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On the Selection of Capital Juries

The Biasing Effects of the Death-Qualification Process*

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Death qualification may bias capital juries not only because it alters the composition of the group "qualified" to sit, but also because it exposes them to an unusual and suggestive legal process. This study examined some of the effects of that process. Subjects were randomly assigned to one of two conditions in which they were exposed to standard criminal *voir dire* that either included death qualification or did not. Subjects who were exposed to death qualification were significantly more conviction prone, more likely to believe that other trial participants thought the defendant was guilty, were more likely to sentence him to death, and believed that the law disapproves of death penalty opposition. Several psychological features of the death-qualification process are suggested to account for the biasing effects.

INTRODUCTION

Persons who hold certain views in opposition to the death penalty are systematically excluded from sitting as jurors in capital cases [Witherspoon v. Illinois, 391 U.S. 510 (1968)]. A number of studies have demonstrated that people's attitudes toward the death penalty are closely related to other beliefs about crime and punishment (e.g., Zeisel, 1968; Bronson, 1970, 1981; Fitzgerald and Ellsworth, 1984), and to the likelihood that they will perceive a criminal defendant to be guilty (e.g., Goldberg, 1970; Jurow, 1971; Cowan, Thompson, and Ellsworth, 1984). Thus, a death-qualified jury may be biased and unrepresentative in that it contains only persons who have these attitudes in common.

But death-qualified juries have something else in common. By definition,

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each member of such a jury has experienced the process of "death qualification"—the procedure by which veniremen with disqualifying attitudes toward the death penalty are identified through *voir dire* questioning and excluded from sitting on capital juries. Death qualification represents an extended discussion of penalty at the outset of a criminal trial, before any evidence has been presented. In essence, prospective jurors are asked to reflect upon and to predict their own behavior during a possible penalty phase of the trial. They are asked specifically whether they are so opposed to the death penalty that they cannot consider imposing it in any case. Prospective jurors who do express such an opinion are dismissed by the court and excluded from participation as jurors in that case. Thus, jurors who ultimately are seated in a capital case have been exposed repeatedly to the death penalty questioning of themselves and others, and typically have witnessed the dismissal of several prospective jurors on the basis of their death penalty attitudes.

This experience may create certain expectations and preconceptions in the minds of the jurors about the legal case that is to follow. Moreover, it may predispose them to receive and interpret evidence in certain ways, and influence the verdict and sentencing decisions they may be called upon to make. Psychologists and lawyers are well aware of the degree to which the process of asking questions can impart as well as elicit information. In social science, this phenomenon has been elevated to the status of a standard methodological issue. Terms like "reactivity" and "pretest sensitization" are examples of this explicit recognition and concern. In law, certain limitations on the use of "leading" questions, and judicial displeasure directed at attorneys who use *voir dire* to "educate" jurors illustrate legal awareness of the phenomenon. In each instance, there is recognition and concern that the process of questioning may have an independent effect of its own, biasing the responses that are given and, in some ways, changing the respondents who give them.

This study was designed to examine the possibility that the death-qualification process might have such an effect.

METHOD

Overview

Subjects were randomly assigned to either experimental or control conditions and shown a videotape of a simulated *voir dire*. Videotapes were identical except that the experimental tape included a 30-minute segment of death qualification. All subjects then answered a 17-item questionnaire designed to assess their attitudes about the trial and its participants.

Subjects

The subjects were 67 adult men and women living in Santa Cruz County who responded to a newspaper advertisement asking for subjects to participate in a

study of juror decision making. All subjects were paid $5.00 per hour for their participation.

Since this study was concerned with the effects of death qualification on persons who might actually sit on capital juries under current procedures, respondents were screened initially on the basis of their eligibility for jury service, including their death penalty attitudes.[1] Those who responded by expressing attitudes which would exclude them from capital jury service under the Supreme Court's *Witherspoon* decision were excluded from the study. Specifically, each respondent was asked the following:

> Assume that you have been called as a possible juror in a first-degree murder trial. The prosecutor is asking for the death sentence. Since this is a case where the death penalty may be imposed, the judge will ask you certain questions about your attitudes toward the death penalty before deciding whether you would be chosen to serve on the jury.
>
> There may be two parts to any trial where the death penalty may be imposed. In the first part, the jury decides whether the person on trial is guilty or not guilty. If the person is found guilty, there is a second part—a separate trial—in which the jury decides whether he or she should get the death penalty or life in prison.
>
> The judge will ask you this question:
>
> Is your attitude toward the death penalty such that, as a juror you would never be willing to impose it in any case, no matter what the evidence was, or would you consider voting to impose it in at least some cases. Which of the following best expresses your attitude?
> a. I would be unwilling to vote to impose it in any case.
> b. I would consider voting to impose it in some cases.

