence. An *aggravating circumstance* is any fact, condition, or event relating to the commission of a crime, above and beyond the elements of the crime itself that increases the wrongfulness of the defendant's conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty. A *mitigating circumstance* is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant's blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty.

Aggravating factors include: (a) The murder was especially heinous, atrocious, or cruel, (b) The capital offense was committed during the commission of a specific felony (robbery).

Among the mitigating circumstances you are allowed to consider include: (a) The defendant's age at the time of the crime[s] of which (he/she) was convicted in this case, (b) The defendant did not have a significant prior history of other criminal activity, (c) Any other circumstance, which extenuates the gravity of the crime though it is not a legal excuse for the crime.

You must decide whether aggravating or mitigating factors exist. Each aggravating circumstance must be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Determine which penalty is appropriate and justified by considering all the evidence and the totality of any aggravating and mitigating circumstances. Even without mitigating circumstances, you may decide that the aggravating circumstances are not substantial enough to warrant death. To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified.

Revised Instruction Condition

You must decide whether the defendant will be sentenced to death or life in prison without the possibility of parole. In reaching your decision, consider all of the evidence. Do not allow bias, prejudice, or public opinion to influence your opinion in any way. In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence. An *aggravating circumstance* is any fact, condition, or event relating to the commission of a crime, above and beyond the elements of the crime itself that increases the wrongfulness of the defendant's conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty. A *mitigating circumstance* is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant's blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty. Aggravating factors include: (a) The murder was especially heinous,

atrocious, or cruel, (b) The capital offense was committed during the commission of a specific felony (robbery).

Among the mitigating circumstances you are allowed to consider include: (a) The defendant's age at the time of the crime[s] of which (he/she) was convicted in this case, (b) The defendant did not have a significant prior history of other criminal activity, (c) **Any other circumstances, other than the ones I have already read to you, that make the crime seems less serious, even though the circumstances are not a legal excuse. In this case do not limit yourself to considering just the crime itself, but any circumstances of the defendant's life.**

You must decide whether aggravating or mitigating factors exist. Each aggravating circumstance must be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Determine which penalty is appropriate and justified by considering all the evidence and the totality of any aggravating and mitigating circumstances. Even without mitigating circumstances, you may decide that the aggravating circumstances are not substantial enough to warrant death. To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified.

Specific Instruction Condition

You must decide whether the defendant will be sentenced to death or life in prison without the possibility of parole. In reaching your decision, consider all of the evidence. Do not allow bias, prejudice, or public opinion to influence your opinion in any way. In reaching your decision, you must consider and weigh the aggravating and mitigating circumstances or factors shown by the evidence. An *aggravating circumstance* is any fact, condition, or event relating to the

commission of a crime, above and beyond the elements of the crime itself that increases the wrongfulness of the defendant's conduct, the enormity of the offense, or the harmful impact of the crime. An aggravating circumstance may support a decision to impose the death penalty. A *mitigating circumstance* is any fact, condition, or event that makes the death penalty less appropriate as a punishment, even though it does not legally justify or excuse the crime. A mitigating circumstance is something that reduces the defendant's blameworthiness or otherwise supports a less severe punishment. A mitigating circumstance may support a decision not to impose the death penalty.

Aggravating factors include: (a) The murder was especially heinous, atrocious, or cruel, (b) The capital offense was committed during the commission of a specific felony (robbery).

Among the mitigating circumstances you are allowed to consider include: (a) The defendant's age at the time of the crime[s] of which (he/she) was convicted in this case, (b) The defendant did not have a significant prior history of other criminal activity, (c) Any aspect of the defendant's character or record or background, any other circumstances of the offense offered as a basis for a sentence less than death including but not limited to: (1) Andrews was severely physically abused by his father during childhood (2) Andrews has been in state institutions but had never received any real help or treatment of his problems, (3) Andrews current psychological disturbances are related to the abuse he experienced as a child , (4) Andrews displayed appropriate remorse and genuine concern for the distress caused to his family and the victims family (5) Andrew's has not been a discipline problem either in prison or in the pretrial detention facility for the period of his recent incarceration, (6) Andrews has not lured anyone else in his family into trouble with the law, he has actually discouraged family members from engaging in criminal behaviors and used himself as an example, and (7) in spite of his

personal problems Andrews has encouraged his cousins to do well and has been a mentor and a role model of integrity to his relatives.

