Law and Human Behavior, Vol. 8, Nos. 1/2, 1984

Death Penalty Attitudes and Conviction Proneness

The Translation of Attitudes into Verdicts

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Attitudes toward the death penalty are consistently predictive of jurors' verdicts in criminal trials. Two studies were conducted to find out why. In Study 1, eligible jurors viewed a videotape showing conflicting testimony by a prosecution and defense witness in an assault case. "Death-qualified" subjects (those permitted to serve on capital juries) interpreted testimony in a manner more favorable to the prosecution than "excludable" subjects (those excluded from serving on juries in capital cases due to their opposition to the death penalty), suggesting that differing interpretations of evidence may mediate the relationship between attitudes toward the death penalty and verdicts. In Study 2, the same jurors indicated their reactions to a number of hypothetical situations in which a jury had convicted an innocent defendant or acquitted a guilty one. "Death qualified" subjects expressed less regret concerning erroneous convictions and more regret concerning erroneous acquittals than "excludable" subjects. Theoretical interpretations of this pattern of results suggest that "death qualified" subjects may have a lower threshold of conviction than "excludable" subjects; thus the relationship between attitudes toward the death penalty and verdicts may also be mediated by differing thresholds of conviction.

INTRODUCTION

It is widely assumed that jurors' attitudes have an important influence on their perceptions of evidence in the courtroom, and, ultimately, on their votes in the

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0147-7307/84/0600-0095$03.50/0

jury room. This assumption is reflected in lawyers' handbooks on jury selection (e.g., Appleman, 1968; Bodin, 1954; Rothblatt, 1966) and in the use of survey research to determine "scientifically" what types of jurors are likely to have favorable attitudes (Benora & Kraus, 1979; Kairys, 1975; Schulman, Shaver, Colman, Emrich, & Christie, 1973). During *voir dire,* trial attorneys often go to great lengths to identify and challenge potential jurors whose attitudes seem unfavorable.[1]

Although widely held, the assumption that attitudes predict verdicts is not well supported by empirical data (Suggs & Sales, 1978). In jury simulation studies the relationships observed between jurors' attitudes and their verdicts are generally weak and inconsistent (Saks, 1976). Simon (1967), for example, found that mock jurors' verdicts in a housebreaking case and an incest case were not significantly related to their responses to a number of attitude scales. Similar findings are common (for reviews, see Saks & Hastie, 1978, Chap. 3; Davis, Bray, & Holt, 1977). The assumption that jurors' attitudes predict the outcome of trials also seems inconsistent with findings of a more general nature about the relation of attitudes to behavior (Abelson, 1972; Ajzen & Fishbein, 1977). There is widespread skepticism among social scientists about the usefulness of attitudes for predicting behavior (Abelson, 1972), skepticism that is based in large part on findings that, in a variety of contexts, attitudes fail to predict behavior (Wicker, 1969). The general failure of attitudes to predict behavior reliably would seem to indicate that attitudes are poor predictors of the decisions of jurors.

On the other hand, a few attitudes do seem to predict verdicts. Jurors' attitudes toward the death penalty, for example, reliably predict their verdicts in simulated trials (Goldberg, 1970; Wilson, 1964; Jurow, 1971; Cowan, Thompson, & Ellsworth, this issue). Jurors' attitudes toward rape help account for individual differences in their decisions in rape cases (Feild, 1978), and the "Legal Attutudes Questionnaire" developed by Boehm (1967) has some predictive power (Jurow, 1971). It is possible, therefore, that unpromising results were found in the majority of studies because the researchers failed to look at the right attitudes. The findings of the attitude–behavior literature are, of course, discouraging to those who seek to predict behavior from attitudes. For reasons we will discuss below, however, we believe that attitudes will be found to predict verdicts in at least some cases.

Our purpose in this paper is not to debate whether jurors' attitudes do or do not predict their verdicts. We assume they do, at least some of the time, and seek to find out why. Because the relationship between attitudes toward the death penalty and juror verdicts is the most consistent and powerful one we know of, it provides a good context for studying the mechanisms by which jurors' attitudes can influence their decisions. We hoped that by learning why verdicts are related to attitudes toward the death penalty, we would gain insight into the relationship between verdicts and attitudes of all types. We chose to focus on attitudes toward the death penalty for several reasons. First, the connection between death penalty attitudes and juror verdicts is extremely reliable, having been found in a variety

[1]A particularly interesting example was lawyer Charles Garry's voir dire of prospective jurors in the first Huey Newton murder trial, transcripts of which are found in Ginger (1975).

of juror populations with a wide range of simulated trial materials. Second, death penalty attitudes are well understood. Extensive research has been conducted on the nature of these attitudes (Ellsworth & Ross, in press) and their relation to other attitudes (Bronson, 1970; Vidmar & Ellsworth, 1974; Fitzgerald & Ellsworth, this issue). Finally, there was a practical reason for focusing on attitudes toward the death penalty. Jurors who strongly oppose the death penalty tend to be disqualified under the standards of *Witherspoon v. Illinois* (1968)[2] from serving in trials where the prosecutor seeks the death penalty (*see* Gross, this issue). Because these excluded jurors have a lesser tendency to convict than those allowed to serve (Cowan, Thompson, & Ellsworth, this issue), their exclusion has created a controversy about the fairness of the resulting juries. We hoped our inquiry into the reasons behind the relationship between death penalty attitudes and juror verdicts would have practical value for resolving this controversy as well as theoretical value for answering broader questions about how attitudes influence jurors' decisions.