Persons who selected alternative (a) were not scheduled for participation in the study.

In capital cases, persons are also excluded from sitting as jurors if their death penalty opposition would preclude them from acting as fair and impartial jurors in the guilt phase and lead them to "nullify" the law.[2] Hence, respondents were also asked the following:

> Suppose that you were a juror in the *first* part of the trial, just to decide whether the accused person is guilty or not guilty of the crime. The judge instructs you that in reaching your verdict you are only allowed to consider the evidence presented in court, and must follow the law as he will state it to you. If the accused is found guilty, there will be a separate trial to decide whether or not he or she should get the death penalty.
>
> Which of the following expresses what you would do if you were a juror for the first part of the trial?
>
> a. I would follow the judge's instructions and decide the question of guilt or innocence in a fair and impartial manner based on the evidence and the law.
>
> b. I would not be fair and impartial in deciding the question of guilt or innocence, knowing that if the person was convicted he or she might get the death penalty.

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[1]To be eligible for jury service in California, persons must be 18 years or older and be residents of the county in which they will serve. They also cannot have been convicted of a felony or be employed as a peace officer. All subjects met these criteria.

[2]See the United States Supreme Court's disscussion of this issue in Adams v. Texas, 448 U.S. 38 (1980).

Persons who selected alternative (b) were also not scheduled for participation in the study.

Demographic information was also obtained from each respondent, including their sex, age, marital status, employment status, religious affiliation, and prior jury experience.

The Videotapes

The experimental treatment consisted of a two-hour videotape of *voir dire* —including death qualification—in a criminal trial. The tape was filmed in the moot courtroom of a law school, which provided a realistic setting complete with legal accoutrements. Experienced trial attorneys were recruited to act as prosecutor, defense attorney, and judge in the videotape. The attorneys were provided with background information from an actual murder case, similar to the material that would be in their possession at the start of a typical trial. They were instructed to conduct themselves as they would in an actual *voir dire*.

The veniremen in the videotape had been recruited to serve as potential jurors in a study of jury behavior. They had been screened beforehand to ensure that they were all eligible for jury service in California and not excludable on the basis of their death penalty attitudes. The veniremen were sworn in and instructed to answer honestly all questions asked of them during *voir dire*.

Death qualification occurred near the beginning of the videotape, after the judge made some preliminary, explanatory remarks and addressed several panel questions to the veniremen.[3] Since, by design, none of the veniremen had disqualifying death penalty attitudes, two confederates were included in the group and played the role of death-scrupled jurors. After initially expressing opposition to the death penalty, they were questioned more extensively about their beliefs by both attorneys. Once it became clear that they could not consider imposing the death penalty in any case, the court dismissed them.[4] The death-qualification segment of the tape lasted approximately one-half hour. The remaining one and one-half hours were devoted to non-death-qualifying *voir dire* questioning of each venireman by both attorneys. Time for this questioning was allocated on a roughly equal basis between the attorneys, with somewhat more time being reserved for the defense.

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[3]Both tapes included these preliminary remarks and panel questions, which lasted approximately 10 minutes. The only reference to the death penalty was contained in one of the panel questions in which the judge asked about the "nullification" issue. Specifically, he inquired whether there was anyone among the veniremen "so strongly opposed to the death penalty that, in a case in which a defendant might be sentenced to death if a jury found him guilty, you could not be a fair and impartial juror *and* could not obey your sworn duty to decide the defendant's guilt or innocence according to the law and the evidence?"

[4]A third prospective juror, who was *not* a confederate in the experiment, initially indicated that he was strongly opposed to the death penalty. When questioned further by both prosecuting and defense attorneys, however, he stated that there were a number of circumstances under which he could consider imposing the death penalty. Consistent with the *Witherspoon* criteria, he was retained on the jury. Although unexpected, this kind of event does occur during the actual process and served to increase the representativeness of the death qualification condition.

