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Claremont McKenna College

**The Changing Nature of Death Qualification  
and its Interaction with Attitude Salience**

submitted to  
Professor Daniel Krauss  
Dean of Faculty

by  
Brendan Busch

for  
Senior Thesis  
Fall 2017 & Spring 2018  
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The Changing Nature of Death Qualification  
and its Interaction with Attitude Salience

Brendan Busch

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### Abstract

Death qualification is a problematic aspect of capital trials, as death qualified jurors have higher conviction rates than non-death qualified jurors. The current study examines whether the death qualification process itself affects juror decision-making via attitude saliency effects.

Participants (n=90) recruited from the venire juror pool at the Santa Ana Superior Court were asked to read a trial transcript and decide guilt or innocence and whether they would sentence the defendant to death. Half of the participants were given a survey determining death qualification before they read the trial (making death qualification salient), while the other half were given the survey at the end of the study (not salient condition).

Although the results do not support the theory that the death qualification process biases jurors' verdict and sentencing decisions, they do suggest that the proportion, attitudes, and demographics of non-death qualified jurors have changed substantially since initial research on death qualification was undertaken.

### The Changing Nature of Death Qualification and its Interaction with Attitude Saliency

In the United States legal system, there exists a requirement that is unique to capital cases. Jurors are constitutionally required to serve on cases in which the death penalty is a potential sentence (*Ring v. Arizona*, 2002) and thus, must also undergo an extra level of screening, called *death qualification*. The death qualification process has been called into serious question by research which suggests the process produces a jury sample that is biased towards conviction. Based upon that research, the present study examines death qualification through the lens of attitude saliency, and seeks to determine if the death qualification process itself biases individual jurors. In other words, it seeks to determine whether or not undergoing the death qualification process itself makes a juror more or less likely to convict and offer a death sentence.

In order to answer that question, however, it is necessary to first understand death qualification. Death qualification is the process by which capital juries are pre-screened in order to remove people who are so opposed to the death penalty that they cannot consider it as a sentence (Sullivan, 2014). The practice has a long history in the US legal system. The first known usage of a death qualified jury was in a capital trial in Pennsylvania in 1828, in which a prospective juror voluntarily informed the judge that he would not be able to consider the death penalty as a sentence, and was thereby excused from the jury (Cohen, 2008). Over time, the process has evolved and the precise meaning of “death qualified” has been modified by a series of 20<sup>th</sup> century Supreme Court cases (Swafford, 2011).

Historically, “death qualification” was a broad term. The first attempt to narrow the definition occurred in *Witherspoon v. Illinois* (1968). The controversy arose because

the prosecutor had used death qualification to dismiss almost half of the potential jury pool, essentially dismissing anyone who had any misgivings about the death penalty (*Witherspoon v. Illinois, 1968*). The Court eventually remanded for an additional hearing, citing the unconstitutional use of death qualification. The Court held that the prosecutor had used death qualification to create an abnormally pro-death penalty jury, and set the precedent that a juror can only be dismissed via death qualification if he or she “states unambiguously that he would automatically vote against the imposition of capital punishment no matter what the trial might reveal” (*Witherspoon v. Illinois, 1968*).

However, this narrow interpretation of death qualification was met with opposition from the lower courts, who often simply ignored the ruling (Swafford, 2011). The Supreme Court was not resolute in its defense of the *Witherspoon* standard either, and actually loosened the restrictions on death qualification in *Wainwright v. Witt* (1985). In 1985, an appeal rose to the Supreme Court in which the defense (whose client had been convicted and sentenced to death) argued that the prosecution had unconstitutionally dismissed a potential juror on the grounds of death qualification. The potential juror in question had said that he opposed the death penalty to the point that it could interfere with his decision-making process, but he did not state “unambiguously” that he would automatically vote against the death penalty, and thus did not technically qualify for dismissal under *Witherspoon v. Illinois* (*Wainwright v. Witt, 1985*). However, the Supreme Court upheld the original conviction, thus modifying the requirement for death qualification. The new *Witt* standard stated that a juror was not “death qualified” and could be excused from jury service if their opinions on the death penalty “substantially

impaired” their ability to make a sentencing decision involving the death penalty (*Wainwright v. Witt*, 1985).

This broader interpretation of death qualification was again upheld by the Supreme Court in *Lockhart v. McCree* (1986). The claimant in the case argued that the death qualification process had violated his Sixth and Fourteenth rights by preventing him from obtaining a fair trial, alleging that the death qualification process had created a jury that was more conviction-prone than a typical jury (*Lockhart v. McCree*, 1986). However, the Court upheld the exclusion of non-death qualified jurors, reinforcing the legitimacy of the death qualification process and upholding the standard it had set in *Wainwright v. Witt*. This standard would prove to be enduring, and still governs death qualification (Swafford, 2011).

In practice, death qualification as defined in *Wainwright v. Witt* (1985) is a largely subjective process. There is no standard set of questions that must be asked to prospective jurors to determine their death qualification status. The judge has the broad discretion to determine death qualification using whatever line of questioning he or she wants, so long as they feel that jurors who are deemed unable to serve have demonstrated that their opinions about the death penalty would have significantly affected their ability to consider a death sentence (Sullivan, 2014). A judge can also dismiss as many potential jurors due to death qualification as they deem necessary, and these dismissals do not count as preemptory challenges, but rather as challenges for cause for the prosecution. During the jury selection process, the prosecution and defense each get a set number of preemptory challenges, which they can use to prevent specific potential jurors from being placed onto the jury. This means that even if potential jurors do not present quite enough

evidence to qualify for dismissal under death qualification or other forms of cause challenges, but are still opposed to the death penalty, there is still a strong chance that the prosecution will use a peremptory challenge to dismiss them (Sullivan, 2014).

The modern death qualification process is endlessly problematic, as research has shown that it creates a jury that, when compared to a typical jury, is unconstitutionally biased towards conviction. Seltzer, Lopes, Dayan, and Canan (1986) argued that the death qualification process should be deemed unconstitutional on the grounds that it created a biased pool of jurors who were statistically more likely to convict than the general population. Their argument relied on 12 research studies which had all found evidence that death qualified jurors were more conviction-prone than typical jurors. This presents a major issue with death qualification; if the process produces a jury that is biased towards conviction (in comparison to the general public), then is it still an impartial jury?

Further research has also revealed demographic issues with death qualified juries. Haney, Hurtado, and Vega (1994) examined 498 random Californians and surveyed them concerning their opinions on the death penalty. They then used these surveys to determine which participants would have been excluded under the *Witt* death qualification standard. With respect to gender, they found that 64.1% of non-death qualified participants (or excluded jurors) were women, even though the total sample was only 48.4% female. Furthermore, ethnic minorities comprised 30.7% of the *Witt*-excludable group, but only 18.5% of the total sample (although the racial demographic effects were somewhat undercut by low initial levels of ethnic minorities in the sample) (Haney et al., 1994). This ethnic disparity has been repeatedly replicated; for example,

one study found that racial minorities were more than twice as likely to be excluded by the death penalty as white jurors (Summers et. al, 2010). This is problematic because other research suggests that white jurors are more likely to convict black defendants than white defendants (Foley & Chamblin, 1982). Thus, by excluding ethnic minorities at a much higher rate than white jurors, the death qualification process creates a remaining jury pool that is more likely to convict minority, and more specifically black, defendants.

