Abstract

WEEKS, STEPHANIE WRIGHT. Mock Jurors’ Ratings of Mitigating Value in Capital Mitigation: Role of Impairment and Defendant Effort. (Under the direction of Jim Luginbuhl.)

Applying attribution theory to capital sentencing decisions, it was hypothesized that temporal location of mitigation (suggesting defendant impairment) and level of defendant effort would affect mock jurors' ratings of mitigating value and subsequent life v. death votes. This was tested experimentally in a 2 (type of mitigation: proximal v. remote-chronic) x 2 (defendant effort: high v. low) design with 240 university psychology students. Two sentencing scenarios were nested within each level of type of mitigation. Thus, participants received one of eight sentencing scenarios. Participants rated the evidence on a variety of dimensions, including perceived defendant impairment, effort and responsibility. They also assigned mitigating value to the circumstances presented in the scenarios and indicated a final penalty vote (life in prison or death). Multivariate analysis of variance results indicated that outcomes were affected by whether the mitigation had a recent or distant onset, but they were not affected by the level of defendant effort. The mitigating value rating was a significant predictor of the vote for life, as more mitigating value was associated with an increased likelihood of voting for life. Supplementary analyses indicated that perceived impairment was a significant mediator of the relationship between mitigating value and the vote for life. When controlling for perceptions of impairment, the predictive power of mitigating value was diminished. These results support previous qualitative and exploratory experimental research concerning the efficacy of capital mitigation.
Mock Jurors' Ratings of Mitigating Value in Capital Mitigation: Role of Impairment and Defendant Effort

by

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Dedication

To Carson and Elanor, my girls, the world holds so much promise for both of you. There is no limit to what you can dream or realize. More than for anyone else, this is for you. Love, Mom
Biography

Stephanie W. Weeks was born in Newport News, VA and grew up in Greensboro, NC. A graduate of Southeast Guilford High School, she attended the University of North Carolina at Greensboro and received a Bachelor's of Science degree in Psychology, *magna cum laude*, from High Point University. Stephanie obtained a Master's of Science degree in Psychology from North Carolina State University and has completed her Ph.D. at that same institution. She is married to Jeffrey R. Weeks of Fayetteville, NC, and they have two daughters. Carson is nine years old, and Elanor is nearly two.
Acknowledgements

It is rare that a worthy accomplishment is initiated and completed through the efforts of a single individual. This piece of research is no different. There are many people whose guidance and support were critical to its completion, and they should be recognized.

Much recognition is due my doctoral committee members. Dr. Jim Luginbuhl, mentor and friend, is largely responsible for this work and for shaping the scientist who wrote it. Your expertise is formidable, and your dedication has been unwavering. Dr. Kitty Klein provided fresh insight into this research and tireless support to my career over the past four years. Thank you both for consistently demanding more of me than I knew I could give. To Dr. Denis Gray, thank you for your time and effort. You always asked the hardest questions and expected coherent answers. This research and my skills in general are sharper because of that. And to Dr. Sharilyn Converse, thank you for reminding me of perspectives other than my own and for keeping my tunnel vision in check. You have all been wonderful.

To my family and friends, I owe an enormous debt of gratitude. To Sam and Elaine Wright, my parents, thank you for instilling in me the idea that no goal was too lofty and that the only thing holding me to the ground was my own fear. To my sister Samantha and my brother-in-law Andy, thank you for being both sounding board and punching bag whenever I needed them. To Carson and Elanor, my daughters, thank you for accepting that Mommy wasn't always at
home and that the computer often seemed a more constant playmate for me than family games. To my husband Jeffrey, thank you for the sacrifices, the emotional support, and the constant editing of proposals and papers over the last four years. I started graduate school because you believed in me, and I have finished because you never stopped believing.

To Tricia Busick and Heidi Campbell, thank you for the unlimited store of tangible and emotional support and for reminding me that I could do it. To Charles Otto, thank you for raising the challenge even when you weren't aware that you were doing so.

I love you all.

Stephanie W. Weeks
February 28, 2002
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Mitigation is the evidence presented by the defense to a capital jury during sentencing. The purpose of mitigation is to suggest to the jury that a merciful sentence (i.e. life in prison) is justified for the particular defendant on trial. As indicated by Haney (1995), mitigation is the primary factor "that stands between the defendant and death." If such a claim were widely accepted, one would expect both breadth and depth of study into the effectiveness of mitigation at arguing for jurors' mercy. In fact, there is very little empirical data to suggest when, if ever, mitigation is effective, and there is perhaps even less theory.

The research to be described sought to integrate previous research by Garvey (1998), Weiner (1985, 1986, 1991), and Weeks and Luginbuhl (2000, 2001). Garvey, using essentially qualitative methods, mined the perceptions of capital jurors post-trial in order to attempt a categorization of both aggravating and mitigating factors. Weiner has presented a cognition-emotion-behavior model for assigning causal responsibility and weight to (non-legal) mitigating circumstances. Weeks and Luginbuhl have, more recently, focused their efforts on experimentally testing the relationships between control over mitigating factors and the influence those factors subsequently wield. Thus, we hoped to integrate and synthesize the qualitative results described by Garvey within the theoretical framework provided by Weiner in the experimental context employed by Weeks and Luginbuhl.
More precisely, we wanted to test whether or not mock jurors' judgments of responsibility (for mitigating circumstances) could be affected by evidence that the defendant put forth effort to overcome the circumstance (or the effects of the circumstance). For example, if the defendant were an alcoholic and was drunk when he committed the murder (and being drunk was presented as mitigation), had the defendant made prior attempts to overcome his drinking problem? If he had put forth effort, then would mock jurors rate his responsibility for the circumstance as lower? A lower judgement of responsibility, we believed, would translate into greater mitigating value for the circumstance. Thus, we also hoped to establish the existence of a mediating influence of judgments of responsibility on the relationship between mitigating value and the final penalty vote. That is, as the defendant was perceived as being less responsible for the circumstance, was his impairment considered more mitigating, and was he more likely to receive a sentence of life?

The Capital Trial Process

In *Gregg v. Georgia* (1976), the United States Supreme Court reinstated the death penalty. This decision came four years after the ruling (*Furman v. Georgia*, 1972) that the death penalty violated the 8th Amendment in that it was arbitrarily and capriciously applied. Several states attempted to rewrite state law to remedy this problem. The Supreme Court rejected each state's efforts on the grounds that either the problem had not been fixed or that the new laws eliminated all discretion in sentencing (i.e. mandatory death sentences upon conviction for certain crimes). The *Gregg* decision paved the way for individual states to
structure state laws such as to reduce the arbitrary and capricious imposition of
death sentences without eliminating juror discretion in sentencing. The template
for restructuring death penalty laws was provided by the state of Georgia in the
form of a bifurcated trial system.

Under this system, a capital trial is divided into two distinct stages. In the
first stage, jurors hear evidence regarding the defendant's guilt. Is the defendant
guilty of first degree murder, guilty of a lesser offense, or not guilty? If the jury
returns a verdict of not guilty or guilty of a lesser charge, then the jury’s work is
over. However, if the jury returns a verdict of guilty of first degree murder, the
trial proceeds to a second stage. Following a guilty verdict, the jury hears
evidence in the sentencing phase of the trial. This evidence relates to the
appropriateness of a death sentence or a sentence of life in prison with or without
parole, depending on state statutes.

In all death penalty states, the prosecution is required to prove the
existence of at least one aggravating circumstance before the jury can consider
sentencing the defendant to death. Usually aggravation is argued during the
penalty phase; however, in a few states, it is argued during the guilt phase.
Aggravation must be proved beyond a reasonable doubt, and every juror must
find it so. Should the state fail to prove aggravation, a life sentence is
automatically handed down.

During sentencing, the defense also has its day. It is the defense attorney's
job to present the jury with mitigating circumstances, factors that would suggest
that a merciful sentence is warranted. The defense's burden of proof is not held to
the same standard as the prosecution's. Mitigating circumstances do not have to be
proven beyond a reasonable doubt; they must be proven only to the juror's
satisfaction (by a preponderance of the evidence). Additionally, mitigating
circumstances need not be proven to the satisfaction of every juror. Any
circumstance considered mitigating by at least one juror can be used by that juror
in deciding between life and death. It is important to note that a final vote for
death by the jury must be unanimous. Thus, a single juror who believes that a
mitigating circumstance is strong enough to require a life sentence will prevent
the jury from handing down a sentence of death.

A final word regarding mitigating circumstances: even in the absence of
any mitigation, a jury can sentence a defendant to life in prison without parole.
Contrary to many misconceptions, mitigation is not required for a sentence of life,
but aggravation is required for a sentence of death.

How, then, do capital jurors weigh aggravating and mitigating
circumstances in reaching a penalty decision? Are certain mitigating factors
inherently more persuasive than others? If so, what do these factors have in
common? A motivational model for assigning responsibility and defining causal
forces is helpful in beginning to answer these questions.

Motivational Models

To begin to answer these questions, we look to attribution theory for
assistance. Research exploring the processes and mechanisms by which people
make causal attributions is nearly half a century old. Heider (1958) said that we,
as humans, are motivated to understand the causes of our own behavior and the
behavior of others. Since that time, social psychologists have put forth many theories regarding these assessments of causality, and these theories are known collectively as attribution theory. Within the body of literature are many models detailing the process of arriving at a decision about the determinants of a person's actions (Bem, 1972; Jones & Davis, 1965; Kelley, 1971; Weiner, 1985). There is also a substantial literature regarding biases that may be inherent to the attribution process.

Two of these biases, the fundamental attribution error (FAE) (Ross, 1977) and correspondence bias (Snyder & Jones, 1974; Gilbert & Jones, 1986) are particularly well represented in the attribution literature. The FAE is a tendency to overattribute causes of behavior to dispositional influences and to underattribute to situational factors. That is, when assigning causality to another's behavior, we tend to readily assume the behavior is due to something about the person (i.e. a personality trait or characteristic) while ignoring or downplaying any influences within the environment that may be present. There are many proposed reasons why we may make the FAE, such as limited cognitive resources (Trope & Cohen, 1989), socio-cultural tendencies to focus on individuality and free will (Fletcher & Ward, 1988), and our immediate focus on the individual because of the behavior (Fiske & Taylor, 1991). It has been further suggested that, although we may later adjust our initial attribution to account for environmental factors, we do not sufficiently adjust, and the attribution may remain disproportionately dispositional (Fletcher, Reeder, & Bull, 1990; Luper, Clark, & Hutcherson, 1990).
A special case of the FAE, correspondence bias, refers to our failure to take into account obvious situational constraints which should imply lack of choice on the part of the individual about whose behavior we are making attributions (Jones & Harris, 1967). Using verbal behavior as an example, we tend to focus on the content of the speech as opposed to the circumstances surrounding it. For example, Jones and Harris (1967) presented participants with an essay on one of four controversial topics of the time (segregation, abortion, Castro's government in Cuba, or the legalization of marijuana). Participants were either told that the writer had chosen the position taken in the essay or that the writer had been assigned which position to take. After reading the essays, participants rated the writer's true position on the topic. Analyses revealed that participants rated writers as believing in the taken position regardless of the choice condition to which they had been assigned. That is, participants attributed the writing as reflecting the writer's true position even when they had been told the writer was assigned the position.