A control tape was created by editing the death-qualification portion out of the original tape. The control tape lasted one and one-half hours, contained only the remaining standard *voir dire* questioning by both attorneys, and, except for the deletion, was identical to the experimental tape.[5] The standard criminal *voir dire* segment, present in both tapes, also contained a discussion by the judge of several relevant legal principles. His comments were modeled on the *California Jury Instructions* (CALJIC) and addressed the presumption of innocence, reasonable doubt, and the fact that an information or indictment is not evidence but merely a vehicle for bringing a case to trial.

The legal verisimilitude and mundane realism of both videotapes was confirmed in pilot testing where a group of experienced criminal trial attorneys reported that the tapes were accurate and highly realistic.

Procedure

Subjects were told that they would be shown a videotaped jury selection in a criminal trial. They were asked to pay careful attention to the tape, to afford it the same degree of seriousness that they would a real trial, and to imagine that they were prospective jurors in this very case. They were told that they would be asked some questions about the *voir dire* at its conclusion. Subjects, in groups of 8–12, then viewed either the experimental or control tape to which they had been randomly assigned.

Dependent Measures

All subjects next completed an attitude questionnaire designed to assess the effects of exposure to this process. Questionnaire items asked them to indicate their beliefs about the likely guilt of the defendant, to estimate the attorneys' and judge's death penalty attitudes and their beliefs in the guilt of the defendant, to select an appropriate sentence in a hypothetical penalty phase, to predict the frequency with which defendants in general are convicted, sentenced, and executed in first-degree murder cases, and to assess the "realism" of the videotaped proceedings.

RESULTS

Experimental and control groups did not differ significantly on any of the demographic variables recorded in the initial telephone screening. In addition, subjects in both groups perceived the videotaped proceedings as quite realistic. Their mean rating of the realism of the *voir dire* questioning was 74.08, and their

[5]The experimental tape differed from the control along one additional dimension—time. The *voir dire* that included death qualification was longer, by approximately one-half hour, than the control tape. However, this difference mirrors the actual process; in capital trials, death qualification necessarily extends the length of jury selection.

mean rating of the overall realism of the entire videotaped proceeding was 67.35 (75 = "very realistic").[6]

A summary of the remaining results is presented in Tables 1 and 2.

The first several questions asked the subjects to estimate the likelihood of the defendant's guilt and conviction. In each case, subjects who were exposed to death qualification differed significantly from those who were not. Specifically, subjects in the death-qualified condition estimated a significantly higher level of guilt than those in the non-death-qualified condition ($t = 2.12$, $p = .037$). They believed it was more likely that the defendant would be convicted of first-degree murder and receive the death penalty ($t = 3.00$, $p = .004$), and also believed it was more likely that the defendant would be convicted of something (first-degree murder *or* a lesser included offense) than did subjects in the non-death-qualified condition ($t = 2.53$, $p = .014$).

Subjects were also asked to estimate the degree to which the prosecutor, defense attorney, and judge believed the defendant was guilty. Subjects exposed to death qualification estimated a significantly greater belief in the defendant's guilt on the part of the prosecutor than did subjects not exposed to death qualification ($t = -2.09$, $p = .041$). Death-qualification subjects also estimated the defense attorney's belief in the defendant's guilt as significantly greater than non-death-qualification subjects estimated it ($t = -2.38$, $p = .021$). Finally, subjects exposed to death qualification estimated the judge's belief in the defendant's guilt as significantly greater than did subjects who were not exposed to death qualification ($t = 3.77$, $p = .0001$).

In addition, subjects were asked to estimate the personal death penalty attitudes of the prosecutor, defense attorney, and judge in the videotape. Subjects exposed to death qualification estimated that the prosecutor was significantly more in favor of the death penalty than the non-death-qualification subjects did ($t = 2.59$, $p = .012$). A similar finding was obtained with respect to the judge, with death-qualification subjects perceiving him as significantly more in favor of the death penalty than non-death-qualification subjects saw him ($t = 3.29$, $p = .002$). There was no difference in the group's estimates of the defense attorney's death penalty attitude. However, when subjects were asked to indicate the degree to which "the law disapproves of people who are opposed to the death penalty," those who were exposed to death qualification indicated a significantly greater amount of disapproval than did subjects who had not been exposed to death qualification ($t = 3.48$, $p = .001$).