Why are jurors who favor the death penalty more likely to convict a criminal defendant than those who oppose it? To understand the relation between attitudes and behavior, one must consider the full range of attitudes that influence the behavior (Kelman, 1974). It is important to realize initially, therefore, that attitudes toward the death penalty do not exist in isolation but are associated with a cluster of other attitudes and beliefs about criminal justice. Compared to those who oppose it, people who favor the death penalty tend to express more concern about crime, more favorable attitudes toward police and prosecutors, less sympathy for criminal defendants, more suspicion of defense attorneys, and greater impatience with due process safeguards in criminal trials (Fitzgerald & Ellsworth, this issue; Harris, Note 1; Bronson, 1970; Vidmar & Ellsworth, 1974). So, jurors favoring and opposing the death penalty bring with them to the trial very different perspectives on criminal justice and crime. Fitzgerald and Ellsworth (this issue) label jurors who oppose the death penalty "due process oriented" and those who oppose it "crime control oriented," borrowing those terms from Packer (1964).

How do these differing perspectives on criminal justice become translated into differing verdicts in a criminal trial? We had two hypotheses. First, we postulated that, compared to those who oppose it, jurors who favor the death penalty tend to interpret evidence in a way more favorable to the prosecution. This prediction has a firm basis in psychological theory. Psychologists have long noted that attitudes and beliefs can influence people's interpretation of information (Allport, 1954; Nisbett & Ross, 1980). We suspected that jurors' differing perspectives on criminal justice might influence their interpretations of evidence through two mechanisms. Because audiences are more persuaded by communicators toward whom they have a favorable attitude (Hovland, Janis, & Kelley, 1953), jurors favoring the death penalty may find police witnesses and prosecutors more credible and persuasive than do jurors who oppose the death penalty, and may find

[2]*Witherspoon v. Illinois*, 391 U.S. 510 (1968).

defense attorneys and witnesses relatively less persuasive.[3] Because ambiguous information tends to be interpreted in a way that maintains people's initial beliefs and confirms their expectations (Chapman & Chapman, 1966; Ross, Lepper, & Hubbard, 1975; Snyder, Tanke, & Berscheid, 1977), jurors who favor the death penalty may resolve ambiguous testimony in a manner consistent with the prosecution theory or "script" of the case while jurors who oppose the death penalty resolve conflicts and uncertainties in a manner more amenable to the defense.

Our second hypothesis was that those favoring the death penalty have a lower threshold of conviction, such that they are willing to convict on a lesser certainty of guilt than those opposed to the death penalty. In criminal trials jurors are instructed to convict the defendant only if they are convinced "beyond a reasonable doubt" of his guilt. But the standard of reasonable doubt is only vaguely defined (*see, e.g., Taylor v. Kentucky,* 1978; CALJIC, Note 2).[4] Hence jurors largely determine for themselves their threshold of conviction. The hypothesis that those favoring the death penalty apply a lower threshold seems, intuitively, to be consistent with the differing perspectives of those favoring and opposing the death penalty. One might expect that jurors who are "crime control oriented" and relatively unsympathetic to criminal defendants will convict based on a lesser certainty of guilt than jurors who are less trusting of prosecutors, more sympathetic to criminal defendants, and more concerned with due process safeguards. Thus, the first hypothesis is that the two groups differ in their interpretations of the same evidence, such that those who favor the death penalty find the evidence more supportive of guilt. The second hypothesis is that the two groups differ in their interpretations of the standard of proof beyond a reasonable doubt, such that those who favor the death penalty will feel that lower levels of subjective certainty meet the standard. Of course, these two hypotheses are not mutually exclusive.

To test our first hypothesis, that jurors who favor the death penalty interpret evidence in a way more favorable to the prosecution, we conducted a relatively straightforward study (Study 1). A videotape was created of a segment of a simulated trial, showing a prosecution witness and a defense witness who gave contradictory accounts of the same incident. The tape was shown to subjects eligible for jury service who had been classified into two groups based on their attitudes toward the death penalty. The "excludable" group was composed of subjects whose opposition to the death penalty was strong enough to disqualify them from jury service under the standards of *Witherspoon v. Illinois*. The "death-qualified" group was composed of subjects sufficiently favorable to the death penalty to

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[3]Data showing significant correlations between jurors' attitudes toward police and punishment and their evaluations of strength of evidence in a simulated case involving extensive police testimony have been reported by Hepburn (1980).

[4]*Taylor v. Kentucky,* 436 U.S. 478 (1978). Standard jury instructions used in California define reasonable doubt as follows: It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. (CALJIC, Note 2).

qualify under *Witherspoon* for service in capital cases. Subjects responded to a series of questions about their evaluation of the testimony. We predicted that "death-qualified" subjects would respond to each question in a manner reflecting a more favorable evaluation of the prosecution testimony (and less favorable evaluation of defense testimony) than would "excludable" subjects.

Finding a way to test our second hypothesis was a bit more difficult. There are two possible approaches to assessing jurors' thresholds of conviction, a direct approach and an indirect approach. The direct approach is simply to ask subjects what their threshold is. Simon and Mehan (1971), for example, asked various groups what subjective probability of guilt they would require before voting to convict a criminal defendant and found, among other things, that the mean probability stated by judges (.89) was higher than that stated by jurors (.79). However, there is little evidence that untrained subjects are able to translate their feelings of certainty into meaningful quantitative statements of probability, and good reason to believe that subjects' answers may reflect what they believe to be an appropriate threshold rather than the threshold they would actually use. Because of these concerns, we decided to use a more indirect approach.