Furthermore, Butler and Moran (2007a) demonstrated that death qualified jurors are less able to effectively evaluate scientific evidence than the non-death qualified jurors. Their study involved venire jurors reading and responding to mock trial transcripts. They found that death qualified jurors were statistically more likely to deem expert testimony with questionable methodology as scientifically valid than non-death qualified jurors were. Additionally, they noted that death-qualified jurors on average exhibited significantly lower levels of need-for-cognition, a scale that measures a person's need and desire to engage with high-effort cognitive activity, than non-death qualified jurors. This suggests that death-qualified jurors are less able to properly understand scientific evidence presented at trial, and are more likely to give weight to scientifically invalid arguments. This is problematic, because a jury that does not understand scientific testimony is liable to reach a verdict via faulty logic. If a jury cannot understand the scientific facts of a case, then they must make their final decision without all of the necessary information, which could cause them to come to an incorrect verdict.

In a second study, Butler and Moran (2007b) determined that death qualified jurors were more likely to believe in a just world and endorse legal authoritarian beliefs.

The beliefs measured by these scales suggest that death qualified jurors are more likely to blame the victim of an unjust event and value the legal rights of the government over the legal rights of individuals. These are both characteristics that a defense attorney would seek to avoid in prospective jurors, as they have been shown to be correlated with higher conviction rates (Butler and Moran, 2007b).

In summary, there is considerable research suggesting that jurors that are deemed “death qualified” under the *Witt* standard are demographically different than jurors who are not death qualified, as they are prototypically male-leaning (Haney et al., 1994) and white-leaning (Comes and Comber, 1984). They are also unable to correctly interpret scientific evidence (Butler & Moran, 2007a). Even more importantly, death qualified jurors are more conviction-prone (Seltzer et al., 1986), which raises questions about the constitutionality of the death qualification process under the impartiality requirement of the 6<sup>th</sup> amendment.

In addition to these substantive problems, past research has also shown that there are procedural issues with death qualification. For example, by focusing jurors on the sentencing phase before the trial actually begins, the death qualification process may imply that there is a reasonable chance that the defendant in the eventual trial could be guilty (Haney, 2005). Before the trial begins, during the death qualification process, potential jurors are asked to imagine the penalty phase of the trial (the point at which they would decide to give the death penalty) and predict their actions during this phase. In this imagined scenario, potential jurors are required to forget the initial trial and imagine a guilty verdict (Haney, 2005). This is worrisome, as past psychological research has shown that the act of imagining a future scenario influences one’s estimation of that

imagination scenario (Carroll, 1976). More specifically, imagining a future scenario makes a subject believe that the imagined scenario is more likely to occur. For example, a study found that participants who were asked to imagine Jimmy Carter winning the presidential election thought that he was more likely to win than participants who were not asked to imagine him winning (Carroll, 1976). Therefore, when this effect is applied to death qualification, it is possible that asking participants to imagine a guilty verdict causes them to think that the chances of a guilty verdict are more likely.

Additionally, the death qualification process appears to frame the trial through the lens of the most extreme punishment (Haney 2005). Much in the way that making a juror imagine their response to having to give the death penalty biases them towards conviction, making jurors consider their views on the death sentence, but not on other forms of punishment, causes them to consider the death penalty as the most salient punishment for a guilty verdict. This practice is likely to involve the availability heuristic, which is a cognitive error in which people base their judgements on information that is most easily recalled (Tversky & Kahneman, 1973). Essentially, the death qualification process forces jurors to think about their willingness to give the death penalty, making that willingness easy to recall during the sentencing phase of a trial. Thus, in accordance with availability heuristic, jurors would then factor their pro-death penalty stance into their sentencing decision. Therefore, just by the nature of the types of questions that are posed to potential jurors, death qualification may bias potential jurors towards both conviction, and a capital sentence once the actual trial begins.

Moreover, the death qualification process itself may bias jurors prior to a trial by desensitizing jurors to the death penalty. Exposing jurors to the death penalty before the

trial forces them to confront the harsh realities of sentencing someone to death long before they have to actually make the decision (Haney, 2005). Therefore, when jurors are forced to envision the moral dilemma presented by the death penalty during a trial, the gravity of the decision is diminished, as jurors have already had to consider their stance on the death penalty during death qualification. This phenomenon is especially powerful for jurors who have moral misgivings about the death penalty, as past research has shown that repeatedly exposing participants to an unpleasant stimulus acclimates them to it (Wolpe & Lazarus, 1964). Thus, death qualification creates problems for the defense during a trial, because they are forced to contend with jurors who, to a certain degree, are desensitized to the moral implications of the death penalty.

Furthermore, the death qualification process can impart the impression on jurors that the court disapproves of people who oppose the death penalty (Haney, 2005). Because the death qualification process is not done in private – potential jurors are questioned about their death penalty opinions in front of the rest of the potential juror pool – potential jurors are forced to watch the court dismiss people who oppose the death penalty before they themselves are questioned about the death penalty. This could lead them to believe that the “correct” course of action is to support the death penalty. Because jurors are highly impressionable in the early stages of the trial process, jurors could then carry this perception that the court expects them to be pro-death penalty throughout the rest of the trial (Haney, 2005). Ultimately, beyond simply creating a pool of jurors that are more conviction-prone than the general population, the death qualification process could actively bias jurors against the defense by causing them to imagine a guilty verdict before the trial actually begins, desensitizing jurors to the death

penalty, and creating the impression that the court itself disapproves of jurors who are opposed to the death penalty (Haney, 2005).

While all of these theories present ways in which the death qualification process could bias jurors, one aspect of death qualification that has not been explored is the possibility that the death qualification process makes jurors' attitudes towards the death penalty more salient before the trial. As a consequence, this saliency could influence their eventual verdict and sentencing decision. "Attitude salience" is a term that has existed in the psychological literature for decades, and refers to the phenomenon in which a person who has explicitly stated their existing attitude towards a person, object, or concept is more likely to take action in accordance with this attitude than a person who has not explicitly stated their attitude towards that same subject (DeFleur & Westie, 1958). For example, one study found that participants who had their attitudes towards abortion made salient with a pilot survey were more likely to commit to distributing a petition at their college campus that matched their stance on abortion than participants who did not have their attitudes towards abortion made salient (Petkova et al. 1995).

In the context of death qualification, this model would imply that people who have been forced to declare their attitude towards the death penalty (i.e. during the death qualification process) are more likely to base their eventual sentencing decision on this previously held attitude than people who do not have to declare their attitudes. Thus, because the death qualification process requires that the jury is only comprised of people who have declared that they could consider the death penalty as a sentence, if the attitude salience model is supported, these jurors would then be more likely to make their sentencing decision based on this declaration.

Several specific aspects of attitude salience could be applicable to the death qualification process. For instance, research has shown that when an attribute of an object is made salient in one context, this attribute becomes easier to recall in later general assessments of the object. So, performing a survey or questionnaire that focuses on one specific attribute of an object will most likely lead to an overweighting of that attribute in a future general assessment of the object (Shavitt & Fazio, 1991). Therefore, when death qualification calls specific attention to jurors' attitudes towards the death penalty (and requires them to approve of it), there is a risk that this approval will be overweighted during the final sentencing decision.