Attribution theory, in general, and the biases discussed above can be applied to the field of jury decision making. Juries are, after all, empanelled with the express purpose of determining causality for events. In the case of a murder trial, specifically a capital murder trial, juries are responsible for determining 1) if the defendant caused the event (the death of the victim), 2) to what degree the defendant is responsible for the event, and 3) what the appropriate punishment is for the defendant after it is found that the defendant caused the event and after it has been determined to what degree he or she was responsible for the event. We
will discuss below a theory of how these attributions and judgments are rendered in a capital murder trial.

Many theorists since Heider have contributed to the body of attribution literature with different models of the processes used in making causal attributions and the dimensions associated with causal inferences (Jones & Davis, 1965; Kelley, 1971; Russell, 1982; Weiner, 1985). The processes may differ, but a number of dimensions found in attribution theory tend to be represented in most models. These include controllability, stability, and locus. That is, could the person control his or her behavior, is the behavior likely to be repeated, and is the behavior due to some internal disposition or to some external factor(s)?

By the mid-1980s, social psychologists began attempts to model the process of assigning responsibility for actions or events through a series of "thought experiments" (Fincham & Roberts, 1985; Russell, 1982; Shaver & Drown, 1986; Schutz & Wright, 1985; Weiner, 1980, 1991, 1995). These experiments attempted to manipulate (and thus identify) the cognitive steps taken in assigning responsibility for the actions of others. Such research suggested the following general sequence:

\[
\text{outcome/event} \rightarrow \text{causal attribution} \rightarrow \text{judgment}
\]

Generally speaking, an individual engages in a behavior, and we make a causal attribution to the individual (dispositional) or to the context (situational). This attribution then influences our perceptions regarding the person. For example, imagine you are dining in a restaurant and witness another diner consume a large quantity of food. A dispositional attribution might cause you to
view the person as a glutton. On the other hand, a situational attribution might lead you to view the person as simply hungry.

Early research concerned itself with how we came to make dispositional or situational attributions. As the processes involved become clearer, the focus shifted to the consequences of such attributions, and researchers realized that attributions for negative behaviors are more complex (as are their consequences) than attributions for positive behaviors. In fact, it seems that we are less motivated to make attributions for positive behaviors, assuming that some external force was acting upon the situation (Weiner, 1998). Also, positive behaviors do not usually require a response from the observer or corrective action from the actor. In general, negative behaviors do require at least one of these. Attributional concepts would, thus, seem particularly applicable to the present research since it concerns itself with a negative behavior (committing first degree murder) and the subsequent punishment (response) to the behavior.

In this case, "responsibility" will be determined from the type of attribution made. A dispositional attribution would indicate that the individual was responsible for the event, and a situational attribution would, at the least, reduce the individual's level of responsibility if not eradicate it altogether. Consider a woman who gives the keys to her car to a complete stranger. If one were to make a dispositional attribution regarding this behavior, it might be that she was irresponsible, frivolous, or just dumb. However, there may have been a situational factor present influencing her behavior. Consider that the stranger who took her keys was holding a gun to her head and demanding the keys. The
behavior seems much different in this light. The woman is no longer responsible for giving her keys to a stranger, or at least she is less responsible.

Weiner (1985, 1986, 1988) gave emotion a prominent role in his attribution→affect→action (AAA) model (1986). An attribution regarding controllability of negative behavior leads to an affective response which, in turn, leads to a specific action. If the negative outcome/event is perceived to have been within the person's control, the affective response will be one of anger, and the action taken will be to deny assistance or aid. If, however, the attribution is one of uncontrollability, the affective response will be pity or sympathy and will result in assistance or aid. An example is provided in Table 1. Weiner also suggests that, if we are initially angry with the person, an affective response that reduces anger is sufficient to result in positive action.

Table 1. Weiner's attribution-affect-action model illustrated.

<table>
<thead>
<tr>
<th>Situation: A fellow student missed class and wants to borrow notes.</th>
<th>Attribution:</th>
<th>Controllable: Student missed class to go to the beach.</th>
<th>Uncontrollable: Student missed class due to being very ill.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attribution:</td>
<td>Affect:</td>
<td>Anger</td>
<td>Pity/Sympathy</td>
</tr>
<tr>
<td>Action:</td>
<td>No Assistance: Do not lend notes.</td>
<td>Assistance: Lend notes.</td>
<td></td>
</tr>
</tbody>
</table>

In the AAA model, Weiner (1986) suggested that the affective response mediates the relationship between the attribution of control and the action taken. This is at odds with Fincham and Roberts' model which assumes that blame mediates the attribution of responsibility and punishment (the behavioral response) (1985). However, the distinction between affect and blame as potential
mediators became even murkier as Weiner eventually recognized a fundamental inadequacy in his own model. By conducting more "thought experiments" Weiner came to believe that there exist other steps between an attribution of control (i.e. causal determination) and a judgment of responsibility (1998).

The resulting motivational model delineates a complex, yet testable, process by which a judgment of responsibility is made. We will travel through this process methodically, including at each step an illustration of the model's applicability to the capital trial process. Generally, the process Weiner (1998) purported can be conceived as illustrated below:

- event → causal belief → control → locus → intentionality → mitigation → judgment

*Causal Belief.* According to Weiner (1998), a judgment of responsibility for an event or action cannot be rendered unless there exists a belief that the *person* actually did engage in the act or bring about the event. This first, essential step is analogous to the guilt phase of a death penalty trial. Did the defendant commit first degree murder? Only if the jury believes the defendant to be guilty of the *act* of murder or guilty of the *events* that led to the murder will the process continue. This is consistent with Weiner's contention that, in the absence of causal belief, the motivational process will be terminated.

*Attribution of Control.* Assuming a causal belief, the model suggests that an attribution of control will next be made. If the act is attributed to an uncontrollable force, then the actor will not be judged responsible for the act. Only if the act was considered controllable (to some degree) will the process
continue. A capital trial example might be a defendant who presents evidence that he was acting under the influence of a paranoid delusion at the time of the murder. Because of the delusion, his actions were outside of his control (or less within his control). If presented during the guilt phase of the trial and if sufficiently compelling, the defendant may be found not guilty by reason of insanity. If presented during the sentencing phase and if jurors perceive this circumstance as mitigating, they will likely find the defendant less responsible for the murder, and perhaps they will be more merciful in sentencing. In such a case, the defendant might be sentenced to life in prison as opposed to being sentenced to death.

*Attribution of Locus.* Had powerful situational factors existed (e.g. having a gun to one's head), an external attribution would probably have been made at step one, and such an external attribution would probably not lead to a causal belief. However, assuming no clear external locus attribution early in the process and the subsequent ascription of control, the locus of behavior will likely be seen as internal (Weiner, 1998). The combination of an internal locus along with the belief that the defendant controlled his or her behavior will lead to the highest judgment of responsibility. Internal locus with an attribution of low control should result in a lower judgment of responsibility. To illustrate, consider the following scenario.

A capital defendant is convicted of a murder committed while the defendant was drunk. The fact that the defendant drank heavily in the hours preceding the murder would probably be considered internal, but what about controllability? If the defendant is presented as a chronic alcoholic who has tried
repeatedly and unsuccessfully to overcome his addiction, his actions may be perceived as uncontrollable leading to a judgment of decreased responsibility. However, in the absence of a chronic drinking problem, a defendant who simply got drunk and committed murder would be perceived as more responsible, because his actions were both internal and controllable. In fact, recent research suggests that this is the way such defendant are perceived (Weeks, 2000).

A note at this point about the salience of situational constraints may be helpful. The correspondence bias (Snyder & Jones, 1974; Gilbert & Jones, 1986) mentioned previously suggests that, even when the external/uncontrollable forces are made salient to observers, the tendency is still to overattribute to dispositions. Often, capital mitigation is, by its very nature, an argument of negative, uncontrollable factors that influenced the defendant's behavior. It is presented as internal and (generally) uncontrollable (e.g. alcoholism or mental illness). For such mitigators, the defense presents the evidence in such as way as to persuade the jury that the circumstance was something within the defendant that he or she couldn't control. It would be argued further that the circumstance contributed to the defendant's behavior at the time of the crime (i.e. the defendant would not have committed the crime if the circumstance weren't present). The correspondence bias both helps and hurts here. We are primed, it would seem, to make the internal attribution - but in conjunction with an attribution of controllability. Thus, effective mitigation should preserve the internality predisposition but overcome the controllability predisposition. Even if the
circumstance were internal, if the defendant could have controlled it, then it would likely be perceived as less effective.

*Mitigating Circumstances.* Weiner notes that, at this point in the process, an internal-controllable attribution does not automatically confer a judgment of increased responsibility (1998). It is here that he introduces the concept of mitigating circumstances, which refer to anything that suggests either good intentions or impairment of the offending party. Consider Weiner's example of an automobile driver who forces another car off of a busy highway onto a median. This may, on the surface, appear to be an aggressive act. However, if the driver did so to prevent a loose wheel from falling off of the forced car, his intentions were good and not likely to lead to a lowered judgment of responsibility. In the same manner, the drunk murderer may evoke an internal-controllable attribution and yet receive a lesser judgment of responsibility due to the diminished capacity produced by intoxication (mitigation).

*Intentionality.* Weiner contends that judgments of responsibility are comprised of the controllability and locus attributions combined with an attribution regarding intentionality (1998). He makes use of a legal example, comparing verdicts of murder to verdicts of manslaughter where the only distinction is intent to kill. It is also possible that intentionality may be addressed during the sentencing phase of a capital trial. Let us return to our defendant who was acting under the influence of a paranoid delusion. Assuming a diagnosis of paranoid affective disorder or paranoid schizophrenia, how does one determine intentionality? A defendant who had sought help for his disorder and was consistent in taking his medication
would probably evoke a no- or low-intentionality attribution. However, a non-compliant, treatment-rejecting defendant who understood the implications of non-compliance would probably evoke a high-intentionality attribution. He intended that his condition would continue to impair his ability to control his behavior.

The above describes the process by which a judgment of responsibility might be reached. Since judgments of responsibility are made only when the behavior is seen as internal, there are four possible judgment-producing combinations that wouldn't terminate the process. These are presented in Table 2.