The indirect approach requires postulation of a model of juror decision making which specifies a relationship between threshold of conviction and other variables. Inferences are drawn about the threshold by measuring the other variables that are theoretically related to it. A good example of an indirect approach is that of Thomas and Hogue (1976), who postulated that jurors' threshold of conviction is related to their confidence in their decision to convict or acquit in a manner that accords with the Theory of Signal Detectability (Green & Swets, 1966). They drew inferences about subjects' thresholds of conviction from subjects' confidence ratings. Thomas and Hogue's elegant model is, unfortunately, unsuitable for our purpose of determining the relative threshold of jurors who favor and oppose the death penalty. Their model requires the assumption that differences among jurors in their perception of the strength of the evidence occur randomly. This assumption is inconsistent with our first hypothesis—that jurors who favor the death penalty assign different weight to evidence than those opposed, as well as having a different threshold of conviction.

The indirect approach we chose to take is based on expected utility theory and is similar to that taken by Nagel in his studies of jurors' thresholds of conviction (Nagel, 1979; Nagel & Neef, 1979). According to our model, jurors are never entirely sure of the right verdict and realize that there are two possible errors they can make: they can acquit a defendant who deserved conviction or convict a defendant who deserved acquittal. Jurors associate a certain amount of disutility with each of these possible errors. The most crucial assumption of our model is that a juror's threshold of conviction is related to the relative disutility he or she associates with the alternative errors. Specifically, we assume that the greater the disutility a juror associates with erroneous convictions, relative to erroneous acquittals, the higher the threshold of conviction. This relationship is exactly what one would expect to find if jurors were acting so as to minimize the expected amount of disutility for each decision. It can be shown mathematically that a juror who believes it is ten times as bad to convict an innocent defendant

as to acquit a guilty one can minimize his expected disutility by convicting only when he thinks the probability the defendant is guilty exceeds .91.[5] By contrast, a juror who thinks it is equally bad to convict the innocent and to acquit the guilty can minimize disutility by voting to convict whenever the probability of guilt appears to exceed .50. We do not assume, of course, that jurors are perfect decision theorists. There is no reason to believe that jurors set their thresholds of conviction at exactly the level that will, theoretically, minimize their expected disutility. But we do believe that our model is approximately accurate and that the disutility jurors associate with erroneous convictions and acquittals corresponds in a rough way to their thresholds of conviction. It seems perfectly reasonable to expect a juror who agrees with Blackstone's famous dictum (that it is better that ten guilty men go free than that one innocent be convicted[6]) to have a higher threshold of conviction than a juror who thinks erroneous convictions and erroneous acquittals are equally bad.

Accordingly, we designed a study (Study 2) to assess the disutility associated with the alternative errors by subjects who favor and oppose the death penalty. We asked "death-qualified" and "excludable" subjects to indicate how much disutility they associated with each of a series of hypothetical situations in which the verdict of their jury was either too lenient (i.e., acquitting a guilty defendant or convicting of a lesser offense than the defendant committed) or the verdict of their jury was too harsh (i.e., convicting a defendant who is innocent or is guilty only of a lesser offense). The difference between the amount of disutility associated with lenient and harsh errors provided an index of subjects' thresholds of conviction. We predicted that the "death-qualified" subjects would associate less disutility with harsh errors, relative to lenient errors, than would "excludable" subjects.

STUDY 1

Method

Subjects

We selected a sample of 36 individuals from a pool of 240 subjects who had previously participated in a study on jury deliberation processes (Cowan,

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[5]The expected disutility of voting to acquit is equal to the disutility of acquitting a guilty defendant (D_a) times the probability the defendant is guilty (P). The expected disutility of voting to convict is equal to the disutility of convicting an innocent defendant (D_c), times the probability the defendant is innocent ($1 - P$). In order to minimize disutility, a juror should convict only when the expected disutility of conviction exceeds that of acquittal, or $(1 - P)D_c > PD_a$. If a juror assumes that D_c is ten times D_a, simple algebra reveals that $(1 - P)D_c$ will exceed PD_a only when P, the probability of guilt, exceeds .91. For a more thorough explanation of this point, see Nagel (1979) or Nagel and Neef (1979).

[6]4 Blackstone Commentaries 358. *See generally* Fletcher (1968).

Thompson, & Ellsworth, this issue).[7] This pool of subjects was well suited to our purposes because all were eligible for jury service in California and because their attitudes toward the death penalty had previously been assessed (using the Capital Punishment Attitude Questionnaire [A] developed by Jurow, 1971). More important, in the previous study they had all answered several questions to determine their eligibility for inclusion on a capital ("death-qualified") jury. (See Cowan, Thompson, & Ellsworth, this issue for details of administration.) We therefore knew in advance which were "death-qualified" and which were "excludable." Subjects were contacted by telephone and offered $5.00 to watch a short videotape of testimony in a trial and fill out questionnaires. We explained that this was a "follow-up" to the study in which they had participated earlier. This recruitment occurred two to six weeks after their participation in the earlier study.