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[6]Experimental and control groups differed in their estimates of realism, with the death-qualified subjects perceiving the *voir dire* questioning as marginally more realistic ($t = 1.85$, $p = .06$) and the overall proceedings as significantly more realistic ($t = 2.13$, $p = .03$). In order to evaluate the alternative hypothesis that differences in estimates of realism and not exposure to death qualification were accounting for the differences on other dependent measures, within-condition correlations were computed between both realism scores and all dependent measures on which significant differences were found. In only one case (out of a possible 14 cases) was a realism score significantly correlated with a dependent measure on which significant between-condition differences had been found. Thus, the hypothesis that differences on other dependent measures were a result of different levels of realism between the conditions was rejected.

Table 1. Means for Experimental and Control Conditions and *t* Tests of Differences[a]

Question	Experimental condition *with* death qualification	Control condition *without* death qualification	*t*	*p*
Likelihood defendant guilty of first-degree murder	46.7	36.2	2.12	.038
Likelihood defendant will be convicted of first-degree murder and sentenced to death	39.6	24.5	3.00	.004
Likelihood defendant will be convicted of something	65.3	51.6	2.53	.014
Estimate of prosecutor's belief that defendant is guilty of first-degree murder[b]	26.0	35.8	−2.09	.041
Estimate of defense attorney's belief that defendant is guilty of first-degree murder[b]	58.5	69.2	−2.38	.019
Estimate of judge's belief that defendant is guilty of first-degree murder[b]	42.1	51.6	−3.77	.0001
Estimate of prosecutor's personal attitude toward the death penalty	69.1	57.7	2.59	.012
Estimate of defense attorney's personal attitude toward the death penalty	41.9	41.7	0.03	n.s.
Estimate of judge's personal attitude toward the death penalty	63.9	51.8	3.29	.002
Law's disapproval of people who are opposed to death penalty	52.4	30.8	3.48	.001
Estimated percent of murder trials by jury in which defendants are convicted	54.4	45.4	1.82	.074
Estimated percent of first-degree murder convictions in which defendants are given death sentences	23.5	17.9	1.32	n.s.
Estimated percent of death sentences that result in actual executions	17.4	17.5	−0.03	n.s.
Regret if defendant was convicted of first-degree murder and sentenced to death	45.7	45.1	0.09	n.s.

[a]All means are derived from a 100-point scale. Reported significance levels are two-tailed probabilities.
[b]Lower numbers indicates greater belief in guilt.

Table 2. Frequency of Penalty Choice in Experimental and Control Conditions, and χ^2 Test of Differences[a]

	Experimental condition *with* death qualification	Control condition *without* death qualification
Life imprisonment	15	25
Death penalty	20	7

[a] $\chi^2 = 8.95$, $p < .005$.

The subjects were also asked to assume a set of facts in an hypothetical penalty phase (namely, that the defendant had been convicted of first-degree murder in this case, and had a prior conviction for the same offense)[7] and to indicate what they believed the appropriate penalty to be. Subjects exposed to death qualification were significantly more likely to select the death penalty than were subjects who had not been exposed to death qualification ($\chi^2 = 8.95$, $p = .005$, see Table 2).

Several questions asked subjects to make normative judgments about rates of conviction, death sentencing, and execution. There was a marginally significant difference between conditions on one item, with subjects in the death-qualified condition tending to estimate a higher rate of conviction in murder trials than subjects in the non-death-qualified condition ($t = 1.82$, $p = .074$). There were no significant differences between the groups in their estimate of the number of death sentences that are given following first-degree murder convictions, or in their estimates of the number of executions that take place in cases in which a death sentence is given. Subjects in the death-qualified condition also did not differ from those in the non-death-qualified condition on a measure of the amount of regret they would feel if the defendant was convicted of first-degree murder and sentenced to death.

DISCUSSION

The results of this study suggest that jurors may be strongly influenced by the process of death qualification and approach the evidentiary stage of a criminal trial in a frame of mind that differs significantly from that of jurors who have not been exposed to the process. Exposure to death qualification increased subjects' belief in the guilt of the defendant and their estimate that he would be convicted. It also increased their estimate of the prosecutor, defense attorney, and judge's belief in the guilt of the defendant. The death-qualification process led subjects to perceive both prosecutor and judge as more strongly in favor of the death penalty, and to believe that the law disapproves of people who oppose the death

[7]Under California law, jurors are not asked to decide between the death penalty and life imprisonment until and unless the defendant is convicted of first-degree murder and they find an enumerated "special circumstance" to be present in the case. Prior conviction of first-degree murder is one such special circumstance.