*Table 2. Possible attributional sequences.*

<table>
<thead>
<tr>
<th>Internal</th>
<th>Controllable</th>
<th>Intentional</th>
<th>High Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>The defendant is an alcoholic.</td>
<td>The defendant can control his drinking habits.</td>
<td>The defendant intentionally allows his addiction to influence his behavior.</td>
<td>The defendant is responsible for his behavior.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Internal</th>
<th>Controllable</th>
<th>Unintentional</th>
<th>Moderate Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>The defendant is an alcoholic.</td>
<td>The defendant can control his drinking habits.</td>
<td>The defendant does not mean to continue his addiction.</td>
<td>The defendant is still mostly responsible for his behavior.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Internal</th>
<th>Uncontrollable</th>
<th>Intentional</th>
<th>Moderate Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>The defendant is an alcoholic.</td>
<td>The defendant has tried without success to overcome his addiction.</td>
<td>The defendant intentionally allows his addiction to influence his behavior.</td>
<td>The defendant is still mostly responsible for his behavior.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Internal</th>
<th>Uncontrollable</th>
<th>Unintentional</th>
<th>Low Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>The defendant is an alcoholic.</td>
<td>The defendant has tried without success to overcome his addiction.</td>
<td>The defendant does not mean to continue his addiction.</td>
<td>The defendant is much less responsible for his behavior.</td>
</tr>
</tbody>
</table>
Perceptions of Capital Mitigation

The preceding theoretical discussion has implications for capital mitigation. Consistent with the process described above and its focus on responsibility, the present research limited itself to a particular category of mitigating circumstances. These mitigators are those that are presented as in some way reducing the defendant's moral responsibility for having committed the murder. These are not the only factors that can be presented as mitigation in death penalty trials. However, it is interesting to note that, of the eight specific mitigators listed in North Carolina state statutes, six mitigators fall into this category. This suggests that even the legislators recognize the potential mitigating value of such circumstances. What follows is a brief discussion of death penalty mitigation in its various forms.

Garvey (1998) reports on what post-trial capital jurors think about both aggravation and mitigation. Although this research makes no statistical inferences, it is nonetheless compelling due to its high degree of ecological validity and the rigor with which it was undertaken. Additionally, Garvey's qualitative results concur with empirical results obtained by Weeks and Luginbuhl (2000, 2001).

Garvey's data were gathered as part of The Capital Jury Project in South Carolina (Bowers, 1995). The South Carolina Project sought to interview four jurors each from the 41 trials used in the study. The 41 trials were inclusive of the death penalty trials heard during the study's period of interest, and four jurors were randomly selected from each. This process resulted in a sample of jurors
from 22 death cases (e.g. a sentence of death) and 19 life cases (e.g. a sentence of life) (Garvey, 1998). Jurors participated in a lengthy face-to-face interview, responding to questions regarding elements of the crime, key parties (e.g. defendant, victim, attorneys), sentencing deliberations, and themselves. Garvey conducted logit regressions on a small portion of these data, testing for differences between jurors who served where a death verdict was rendered and where a life verdict was rendered. He also looked for differences between how jurors perceived mitigation that was actually presented at trial versus mitigation that was not presented at trial. Many of these analyses (for mitigating circumstances) failed to reach statistical significance. However, it is Garvey's classification system, not differences between life and death cases, in which we are interested.

Garvey approaches aggravation and mitigation from the perspective of the juror as opposed to the perspective of the law. While the law states that only a certain set of factors can be aggravating and that anything can be mitigating, intuitively we know that jurors may not always be able to make such clear distinctions. Research by Luginbuhl and Middendorf (1988) suggests that support for the death penalty, a personal cognitive-emotive belief, can potentially influence the acceptance of aggravating and mitigating circumstances. Thus, Garvey begins with the essential questions of what, exactly, jurors find aggravating and what they find mitigating. What follows from that question is a systematic inquiry into the thought process of the capital juror engaged in sentencing.
Restricting the remainder of this discussion to mitigating circumstances, Garvey's analyses provide real world, compelling evidence of a higher order mitigation structure. This structure closely resembles the one found by Weeks and Luginbuhl, which will be discussed shortly. Garvey identified three broad categories of circumstances which actual capital jurors found to be truly mitigating. That is, although mitigation can take any form, all mitigating circumstances are not considered equal (Weeks, 2000).

The first category of mitigators, and the one with which we are particularly concerned, is what Garvey labels "reduced culpability" (1998). These circumstances are ones that reduce, in some way, the level of the defendant's moral responsibility for committing the crime. As Garvey states, "A defendant's culpability may be great enough to convict, yet not great enough to sentence him to death" (Garvey, 1998, p. 1542). Under the umbrella of reduced culpability, Garvey identifies two sub-categories of mitigators which he labels proximal and remote.

Proximal mitigators are those that provide evidence of the defendant's impairment at the time of the murder. The evidence may suggest that the defendant was unable to control his or her behavior, or it may suggest that he or she was unable to appreciate the criminality of his or her conduct. According to Garvey, the defining characteristic of proximal reduced culpability mitigators is that they explain how the defendant is less responsible "for what he has done" (1998, p. 1542). An example such a mitigator would be impairment due to substance use/abuse in the hours prior to the murder.
By contrast, remote reduced culpability mitigators speak to factors that shaped the defendant's character. In Garvey's words, they explain the defendant's reduced responsibility "for who he is" (1998, p. 1542). One such example is the presentation of evidence that a defendant was abused as a child. Presumably, the abuse helped to shape (negatively) the defendant's character and resulting behavior, making him or her less responsible for who he or she has become as an adult.

Proximal reduced culpability mitigators had considerable influence on the jurors. However, there was one caveat. Mitigators that were under the defendant's control (i.e. substance use/abuse) were seen as less mitigating, and some jurors even considered them to be aggravating (1998)! This hearkens back to Weiner's assumptions regarding the role of controllability in making judgments of responsibility (1988). As defendants' levels of control over their impairment increased, the value assigned to the impairment as mitigation decreased.

Remote reduced culpability mitigators did not fare so well with the jurors. Generally, jurors either assigned little or no mitigating value to these circumstances (1998). Remote reduced culpability mitigators were most effective when they were paired with evidence that the defendant had sought help or treatment for his problems and society had failed him. Again, we can place this finding in the context of Weiner's theory regarding intentionality (1998). With evidence that the defendant had sought help, the attributions of both controllability and intentionality would be reduced. That is, if a defendant sought
help and did not receive it, he would be considered less able to control his impairment, and his subsequent behavior would be viewed as less intentional.

Compared to the proximal reduced culpability mitigators, remote mitigators simply were not as compelling. Jurors seemed to weigh more heavily mitigators that reduced culpability for what the defendant had done than those that reduced culpability for who he was (Garvey, 1998). This is consistent with empirical data gathered by Weeks and Luginbuhl (2001).

The second category of mitigators Garvey labels good character, as these mitigators speak to the good person the defendant is considered to have been or to previous good deeds the defendant had done (1998). Such circumstances are often presented in mitigation, but unfortunately the survey instrument contained almost no examples of these types of mitigators. Some examples of such mitigators that one does see in capital trials are that the defendant had no criminal history prior to the murder and that the defendant had been a good father/mother to his/her children. These, and other good character mitigators, are used to speak well of the defendant and, perhaps, suggest that the murder was in some way atypical of the defendant.

Finally, Garvey identifies a third category of mitigators that he labels "future dangerousness" (1998). These include, for example, evidence that the defendant has been a model prisoner since his arrest or expert testimony that the defendant is unlikely to be dangerous in the future. Garvey's data suggest only minimal mitigating value for the future dangerous circumstances. This is not surprising given that, in discussing aggravation, jurors assigned great weight to
evidence that the defendant was likely to be dangerous in the future. For the likelihood of being dangerous in the future to be so aggravating, it is not surprising that a lack of future dangerousness is not seen as particularly mitigating.

Understanding Garvey' classification system and general findings, let us turn our attention to the specific mitigators themselves. The logit regressions employed by Garvey looked for significant effects of the outcome of the case (life v. death) and the presence of specific mitigator (present v. absent) on the change in likelihood of voting for death. To illustrate, an example of a mitigating circumstance was that the defendant was a drug addict. The independent variables were type of case (life v. death) and presence of mitigator (present v. absent). The dependent variable was the likelihood of voting for death. Thus, the jurors had either served on a life case or a death case and had either received mitigation evidence that the defendant was a drug addict or had not received such evidence. Logit regression was then conducted to test if there were differences in the likelihood of voting for death in the four conditions. There were few significant differences across all types of mitigation. Exceptions were as follows:

1) When the defendant was mentally retarded, 24.4% of jurors who actually heard such evidence said they would be either slightly less likely or much less likely to vote for death if such a circumstance were presented. By contrast, 19.8% of jurors who were not presented with this mitigating circumstance said they would be either slightly less likely or much less likely to vote for death ($p < .018$). Thus, it would
appear that evidence of mental retardation was more influential in the
dead vote than jurors predicted it would be.

2) When the defendant was a drug addict, 8.3% of jurors who actually
heard this evidence said that they would be either slightly less likely or
much less likely to vote for death. 10.7% of jurors who did not hear
this evidence said they would be either slightly less likely or much less
likely to vote for death ($p < .007$). In contrast with mental retardation,
it seems that evidence of drug addiction was less influential than jurors
predicted it would be.

3) When the defendant had a history of mental illness, 44% of jurors
who actually were presented with this evidence said they would be
either slightly less likely or much less likely to vote for death.
However, 61.1% of jurors who were not presented with this evidence
said they would be either slightly less likely or much less likely to vote
for death ($p < .062$). As with drug addiction, it appears that a history of
mental illness was less influential than jurors predicted it would be. In
both cases, however, mental illness still exhibited a powerful
influence.

4) When the defendant had a loving family, 26.7% of jurors who
heard such evidence said they would be either slightly less likely or
much less likely to vote for death, while 15.5% of jurors who did not
hear this evidence said they would be less likely to vote for death ($p <$
.062). This would indicate that the defendant having a loving family is more influential than jurors predicted it would be.

5) When the defendant had a background of extreme poverty, 31.6% of jurors who were presented with this evidence said they would be either slightly less likely or much less likely to vote for death. However, only 10.1% of jurors who did not hear this evidence said they would either be slightly less likely or much less likely to vote for death ($p < .024$). Additionally, 25% of jurors in life cases said this circumstance would make them either slightly less likely or much less likely to vote for death; whereas only 6.5% of jurors from death cases said the same. As with having a loving family, the defendant having a background of extreme poverty appears to be more influential than jurors predicted it would be.