We attempted to recruit all of the subjects who had been classified as "excludables" in the previous study. Nineteen were contacted and 16 agreed to participate. We also contacted a random sample of 22 of the subjects who had been classified "death-qualified"; 19 agreed to participate.

Almost all of the subjects were white and the educational level of the sample was fairly high, 33% having completed at least four years of college. Almost 70% of the subjects were female. Different religious preferences were well represented, except that Jews were somewhat underrepresented. Forty-seven percent of the subjects were Republican, 39% Democrat, and 14% independent. All subjects were eligible for jury duty in California, 40% having been selected for jury duty in the past and 30% having actually served on juries.

Stimulus Material

Subjects were shown a videotape which showed a scripted simulation of the conflicting testimony of two witnesses: a white police officer and a black defendant. The witnesses indicated through their testimony that the two had been involved in a physical confrontation which led to the defendant's arrest by the officer for assault.

The tape begins with the testimony of the police officer, who is questioned first by the prosecutor (direct examination) and then by the defense attorney (cross examination). The police officer testifies during direct examination that on the night in question he and a number of fellow officers were on crowd-control duty at a large auditorium. The officers were trying to clear an unruly crowd from the sidewalk when the defendant tried to break through the line of police

[7]In that study, groups of 12 subjects watched a 2½-hour videotape of a trial and deliberated as a simulated jury for an hour. The 240 subjects were recruited from two discrete groups: individuals who had served as jurors in Santa Clara County, California, and persons who responded to an advertisement placed in local newspapers. All were screened to assure their eligibility for jury service in California. Their eligibility for inclusion on a death-qualified jury was determined through a series of questions permissible under *Witherspoon v. Illinois* for determining the attitudes of prospective jurors toward the death penalty.

and move in the opposite direction. The officer testifies that when he took the defendant aside in order to explain the need to disperse the crowd, the defendant became belligerant and struck him on the chin, cutting his chin and initiating the struggle which resulted in the defendant's arrest. During cross examination the officer denies having directed racial slurs at the defendant, denies that the injury to his chin resulted from an unrelated incident, and denies initiating the struggle with the defendant.

The defendant then takes the stand and is examined first by the defense attorney and then by the prosecutor. The defendant testifies that while leaving a crowded concert at the auditorium he had become separated from his friends. He states that in order to reach his car and rejoin his friends he needed to move against the flow of pedestrians police had created. According to the defendant, when he tried to explain his desire to the police officer, the officer pulled him aside, abused him verbally with racial slurs, and then, without provocation, began beating him. During cross examination the defendant denies having been drunk, denies insulting the officer, and insists he neither struck the officer nor initiated the struggle.

In developing the script, our aim was to create a realistic and believable segment of testimony. We therefore had a group of lawyers and psychologists review the script for realism, modifying it in response to their suggestions. We videotaped the testimony and showed it to a pilot group of ten death-qualified pilot subjects. They indicated the situation and the characters were realistic, and that the two conflicting explanations of the confrontation both seemed plausible.

The testimony was videotaped in the Moot Courtroom of Stanford Law School, a room that resembles an actual court room in all respects. The roles were played by actors with suitable appearance and demeanor. The role of the police officer was played by a former policeman who had had experience testifying in court.

Procedure

Subjects participated in groups of four to ten. Initial instructions asked them to place themselves in the role of jurors. After watching the videotape, which lasted about 20 minutes, subjects completed a 16-item self-administered questionnaire which included four types of questions. Questions 1 through 3 measured the subjects' perceptions of the general credibility and truthfulness of the two witnesses. Questions 4 through 9 asked which witness' story was more plausible with respect to six specific facts about which there was conflicting testimony, e.g., whether the defendant threatened the officer, whether the officer used racial slurs. Questions 10 through 13 asked subjects what inferences they had drawn about events leading to the arrest: Who initiated the struggle? Was the officer too rough or antagonistic? Was the defendant justified in trying to break through the police line? Finally, questions 14 through 16 asked about subjects' attributions regarding the character and personality of the two witnesses: Had the defendant been in trouble with the police before? Was the officer biased against blacks?

Was the defendant unduly hostile to the officer? Subjects indicated their opinions on six-point Likert-type scales.

The entire procedure lasted approximately 35 to 40 minutes. Subjects were given as much time as they needed to complete the questionnaire. The experimenter was unaware of the subjects' death penalty attitudes, and thus could not have biased the outcome.

Results and Discussion

Consistent with our hypothesis, death-qualified subjects evaluated the evidence in a way markedly more favorable to the prosecution than did the excludables. In Table 1, the mean evaluations of death qualified excludable subjects on the 16 questions are presented. Some of the scores were inverted so that a higher

Table 1. Mean Evaluations of Evidence by Death Qualified and Excludable Subjects: Study 1[a]

Question	Group[b]		
	Death-qualified	Excludable	*t*-value
Credibility of witnesses			
1. Officer's truthfulness	4.55	3.44	3.42[d]
2. Defendant's truthfulness	3.69	3.05	1.76
3. Relative accuracy of witnesses	4.35	3.25	2.49[c]
Plausibility of facts			
4. Defendant threatened to punch officer	4.15	2.87	2.49[c]
5. Defendant struck officer	4.45	2.37	4.25[d]
6. Officer was cut by bottle	2.81	1.85	1.78
7. Defendant was limping	3.68	3.45	.48
8. Officer used racial slurs	4.44	3.65	1.68
9. Defendant was derogatory to officer	5.00	4.31	1.65
Inferences from facts			
10. Who initiated the struggle?	4.06	2.35	3.36[d]
11. Was the officer too rough?	4.18	3.10	2.05[c]
12. Defendant's breaking police line justified?	4.00	1.95	4.09[d]
13. Officer antagonistic to defendant?	4.37	3.05	2.70[c]
Attributions about the witnesses			
14. Defendant had previous trouble with police	4.80	3.50	2.76[c]
15. Officer had racial bias	3.12	2.60	1.38
16. Defendant unduly hostile to police	4.45	3.50	2.69[c]