penalty. And it led jurors to choose the death penalty as an appropriate punishment much more frequently than persons not exposed to it. Thus, persons who had been exposed to death qualification not only differed from non-death-qualified subjects, but they differed in ways that were consistently prejudicial to the interests and rights of defendants.[8]

There are several explanations for these biasing effects rooted in the structure of the death-qualification process itself. Persons placed in novel or unfamiliar situations are especially sensitive to cues from authority figures and apparently knowledgeable others. In the courtroom, the judge and attorneys are obvious candidates for such attention, and previous research suggests that jurors are, in fact, quite sensitive to the behavior of these trial participants (e.g., O'Barr and Conley, 1976). Jurors enter the courtroom in a state of some uncertainty about courtroom norms and the likelihood that the defendant is guilty. Of course, they know there is *some* likelihood of it, otherwise there would be no trial. But death-qualification resolves much of this initial uncertainty in a manner that appears prejudicial to the defendant. By requiring the attorneys and judge to dwell on penalty at the very start of the trial, the death-qualification process implies a belief in the guilt of the defendant on the part of these major trial participants. If there was not a good chance that the defendant was guilty, jurors may reason, why would they spend so much time discussing his postconviction fate? Of course, those jurors who draw this inference may not do so consciously. But death-qualification requires an initial discussion of penalty and penalty implies guilt.

Death qualification may also imply that the trial participants believe the death penalty is a warranted or appropriate punishment here—in essence, that this is a "death penalty case." It thus constitutes a form of implied labeling from which jurors may infer that the trial participants believe the crime to be among the very worst committed. Thus, the procedure not only tells jurors something about the likelihood of the defendant's guilt, but provides them with a legal gauge of the magnitude of the crime that they are denied in every other kind of case.

Death qualification not only implies that the major trial participants believe that a penalty phase will occur in which jurors must decide between the life and death of the defendant, but it requires jurors to contemplate and reflect upon the event as well. Questioning by attorneys and the court forces jurors to predict their own behavior in the penalty phase and to assess their ability to impose the death penalty. But social psychological research suggests that thinking about or imagining an event increases our subjective estimate that it will occur. Carroll (1978) writes that the "objective fact that some events are imaginary, hypothetical, inferred rather than observed, or even factually discredited is poorly coded

[8]It may be that, because the subjects in this study were all death-qualified, their crime-control perspectives (e.g., Fitzgerald and Ellsworth, 1984) rendered them more willing to relinquish the presumption of innocence and to infer guilt merely on the basis of events that occurred during death qualification. If so, the point is academic. By definition, the only persons who could survive death qualification, and carry its biasing effects into the evidentiary phase of the trial, are themselves death-qualified.

or not properly used. Thus, the act of posing a problem or asking a question could itself change the beliefs of subjects" (p. 95). Once jurors have imagined themselves in the penalty phase of the trial, they may come to assume that it will occur, and begin to organize subsequent information in a manner consistent with that assumption.

Death qualification may also desensitize jurors to conviction in a capital case and to the imposition of the death penalty. Under some circumstances thinking and talking about a frightening event makes it less fearful. This is a basic assumption of desensitization therapy in which patients are placed in a state of relaxation and asked to imagine themselves in varying degrees of contact with a fearful stimulus. More generally, we assume that repeated exposure to an aversive event accustoms people to it (see, e.g., Wolpe and Lazarus, 1967). Jurors who have confronted the awesome question of imposing the death penalty in *voir dire* may be less frightened and intimidated by it in the deliberation stage of the trial. Moreover, because death qualification exposes jurors to repeated discussions of the most awesome decision they will be asked to make, it may accustom them to somewhat less awesome decisions as well. Jurors who become desensitized to the prospect of imposing the death penalty may also be less intimidated by the decision of guilt or innocence and the finding of special circumstances that may follow it. (See footnote 7.)

The process of death qualification also includes excusing from jury participation those persons who express disqualifying death penalty attitudes.[9] To jurors, such disqualification likely represents an expression of disapproval on the part of the judge and the law toward death penalty opposition. It may lend authority and credence to the pro-death-penalty stance that would be lacking in the absence of this demonstration. Disqualification also helps to convince jurors that the judge and prosecutor—those people responsible for the exclusion—personally favor the death penalty. Jurors who wish to please these authority figures may choose to do so by advocating the death penalty in deliberations. Moreover, some jurors may infer from this lesson of disqualification that the law disfavors any form of "timidity," and prefers hard line stands and the expressed willingness to readily consider imposing any punishment, however severe.