Furthermore, empirical research has shown that "the more accessible the attitude, the more predictive it [is] of subsequent behavior" (Fazio et al., 1989, p.284). This is important in the context of death qualification because the death qualification process makes jurors' attitudes towards the death penalty more accessible than they would have otherwise been during the trial. Being directly questioned about your personal beliefs on the death penalty is likely to create greater accessibility for those attitudes than having them develop subconsciously while objectively evaluating a capital case. Thus, when applied to death qualification, attitude salience research suggests that the process, in addition to eliminating those who are strongly opposed to the death penalty, may prime the remaining jurors towards convicting and sentencing the defendant to death penalty once the trial starts.

A useful framework for understanding this theory is the attitude accessibility model. First proposed by Fazio, the attitude accessibility model explains the process by which attitudes guide behavior (Fazio, 1986, 1989, 1990, Bargh et al. 1992). The model

proposes that attitudes can only guide behavior if they are first retrieved from memory, in a step called attitude activation (Fazio, 1986). Once activated, attitudes can influence perceptions of both the attitude object and the situational context in which the object is observed; these altered perceptions can subsequently influence behavior (Fazio, 1986). *Associative strength*, the strength of the association between the object and the attitude, ultimately determines if the attitude is activated (Fazio, 1989). Applying this model to capital trials, a juror's pre-existing beliefs about the death penalty would serve as the attitude in question. Once activated, these attitudes could influence the juror's perceptions of the death penalty as the punishment in a capital trial, and eventually influence their behavior by making them more likely to sentence a defendant to death. Thus, because jurors would be more inclined to give the death penalty under these influences, they would also be more likely to offer a guilty verdict, as this is a necessary requirement to giving the death penalty. However, this can only happen if the attitude is effectively activated. The death qualification process serves to strengthen the associative strength between the trial and the juror's attitudes towards the death penalty by directly asking the juror to declare their position on the death penalty. In this way, death qualification increases the likelihood that previously held beliefs about the death penalty will influence a juror's eventual verdict and sentencing decisions.

#### Present Research

The present study will build on the previous research highlighting the adverse effects of the death qualification process by using the lens of attitude saliency. The current research will examine whether the death qualification process activates attitude saliency for the death penalty in a way that affects jurors' conviction and sentencing

rates. Using attitude salience and the attitude accessibility model as a framework, the following hypotheses will be tested:

1. Death qualified participants will have higher conviction and death sentencing rates than non-death qualified participants (Seltzer, et al., 1986).
2. Death qualified participants who have undergone the death qualification process (and thus have had their support of the death penalty made salient) will have higher conviction and death sentencing rates than death qualified participants who have not undergone the death qualification process (and thus have not had their support of the death penalty made salient).
3. Non-death qualified participants who have undergone the death qualification process (and thus have had their opposition to the death penalty made salient) will have lower conviction and death sentencing rates than non-death qualified participants who have not undergone the death qualification process (and thus have not had their opposition to the death penalty made salient).
4. Demographically, the death qualified group will have a higher percentage of male and white participants than the non-death qualified group (Haney et al. 1994, Swafford 2011)

## **Methods**

### **Participants**

Participants were recruited from the Santa Ana Superior Courthouse. They were selected from the pool of potential jurors who had not been chosen to serve on a jury and had been dismissed from jury duty at the end of their day-long waiting period.

Immediately before the notifying the venire jurors that their service had concluded, the

court attendant read an announcement notifying them that they had the option to participate in a jury decision-making study. They were also told that they would be paid \$10 for their participation.

The sample consisted of 105 participants. However, only 95 participants passed the manipulation check, which had two parts. If participants did not correctly answer 7 out of 10 multiple choice questions about the trial they had just read, they were dismissed. Additionally, if participants indicated that they would both *always* and *never* give the death penalty during the death qualification survey, they were also dismissed. The remaining sample was 48% male, and ages ranged from 19 to 75, with the mean age being 38.5 ( $sd = 16.09$ ). 56% of the sample was white, 13% was Hispanic, 20% was Asian, 10% was Mixed, and 1% was Other (indicating their race was not listed on the demographic survey). When indicating their political identity on a scale of 1 to 7 (with 1 indicating “strongly conservative” and 7 indicating “strongly liberal”), 47% identified as liberal (choosing options 5-7), 26% identified as centrist (choosing option 4), and 27% identified as conservative (choosing options 1-3). Furthermore, 22% of the participants had served on a jury before. As for the participants’ education levels, 4% had a doctorate degree, 19% had a professional degree, 38% had a 4-year degree, 15% had a 2-year degree, 20% had some college education, and 3% had a high school degree (Table 1).

### **Procedure**

This study utilized a 2x2 between-subjects design. Participants were randomly assigned to have their death-qualification status determined either before or after reading a mock trial and deciding on their verdict and sentencing. Those who had their death qualification status determined before acting as a mock juror were considered to have had

their death penalty attitudes made *salient*, while those who determined their status after acting as a mock juror were considered to have their death penalty attitudes *not salient*. Then, based on their answers to the death-qualification survey, they were designated as either *death qualified* or *not death qualified*. Those who were not death qualified were decomposed into two groups – *not death qualified because of opposition to the death penalty* (these participants were included in the final data analysis) and *not death qualified because of support for the death penalty* (participants were placed in this group if they claimed they would *always* give the death penalty as a sentence; because there were only 5 participants who identified this way, they were excluded from the final data analysis). The dependent variable for the study were the participants' decision to find the defendant guilty or not guilty, and (if a guilty verdict was reached) to either sentence the defendant to death or life in prison.

After agreeing to participate in the study, participants who had been randomly assigned to the *death qualification salient* group were given a 33-item survey that measured their death qualification status and primed their attitudes concerning the death penalty (See Appendix A). They were then instructed to read an excerpt from a mock trial, which contained both a summary of the events of the trial and the transcript of witness testimony (participants who were randomly assigned to the *death qualification not salient* group were given the mock trial transcript immediately after agreeing to participate, and were not administered the death qualification survey until later in the study). The mock trial simulated the trial of a man who was accused of sexually assaulting and then murdering his three daughters, and was loosely based on the transcript of an actual Texas capital trial (*Texas v. Willingham*, 1992) (see Appendix B).

After reading the mock trial, all participants were asked to complete a survey that recorded their verdict and sentencing decisions (see Appendix C). Participants were then given a 10-item survey to determine how well they remembered the facts of the (see Appendix D) and a 7 item survey that measured their opinions on prosecuting attorneys, defense attorneys, the police, and the insanity defense, to use as exploratory variables (see Appendix E). At this point, the *death qualification not salient* group was given the death qualification survey to complete. Finally, participants were administered demographic questions (see Appendix F), and were debriefed.

### **Measures**

Although presented as a continuous measure, the scale used to determine death qualification was actually composed of two different components (See Appendix A). Each component was drawn from a separate pre-existing scale, served a unique purpose, and had its own scoring.

The first component was intended to make the participant's death penalty opinions salient and to simulate the length and depth of an actual death-qualification interview (although, as previously discussed, there is no one standard interview procedure). This component of the scale contains the 23-item ATDP Scale (Hingula & Wrightman 2002), with the addition of 7 new items for increased length (i.e. items 24-30 were not included in the original scale, and were created for this study; the first 23 items are presented as originally written). The scale measures participants' opinions of the death penalty by presenting them with a series of opinions about the death penalty (such as "The government does not have the right to sentence people to death"), and asking them to indicate their level of agreement with each statement on a 5-point scale, ranging

from *strongly agree* to *strongly disagree*. A high score on the scale indicates a high level of support for the death penalty. The reliability for the scale was high ( $\alpha = 0.937$ ).