[a]The scale ranged from 1 to 6; higher numbers indicate evaluations more favorable to the prosecution.
[b]Death-qualified $n = 19$; excludable $n = 16$.
[c]$p < .01$.
[d]$p < .05$.

number always represents a response more favorable to the prosecution. As can be seen, death-qualified subjects gave answers that were more favorable to the prosecution than those of the excludables on every one of the 16 questions. On ten questions this difference was significant at the .05 level or better. Relative to the excludables, death-qualified subjects were significantly more favorable to the prosecution witness on two of the three questions (1–3) dealing with credibility of the witnesses, two of six questions (4–9) about the plausibility of specific facts, all four questions (10–13) regarding inferences drawn from the facts, and two of the three questions (14–16) regarding attributions about the witnesses.

A general index of subjects' tendency to evaluate evidence in a manner favoring prosecution or defense was created by summing each subject's scores across all 16 questions (after inverting some scores so that 1 always represented the prodefendant end of the scale and 6 the proprosecution end). This general index ranged from 16 (a score of 1 on each question), representing the strongest possible prodefendant evaluation, to 96 (a score of 6 on each question), representing the strongest possible proprosecution evaluation. Using this general measure we found that, by a large margin, death-qualified subjects were more likely to evaluate evidence in a manner favoring the prosecution ($\bar{X} = 69.6$) than were excludable subjects ($\bar{X} = 52.0$, $t(31) = 4.13$, $p < .0002$).

To see how well subjects' evaluations of evidence were predicted by their attitudes toward the death penalty, we correlated the general index with responses subjects had previously given on Jurow's CPAQ-A, a five-point scale of attitudes toward the death penalty (Jurow, 1971). Subjects' evaluations of evidence were predicted surprisingly well from attitudes toward the death penalty they had expressed two to six weeks earlier: $r = .60$, $p < .01$.

These findings suggest that the greater conviction-proneness of jurors who favor the death penalty is due, at least in part, to their tendency to interpret evidence in a way more favorable to the prosecution and less favorable to the defense. More generally, these findings demonstrate that jurors holding different attitudes may interpret the same testimony in very different ways. Hence, these findings support the widespread view that jurors' attitudes influence their perceptions of evidence in trials.

There are several psychological mechanisms that may have produced these differences. Audiences are, in general, more persuaded by a communicator they like and trust (Abelson, 1959; Hovland, Janis, and Kelley, 1953). Accordingly, the differences may be explained in part by the fact that death-qualified jurors have more favorable attitudes than excludables toward police and prosecutors and less favorable attitudes toward defense attorneys and defendants (Fitzgerald and Ellsworth, this issue). Death-qualified subjects may simply have given more credence to the statements of the officer and the prosecutor, while the excludables gave relatively more credence to the defendant and his attorney.

Differences between the two groups' general beliefs about crime and criminal justice (Bronson, 1970; Fitzgerald and Ellsworth, this issue) may also have played a role. Facts that fit with prior theories and beliefs tend to be seen as more plausible (more likely) than those that contradict expectations (Lord, Ross, and

Lepper, 1979). The death-qualified subjects may have been more likely than the excludables to believe the defendant threatened (question 4) and struck the officer (question 5) for example, because these actions are consistent with their beliefs about how young blacks are likely to behave when restrained by a police officer, while excludables are more likely to expect brutality by the officer.

These differences in beliefs about police and crime may also have influenced the way subjects construed ambiguous statements and "filled-in" missing details. When presented with a series of facts or events, people seem to make sense of them by assimilating them to familiar "scripts" (Langer and Abelson, 1972; Abelson, 1976). People construe ambiguities and "fill-in" missing details in accordance with their conception of how the scenario typically develops. It seems likely that death-qualified and excludable subjects have different conceptions about the way interactions between police officers and young blacks typically develop. The two groups may have evaluated the evidence differently because the death-qualified subjects construed ambiguities and "filled-in" details in accordance with a "script" in which the defendant is the aggressor. It is notable in this regard that the differences between the two groups that most consistently achieved statistical significance were the differences in the *inferences* they were willing to draw from the facts.

Although the differences observed here occurred in response to only one trial segment, we believe similar differences would be found in response to a wide variety of criminal trial evidence. In most trials there is conflicting ambiguous testimony, leaving considerable latitude for interpretation. Moreover, it is not uncommon in criminal trials for police officers to testify for the prosecution; or for the defendant to be a young man of low status, often a black man; or for the defense and prosecution to present alternative "scripts" of the events in dispute. In several basic ways, then, this segment embodied a representative criminal justice confrontation.

It is possible, of course, that large differences such as those observed here would not occur in all trials. In a trial where a white police officer was being tried for unjustifiably assaulting a black man during an arrest, for example, death-qualified jurors might be less prosecution prone, and excludable jurors might be more prosecution prone than observed here. Whether differences between the two groups would disappear or even be reversed in such circumstances remains to be determined. The present study shows only that death-qualified and excludable jurors differ in response to a single segment of testimony.