One final process is likely at work in death qualification that was not assessed by the design of the present study. Death qualification requires jurors to take a public stand affirming their commitment to consider imposing the death penalty. Since the early demonstrations of Kurt Lewin (1947), social psychologists have been collecting evidence that active, public advocacy of a position intensifies

[9]In some states jurors who evidence unqualified support of the death penalty—those who would vote to *impose* it in every case, regardless of the facts and circumstances—are identified in death-qualification and excluded from sitting in capital juries. Because such persons are extremely rare (e.g., Kadane, 1984), making it statistically improbable that one of them would be dismissed from any given jury panel, this questioning was omitted from the death-qualification procedure used in the experiment. Its inclusion, while perhaps moderating the degree to which jurors infer that the law disapproves *only* of persons opposed to the death penalty, should have many of the same biasing effects as the standard death qualification questions that were included.

one's belief in it. The public affirmation required by death qualification may thus intensify jurors' commitments to use the death penalty. Moreover, by taking a public stand to consider imposing the death penalty, they may become invested in a "tough" image that will affect them in deliberation. Someone who is committed to considering death penalty imposition should find it more difficult to balk at other less drastic punishments like life imprisonment.

These conclusions must be tempered by the fact that the subjects in this study did not proceed to the evidentiary stage of the trial. What was measured, then, was bias and predisposition existing in the minds of jurors before evidence had been formally presented. It seem perfectly clear that in some cases the weight of the evidence will be sufficiently imbalanced to overcome any bias or presumptions created by the death-qualification process.

Yet, in many cases it may not be. Attitudes and expectations are important determinants of the way in which subsequent information is received, interpreted, and acted upon. Jurors exposed to death qualification may adopt a perceptual set or cognitive framework through which they will view subsequent evidence, and they may selectively attend to only that information which conforms best to their preexisting structure. Thus, jurors biased by death qualification might literally *see* a different case from those who were not, a case that conforms to their expectation of guilt and one that is far more unfavorable to the defendant. Rather than the evidence overcoming preexisting biases, the biases may produce divergent interpretations of evidence that result in even greater differences between death-qualified and non-death-qualified juries at the conclusion of the case.

Social psychologists have documented the importance of early impressions in social perception. "Primacy effects" can exert a significant and controlling influence over later attributions (e.g., Asch, 1946; Jones and Goethals, 1971). But, the primacy of the death-qualification process is followed by events highly consistent with the initial predisposition to convict that it may create, since the first stage of the evidentiary case is devoted to the prosecution's version of the facts. Although the defense eventually presents its side of the issues, the cumulative effect of preceding events will be too much to overcome. Ross and his colleagues have shown that initial interpretations of events often persist in the face of powerful contradictory evidence. Indeed, early interpretations can "persevere to influence impressions after the validity or authenticity of the prior (biasing) information has been challenged or even totally refuted" (Ross, Lepper, and Hubbard, 1975, p. 891, footnote omitted).

Whether or not the biases created by death qualification persist and are amplified by divergent interpretations of evidence, they raise serious questions about the constitutionality of this process. Nearly a half-century ago, the U.S. Supreme Court wrote that "[i]mpartiality is not a technical conception. It is a state of mind" [United States v. Wood, 299 U.S. 123, 145 (1936)]. The process of death-qualification appears to significantly alter the state of mind of jurors who sit in capital cases. In *Witherspoon,* the Court acknowledged that defendants should not be subjected to the judgment of a "tribunal 'organized to convict' " (391 U.S. at 521). But this research, along with that on the composition of the death-qualified jury, indicates that death qualification results in precisely this.

Persons exposed to death qualification are not a "panel of impartial, 'indifferent' jurors" [Irvin v. Dowd, 366 U.S. 717, 722 (1961)]. In the Court's most recent proclamation on the nature and function of the American jury, Ballew v. Georgia, 435 U.S. 223 (1978), it reaffirmed a commitment to the protection of Sixth Amendment guarantees, including the impartiality of the jurors themselves. It now appears that the process of death qualification may act to create exactly the kind of "imbalance to the detriment . . . of the defendant" that the Court condemned. This research suggests that the imbalance results not just from the composition of death-qualified juries, but also from the biasing effects of the process by which they are selected.

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