You must decide whether aggravating or mitigating factors exist. Each aggravating circumstance must be established beyond a reasonable doubt. If you are reasonably convinced that mitigating circumstances exist you may consider it as established. Determine which penalty is appropriate and justified by considering all the evidence and the totality of any aggravating and mitigating circumstances. Even without mitigating circumstances, you may decide that the aggravating circumstances are not substantial enough to warrant death. To return a judgment of death, each of you must be persuaded that the aggravating circumstances both outweigh the mitigating circumstances and are also so substantial in comparison to the mitigating circumstances that a sentence of death is appropriate and justified.

Appendix D

Post-Trial Questionnaire

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

Please recommend a sentence for the defendant in this case.

Life in prison [1]

Death by lethal injection [2]

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

How confident are you of your sentencing recommendation?

1 2 3 4 5 6 7 8

Not at all confident

Completely confident

Using the following scale, please circle the number that reflects your opinion of how credible the expert testimony was in this case:

1 2 3 4 5 6 7 8

Not at all credible

Completely credible

Using the following scale, please circle the number that reflects your opinion of how scientific the expert testimony was in this case:

1 2 3 4 5 6 7 8

Not at all scientific

Completely scientific

Using the following scale, please circle the number that reflects your opinion of how important the expert testimony was to this case:

1 2 3 4 5 6 7 8

Not at all important

Completely important

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

1 2 3 4 5 6 7 8

Not at all troubled

Completely troubled

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

1	2	3	4	5	6	7	8
Not at all				A great deal			

Please indicate on a scale of 0% to 100%, the extent to which each of the following factors influenced your sentencing decision. They do not need to add to 100%.

His father severely physically abused the defendant during childhood.

_____ %

The defendant committed the offense in an especially heinous, cruel, or depraved manner.

_____ %

The defendant has never received any real treatment for his problems.

_____ %

The defendant’s psychological disturbances are related to the abuse he experienced as a child.

_____ %

The defendant has displayed appropriate remorse and genuine concern for the pain he caused.

_____ %

The defendant has not been a discipline problem during the period of his recent incarceration.

_____ %

The defendant has not lured anyone else in his family into trouble with the law.

_____ %

The defendant has encouraged his cousins to do well and has become a role model to his relatives.

_____ %

The defendant’s age at the time of the offense.

_____ %

The defendant did not have a significant prior history of other criminal activity

_____ %

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

1	2	3	4	5
<i>very slightly or not at all</i>	<i>a little</i>	<i>moderately</i>	<i>quite a bit</i>	<i>extremely</i>

_____ attentive

_____ strong

_____ irritable

_____ inspired

_____ afraid

_____ alert

_____ upset

_____ active

_____ guilty

_____ nervous

_____ excited

_____ hostile

_____ proud

_____ jittery

_____ ashamed

_____ scared

_____ enthusiastic

_____ distressed

_____ determined

_____ interested

The defendant in this case was

- Physically abused throughout childhood [1]
- Sexually abused throughout childhood [2]
- The witness of physical abuse throughout childhood [3]
- None of the above [4]

In order to consider a factor in favor of a death sentence it must be proven

- beyond a reasonable doubt [1]
- by a preponderance of the evidence [2]
- only to a juror's personal satisfaction [3]

In order to consider a factor in favor of a life sentence it must be proven

- beyond a reasonable doubt [1]
- by a preponderance of the evidence [2]
- only to a juror's personal satisfaction [3]

In this case, you heard evidence presented by an expert witness:

- No [1]
- Yes [2]

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

1 2 3 4 5 6 7 8

Not at all serious

Completely serious

Appendix E

Debriefing

We appreciate your participation in our study on juror perceptions. The responses you provided will be used to examine effects of testimony regarding evidence of physical abuse on sentencing verdicts. For additional information about confession evidence, the following is an excellent resource:

Stevenson, M. C., Bottoms, B. L., & Diamond, S. S. (2010). Jurors' discussions of a defendant's history of child abuse and alcohol abuse in capital sentencing deliberations. *Psychology, Public Policy, and Law*, 16, 1-38.