Twelve of the items were reverse coded.

The second component of the scale was used to determine the participants' death qualification status. This component of the scale (items 31-33) were formatted and scored differently from the first 30 items, and were taken from an existing survey used to determine death qualification (Garret, Krauss, & Scurich, 2017). The survey consists of three yes-or-no questions that ask participants their attitudes about the death penalty, and if they were so strong that they would be unable to consider all sentencing options. The questions are as follows:

1. "Do you have such conscientious objections to the death penalty that, regardless of the evidence in a case, you would refuse to vote for murder in the first degree merely to avoid reaching the death penalty issue?"
2. "Even if you are able to conscientiously vote for guilt or innocence, do you have such conscientious objections to the death penalty that, should we get to the penalty phase of a trial, and regardless of the evidence in this case, you would automatically vote for a verdict of life imprisonment without the possibility of parole and never vote for a verdict of death?"
3. "Do you have such conscientious opinions regarding the death penalty that, should we get to the penalty phase of a trial, and regardless of the evidence in this case, you would automatically, and in every case, vote for a verdict of death and never vote for a verdict of life imprisonment without the possibility of parole?"

If participants answered *No* to all three questions, then they were categorized as *death qualified*. However, if they answer *Yes* to any one of the questions, they were categorized as not death qualified. A *Yes* answer to the first two questions (items 31 and 32) would indicate that a participant is *not death qualified* because they were either so opposed to the death penalty that they would be unable to fairly consider a defendant's guilt or innocence or because they were so opposed to the death penalty that they would be unable to consider it as a sentencing option, respectively. Finally, a *Yes* answer to the third question (item 33) would indicate that a participant is not death qualified because they are so in favor of the death penalty that they would not be able to consider life in prison as a sentencing option (this group constituted a negligible percentage of the total participants, and these participants were thus omitted from the data analysis).

The survey assessing participants' memories of the facts of the trial (see Appendix D) was composed of ten multiple choice questions (including items such as "What was Mr. Anderson's relationship to Mr. Johnson?"). Participants' correct answers were summed, and they were given a raw score out of 10. The survey assessing participants' opinions of various aspects of the legal process (see Appendix E) was divided into four separate components, all composed of statements that participants indicated their level of agreement with. The first item of the survey assessed participants' opinions of the trustworthiness of prosecutors. The second assessed their opinions of the trustworthiness of defense attorneys, and the third assessed their opinions of the trustworthiness of police. The final four items of the survey were compiled to determine participants' opinion of the insanity defense ( $\alpha = .683$ ).

## Results

### Primary Analyses – Verdicts and Sentences

The primary analyses for this study consisted of two binary logistic regression models – one to test participants' conviction rates and one to test participants' death sentencing rates (Table 2). The first model examined the effect that participants' death qualification status (death qualified or not death qualified), death penalty attitude saliency (salient or not salient), and the interaction between the two variables had on their likelihood to offer a guilty verdict. Only participants who passed the manipulation checks (by scoring at least a 7 out of 10 on the trial recall test), and indicated that they would not always choose to give the death penalty regardless of the specifics of the case were included in the analysis (n=90). A binary logistic regression with verdict decision (guilty or not guilty) as the outcome variable indicated that death qualification status ( $\chi^2(1) = 20.584, p = .999$ ), death penalty attitude saliency ( $\chi^2(1) = 0.379, p = .556$ ), and the interaction between the two variables ( $\chi^2(1) = -21.457, p = .999$ ) were not significant ( $R^2 = 01.84$ ).

A second binary logistic regression was run to analyze participants' death sentencing rates. In addition to the previous restrictions on the sample, this analysis only included participants who offered a guilty verdict (n = 61). The regression, which used the same independent variables but used participants' death sentencing decisions (death penalty or life in prison) as the outcome variable, indicated that death qualification status ( $\chi^2(1) = 20.024, p = .999$ ), death penalty attitude saliency ( $\chi^2(1) = -0.405, p = .591$ ), and the interaction between the two variables ( $\chi^2(1) = -18.313, p = .999$ ) were not significant ( $R^2 = .208$ ).

These results ultimately do not support the hypotheses of the study. First, although a main effect of death qualification on verdict decision (such that participants who were death qualified would be more likely to convict) was expected based on past research, no main effect was found. Similarly, a main effect of death qualification on death sentencing rates (such that death qualified participants would be more likely to give the death sentence) was expected yet, again, no such main effect was found. Furthermore, the third hypothesis predicted that there would be an interaction effect between death qualification and death penalty saliency that would predict participants' verdict and sentencing decisions, but the hypothesis was not supported; the interaction between these variables did not significantly predict verdict or sentencing decisions.

### **Secondary Analyses – Confidence and External Validity**

In addition to participants' binary decisions on verdict and sentencing, participants' confidence in their verdict and sentencing decisions were measured to determine if their confidence level could be predicted by death qualification and death penalty attitude saliency (Table 3). First, a 2x2 factorial ANOVA was run with verdict confidence (measured on a 1-5 scale) as the dependent variable and death qualification status and death penalty attitude saliency as independent variables. The analysis showed death qualification [ $F(1,86) = 0.004, p = .952$ ], death penalty attitude saliency [ $F(1, 86) = 2.145, p = .147$ ], and the interaction between death qualification and attitude saliency [ $F(1, 86) = 1.841, p = .178$ ], were all insignificant. This analysis supports the initial finding that death qualification status and death penalty attitude saliency do not affect jurors' decision-making process when it comes to offering a verdict. Taken together, the primary and secondary analyses show that death qualification and attitude saliency do not

significantly predict a juror's verdict or their confidence in that verdict, suggesting that the death qualification process as a whole does not play an important role in determining a juror's verdict, which contradicts previous research reporting a link between death qualification and guilty verdicts (Seltzer et al. 1986).

For participants who offered a guilty verdict and properly provided a sentencing confidence score ( $n = 56$ ), a similar 2x2 factorial ANOVA was run to examine their confidence in their sentencing decisions, using sentencing confidence (again measured on a 1-5 scale) as the dependent variable and death qualification status and death penalty attitude salience as independent variables. The analysis found death qualification [ $F(1, 52) = 0.018, p = .893$ ], death penalty attitude salience [ $F(1, 52) = 3.154, p = .082$ ], and the interaction between death qualification and attitude salience [ $F(1, 52) = 1.311, p = .258$ ], were insignificant. Like the previous analysis, these results support the primary analysis's finding that death qualification and death penalty attitude salience do not significantly affect jurors' death sentence decision making process.

In order to ensure that the death qualification measure was valid, it was compared to a longer survey that asked participants detailed questions about their attitudes towards the death penalty. This death penalty attitude survey consisted of 28 questions (2 questions were omitted from the original scale due to irrelevance to the desired measurement), and the scale had a Cronbach's alpha of 0.937, indicating that it had high internal consistency. A binary logistic regression with death qualification as the outcome variable indicated that participants' scores on the extended death penalty attitudes survey significantly predicted their death qualification status ( $\chi^2(1) = -2.976, p < .001$ ). The  $R^2$  value of 0.57 suggests that 57% of the variance in participants' death qualification status

can be determined by their score on the longer death penalty attitude assessment scale, indicating that, while not perfect, the death qualification variable used in this study is reasonably externally valid.