Some evidence for the generality of our findings is provided by witness credibility ratings of subjects in the Cowan, Thompson, and Ellsworth (this issue) study, which used different stimulus materials. In a postdeliberation questionnaire, these jurors indicated how believable they had found the testimony of each of six witnesses in the 2½ hour trial. Compared to excludables, the death-qualified jurors rated all four prosecution witnesses more believable and both defense witnesses less believable. Although additional research will be required to define the scope and limits of these effects, this replication increases our confidence in their generalizability.

STUDY 2

Method

Our approach is Study 2 was based on a theoretical model of decision making by jurors which assumes that a juror's threshold of conviction is related to the amount of disutility he or she associates with erroneous convictions and erroneous acquittals. Specifically, our model assumes that the greater the disutility jurors associate with erroneous convictions, relative to erroneous acquittals, the higher will be their threshold of conviction. To draw inferences about threshold of conviction, then, we sought to assess the amount of disutility subjects associated with the relevant situations.

Informal pretesting suggested that many subjects failed to understand the term "disutility." They seemed to understand what we were getting at, however, when we asked them how much regret they would feel if a certain event occurred (e.g., an innocent defendant were mistakenly convicted). Therefore, we substituted the term "regret" for disutility in our measures.

Subjects who participated in Study 1 also participated in Study 2 at the same session.[8] Order of participation was counterbalanced. Subjects were given a questionnaire titled "Regret Scale" which asked them to indicate how much regret they would feel in each of 16 hypothetical situations. They expressed their quantum of regret as a number between 0 and 100 after being told that 0 indicated no regret and 100 indicated the most regret they could possibly feel. In each of the 16 situations the subjects were asked to imagine their jury had reached one of four specified verdicts in a homicide case (guilty of first degree murder, guilty of second degree murder, guilty of manslaughter, or not guilty) and that the defendant was later proven actually to have been guilty of one of the three levels of homicide (first degree murder, second degree murder, manslaughter) or to have been innocent. The 16 situations comprised all possible combinations of the four verdicts with the four levels of actual guilt (see Table 2). Thus among the 16 situations there were four correct verdicts, where the jury convicted the defendant of the crime he actually committed, and 12 errors. Six of the errors were on the side of leniency: the jury acquitted a guilty defendant or convicted of a lower-level crime than the defendant actually committed. Six of the errors were on the side of harshness: the jury convicted a defendant who was innocent or was guilty only of a lesser offense than that for which he was convicted. Jurors indicated their level of regret for each situation on a 4×4 matrix, similar to Table 2, on which rows corresponded to the four jury verdicts and columns corresponded to the crime the defendant actually committed.

Results and Discussion

We hypothesized that excludable subjects would associate greater disutility (regret) with erroneous convictions, relative to erroneous acquittals, than would

[8]Two excludable and four death-qualified subjects who participated in Study 1 failed to complete the questionnaire for Study 2. As a result, for Study 2 death-qualified $n = 15$; excludable $n = 14$.

death-qualified subjects. By the terms of our model, this finding would indicate that excludables have a higher threshold of conviction. Our hypothesis was confirmed. The mean level of regret expressed by death-qualified and excludable subjects in each of the 16 hypothetical situations is shown in Table 2. The four cells on a diagonal line from the upper left to the lower right corner of the table represent the four situations in which the jury made a correct decision. The six cells above that diagonal represent the harsh errors, i.e., the situations where the jury convicted the defendant of an offense more serious than he actually committed. The six cells below the diagonal represent lenient errors, i.e., situations where the defendant's actual offense was more serious than the verdict the jury returned. A quick look at the means reveals that excludable subjects expressed more regret than death-qualified subjects for each of the six harsh errors. By contrast, excludables expressed less regret than death qualified subjects for each of the six lenient errors.

An index was created by summing across each subject's scores for the lenient errors and subtracting that sum from the sum of his or her scores for the harsh errors. The remainder indicated the amount by which the subject's regret for harsh errors exceeded his or her regret for lenient errors. We used this as an index of threshold of conviction, higher numbers indicating a higher threshold. As hypothesized, excludables showed significantly higher values ($\bar{X}$ = 127.85) than death-qualified subjects [$\bar{X}$ = 1.13; $t(28) = 2.06$, $p < .05$].

The death-qualified subjects expressed nearly equal regret for harsh and lenient errors. The excludables expressed more regret than the death-qualified subjects for harsh errors, and less for lenient errors. This pattern of differences is consistent with the attitudes of the two groups toward criminal justice. The death-

Table 2. Mean Regret Expressed by Death-Qualified and Excludable Subjects: Study 2[a]

	Crime defendant actually committed			
Verdict of jury	1st degree murder	2nd degree murder	Manslaughter murder	Not guilty
1st degree murder				
D.Q.[b]	0.67	43.2	54.33	68.86
Exc.[c]	7.50	66.07	70.71	90.71
2nd degree murder				
D.Q.	45.00	.33	49.13	68.20
Exc.	27.14	7.14	53.12	85.71
Manslaughter				
D.Q.	54.00	46.33	0.0	69.20
Exc.	49.28	44.64	8.2	73.57
Not guilty				
D.Q.	73.73	70.53	60.20	0.0
Exc.	71.78	61.07	58.21	6.43