If you have any concerns regarding this study, please feel free to contact Dr. Judith Platania in the Feinstein College of Arts and Sciences Building Office 104, via e-mail at jplatania@rwu.edu or at 401-254-5738. Thank you for your participation. *If you are experiencing stress and need assistance, please contact the Roger Williams University Counseling Center at (401) 254-3124.

Current Study:

	<i>Catchall Instruction</i>	<i>Revised Instruction</i>	<i>Specific Instruction</i>
<i>Expert Testimony Present (ET)</i>	<i>CI / ET</i>	<i>RI / ET</i>	<i>SI / ET</i>
<i>Expert Testimony Absent (ET)</i>	<i>CI / No – ET *</i>	<i>RI / No – ET</i>	<i>SI / No – ET</i>

* *Control Condition*

Table 1.

Post Hoc Differences on Type of Instruction for Non-Statutory Mitigating Circumstances

	<u>Catchall</u>	<u>Revised</u>	<u>Specific</u>
The defendant . . .			
suffered severe physical abuse during his childhood.	39% ^a	49% ^{ab}	60% ^b
never received treatment for his problems.	38% ^a	50% ^{ab}	62% ^b
psychological disturbances are related to abuse.	40% ^a	58% ^b	60% ^b
has displayed appropriate remorse.	32% ^a	53% ^b	57% ^b
hasn't been a discipline problem while incarcerated.	37% ^a	51% ^b	60% ^b
hasn't lured family members into crime.	36% ^a	53% ^b	59% ^b

has been a role model to his cousins.	34% ^a	53% ^b	58% ^b
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Note: Percentages sharing superscripts do not differ significantly at $p < .05$. Instructions indicated that totals did not need to equal 100%. $N = 52 - 55$ per experimental condition.

Table 2.

Post Hoc Differences on Type of Instruction for Non-Statutory Mitigating Circumstances

	<u>Expert Testimony Present</u>	<u>Absent</u>
The defendant . . .		
suffered severe physical abuse during his childhood.	62%	33%
never received treatment for his problems.	61%	37%
psychological disturbances are related to abuse.	67%	37%
has displayed appropriate remorse.	54%	38%
hasn't been a discipline problem while incarcerated.	55%	41%
hasn't lured family members into crime.	58%	36%
has been a role model to his cousins.	58%	35%

Note: Instructions indicated that totals did not need to equal 100%; $p < .05$.

Figure 1.

Expert Testimony x Judge's Instructions on Non-Statutory Circumstance of treatment.