### **Exploratory Analyses – Death Qualification**

Further exploratory analyses were conducted to examine whether variables measured in this study could predict participants' death qualification status. First, demographic information was analyzed in a binary logistic with death qualification status as the dependent variable. The regression showed that gender, age, education level, race, and former jury service were all not significantly related to death qualification (all p-values over 0.529). Political identification was also not significantly related to death qualification, but it approached significance political identification ( $\chi^2(1) = 0.282, p = .094$ ). The overall  $R^2$  of the model was 0.235. These findings directly contradict the study's final hypothesis, which predicted that male and white participants would be more likely to be death qualified. Unlike the findings in previous research, the results of this study suggest that the effects that race and gender have on death qualification status are insignificant (Haney et al. 1994, Swafford 2011).

Finally, a series of attitude statements about the criminal justice system were analyzed to determine if any of the participants' previously held beliefs about the legal system could predict their death qualification status. One of the independent variables in the model, opinions about the insanity defense, was composed of an averaged score of three questions, which had a Cronbach's Alpha of .683 (which does not quite reach the typical benchmark of 0.7, but closely approaches it). The regression, which used death qualification status as the dependent variable, found that a participant's opinion of the

police significantly predicted their death qualification status ( $\chi^2(1) = -0.626, p = .046$ ), but a participant's opinion of prosecution attorneys ( $\chi^2(1) = -0.231, p = .598$ ), defense attorneys ( $\chi^2(1) = 0.514, p = .257$ ), the insanity defense ( $\chi^2(1) = -0.388, p = .243$ ), and their belief that if a defendant is unwillingness to testify it is most likely because they are guilty ( $\chi^2(1) = -0.042, p = .886$ ), did not significantly predict death qualification status ( $R^2 = .139$ ). The relationship between a participant's opinion of the police and their death qualification status was such that participants who had a more favorable opinion of the police were more likely to be death qualified.

### **Discussion**

Ultimately, the results of the study did not support any of the original hypotheses. The theory that making a juror's attitudes towards the death penalty salient would exaggerate the pre-existing difference between the conviction (and sentencing) rates of death qualified and non-death qualified jurors was not borne out by the data. There were no significant interaction effects between death qualification and attitude salience manipulations that predicted verdict or sentencing decisions. However, surprisingly, it is also because there were no main effects of death qualification on verdict or sentencing decisions; that is, there was no "pre-existing" difference in conviction rates between death qualified and non-death qualified jurors to begin with, despite what previous research would suggest (Seltzer et al. 1986). This is a very perplexing finding, as it suggests that the attitudes of the "death qualified" population may be changing. However, the results of the analyses do still have some potentially important implications for forensic psychology research. Because there was no interaction effect between death qualification and attitude salience, it appears that undergoing the process of death

qualification does not have any effect on jurors' verdicts. Thus, the inclusion of death qualification scales in future or past forensic research should not bias conviction or sentencing rates, and should not act as a confounding variable.

The more surprising finding of this study was the lack of main effects for death qualification on conviction or sentencing rates; essentially, the results suggest that a participant's death qualification status does not significantly determine their verdict or sentencing decision. The lack of a main effect of death qualification on sentencing decisions can most likely be attributed to a lack of power in that analysis, due to both a low number of death qualified participants that sentenced ( $n = 25$ ) and a relatively low death sentencing rate of 28% (Table 2) for death qualified participants who offered a guilty verdict (a somewhat surprising finding given the gruesome nature of the crime presented in the mock trial). Furthermore, of the non-death qualified participants, all but one chose to sentence the defendant to life in prison rather than choosing the death penalty, giving the non-death qualified group a death sentencing rate of just 4% (Table 2). Thus, although the power of this particular analysis was not strong enough to detect an effect, the results trended in the predicted direction.

However, the lack of a main effect for death qualification on verdicts is harder to explain. In fact, although not statistically significant, the results of this analysis actually trend in the *opposite* direction than what was predicted by past research. Death qualified participants had a conviction rate of 61%, while non-death qualified participants had a surprisingly high conviction rate of 78% (Table 2). While, again, these results are not statistically significant, they are quite different from the expected results, as one would

think that qualified jurors should have a significantly *higher* conviction rate than non-death qualified jurors.

This finding could suggest that the demographics and attitudes of the death qualified population are changing from what was originally observed in the 1980s. For one thing, the sheer number of participants that were non-death qualified in this experiment was inconsistent with historical studies. For example, in his 1994 study, Haney reported that 19% of his participants (who were also drawn from a randomized sample in California) were not death qualified. Furthermore, research on death qualification in the 1980s estimated that 11-17% of the population was not death qualified, and this was the estimate that the Supreme Court used when it upheld the current interpretation of death qualification in *Lockhart v. McCree* (1986). However, this study found that 39% of venire jurors were not death qualified (including those who were unqualified because they claimed they would *always* give the death penalty). This statistic is similar to a finding by Garrett, Krauss, and Scurich (2017), who reported that 32% of venire jurors were not death qualified (similarly to the current study, their sample also included venire jurors from the Santa Ana Superior Court). Taken together, these two recent studies suggest that, in the decades since *Lockhart v. McCree* was decided, there has been a substantial increase in the percentage of Americans who are not death-qualified. This raises serious constitutional issues for death qualification; when the Court last set the death qualification standard, it was operating under the assumption that less than 20% of the population would be excluded by it. However, if the death qualification standard currently excludes over a third of Americans from serving on capital juries, is

the current non-death qualified group still equivalent to the group the Court intended to exclude in *Lockhart v. McCree*?

Much of the research that found that death qualified jurors were more likely to convict than non-death qualified jurors was completed in the 1980s, when death qualification rates were still reported to be as high as 88% of the population (Seltzer et al, 1986). However, now that death qualification rates appear to have fallen to just 61% of the population, one possible explanation for the disappearance of the connection between death qualification and conviction rates could be that the non-death qualified population has become less radical and more similar to the death qualified population. According to a Gallup poll, the percent of the population that was opposed to the death penalty in 1985 was 17%, with this number falling to as low as 13% in 1995. However, the percentage of Americans who are opposed to the death penalty rose substantially during the 21<sup>st</sup> century, and as of October 2017, 41% of Americans are currently opposed to the death penalty (Gallup 2017). When death qualification was being studied in the 1980's, and only 17% of the population opposed the death penalty, being opposed to the death penalty was a much more radical stance than it is today. Thus, the non-death qualified population of the 1980s likely consisted primarily of extreme liberals, who would have been less inclined to convict than the general population. However, now that opposition to the death penalty is much more frequent, it would not be surprising if the non-death qualified population has become more representative of the general population. Consequently, the current non-death qualified group may be much more similar to the death qualified population than it was 30 years ago. As the non-death qualified population grows and becomes more equivalent to the death-qualified population, it is

logical that previously observed effects that death qualification had on conviction rates would start to disappear.