The above analyses are interesting. However, the significant differences found by Garvey are, theoretically, less important to this research than his general classification scheme. It should be noted here that the mitigating circumstances in Garvey's research that resulted in the largest number of jurors claiming they would be slightly or much less likely to vote for death were 1) that the defendant was under extreme emotional or mental distress at the time of the murder. 2) that the defendant was mentally retarded, 3) that the defendant had a history of mental illness, and 4) that the defendant had been institutionalized but had not received
the help he needed. These are all mitigators that relate to the issue of defendant impairment and/or diminished capacity.

*Control in Exculpatory and Compensatory Mitigating Circumstances*

In 1999, Weeks and Luginbuhl conducted a correlational study to investigate the dimensions on which it was proposed that mitigators differ. Participants rated 23 mitigators on dimensions such as controllability and locus as well as mitigating value. What emerged was a strong, if perplexing, relationship between control and mitigating value.

For certain mitigators, as Weiner would predict (1986), as control decreased, mitigating value increased. For other mitigators, the opposite was true. That is, as control *increased*, mitigating value also increased. This discrepancy led us to look at the qualitative differences between the two groups of mitigators.

Within the mitigators that behaved as expected (showing a negative correlation between control and mitigating value), certain qualities seemed to be consistently present. These mitigators tended to, in some way, reduce the defendant's responsibility for committing the murder. Factors that indicated the defendant was impaired fell under this group. However, so did factors that suggested the defendant had played a minor role in the murder. One such mitigator might be that the defendant waited in the getaway car while an accomplice committed the murder or that the defendant stood lookout while the accomplice committed the murder. Given that all of these mitigators tended to reduce culpability, we labeled them "exculpatory" (Weeks, 2000).
The other group of mitigators was quite different. They seemed to be unrelated, by and large, to the crime itself. Rather, they tended to speak positively of the defendant's character and/or past behavior. Included in this group were mitigators such as the defendant's being a model prisoner since the time of the arrest or a lack of prior criminal history. As these factors seemed to, in some way, compensate for the defendant's murderous behavior, we labeled these mitigators "compensatory" (Weeks, 2000).

The resulting classification system and its relationship to control was tested experimentally in a Master's thesis (Weeks, 2000). A 2 (type of mitigation: exculpatory v. compensatory) X 2 (level of defendant control: low v. high) experiment was conducted. The interaction between the two independent variables on mitigating value was significant. High control compensatory mitigators had more mitigating value than low control compensatory mitigators, and low control exculpatory mitigators had more mitigating value than high control exculpatory mitigators. This makes sense. If a factor is to reduce culpability, then it should be outside the person's control (e.g. child abuse or mental illness). Alternatively, if a factor is to speak highly of a person's character or past behavior, it should be within the person's control (e.g. being a good father or having no prior criminal history).

Also tested in this experiment was the possible mediating influence of the affective response to mitigation (anger reduction). This influence on the relationship between control and mitigating value was significant. When controlling for anger, the relationship between control and mitigating value was
weaker.

Follow up research suggests a strong and consistent relationship between perceptions of impairment and mitigating value (Luginbuhl, Buffaloe, & Weeks, 2001). That is, the greater the perceived impairment caused by the mitigator, the stronger the circumstance's mitigating value. This relationship holds for all mitigators, regardless of the average level of impairment and for all levels of defendant control.

Additionally, this study provided us with a means to test the underlying factor structure of mitigation. Exploratory factor analysis supported our general distinction between compensatory and exculpatory mitigators. Exculpatory mitigators that suggested impairment loaded on one of two factors (discussed below). Compensatory mitigators as well as exculpatory mitigators that did not suggest impairment (i.e. drove the getaway car) loaded on a separate factor. However, the factor analysis also provided support for Garvey's three-category structure. Those mitigators that we previously categorized as exculpatory did, in fact, load on two separate dimensions. One of these is clearly a proximal dimension, and the other suggests remote and/or chronic circumstances. This structure was particularly obvious when viewing the factor structure for the dependent item measuring perceptions of impairment.

All of the mitigators suggesting impairment at the time of the crime loaded on the same factor. In addition, no other mitigators loaded on this factor. Finally, the mean impairment score for this factor (5.399) was substantially higher than the mean impairment scores for either of the other two factors ($M = 2.236$ and
$M = 4.602$ for the compensatory/no impairment and the exculpatory/remote-chronic factors respectively). As a final note, the mitigators on the exculpatory/remote-chronic factor were all of such a nature as to possibly produce some lesser level of impairment (i.e. childhood abuse and severe retardation). The resulting factor structure is illustrated in Table 3.

Table 3. Underlying factor structure for capital mitigation for perceptions of defendant impairment.

<table>
<thead>
<tr>
<th>Factor 1</th>
<th>Factor 1</th>
<th>Factor 1</th>
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</thead>
<tbody>
<tr>
<td>Compensatory or No Impairment</td>
<td>Exculpatory-Proximal</td>
<td>Exculpatory-Remote</td>
</tr>
<tr>
<td>1. no criminal history</td>
<td>1. drunk</td>
<td>1. physical/mental abuse</td>
</tr>
<tr>
<td>2. under accomplice's orders</td>
<td>2. addiction/alcohol</td>
<td>2. parent's deaths</td>
</tr>
<tr>
<td>3. 15 years old</td>
<td>3. addiction/prescription</td>
<td>3. severe retardation</td>
</tr>
<tr>
<td>4. not dangerous/future</td>
<td>4. schizophrenic</td>
<td>4. sexual abuse</td>
</tr>
<tr>
<td>5. model prisoner</td>
<td>5. mental domination</td>
<td></td>
</tr>
<tr>
<td>6. getaway car</td>
<td>6. mild retardation</td>
<td></td>
</tr>
<tr>
<td>7. non-violent criminal history</td>
<td>7. cocaine</td>
<td></td>
</tr>
<tr>
<td>8. cooperated w/police</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9. good father</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10. lookout</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11. euthanasia</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12. aided police</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. remorse</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$M$ (impairment) = 2.236

$M$ (impairment) = 5.399

$M$ (impairment) = 4.602

It is worth mentioning at this point that our exculpatory/compensatory classification is not substantively different from Garvey's own system, and the two complement one another. Garvey explicitly distinguishes between proximal and remote exculpatory mitigators, while we combine Garvey's good character and future dangerousness categories into the single, more inclusive compensatory category.

Dissertation Research.

This research was proposed in order that we might further explore empirically the relationship between mock jurors' perceptions of defendant
responsibility, perceptions of defendant impairment, and mitigating value (all measured by series of Likert ratings). Thus, we focused on proximal and remote exculpatory mitigators that suggested defendant impairment. As well, we deviated from our original adherence to Weiner's AAA model (1986) to account for the additional steps in his revised motivational model (1998). Therefore, we measured the overall judgment of responsibility rather than simply the perception of defendant control. Additionally, evidence was presented in terms of the effort the defendant made to overcome his impairment as opposed to the level of control the defendant had over the impairment. Garvey's (1998) results suggest that effort plays a pivotal role in jurors' minds. Weiner (1985) also suggests that effort and ability factor in to our attributions. For example, an alcoholic may be able to overcome his addiction and yet make no effort to do so. Conversely, it is unlikely that a paranoid schizophrenic can completely overcome his illness, and yet he may put forth a great effort to do so. Additionally, Weiner and others have consistently shown that effort is rewarded (Weiner, 1998).

Type of impairment and effort to overcome impairment were manipulated through the use of expert testimony. Two exculpatory/proximal mitigators were presented, paranoid schizophrenia and alcoholism. Two exculpatory/remote-chronic mitigators were also presented, child abuse and mental retardation. Effort to overcome the circumstance was presented as either high or low. We measured perceptions of effort and impairment through a series of rated items imbedded in the Sentencing Questionnaire.
Each of the dependent variables (mitigating value, judgments of responsibility, and perceptions of impairment) were measured using a series of rated items in the Sentencing Questionnaire.

We made five specific predictions.

Hypothesis 1. There would be a significant main effect for type of impairment on mitigating value such that proximal mitigators would have greater mitigating value than remote-chronic mitigators.

Hypothesis 2. There would be a significant main effect for effort on mitigating value such that the high effort condition would produce greater mitigating value than the low effort condition.

Hypothesis 3. There would be a significant main effect for effort on judgments of responsibility such that the high effort condition would produce lower responsibility scores than the high effort condition.

Hypothesis 4. Judgments of responsibility would mediate the relationship between mitigating value and the final penalty vote such that the following would be found: 1) mitigating value would be positively related to the likelihood of voting for life; and 2) judgments of decreased responsibility would be positively related to mitigating value and the likelihood of voting for life; 3) when controlling for the effects of judgments of responsibility, the relationship between mitigating value and the likelihood of voting for life would be weakened or no longer significant.

Hypothesis 5. Perceptions of defendant effort to overcome the effects of his impairment would mediate the relationship between mitigating value and
mitigating value such that the following would be found: 1) mitigating value would be positively related to the likelihood of voting for life; and 2) effort to overcome the circumstance would be positively related to mitigating value and the likelihood of voting for life; 3) when controlling for the effects of effort to overcome the circumstance, the relationship between mitigating value and the likelihood of voting for life would be weakened or no longer significant.

At this point, a brief discussion of the ecological validity of using mock jurors in trial simulations is helpful. While it is certainly true that generalizability issues present themselves with the type of research conducted here, there is evidence to suggest that the use of undergraduate students as mock jurors, as well as the use of simulated trial materials, is adequate in the early investigation of new ideas in jury research. Bornstein (1999) reviewed the relevant literature regarding these issues, and the results, while not conclusive, suggest that there is little difference between undergraduate mock jurors and mock jurors drawn from the community at large. This finding was consistent despite the fact that undergraduate students rarely serve on actual juries. Of 26 studies that compared the verdicts of undergraduates and non-student community members, only five studies found differences between the two groups due to student status (Bornstein, 1999). In addition, the direction of these differences (in verdicts) was not consistent.

Perhaps more relevant to this research, Finkel and Handel (1989) compared the verdicts of students and non-students in a trial where the defense was insanity. There were no differences in the likelihood of conviction due to student status.
Additionally, Bornstein (1999) examined the differences in results between methods of trial presentation. Specifically, he looked at trial simulations where the presentation materials were either written summaries, audiotaped proceedings, or videotaped proceedings. These methods are considered different in terms of the realism they afford participants, with written summaries considered the least realistic and videotaped summaries considered the most realistic (for laboratory presentation). Of the 11 studies Bornstein examined, there were only three studies in which significant differences occurred as a result of presentation method (1999). Within those three studies, the differences noted were not systematic.