[a]Higher numbers indicate greater regret. Death qualified n = 15; Excludable n = 14.
[b]D.Q. = death qualified.
[c]Exc. = excludable.

qualified subjects may have felt more regret for lenient errors in part because they think violent crime is a serious problem and believe harsh punishment is the solution (Fitzgerald and Ellsworth, this issue). These beliefs may cause them to see erroneous acquittals and other lenient errors as especially detrimental to society. The excludables, by contrast, are less likely to see crime as a serious problem and less likely to believe harsh punishment is a solution (Harris, Note 1; Fitzgerald and Ellsworth, this issue). They may, therefore, see a lenient error as less damaging to society. The differing level of regret for lenient errors may also reflect differences in the two groups' views of criminal desert. Excludables are more likely than death-qualified subjects to believe in treating criminals mercifully (Fitzgerald and Ellsworth, this issue). Hence, a lenient error that gives a criminal a "break" may be seen as less of an injustice by the excludable than by the death-qualified subjects.

The two groups may have differed in their regret for harsh errors for similar reasons. Death-qualified subjects, who believe strongly that punishment has social utility and that criminals deserve it, view a harsh error, and the excessive punishment that results, as regretable, of course, but do not feel as much regret as the excludables, who have less faith in the utility and justice of punishment in the first place. The death-qualified subjects may also be more accepting of harsh errors because they believe they are the price society must pay to assure all guilty defendants are convicted. This sentiment is reflected in the finding that death-qualified subjects are less willing than excludables to agree that it is better for society to let some guilty defendants go free than to risk convicting an innocent person (Fitzgerald and Ellsworth, this issue).

The conclusions we have drawn from the data thus far compare death-qualified and excludable subjects only in terms of the *relative* level of their thresholds of conviction. Excludables, we have concluded, have a higher threshold. Nagel (1979; Nagel and Neef, 1979) has argued that it is also possible to draw conclusions about the *absolute* level of subjects' thresholds of conviction from data such as ours. In other words, he suggests that the exact probability of guilt our subjects would require before convicting can be inferred from the relative level of regret they express for erroneous convictions and acquittals. He argues that a juror's threshold probability of conviction (P) can be determined from the formula $P = X/(X + 1)$, where X is the ratio of the disutility of erroneous conviction to the disutility of erroneous acquittal. A juror who, like Blackstone, considers erroneous convictions to be ten times as bad as erroneous acquittals would, according to Nagel, have a threshold of $P = 10/(10 + 1) = .91$.

The only support Nagel offers for his argument is the observation that, according to expected utility theory, a juror who set his or her threshold of conviction according to the formula would minimize expected disutility. Nagel bases his position on the assumption that jurors actually follow the decision strategy that will minimize their expected disutility. This is an assumption we suspect to be false, at least in part. It is true, as Nagel points out, that any other decision strategy would be suboptimal by the jurors' own standards. The expected disutility of a juror with Blackstone's sentiments would indeed be greater to the

extent his threshold was either higher or lower than .91. But recent research indicates that people's decision strategies are frequently suboptimal (Nisbett and Ross, 1980; Saks and Kidd, 1981). Nagel offers no evidence, and we know of none, to suggest that jurors are capable of computing accurately the decision threshold that will minimize their expected disutility. Hence, even if jurors try to minimize disutility, the threshold of decision they adopt to achieve this result may differ markedly from that dictated by Nagel's formula. Data on the disutility jurors associate with erroneous convictions and acquittals, then, probably are not an accurate index of the *absolute* level of jurors' thresholds of conviction. We assume, of course, that there is a rough correspondence between the disutilities associated with erroneous decisions and jurors' threshold of conviction, such that Blackstone would have a higher threshold of conviction than a juror who, like our death-qualified subjects, associates equal disutility with erroneous convictions and acquittals. This rough correspondence is all that is required for drawing inferences about the *relative* level of jurors' thresholds based on their regret scores.

We believe the regret scale is a promising new technique for assessing the relative thresholds of conviction of groups of subjects and that the results of Study 2 strongly support the hypothesis that death-qualified jurors have a lower threshold of conviction than excludables. Nevertheless, some caveats are in order regarding this technique. First, although the model of decision making by jurors on which our inferences are based seems plausible, it has not been verified empirically. However reasonable our assumptions seem, we must admit the possibility that they are wrong—in which case our conclusions would be invalid. Second, it is important to note that the questions on the regret scale were not associated with any particular trial. Subjects were asked how much regret they would feel if, for example, they had erroneously convicted *a* defendant, not how much regret they would feel if they had erroneously convicted any particular defendant. Although asking questions in this general form makes jurors' responses independent of any particular trial situation, it fails to capture any possible variation across trials in death-qualified and excludable subjects relative thresholds of conviction. The way in which such variations would influence responses would be an interesting topic for further research.

GENERAL DISCUSSION

These two studies help explain the consistent finding that death-qualified jurors are more likely to convict a criminal defendant than excludables. Study 1 demonstrates that the same testimony from a criminal trial may be evaluated differently by death-qualified and excludable jurors, suggesting that the difference in conviction-proneness may be due, in part, to systematic differences between the two groups in their perceptions of evidence in criminal trials. Study 2 shows that, relative to excludables, death-qualified subjects express less regret for erroneous convictions and more for erroneous acquittals. This finding suggests that

differences in conviction-proneness may also be due to a tendency for death-qualified jurors to convict on a lesser showing of guilt than that required by excludables. Of course, the two differences between death-qualified and excludable jurors we explored here may not exhaust all possibilities. There may be a number of other differences that help account for the greater conviction proneness of death-qualified jurors. The two groups may also differ, for example, in their interpretation of judge's instructions. Evaluating evidence and deciding whether it justifies conviction are such essential aspects of a juror's role, however, that it seems likely that these differences are most important.