The death qualification groups' demographic information further supports the notion that the composition of the death qualified population has changed considerably. This demographic shift is most observable in the gender differences between death qualified and non-death qualified groups. In 1994, Haney found that 64% of non-death qualified individuals were women. However, the current study found that only 44% of non-death-qualified participants were women, while 60% of death qualified participants were women. In fact, 71% of women in the current study were death qualified while only 51% of men were death qualified (Table 1). While women used to be significantly more likely than men to be non-death qualified (Haney et al. 1994), the current study suggests that this is no longer the case, as gender did not significantly predict death qualification. This finding suggests that the influx of new non-death qualified jurors could be men, as (although the percent of non-death qualified jurors has increased overall) female representation in the non-death qualified population has declined. Similarly, this study found that race and political identification no longer predict death qualification. However, the results for these demographics are less convincing than those for gender, as the racial analysis was hindered by the fact that none of the participants identified as black and only 13% identified as Hispanic (with the rest identifying as either white, Asian, or mixed). Furthermore, political identification approached significance as a predictor of death qualification, and it is possible that an effect could be observed in a higher-powered study such that liberals would be significantly less likely to be death

qualified than conservatives, as 65% of conservatives were death qualified in this study, but only 56% of liberals were death qualified (Table 1).

Ultimately, the only factor that significantly predicted death qualification was trust in law enforcement, such that participants who had a higher level of trust for police were more likely to be death qualified. This result demonstrates that, while they may be becoming more similar, the death qualified and non-death qualified populations are not yet identical. However, the fact that gender, race, political identity, and education level do not significantly predict death qualification, and that death qualification did not significantly predict conviction rates, suggests that both the demographics and attitudes of the death qualified and non-death qualified populations have changed substantially since much of the foundational research was completed

#### Limitations.

This study is limited by a number of factors. First, the study was constrained to a population of venire jurors exclusively drawn from Orange County, California. Because this sample contained no black participants and only 12 Hispanic participants, it is difficult to generalize the racial findings from this study to a national sample. However, because participants were gathered from the venire jury pools at the Santa Ana Superior Court, the sample was more representative than a typical college student or online sample, and was likely more representative of jury-eligible adults in Orange County. Additionally, the study was limited in that the mock trial presented to participants was much shorter than a typical trial, contained no legal instructions from a judge, contained limited testimony, and was presented in written form rather than as a video, potentially reducing the external validity of the participants' mock trial experience. However, such

factors appear to play a very limited role in simulated jury differences (Bornstein, 2017). Furthermore, the participants lacked consequentialism in their decisions, as they knew that they were participating in a mock trial, and that their decisions would not have any effect on the defendant in the trial. However, research suggests that there tend to be few differences between jurors making decisions with real consequences and jurors making hypothetical decisions (Bornstein, 2017). Finally, the amount of time participants waited between undergoing the death qualification process and providing an actual sentence was much shorter than it would be in an actual trial. Although if anything, this limitation would likely bias the results in *favor* of the hypothesized results, and as such likely did not have a large effect on the conclusions of the study.

### **Conclusion**

Although the study did not find that the death qualification process biases jurors in their verdict or sentencing decision-making, it did produce several important findings. The study found that the percentage of the population that is not death qualified has grown considerably since the foundational research on death qualification was completed. Further, in contrast to past research, this larger non-death qualified population does *not* significantly differ from death qualified jurors in its conviction rates. Additionally, this study demonstrates that the demographics of the death-qualified population are changing, especially in regards to gender (with women making up an increasing proportion of the death qualified population and men making up an increasing proportion of the non-death qualified population). Future research is needed to verify whether this increase in non-death qualified jurors is a national trend or is simply

confined to Santa Ana. Moreover, future research is needed to establish the racial and political breakdowns of this increasing population of non-death qualified jurors.

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## Tables

Table 1

*Demographic information*

	Death Qualified	Non-Death Qualified	Always Death
<b>Gender</b>			
Male	51% (n = 23)	38% (n = 17)	11% (n = 5)
Female	71% (n = 34)	29% (n = 14)	0% (n = 0)
Other	0% (n = 0)	100% (n = 1)	0% (n = 0)
<b>Race</b>			
White	70% (n = 37)	26% (n = 14)	4% (n = 2)
Asian	53% (n = 10)	42% (n = 8)	5% (n = 1)
Hispanic	42% (n = 5)	42% (n = 5)	16% (n = 2)
Mixed	60% (n = 6)	40% (n = 4)	0% (n = 0)
Other	0% (n = 0)	100% (n = 1)	0% (n = 0)
<b>Education Level</b>			
High School	0% (n = 0)	67% (n = 2)	33% (n = 1)
Some College	58% (n = 11)	32% (n = 6)	10% (n = 2)
2-Year Degree	57% (n = 8)	43% (n = 6)	0% (n = 0)
4-Year Degree	64% (n = 23)	36% (n = 13)	0% (n = 0)
Professional Degree	67% (n = 12)	22% (n = 4)	11% (n = 2)
Doctorate	75% (n = 3)	25% (n = 1)	0% (n = 0)
<b>Political Identification</b>			
Liberal	56% (n = 25)	44% (n = 20)	0% (n = 0)

Conservative	69% (n = 18)	23% (n = 6)	8% (n = 2)
Centrist	61% (n = 14)	27% (n = 6)	12% (n = 3)

*Notes: Percentages refer to the percent of participants in each demographic condition that have the given death qualification status (with the “n” variable referring to the number of participants in each condition that have the given death qualification status). For example 51% (n = 23) under the “Male” and “Death Qualified” categories means that 23 men, or 51% of all of the men in the sample, are death qualified.*

Table 2

*Conviction and Death Sentencing Rates by Condition*

	Death Qualified	Non-Death Qualified
<b>Conviction Rates</b>		
Salient Condition	53% (n = 32)	100% (n = 12)
Not Salient Condition	70% (n = 27)	65% (n = 20)
Both Conditions	61% (n = 59)	78% (n = 32)
<b>Death Sentencing Rates</b>		
Salient Condition	24% (n = 17)	0% (n = 12)
Not Salient Condition	32% (n = 19)	8% (n = 13)
Both Conditions	28% (n = 38)	4% (n = 25)

*Notes: The “n” variable refers to the total number of participants in the condition, while the percentage refers to the percent of participants in that condition that either convicted or gave the death penalty.*

Table 3

*Average Confidence Score by Condition*

	Death Qualified & Salient	Death Qualified & Not Salient	Non-Death Qualified & Salient	Non-Death Qualified & Not Salient
<b>Verdict</b>				
Guilty	3.71 (1.05)	3.79 (0.71)	3.33 (1.23)	4.07 (0.64)
Not Guilty	3.47 (0.52)	3.14 (0.90)	N/A	3.57 (1.13)
<b>Sentence</b>				
Death	4.50 (0.58)	4.33 (0.52)	N/A	N/A
Life in Prison	3.77 (1.09)	4.00 (0.77)	3.58 (1.44)	4.40 (0.84)

*Notes: Values refer to the mean score of participants in each condition on a 5-point confidence scale (with the standard deviation in parentheses). There are three "N/A" values because all participants in the Non-Death Qualified & Salient condition offered guilty verdicts and a sentence of life in prison, and the one Non-Death Qualified & Not Salient participant who offered a death sentence failed to fill out a confidence score for their sentencing decision.*

**Appendix A**

This questionnaire contains a set of attitude statements. There are no right or wrong answers: we are interested in your opinions. Please read each statement carefully and then circle the response that reflects your reaction.