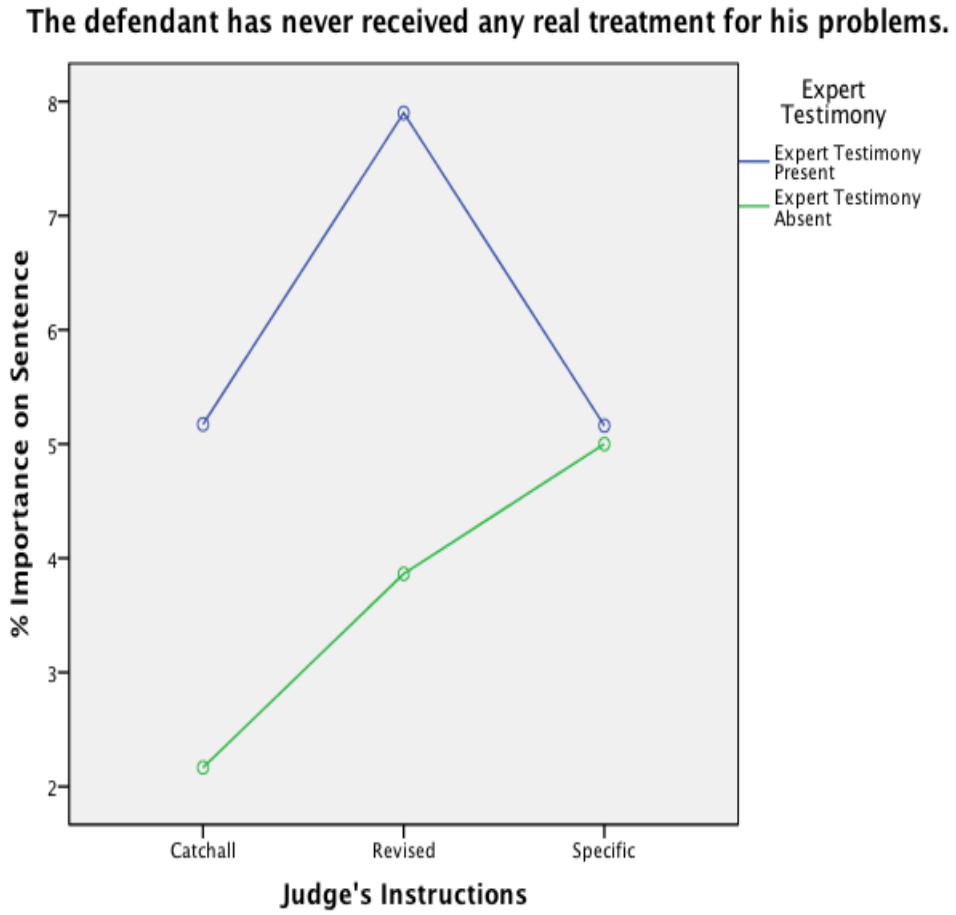


Figure 2.

Expert Testimony x Judge's Instructions on Non-Statutory Circumstance of Remorse

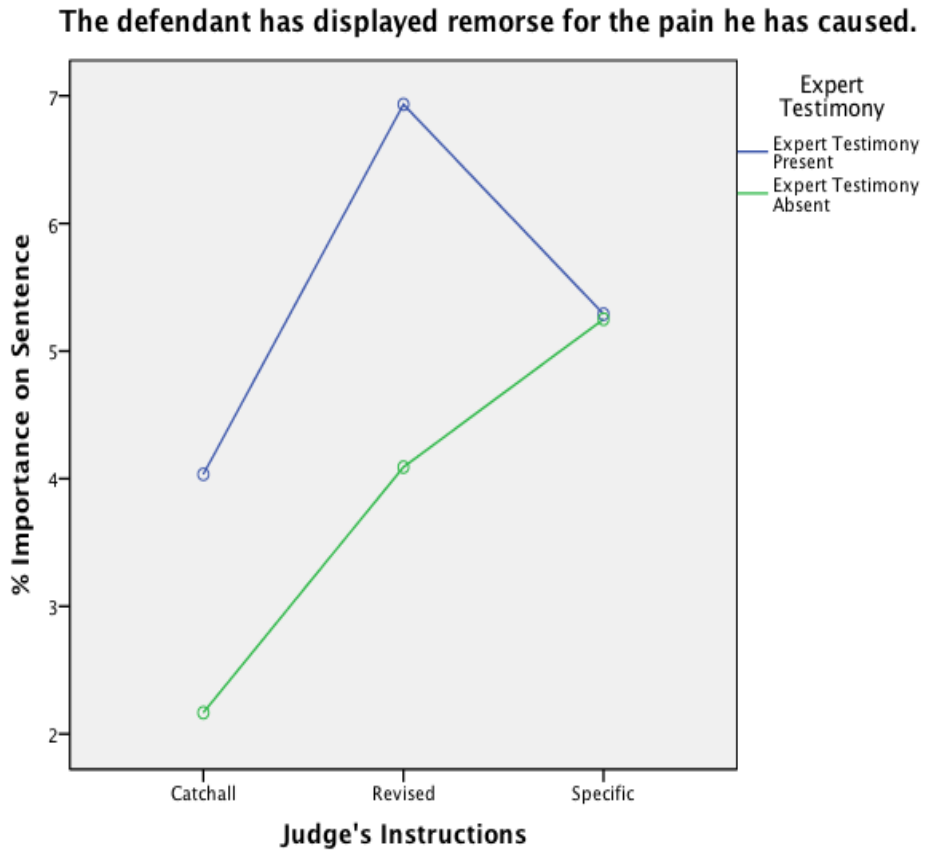


Figure 3.

Expert Testimony x Judge's Instructions Interaction on Non-Statutory Circumstance of lure