The above discussion allows us to have a fair degree of confidence in our decision to use undergraduate mock jurors despite the issues of ecological validity that arise. Also, we are reasonably confident in using written trial summaries as opposed to a more realistic presentation method. As Diamond noted (1997), this method of selecting participants and presenting trial materials is adequate for initial research. Should results be promising, future research should address these issues anew and perhaps make attempts to draw a more representative sample and employ more realistic trial presentation techniques.

Method

The design of this experiment was a 2 (effort to overcome circumstance: low v. high) X 2 (type of impairment: proximal v. remote-chronic) between subjects factorial design with 60 participants per condition. (See Table 3.) Nested within the type of impairment manipulation were two scenarios per condition (n = 30 each). The decision to use two scenarios per impairment condition was made so that we might make causal
inferences regarding impairment without those inferences being confounded by a single impairment scenario. The dependent measures for perceptions of responsibility, defendant impairment, effort to overcome the circumstance, and mitigating value were all measured using single or multi-item Likert-type scales.

*Table 4.* Dissertation research design.

<table>
<thead>
<tr>
<th>Effort</th>
<th>Type of Mitigation</th>
<th>Proximal</th>
<th>Remote</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Proximal</td>
<td>60</td>
<td>60</td>
</tr>
<tr>
<td>Low</td>
<td>Remote</td>
<td>60</td>
<td>60</td>
</tr>
</tbody>
</table>

*Participants*

Two hundred forty participants were recruited from Introductory Psychology students at North Carolina State University and Methodist College. All participants were at least 18 years of age and citizens of the United States, providing us with a sample that is comprised of "jury-eligible" citizens. Participants at North Carolina State University received partial credit toward fulfillment of a course research requirement as compensation. Participants at Methodist College received extra credit points toward their final grades. All students were offered an alternative means for receiving research credit or extra credit points.

*Materials*

This research required a comprehensive set of materials beginning with the oral instructions. These instructions provided participants with the most relevant points of law
needed in order to arrive at a penalty decision in a capital trial. The Oral Instructions are located in Appendix A.

*Juror Selection Questionnaire.* All participants completed a Juror Selection Questionnaire. This questionnaire contained general demographic questions (e.g. age, ethnicity), questions regarding personal exposure to crime, and death penalty attitudes (DP). The DP measure is a series of five statements indicating increasing levels of support for the death penalty, where participants check the statement that most accurately reflects their opinions. The demographic questions are either continuous (e.g. age) or discrete (e.g. sex, race, political orientation). (See Appendix B.)

The demographic questions and questions regarding prior experience with crime were used to assess any differential effects of the manipulations based on these personal factors. None were anticipated; however, we were prepared to covary any such effects out of the final analyses. One item relating to political orientation was included so that we might test for effects on the final analyses since, as Weiner indicated, this demographic is often a predictor of final action as a consequence of the attribution process (1995). This is consistent with findings by Weeks and Luginbuhl (2001). As with the other demographic questions, we were prepared to covary any effect of political orientation out of the final analyses. The DP attitudes measure was used so that we might omit subjects who fall into the "excludable" category as defined by Witt (1985). These are people who would always vote for the death penalty or would never vote for the death penalty. By restricting our analyses to participants who *would sometimes* vote for the death penalty, our sample was more representative of an actual death penalty jury.

The Jury Selection Questionnaire is located in Appendix B.


_Guilt Phase Evidence._ The Guilt Phase Evidence summarized the information that led
the jury to convict the defendant of first degree murder. We anticipated that virtually all
participants would agree with the decision. Data from those who did not agree (as
assessed by the question at the end of the guilt phase evidence) were discarded (n = 6).
We used a modified version of the summary employed previously in our research. In
brief, the defendant was arrested for the shooting death of a convenience store clerk. The
shooting occurred during the course of the defendant robbing the convenience store. That
the murder was committed for pecuniary gain has provided the prosecution with grounds
for seeking the death penalty. This summarizes the materials that have been used
previously. For this study, we provided added detail to heighten believability and add a
greater degree of realism. The Guilt Phase Evidence is located in Appendix C.

_Independent Variables._ The Sentencing Phase Evidence summarized the prosecution's
request for the death penalty and the defense's request for a life sentence. The prosecution
argued pecuniary gain. The defense argued for a life sentence, providing evidence that,
due to a mitigating circumstance, the defendant was impaired to such a degree as to
render him less responsible for the crime than he might otherwise have been. For this
reason, the defense argued, the defendant deserved mercy in sentencing. It is the defense
summary that we used to manipulate type of type of mitigating circumstance. The level
of effort manipulation was provided through the prosecution's cross examination of the
expert witness.

_Mitigation Manipulations._ All participants received one of four scenarios with
expert testimony from a psychiatrist stating that the defendant was impaired at the time of
the murder. The first two scenarios presented the proximal mitigators: paranoid
schizophrenia and extreme mental and emotional distress. The other two scenarios presented remote-chronic mitigators: childhood abuse and mental retardation. In the paranoid schizophrenia scenario, the defendant was diagnosed with the disorder five years previously, and evidence was provided that the murder was committed while he was suffering from a paranoid delusion. In the extreme mental and emotional distress scenario, the defendant had dealt with the illnesses and deaths of both parents, the abandonment by his wife and loss of his children through the ending of his marriage, all within the past five years. The remote-chronic conditions were a little different. In each, the defendant had suffered the condition from childhood. In the childhood abuse scenario, evidence was provided that the defendant's character and behavior were shaped negatively by the abuse he suffered. In the mental retardation scenario, evidence was provided that the defendant's IQ was 71.

In all four conditions, it was argued that the defendant's moral responsibility for having committed the murder was less than it would have been had the mitigation not been present. The expert testified not only as to the impairment resulting from the mitigation but also as to how that impairment caused the defendant to be less in control of his actions than someone who wasn't impaired would have been. For example, in the proximal condition (schizophrenic scenario), the expert testified to the effects of paranoid delusions and how, due to these effects, the defendant was not as able to control his actions as he would have been if he were not deluded. Thus, not only was evidence of the impairment itself given, but the expert also made clear how the impairment was mitigating (in that it reduced the defendant's ability to control his behavior).
**Effort Manipulations.** In addition to receiving mitigation evidence from expert testimony, all defendants received one of two types of testimony regarding how much effort the defendant put forth to overcome his condition. In the high effort condition, the defendant's strong effort to overcome his condition was made salient to participants in the course of the expert's direct testimony. For example, in the proximal-high effort condition (schizophrenic scenario), the defendant was described as compliant in taking his medication and maintaining scheduled appointments with his psychiatrist.

In the low effort condition, the expert testified to the impairment and also to measures the defendant might have taken, but did not, to lessen his condition (e.g. missing appointments with the psychiatrist and not taking his medications). The low effort on the defendant's part was provided during the course of the prosecution's cross-examination of the expert witness. That is, the defendant's schizophrenia and the effects of the paranoid delusions were described in direct testimony; however, on cross-examination, the expert also testified that the defendant often missed appointments and was not consistent in taking his medications. Such testimony, while not diminishing the effects of the delusion at the time of the murder, was expected to heighten the perception that the defendant was responsible for the mitigation itself.

The stimulus materials are located in Appendices D through K.

**Dependent Variables.** All participants received qualitatively the same dependent measures, contained within the Sentencing Questionnaire. Attached to the Sentencing Phase Evidence, participants received a series of items relating to their perceptions of the defendant's level of control over his impairment and their perceptions of the impairment itself. They also received items pertaining to the value they placed on the impairment
mitigator and how influential that mitigator was in determining their ultimate penalty vote. These items differed only in labeling the type of impairment. In other words, items relating to the paranoid schizophrenic condition referred to the defendant's schizophrenia, whereas items relating to the defendant's childhood abuse referred to the childhood abuse. All of these items were measured using a 7-point Likert scale where 1 = little or no effect and 7 = a large effect. Participants also answered two items referring to the realism of the study itself. These items addressed how well the participants were able to "get into" their role as juror and also their level of involvement with the sentencing decision. Again, these were rated on a 7-point Likert scale where 1 = not at all and 7 = a great deal.

These questions are located in Appendix L, and the items for each individual scale (i.e. responsibility or mitigating value) are categorized in Table 5.

Table 5. Sentencing questionnaire items by sub-scale.

| Manipulation Checks | 1. Was the mitigating circumstance (MC) something that had happened to the defendant recently, or was it something that initially occurred some time ago? |
| Sentencing Decisions/Strength | 2. To what extent do you think the defendant has tried to overcome the effects of his [MC]?
| 1. Please indicate below whether you sentence the defendant to life or to death? |
| 2. How strongly do you believe the defendant deserved a life sentence? |
| 3. How strongly do you believe the defendant deserved a death sentence? |
| Responsibility | 1. To what extent do you feel the defendant was responsible for the effects of his [MC] that were present when he committed the murder? |
| 2. How much more responsible does the defendant's [MC] make him for the crime? |
| 3. How much less responsible does the defendant's [MC] make him for the crime? |
| Impairment | 1. How much do you think the defendant's [MC] impaired his judgment at the time of the murder? |
| 2. To what degree do you think the defendant's [MC] lessened his ability to behave within the bounds of the law at the time of the murder? |
| 3. How much do you think the defendant's [MC] impaired his ability to understand that what he was doing was wrong? |
| Mitigating Value | 1. How much of a role did the defendant's [MC] play in your decision to sentence the defendant to life or death? |
| 2. Whether you voted for life or for death, how much did the defendant's [MC] cause you to think that the penalty should be life? |
| 3. Whether you voted for life or for death, how much did the defendant's [MC] cause you to think that the penalty should be death? |
Procedure. Participants convened in groups of 15-20. Upon arrival, they were introduced to the study and provided with the informed consent statement. After agreeing to participate, the participants were given general instructions for deciding a penalty in a capital trial. Prior to receiving the Guilt Phase Evidence, participants completed the Juror Selection Questionnaire. They then read the summary of the Guilt Phase Evidence that led the "jury" to convict the defendant and indicated whether or not they agreed with the jury's verdict. Regardless of participants' agreement with the verdict, they were told to assume the role of juror on that jury in order to reach a penalty decision. As indicated earlier, data from any participants who disagreed with the jury's verdict were discarded.

After reading the guilt phase evidence, the participants were randomly assigned to receive one of the eight Sentencing Phase Evidence scenarios with attached dependent measures using a batch randomization procedure (Shadish, Cook, & Campbell, 2002). As groups of participants convened, materials were collated such that the first packet given out was condition 1, the second was condition 2, and so forth. This was repeated for each group of participants. Upon completion of the dependent measures, the Sentencing Phase Evidence and Sentencing Questionnaires were collected. Students were debriefed and dismissed. During debriefing, our specific hypotheses were explained, and participants were given the opportunity to sign up to receive a summary of the results. The general procedure used is illustrated in Figure 1.
Results

Descriptive Statistics.