**SA = strongly agree, A = agree, U = undecided,  
D = disagree, SD = strongly disagree**

1. A judge should have the right to sentence a defendant to death, even if the jury has recommended life in prison.  
SA            A            U            D            SD
2. People on death row are permitted to appeal their sentence too often.  
SA            A            U            D            SD
3. If there is any doubt about a defendant's guilt, he or she should not be executed.  
SA            A            U            D            SD
4. If a defendant on death row wants a DNA test of evidence, the state should automatically grant it.  
SA            A            U            D            SD
5. People remain on death row too long.  
SA            A            U            D            SD
6. It is wrong to sentence the mentally retarded to death.  
SA            A            U            D            SD
7. Children over 14 years should be able to receive a death sentence if they commit murder  
SA            A            U            D            SD
8. Those sentenced to life imprisonment often get out on parole.  
SA            A            U            D            SD
9. Those who spend life in prison have too many luxuries (for example, TV, exercise equipment, etc.).  
SA            A            U            D            SD
10. Severe actions deserve equally severe punishments.  
SA            A            U            D            SD
11. The government does not have the right to sentence people to death.  
SA            A            U            D            SD

12. Men and women should be treated equally when the death sentence is considered.  
**SA**            **A**            **U**            **D**            **SD**
13. I am opposed to the execution of women who are pregnant.  
**SA**            **A**            **U**            **D**            **SD**
14. It is worse to get a sentence of life in prison without parole than to get the death penalty.  
**SA**            **A**            **U**            **D**            **SD**
15. No civilized society permits capital punishment.  
**SA**            **A**            **U**            **D**            **SD**
16. It is necessary to permit the death penalty in order to reduce the murder rate.  
**SA**            **A**            **U**            **D**            **SD**
17. The possibility of being executed serves as a deterrent against committing violent crimes.  
**SA**            **A**            **U**            **D**            **SD**
18. Laws that permit the death penalty devalue the worth of every human life.  
**SA**            **A**            **U**            **D**            **SD**
19. The death penalty is acceptable as a last resort.  
**SA**            **A**            **U**            **D**            **SD**
20. A vote for the death penalty in some cases may be due to discrimination against a defendant who is a minority  
**SA**            **A**            **U**            **D**            **SD**
21. Laws permitting the death penalty use violence to punish violence.  
**SA**            **A**            **U**            **D**            **SD**
22. The only way to control some potential crime is to enforce the death penalty.  
**SA**            **A**            **U**            **D**            **SD**
23. If a woman committed a crime along with a man, and he is sentenced to death, she should be too.  
**SA**            **A**            **U**            **D**            **SD**
24. The death penalty should not be used because there is no way to reverse the punishment if the defendant is later found to be innocent.  
**SA**            **A**            **U**            **D**            **SD**

25. There are some crimes that are so heinous that it would be immoral to let the perpetrator live.  
**SA            A            U            D            SD**
26. I would feel personally responsible for killing another human being if I were to give the death penalty.  
**SA            A            U            D            SD**
27. The death penalty is the only way to deter criminals who have already served several sentences in jail.  
**SA            A            U            D            SD**
28. The death penalty is not worth its high monetary cost to the government.  
**SA            A            U            D            SD**
29. After being given the death penalty, people should be executed as quickly as possible.  
**SA            A            U            D            SD**
30. The death penalty allows the victim's family to get justice.  
**SA            A            U            D            SD**

**For the next three questions, please indicate your answer by checking either the *Yes* or *No* option.**

31. Do you have such conscientious objections to the death penalty that, regardless of the evidence in a case, you would refuse to vote for murder in the first degree merely to avoid reaching the death penalty issue?  
 \_\_\_\_\_ Yes or \_\_\_\_\_ No
32. Even if you are able to conscientiously vote for guilt or innocence, do you have such conscientious objections to the death penalty that, should we get to the penalty phase of a trial, and regardless of the evidence in this case, you would automatically vote for a verdict of life imprisonment without the possibility of parole and never vote for a verdict of death?  
 \_\_\_\_\_ Yes or \_\_\_\_\_ No
33. Do you have such conscientious opinions regarding the death penalty that, should we get to the penalty phase of a trial, and regardless of the evidence in this case, you would automatically, and in every case, vote for a verdict of death and never vote for a verdict of life imprisonment without the possibility of parole?  
 \_\_\_\_\_ Yes or \_\_\_\_\_ No

## **Appendix B**

The following information is part of a mock trial. Please know that your decisions will NOT have any effects on any real people and that your answers will be used only for research. However, we ask that you please take this case seriously and treat it as if it were a real trial, considering all of the evidence that is presented.

### **Case Summary**

On Sunday April 3<sup>rd</sup>, 2017, the home of Brian Johnson caught fire and burned to the ground. All three of Mr. Johnson's daughters – aged 4, 6, and 9 – perished in the fire, while Mr. Johnson emerged with only minor burns. Mrs. Johnson was out shopping at the time and was unaware of what happened until the fire department was already on the scene, at which point she received a call from her husband.

The defendant, Mr. Brian Johnson, is currently on trial for three counts of first-degree murder. The prosecution alleges that Mr. Johnson intentionally set the fire to murder his three daughters, so that he could cover up the fact that he had been sexually assaulting them for years. However, the defense has called this accusation “wildly speculative,” and although it is true that the prosecution does not have enough evidence to charge Mr. Johnson with sexual assault, they maintain that it was a highly relevant aspect of Mr. Johnson's motive, and have a witness who claims that Mr. Johnson admitted to (and even bragged about) sexually assaulting his daughters. Mrs. Johnson refutes this accusation against her husband.

Early in the trial, Mr. Johnson's neighbors recounted that, on the day of the fire, Mr. Johnson exited the house very quickly after the flames were first visible (Mr.

Johnson claims that he was in the house's front-most room when the fire started and that the flames prevented him from reaching any other room in the house). Mr. Johnson immediately begged his neighbors to call 911, but after that began to behave "very strangely." According to neighbors who were present at the scene of the fire, Mr. Johnson oscillated between very outward bursts of emotion (especially once the authorities arrived) and long periods of calmness (as he moved his car and other possessions out of the path of the flames).

Currently, the prosecution has called a police investigator to the stand who has asserted that the evidence strongly suggests that the fire was intentionally started. An abbreviated transcript of his testimony appears below:

**Prosecution:** When did you first arrive at the scene?

**Investigator:** I arrived an hour after the fire was put out, so about three hours after it started.

**Prosecution:** After examining the scene, what did you think started the fire?

**Investigator:** After spending about two hours at the scene, I came to the conclusion that the fire was started intentionally with the aid of a liquid accelerant.

**Prosecution:** What was the evidence that led you to this conclusion?

**Investigator:** On the floor of the house, there were char marks in the shape of puddles, which highly suggests that a liquid accelerant was used to start the fire. Additionally, based on the path of destruction, the fire appeared to have two distinct starting points, which would be very unusual for a fire that was not intentionally set. Finally, the damage

and the time in which it took the fire to burn through most of the house show that the fire burned fast and hot, another indicator that the fire was started by a liquid accelerant.

**Prosecution:** No further questions.

The police investigator is cross examined by the defense:

**Defense:** Is your work on this case an exact science, or is there room for interpretation?

**Detective:** It is my job to consider all of the evidence available and make my best possible analysis of the situation.