On a more general level, these studies strongly suggest that attitudes can have an important influence on the decision making process of jurors. The influence of attitudes was particularly evident in Study 1, where subjects' attitudes toward the death penalty, as expressed two to six weeks earlier on a five-point scale, accounted for over a third of the variance in their evaluations of testimony. These findings support the widespread view that jurors' attitudes may have an important influence on their decisions.

Findings of previous studies make it clear that not every attitude has such an influence (Saks and Hastie, 1978, Chap. 3). Many attitudes that would seem, *a priori,* to be relevant are unrelated to jurors' decisions. In light of our findings it is worth considering why attitudes toward the death penalty predict jurors' decisions while many other attitudes do not. As we see it, jurors' decisions are not influenced directly by their attitudes on the death penalty, but are influenced by a set of beliefs and theories they hold that are directly relevant to the judgments they must make in court. Jurors' evaluations of evidence are influenced by their opinions on the credibility of various types of witnesses, their trust in prosecutors and defense attorneys, and their intuitive theories and beliefs about police, crime, and criminals. Their judgment of the sufficiency of the evidence to convict is influenced by their opinions on the utility and justice of criminal sanctions, their assessment of the *a priori* odds a criminal defendant is guilty, and so on. The reason attitudes toward the death penalty predict verdicts is that they identify people with sets of *other* attitudes that predispose them to favor prosecution or defense. People who favor the death penalty are also likely to hold a set of attitudes all of which dispose them to favor the prosecution, and those who oppose it a consistent set of prodefense attitudes. Attitudes toward the death penalty are thus a clue to the perspective a juror takes on criminal justice, and that perspective, rather than the death penalty attitudes themselves, colors jurors' interpretation of evidence and influences their threshold of conviction.

This is not to say that the jurors differ in their *intentions* to vote guilty or innocent before they hear the evidence, nor that they are aware of any predisposition. It seems more likely that most jurors intend to evaluate the testimony open-mindedly, and, when they vote, see themselves as responding rationally to the weight of the evidence according to the standard of proof described by the judge. But their perspectives on criminal justice lead them to perceive the evidence and the standard differently. In a criminal trial the evidence is usually extensive, complex, and ambiguous in its implications, and few people are likely to remember all of it accurately. Instead, they unwittingly organize the informa-

tion in terms of their mental "scripts" (Abelson, 1976) about crime and criminal justice, omitting and distorting details, filling in the gaps, and drawing inferences as they go along. By the end of a trial, differing scripts may have exerted substantial influence, so that two well-intentioned jurors' reconstructions of the facts and the implications of those facts may be surprisingly dissimilar. Likewise, the standard of reasonable doubt is imprecise and leaves room for interpretation. A person who readily imagines an innocent person dishonored and imprisoned is likely to interpret the standard more strictly than one whose first thought is of the vicious criminal back on the streets.

In a more speculative vein, we might argue more generally that an attitude is likely to have an unrecognized influence on behavior (1) when the attitude is associated with a perspective (or set of scripts) that is applicable to the situation at hand; (2) when the situation itself is sufficiently ambiguous to leave substantial room for differences in interpretation; (3) when the behavioral alternatives are clear and the person cannot abstain from choosing among them; and (4) when the criterion for choosing is not clearly specified.[9] Since a jury trial embodies the second, third, and fourth of these hypothetical predictors, we would expect that attitudes embodying the first would have an influence on jurors' verdicts.

We know that *some* sorts of attitudes or other dispositions jurors bring with them to court have an influence on the way they decide a case, because juries are rarely unanimous on the first ballot (Kalven and Zeisel, 1966). Since the jurors all see the same trial, the difference in initial vote must be caused by individual differences among the jurors. Recognizing that such dispositions must exist and being able to identify in advance those who hold them, however, are two different matters. The research on attitude–verdict relations suggests that most attitude measures that have been used fail to identify jurors who are disposed to vote one way or the other. Death penalty attitudes may be superior predictors because they are associated with a set of beliefs about crime and criminal justice that provide available scripts for interpreting the complicated events of many criminal trials.

To summarize, our research shows that people's attitude toward the death penalty affects both their interpretations of testimony and their threshold of reasonable doubt. These findings provide some initial illumination of the frequent finding that death-qualified jurors are more conviction prone than excludables, by identifying two psychological mechanisms underlying this relationship. Compared with excludables, death-qualified jurors perceive conflicting, ambiguous testimony in a way that follows the prosecution's version of the events, perhaps because that version corresponds to a script that is readily available to them. And death-qualified jurors do not show the excludables' tendency to regard conviction of the innocent as a more regrettable error than acquittal of the guilty, indicating that less evidence is necessary to convince death-qualified jurors beyond a reasonable doubt.

[9]These hypothetical predictors are meant to apply to situations in which the person is unaware or only dimly aware of the influence of the attitude on his or her behavior, and are not meant to apply to situations in which people intentionally choose to engage in some behavior in order to express their attitudes.

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