Sample. Two hundred forty participants were recruited from Introductory Psychology courses at NC State University ($n = 156$) and Methodist College ($n = 84$). Participants at each school were fairly evenly distributed across conditions ($\chi^2 = 1.465, p < .98$), although there were always a greater proportion of students from NC State University than from Methodist College in each cell. See Table 6 for cell $n$s. The mean age of participants was 19.95 years, with a range of 33 years (18-51 years). Approximately 49% were male and 51% female. The majority across both schools were freshmen (58%), while sophomores, juniors, and seniors numbered 24%, 12%, and 6% respectively. Seventy-nine percent were Caucasian, 13% African-America, 1% America-Indian, 2% Hispanic, 2% Asian, and 3% other.

Table 6. Distribution of participants across experimental conditions by school.

<table>
<thead>
<tr>
<th>Condition</th>
<th>School</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NCSU</td>
<td>Methodist Coll.</td>
</tr>
<tr>
<td>Distress-High Effort</td>
<td>$n = 21$</td>
<td>$n = 9$</td>
</tr>
<tr>
<td>Distress-Low Effort</td>
<td>$n = 18$</td>
<td>$n = 12$</td>
</tr>
<tr>
<td>Schizophrenia-High Effort</td>
<td>$n = 19$</td>
<td>$n = 11$</td>
</tr>
<tr>
<td>Schizophrenia-Low Effort</td>
<td>$n = 20$</td>
<td>$n = 10$</td>
</tr>
<tr>
<td>Childhood Abuse-High Effort</td>
<td>$n = 20$</td>
<td>$n = 10$</td>
</tr>
<tr>
<td>Childhood Abuse-Low Effort</td>
<td>$n = 18$</td>
<td>$n = 12$</td>
</tr>
<tr>
<td>Retardation-High Effort</td>
<td>$n = 19$</td>
<td>$n = 11$</td>
</tr>
<tr>
<td>Retardation-Low Effort</td>
<td>$n = 21$</td>
<td>$n = 9$</td>
</tr>
<tr>
<td></td>
<td>$n = 156$</td>
<td>$n = 84$</td>
</tr>
</tbody>
</table>
Figure 1. Flowchart of treatment implementation.

Ps Recruited: US Citizens Over Age 18

Ps Arrive in Groups of 15-20

Ps Receive Oral Instructions: Introduction to Study & Directions

Experimental Materials Distributed

Batch Randomization

C1 C2 C3 C4 C5 C6 C7 C8

Materials Collected; Ps Debriefed & Dismissed
Approximately 16% had been victims of serious crime or had family members/close friends who had been victims of serious crime with the most frequently reported type of crime being murder ($n = 11$). Approximately 9% had been convicted of a serious crime or had family members/close friends who had been convicted with the most frequently reported type of crime being drug related ($n = 6$). For analysis purposes, we assumed the 9% who reported that they or family/friends had been convicted of a serious crime were referring to family members or close friends.

Interestingly, 7.5% of participants reported that they could never vote for the death penalty even in cases of first degree murder, and 7.5% reported that they would always vote for the death penalty in cases of first degree murder. These participants were not included in hypothesis testing, resulting in a new $n$ of 204 participants. Of the remaining participants, 20% said that they generally opposed the death penalty but could sometimes vote for it; 22% neither favored nor opposed the death penalty; and 43% generally favored the death penalty but would sometimes vote for life in prison. Additionally, the mean score reported for support of the death penalty as an appropriate sentence for defendants convicted of first degree murder was 6.09 on a Likert scale of 1 (not at all) to 7 (very much).

Upon reading the Guilt Phase Evidence, participants indicated whether or not they agreed with the decision of the jury to convict the defendant of first degree murder, and 97.5% ($n = 234$) reported that they did agree with the verdict. The remaining 2.5% ($n = 6$) reported that they did not agree, and these participants were not included in hypothesis testing.
Removing these six participants and the 36 who indicated they would never or would always vote for the death penalty resulted in a final $n$ of 199 participants for hypothesis testing. (One participant was removed from further analyses, because he or she was excludable under the death penalty opinions criterion and indicated that the guilty verdict was incorrect.) The remaining 199 participants were distributed fairly evenly across all experimental conditions ($\chi^2 (1) = 0.0618, p < .80$). See Tables 7a and 7b for cell $ns$. Additionally, there were no significant imbalances in demographic variables across the experimental conditions.

Table 7a. Distribution of adjusted sample across experimental conditions.

<table>
<thead>
<tr>
<th>Type of Mitigation</th>
<th>Proximal</th>
<th>Remote</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>50</td>
<td>54</td>
</tr>
<tr>
<td>Low</td>
<td>44</td>
<td>51</td>
</tr>
</tbody>
</table>

Table 7b. Distribution of adjusted sample across all four mitigators.*

<table>
<thead>
<tr>
<th>Type of Mitigation</th>
<th>Proximal</th>
<th>Distress</th>
<th>Schizophrenia</th>
<th>Remote</th>
<th>Retardation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effort</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High</td>
<td>25</td>
<td>25</td>
<td>28</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>21</td>
<td>23</td>
<td>25</td>
<td>26</td>
<td></td>
</tr>
</tbody>
</table>

$*\chi^2 = 1.24, p < .99$

Of the total sample, 65% voted to sentence the defendant to life in prison without parole, while 35% voted for death. We also conducted a $\chi^2$ Test for Independence on the
final penalty vote by level of death penalty support which showed significant differences in life v. death sentencing depending on level of support for the death penalty ($\chi^2(4) = 70.66, p < .0001$). Examination of the frequency counts revealed a consistent and intuitive pattern. As support for the death penalty increased, so did the percentage of participants voting for death. The results of this analysis are presented in Table 8 and Figure 2.

Table 8. Life v. death vote by level of support for the death penalty.

<table>
<thead>
<tr>
<th></th>
<th>Generally Oppose DP</th>
<th>Neither Favor nor Oppose DP</th>
<th>Generally Favor DP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Life Sentence</td>
<td>$n = 44$</td>
<td>$n = 43$</td>
<td>$n = 48$</td>
</tr>
<tr>
<td>Death Sentence</td>
<td>$n = 4$</td>
<td>$n = 9$</td>
<td>$n = 56$</td>
</tr>
</tbody>
</table>

Figure 2. Percentage of life v. death votes by level of support for the death penalty.
Preliminary Analyses. Prior to hypothesis testing, it was necessary to establish the reliability of the scales created to measure the dependent variables. Of the 16 items included on the sentencing questionnaire, three were constructed to measure mitigating value, three to measure perceived defendant impairment, and three to measure defendant responsibility. (For the specific items, refer again to Table 5.) Cronbach's alpha was calculated for each of these scales.

The resulting coefficient alpha for mitigating value, $\alpha = .5676$, was not as high as we would have liked. (See Table 9.) One item, *Whether you voted for life or death, how much did the defendant's [mitigating circumstance] suggest to you that the penalty should be death?*, had a very low inter-item correlation (-0.0416). This item was discarded and the analyses conducted again. For the remaining two items, $\alpha = .8657$. Thus, we concluded that the mean of these remaining two items would comprise the mitigating value scale. The mean mitigating value score was 4.417 (on a 1 - 7 scale).

<table>
<thead>
<tr>
<th>First Analysis Scale Items</th>
<th>$R^2$</th>
<th>$\alpha^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much of a role did the defendant's [MC] play in your decision to sentence the defendant to life or death?</td>
<td>.6926</td>
<td>-.1592</td>
</tr>
<tr>
<td>Whether you voted for life or for death, how much did the defendant's [MC] cause you to think that the penalty should be life?</td>
<td>.5732</td>
<td>.0958</td>
</tr>
<tr>
<td>Whether you voted for life or for death, how much did the defendant's [MC] cause you to think that the penalty should be death?</td>
<td>-.0416</td>
<td>.8657</td>
</tr>
</tbody>
</table>

$\alpha^2 = .5676$

<table>
<thead>
<tr>
<th>Second Analysis Scale Items</th>
<th>$R^2$</th>
<th>$\alpha^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much of a role did the defendant's [MC] play in your decision to sentence the defendant to life or death?</td>
<td>.7634</td>
<td>.8657</td>
</tr>
<tr>
<td>Whether you voted for life or for death, how much did the defendant's [MC] cause you to think that the penalty should be life?</td>
<td>.7634</td>
<td>.8657</td>
</tr>
</tbody>
</table>

$\alpha^2 = .8657$

1interitem correlation; 2$\alpha$ with item removed; 3coefficient alpha.
For perceptions of defendant impairment, the initial alpha for all three items was much higher, $\alpha = .8984$. (See Table 10.) Additionally, each of these items was significantly correlated with the other two. Therefore, we concluded that the mean of the three items should comprise the impairment scale. The mean of this scale for the 199 remaining participants was 3.874.

Table 10. Reliability analyses for impairment scale.

<table>
<thead>
<tr>
<th>Scale Items</th>
<th>$R^1$</th>
<th>$\alpha$</th>
</tr>
</thead>
<tbody>
<tr>
<td>How much do you think the defendant's [MC] impaired his judgment at the time of the murder?</td>
<td>.8236</td>
<td>.8335</td>
</tr>
<tr>
<td>To what degree do you think the defendant's [MC] lessened his ability to behave within the bounds of the law at the time of the murder?</td>
<td>.7848</td>
<td>.8670</td>
</tr>
<tr>
<td>How much do you think the defendant's [MC] impaired his ability to understand what he was doing was wrong?</td>
<td>.7889</td>
<td>.8635</td>
</tr>
</tbody>
</table>

$^1$interitem correlation; $^2\alpha$ with item removed; $^3$coefficient alpha.

The reliability of the responsibility scale was very low, $\alpha = .2044$. (See Table 11.) Two of the individual items were significantly correlated (How much more... and How much less responsible does the defendant's [mitigating circumstance] make him for the crime?). The correlation was weak, $r = .16, p < .012$, and there were no other significant correlations. In determining which would be the single, best measure for responsibility, we decided to use the item from the original three-item scale that seemed to best represent our construct of reduced responsibility. This item asked participants to rate how much less responsible for the crime the defendant was because of his impairment. The mean responsibility score for the 199 participants was 3.219.
Table 11. Reliability analyses for responsibility scale.

<table>
<thead>
<tr>
<th>Scale Items</th>
<th>$R^2$</th>
<th>$\alpha^2$</th>
</tr>
</thead>
<tbody>
<tr>
<td>To what extent do you feel the defendant was responsible for the effects of his [MC] that were present when he committed the murder?</td>
<td>.0485</td>
<td>.2784</td>
</tr>
<tr>
<td>How much more responsible does the defendant's [MC] make him for the crime?</td>
<td>.2809</td>
<td>-.2838</td>
</tr>
<tr>
<td>How much less responsible does the defendant's [MC] make him for the crime?</td>
<td>.0219</td>
<td>.3482</td>
</tr>
</tbody>
</table>

$\alpha^2 = .2044$

1 interitem correlation; 2 $\alpha$ with item removed; 3 coefficient alpha.