**Defense:** So, can you say with 100% certainty that this fire was intentionally set.

**Detective:** No, I cannot say that with 100% certainty, but I would say that it is the most likely cause.

**Defense:** But it wouldn't be impossible for there to have been a different cause?

**Detective:** No, it is possible that there was another cause.

**Defense:** What else could have caused the fire?

**Detective:** It is possible that the fire could have been an electrical fire, but again it is unlikely that an electrical fire would burn in the way that this fire did; it is most likely that this fire was intentionally set using a liquid accelerant.

**Defense:** No further questions.

Next, the prosecution calls Mr. Johnson's cellmate at the Orange County Maximum Security Prison to the stand. An abbreviated transcript of his testimony appears below:

**Prosecution:** Please state your name and relationship to the defendant.

**Mr. Anderson:** My name is Steve Anderson, I've been Mr. Johnson's cellmate for the past month.

**Prosecution:** Has Mr. Johnson ever discussed the fire with you before?

**Mr. Anderson:** Yeah, a couple of times. He told me that he set the fire himself, and that he had been thinking of doing it for months.

**Prosecution:** Did he say why he set the fire?

**Mr. Anderson:** Yeah. He said that he had been – you know – sleeping with his daughters for a few years. I guess he was worried that he was going to get caught, cuz he said he had to “get rid of them” before anyone found out what he had done.

**Prosecution:** So Mr. Johnson told you explicitly that he has been raping his daughters for an extended period of time and that he set the fire with the intention of murdering them?

**Mr. Anderson:** Yeah.

**Prosecution:** Did he say why he decided to do this now?

**Mr. Anderson:** He said he was worried that his daughters were getting old enough to tell other people what he had done.

**Prosecution:** No further questions.

The defense cross examines Mr. Anderson:

**Defense:** Mr. Anderson, did you have any previous relationship with Mr. Johnson before you became his cellmate?

**Mr. Anderson:** No, I didn't know him before then.

**Defense:** So, if Mr. Johnson killed his daughters because he was worried about people finding out that he was assaulting them, as you claim, then why would he tell you this information? And a few weeks before his trial at that?

**Mr. Anderson:** I don't know, he said that he knew I would understand; I'm in for sex crimes too.

**Defense:** Isn't it true that you have a probation hearing coming up in two weeks?

**Mr. Anderson:** Yes that's true.

**Defense:** Interesting. Are you sure that the prosecution didn't offer to let you off on an early probation if you made up this false testimony against Mr. Johnson?

**Mr. Anderson:** What? No, absolutely not.

**Defense:** No further questions.

[End of transcript]

**Appendix C**

Please answer the following questions by circling the letter or number that best represents your opinion.

1. What is your verdict?  
A) Guilty  
B) Not Guilty

2. How confident are you in your decision?

1                      2                      3                      4                      5

Not at all confident

Very confident

3. If you found the defendant guilty, how do you sentence the defendant?  
A) Death  
B) Life in Prison  
C) Not applicable, I found the defendant not guilty

4. How confident are you in your decision? If you found the defendant not guilty, please leave this answer blank.

1                      2                      3                      4                      5

Not at all confident

Very confident

**Appendix D**

Please answer the following questions about the trial by circling the correct answer.

1. What is Mr. Johnson on trial for?
  - A) Breaking and entering
  - B) Three counts of murder
  - C) Sexual assault
  - D) Tax evasion
  
2. Who died in the fire?
  - A) Mr. Johnson
  - B) Mr. Johnson's wife
  - C) Mr. Johnson's daughters
  - D) No one
  
3. Why did Mr. Johnson say that he couldn't rescue anyone from the fire?
  - A) He was in the front room of the house when the fire started, and the flames prevented him from going anywhere else in the house.
  - B) He was not in the house at the time of the fire.
  - C) He did not know that anyone else was home at the time of the fire.
  - D) He was unconscious when the firemen found him in the house.
  
4. Why does the prosecution claim that Mr. Johnson started the fire?
  - A) He was trying to cover up the fact that he was sexually assaulting his daughters
  - B) He was trying to collect insurance on the house
  - C) He was a serial arsonist
  - D) He was in the middle of a bitter feud with his wife
  
5. How does Mrs. Johnson feel about the accusations against her husband?
  - A) She refutes them
  - B) She endorses them
  - C) She is indifferent
  - D) Mrs. Johnson is dead
  
6. According to neighbors who were present at the scene of the fire, how was Mr. Johnson's behavior?
  - A) He appeared to be in a state of total shock
  - B) He was hysterically emotional
  - C) He was eerily calm
  - D) He went back and forth between outbursts of emotion and a state of calm

7. What does the police detective believe was the cause of the fire?
  - A) An electrical problem
  - B) A gas leak
  - C) Liquid accelerant, used to intentionally start the fire
  - D) An improvised flamethrower
  
8. Was the detective 100% certain of his determination of the cause of the fire?
  - A) Yes
  - B) No
  - C) He refused to say
  - D) He admitted he had no idea what caused the fire
  
9. What was Mr. Anderson's relationship to Mr. Johnson?
  - A) Childhood friend
  - B) Cousin
  - C) Therapist
  - D) Cellmate
  
10. Why does the defense think Mr. Anderson fabricated his testimony?
  - A) He has a personal vendetta against Mr. Johnson
  - B) Mr. Anderson is the person who actually started the fire
  - C) He is trying to make a deal with the prosecution to get an early probation
  - D) He is having an affair with Mr. Johnson's wife

**Appendix E**

This questionnaire contains a set of attitude statements. There are no right or wrong answers: we are interested in your opinions. Please read each statement carefully and then circle the response that reflects your reaction.

**SA = strongly agree, A = agree, U = undecided,  
D = disagree, SD = strongly disagree**

1. I believe that prosecuting attorneys are trustworthy.  
SA            A            U            D            SD
2. I believe that defense attorneys are trustworthy.  
SA            A            U            D            SD
3. I believe that the police are trustworthy.  
SA            A            U            D            SD
4. If a defendant chooses not to testify in their own trial, it is probably because they are guilty.  
SA            A            U            D            SD
5. The insanity defense returns dangerous criminals to the streets.  
SA            A            U            D            SD
6. Defense attorneys abuse the insanity defense and use it to circumvent the criminal justice system.  
SA            A            U            D            SD
7. The insanity defense is necessary to keep the mentally ill out of prison and get them the help they need.  
SA            A            U            D            SD

**Appendix F**

Please answer the following questions by circling the letter or number of the choice that best represents you.

1. What is your gender?
  - A) Male
  - B) Female
  - C) Other

2. What is your age?  
\_\_\_\_\_

3. What is your highest level of education?
  - A) Less than high school
  - B) High school graduate
  - C) Some college
  - D) 2 year degree
  - E) 4 year degree
  - F) Professional degree
  - G) Doctorate

4. What race/ethnicity do you identify as?
  - A) African American
  - B) Asian
  - C) Hispanic (non-white)
  - D) Hispanic (white)
  - E) Native American
  - F) Pacific Islander
  - G) White
  - H) Other
  - I) Mixed

5. Ideologically, which of the following best describes you?

<b>Strongly Liberal</b>	<b>Moderately Liberal</b>	<b>Weakly Liberal</b>	<b>Centrist/ Middle of the Road</b>	<b>Weakly Conservative</b>	<b>Moderately Conservative</b>	<b>Strongly Conservative</b>
1	2	3	4	5	6	7

6. Have you ever served on a jury?
  - A) Yes
  - B) No