Analyses were also conducted as manipulation checks on the two independent variables, perceptions of the defendant's effort to overcome his impairment and the temporal aspect of the circumstance. Perceptions of the effort the defendant had put forth to overcome the effects of his impairment were affected by the effort manipulation, $F(1, 197) = 117.90, p < .0001$. The mean perceived effort score for the high effort condition was 5.096, while the mean for the low effort condition was 2.916.

The manipulation check for whether participants perceived that the impairment was something that developed recently or in the distant past was more complicated. Initially, we compared the percentage of participants who correctly identified the mitigator's temporal location (something that happened to the defendant recently or something that happened some time ago) with the percentage that incorrectly identified it. If the difference were salient, we would expect a much higher percentage of correct than incorrect identifications. However, we found a nearly even split between the two, 56.78% and 43.22% for correct and incorrect respectively. Given this result, we conducted a $\chi^2$ Test for independence, type of mitigation (proximal v. remote) X identification of temporal location (correct v. incorrect). The result was significant, $\chi^2 (1) = 127.39,$
\[ p < .0001, \] showing that being correct in temporal identification wasn't distributed evenly across the proximal and remote conditions. Examination of the individual cells revealed that participants in the remote condition were much more likely to correctly identify the mitigator as something that happened to the defendant some time ago (94.29\%) than participants in the proximal condition were to identify the mitigator as something that developed relatively recently (14.89\%). Possible reasons for this difference are discussed later. The results of the $\chi^2$ Test for Independence are presented in Table 12.

*Table 12*. Percentage of participants correctly identifying the temporal location of the defendant's impairment by type of impairment manipulation.

<table>
<thead>
<tr>
<th>Temporal Location</th>
<th>Proximal</th>
<th>Remote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Correct</td>
<td>14.89%</td>
<td>94.29%</td>
</tr>
<tr>
<td>Incorrect</td>
<td>86.11%</td>
<td>5.71%</td>
</tr>
</tbody>
</table>

*Hypothesis Testing*. Having established the reliability of the dependent measures and conducted manipulation checks, we turned our attention to hypothesis testing. Using Weiner's model, we focused out attention of the "mitigating circumstances" stage in the theoretical decision making process. Hypotheses 1 and 2 shared the same dependent variable (mitigating value), and Hypotheses 2 and 3 shared the same independent variable (effort). Therefore, to make the Bonferroni adjustment, these three hypotheses were tested concurrently using a multivariate analysis of variance (MANOVA). That is, we modeled type of mitigation and effort to overcome its effects on the mean mitigating
value and judgments of responsibility scores. Initially, these analyses were conducted without any additional covariates. Upon further consideration, we decided to add death penalty opinions as a covariate since those attitudes might well alter the effects of our manipulations. Therefore, all analyses discussed below controlled for death penalty opinions. Only one of the hypothesis tests was significantly changed by adding death penalty opinions to the model. The $F$ tests for the individual hypothesis are discussed singly below.

In Hypothesis 1, we predicted a main effect of type of mitigation on mitigating value such that proximal mitigators would have significantly greater mitigating value than remote-chronic mitigators. The hypothesis was not supported, $F(1,198) = 1.00, p < .32$. Examination of the means for each mitigation condition revealed a mean difference in the anticipated direction, but the difference was not significant, $M = 4.66$ and $M = 4.39$ for proximal and remote respectively.

Given that each condition contained two different mitigators, we expanded the type of mitigation variable to include all four mitigators. All subsequent analyses were conducted using the four mitigators separately instead of collapsing them into the proximal and remote-chronic conditions.

Conducting the MANOVA for a second time in this way, there was a significant main effect for type of mitigation on mitigating value, $F(3, 195) = 4.93, p < .0025$. Looking at the means, the lack of effect above was explained. Childhood abuse, a remote mitigator, had the lowest mitigating value mean, $M = 3.73$. This mean was significantly lower than the two proximal mitigators' means, $M = 4.56, p < .0286$ and $M = 4.78, p < .0049$ for extreme mental and emotional distress and schizophrenia respectively. The
fourth mitigator, mental retardation, was a remote mitigator. However, it can also be described as chronic. This mitigator had the highest mitigating value mean, $M = 5.10$. The mean mitigating value for mental retardation was significantly greater than the mean for childhood abuse ($p < .0002$), but it was not significantly greater than the means for the two proximal mitigators. Thus, any effect of proximal versus remote would be masked in an analysis that collapsed the two conditions. (These results are presented in Figure 3.) Given these results, we conducted a logistic regression to determine what effect, if any, the type of mitigation manipulations had on the life vote. There was no effect of type of mitigation on the vote for life, and possible reasons for this are discussed later.

Figure 3. Results of MANOVA modeling type of mitigation on mitigating value.
In Hypothesis 2, we predicted a main effect for effort on mitigating value such that, in the high effort condition, the mitigating value mean would be significantly greater than in the low effort condition. This hypothesis was not supported, $F(1, 197) = 1.57, p < .21$. Means were in the appropriate direction, $M = 4.69$ and $M = 4.39$ for high and low effort respectively, but the difference did not approach significance. See Figure 4.

*Figure 4.* Results of MANOVA modeling effort on mitigating value.

In Hypothesis 3, we predicted a main effect for effort on perceptions of defendant responsibility such that perceived responsibility would be lower in the high effort condition than in the low effort condition. The hypothesis was not supported,
$F(1, 197) = 0.58, \ p < .49$. The means were not in the anticipated direction, $M = 3.25$ for high effort and $M = 3.44$ for low effort, but this difference was not significant.

We also predicted that mitigating value would predict the final penalty vote and that judgments of responsibility would mediate this relationship in Hypothesis 4. We anticipated that the effect of the judgment of responsibility would be such that the relationship between mitigating value and the final penalty vote would be weakened. To test this hypothesis, we first had to establish the existence of a relationship between mitigating value and the vote for life. To do this, logistic regression was employed, modeling mitigating value on the life vote to determine the odds ratio of voting for life as mitigating value increased while controlling for death penalty opinions. Mitigating value did, in fact, predict the likelihood of voting for life in prison, $\chi^2(1) = 43.76, \ p < .0001$, odds ratio = 2.598. That is, as mitigating value increased, the odds that the participant would vote for life also increased.

Next, we needed to establish the existence of a relationship between judgments of responsibility and mitigating value such that, as the defendant was perceived as less responsible, mitigating value would increase. Multivariate Ordinary Least Squares (OLS) regression was used (so that we could also control for death penalty opinions), and the results supported the existence of such a relationship, $F(1, 197) = 35.31, \ p < .0001$. The slope for responsibility was positive, $\beta = 0.546$, and the t-test for the slope was significant, $t = 8.16, \ p < .0001$. For this analysis, $R^2 = .26$, indicating that about 26% of the variance in mitigating value was explained by the judgments of responsibility and death penalty opinions. These results for the single-item measure of responsibility ([How much less responsible does the defendant's [mitigating circumstance] make him for the
crime?) indicated that, as the defendant was perceived as being less responsible for the crime (by one scale point), mitigating value increased by an average of about .55 points.

Before testing for mediation, we had to establish the existence of one other relationship, that between judgments of responsibility and the vote for life. We anticipated that, as the defendant was perceived as being less responsible, the odds of voting for life would increase (when controlling for death penalty opinions). Using logistic regression, this relationship was found, $\chi^2 (1) = 53.70, p < .0001$, odds ratio = .558.

The final analysis for Hypothesis 4 was a logistic regression analysis modeling both mitigating value and judgments of responsibility on the vote for life, while controlling for death penalty opinions. To support the hypothesis, the relationship between mitigating value and the life vote would have to be weaker when controlling for judgments of responsibility than in the initial logistic regression analysis. The predictive power of mitigating value did decrease, $\chi^2 (2) = 32.72, p < .0001$, odds ratio = 2.324. Although the odds ratio declined minimally, the difference in the $\chi^2$ for mitigating value between the two models was significant at $p < .05$. These results are presented in Table 13.

<table>
<thead>
<tr>
<th>Model</th>
<th>$\chi^2$</th>
<th>$p$</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigating value on life</td>
<td>43.76</td>
<td>.0001</td>
<td>2.598</td>
</tr>
<tr>
<td>Responsibility on life</td>
<td>53.70</td>
<td>.0001</td>
<td>.5580</td>
</tr>
<tr>
<td>Mitigating value on life, controlling for responsibility</td>
<td>32.72</td>
<td>.0001</td>
<td>2.324</td>
</tr>
</tbody>
</table>
Our final hypothesis, Hypothesis 5, predicted a mediating effect of perceptions of defendant effort on the relationship between mitigating value and the vote for life. As in Hypothesis 4, the series of analyses necessary to test this hypothesis included multivariate OLS regression and logistic regression. The relationship between mitigating value and the vote for life was established in Hypothesis 4 ($\chi^2 = 43.76, p < .0001$, odds ratio = 2.598).

We also needed to establish the existence of a relationship between perceptions of defendant effort and mitigating value. The multivariate OLS regression supported the existence of that relationship, $F (2, 197) = 10.23, p < .0001$. The slope for perceptions of defendant effort was positive and significant, $\beta = 0.31, t = 5.49, p < .0001$. This indicated that, as perceptions of defendant effort increased by one scale point, mitigating value also increased by an average of .31 points. Additionally, the model indicated that approximately 9% of the variance in mitigating value was explained by perceptions of defendant effort and death penalty opinions ($R^2 = .0895$).

The final analysis required before testing for mediation was a logistic regression to determine the existence of a relationship between perceptions of defendant effort and the vote for life while controlling for death penalty opinions. The model supported the existence of this relationship, $\chi^2 (1) = 18.23, p < .0001$, odds ratio = .731. That is, as the defendant was perceived as putting for greater effort, the odds of the participant voting for life also increased.

Having established the existence of these three relationships, we next tested for the mediating effects of perception of defendant effort on the relationship between mitigating value and the vote for life. Using logistic regression, we modeled mitigating
value and perceptions of defendant effort on the likelihood of voting for life, while controlling for death penalty opinions. Our hypothesis was not supported. Mitigating value remained a significant predictor of the vote for life, and the magnitude of the effect ($\chi^2 = 43.76$ to $\chi^2 = 40.51$) was not reduced significantly at $p < .05$. Thus, we cannot conclude with confidence that perceived defendant effort mediates the relationship between mitigating value and the vote for life when controlling for death penalty opinions. This is the only result that was changed by adding death penalty opinions as a covariate. In the initial analysis, the mediating influence of perceived defendant effort on the relationship between mitigating value and the life vote was significant. The results of these analyses are presented in Table 14.

Table 14. Logistic regressions testing mediation of effort on the relationship between mitigating value and the likelihood of voting for life when controlling for death penalty opinions.

<table>
<thead>
<tr>
<th>Model</th>
<th>$\chi^2$</th>
<th>$p$</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigating value on life</td>
<td>43.76</td>
<td>.0001</td>
<td>2.598</td>
</tr>
<tr>
<td>Effort on life</td>
<td>18.15</td>
<td>.0001</td>
<td>0.731</td>
</tr>
<tr>
<td>Mitigating value on life, controlling for effort</td>
<td>40.51</td>
<td>.0001</td>
<td>2.593</td>
</tr>
</tbody>
</table>

Internal Analyses. Given the differential effect of the four mitigators on mitigating value from Hypothesis 1, we thought it advisable to conduct a series of internal analyses. Specifically, we wanted to test whether perceptions of defendant impairment would mediate the relationship between mitigating value and the likelihood of voting for life, and whether or nor not they were significantly related to the judgments of responsibility and perceived defendant effort. Additionally, we were interested in whether or not perceptions of impairment were affected by the type of mitigator.
Perceived impairment on the vote for life. With regard to the relationship between perceived defendant impairment and the final penalty vote, impairment was a significant predictor of the likelihood of voting for life instead of death, $\chi^2 (1) = 113.49, p < .0001$, odds ratio = .319. That is, as perceived impairment increased, so did the odds of voting for life.

Next we tested for a mediating effect of perceptions of impairment on the relationship between mitigating value and the final penalty vote. Earlier, we had established the existence of the relationship between mitigating value and the odds of voting for life ($\chi^2 (1) = 43.76, p < .0001$, odds ratio = 2.598). Also, we established the relationship between perceptions of impairment and the vote for life ($\chi^2 (1) = 113.49$, $p < .0001$, odds ratio = .319). Lastly, we had already established the relationship between perceptions of impairment and mitigating value ($F (1, 198) = 107.97, p < .0001$, $\beta = 0.856, t = 14.48$). What remained was to test the mediating influence of impairment on the relationship between mitigating value and the vote for life. Logistic regression was again used, and the result indicated that perceptions of impairment did mediate that relationship (when controlling for death penalty attitudes). Mitigating value remained a significant predictor of the likelihood of voting for life instead of death, $\chi^2 (1) = 19.98$, $p < .0001$, odds ratio = 2.125, but the magnitude of the effect was substantially reduced ($\chi^2 (1) = 48.34$ to $\chi^2 (1) = 19.98$). This reduction was significant at $p < .05$. Thus, both perceptions of defendant impairment and mitigating value contributed to the vote for life. See Table 15.
Table 15. Logistic regressions testing mediation of perceptions of impairment on the relationship between mitigating value and the likelihood of voting for life when controlling for death penalty opinions.

<table>
<thead>
<tr>
<th>Model</th>
<th>χ²</th>
<th>p</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigating value on life</td>
<td>43.76</td>
<td>.0001</td>
<td>2.598</td>
</tr>
<tr>
<td>Impairment on life</td>
<td>113.49</td>
<td>.0001</td>
<td>0.319</td>
</tr>
<tr>
<td>Mitigating value on life, controlling for impairment</td>
<td>19.98</td>
<td>.0001</td>
<td>2.125</td>
</tr>
</tbody>
</table>

Perceptions of impairment and judgments of responsibility. Bivariate OLS regression modeling perceptions of impairment on judgments of responsibility confirmed a relationship between the two variables, \( F(1, 198) = 112.08, p < .0001 \). The slope for impairment was positive, \( \beta = .641 \), and the \( t \)-test for the slope was significant, \( t = 10.59, p < .0001 \). That is, as perceptions of impairment increased by one point, judgments that the defendant was less responsible for the crime also increased, by an average of .641 points.

Perceived impairment and perceived effort. We also used bivariate OLS regression to determine whether or not perceived impairment was a significant predictor of perceived defendant effort. The results were a significant model, \( F(1, 198) = 12.76, p < .0004 \), and a significant slope, \( \beta = .0869, t = 3.57, p < .0004 \). Thus, the analysis indicated that, as perceptions of defendant impairment increased by one scale point, perceptions of defendant effort also increased by an average of 0.869 points.

Nested models predicting mitigating value and the vote for life. The preceding analyses indicated strong correlations between these four variables (mitigating value, perceived defendant impairment, perceived defendant effort, and judgments of responsibility). As well, the relationship between mitigating value and the likelihood of voting for life was significantly mediated by each of the other three. (See Table 16 for a summary of these relationships and Figure 5 for a proposed simple model.) Thus, it
seemed important to test which of these accounted for the most variance in mitigating value. We conducted a hierarchical regression analysis using perceptions of defendant impairment, judgments of responsibility, and perceptions of defendant effort as predictors of mitigating value.

*Figure 5. Proposed simple model of treatment effects and mediators.*

![Diagram](https://via.placeholder.com/150)

Previously, we had established that each of the preceding three variables was a significant predictor of mitigating value. To recap the previous analyses, the variance in mitigating value explained by each of these was 52% for perceptions of impairment, 26% for judgments of responsibility, and 9% for perceptions of defendant effort ($p < .0001$ for all three models).

For the hierarchical model, we began with perceptions of impairment as the predictor of mitigating value since it explained the greatest amount of variance. The model was significant, $F (1, 198) = 210.23, p < .0001$. The variance in mitigating value that was explained was quite large, $R^2 = .5162$, and the slope for perceptions of impairment was significant, $t = 14.50, p < .0001$.

The second equation included judgments of responsibility as a predictor variable (entered here because it previously explained the next largest amount of variance in mitigating value). The model remained significant, $F (1, 198) = 108.87, p < .0001$. 
Although the slopes for both perceptions of impairment ($t = 10.44, p < .0001$) and judgments of responsibility ($t = 2.04, p < .04$) were significant, the addition of judgments of responsibility contributed only $1\%$ unique variance to the model, $R^2 = .5263$.

The final equation included perceptions of defendant effort as a third predictor variable. Again, the model was significant $F(1, 198) = 76.01, p < .0001$. Perceptions of impairment continued to be the greatest predictor of mitigating value ($t = 10.21, \ p < .0001$). However, judgments of responsibility lost significance ($t = 1.71, p < .08$). Additionally, perceived defendant effort was a significant predictor of mitigating value ($t = 2.32, p < .02$). Finally, the amount of variance explained in this model, $R^2 = .5390$, indicated that including judgments of responsibility and perceptions of defendant effort added less than $2\%$ unique variance to the model. The hierarchical model is illustrated in Table 17.

Table 16. Summary of the relationships between mitigating value, perceived impairment, judgements of responsibility, and perceived defendant effort.

<table>
<thead>
<tr>
<th>Greater mitigating value</th>
<th>increased likelihood of voting for life.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lower responsibility</td>
<td>greater mitigating value.</td>
</tr>
<tr>
<td>Lower responsibility</td>
<td>increased likelihood of voting for life.</td>
</tr>
</tbody>
</table>

Therefore, greater mitigating value and lower responsibility $\rightarrow$ increased likelihood of voting for life, AND responsibility is one component of mitigating value.

<table>
<thead>
<tr>
<th>Higher defendant effort</th>
<th>greater mitigating value.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher defendant effort</td>
<td>increased likelihood of voting for life.</td>
</tr>
</tbody>
</table>

Therefore, greater mitigating value and higher defendant effort $\rightarrow$ increased likelihood of voting for life, AND defendant effort is one component of mitigating value.

<table>
<thead>
<tr>
<th>Higher perceived impairment</th>
<th>greater mitigating value.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Higher perceived impairment</td>
<td>increased likelihood of voting for life.</td>
</tr>
<tr>
<td>Higher perceived impairment</td>
<td>lower responsibility.</td>
</tr>
<tr>
<td>Higher perceived impairment</td>
<td>higher defendant effort.</td>
</tr>
</tbody>
</table>

Therefore, greater mitigating value and higher perceived impairment $\rightarrow$ increased likelihood of voting for life, AND perceived impairment is a component of mitigating value, responsibility, and defendant effort.
This series of analyses suggests several conclusions. First, when controlling for perceptions of impairment and defendant effort, the unique variance in mitigating value explained by judgments of responsibility is negligible. Second, neither judgments of responsibility nor perceptions of defendant effort contribute meaningful variance to explaining mitigating value when controlling for perceptions of impairment. Finally, we can conclude that perceptions of impairment drive mitigating value in this study. This predictor, by itself, accounts for approximately 52% of the variance in mitigating value. This amount is both significant and meaningful.

Table 17. Hierarchical regression model: Perceptions of impairment, judgments of responsibility, and perceptions of defendant effort as predictors of mitigating value.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model 1 (Impairment)</th>
<th>Model 2 (Impairment, Responsibility)</th>
<th>Model 3 (Impairment, Responsibility, Effort)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$R^2$</td>
<td>.5162</td>
<td>.5263</td>
<td>.5390</td>
</tr>
<tr>
<td>Model $F$</td>
<td>210.23$^a$</td>
<td>108.87$^a$</td>
<td>76.01$^a$</td>
</tr>
<tr>
<td>Parameter Estimates (Std. Errors)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impairment</td>
<td>.5501$^a$ (.0379)</td>
<td>.4922$^c$ (.0471)</td>
<td>.4792$^a$ (.0470)</td>
</tr>
<tr>
<td>Responsibility</td>
<td>.2707$^b$ (.1329)</td>
<td>.2274$^c$ (.1328)</td>
<td></td>
</tr>
<tr>
<td>Effort</td>
<td></td>
<td>.2559$^b$ (.1101)</td>
<td></td>
</tr>
</tbody>
</table>

$p < .0001$, $^b p < .05$, $^c$ns

Next, we repeated the nested model using the vote for life as a dichotomous dependent variable in a series of logistic regressions. In the first analysis, perceived impairment was modeled on the vote for life as a single predictor. Its predictive power
was significant ($\chi^2(1) = 47.51, p < .0001$, odds ratio = 2.562). That is, as perceived impairment increased, so did the odds of voting for life. In the second model, we added judgments of responsibility as a second predictor. This variable was not a significant predictor ($\chi^2(1) = 2.68, p < .1016$, odds ratio = 1.244), and the inclusion of this variable did not result in a better fitting model at $p < .05$. In the third model, we added perceived defendant effort as another predictor variable. This variable was not a significant predictor of the life vote ($\chi^2(1) = 1.40, p < .24$, odds ratio = .642), and the third model did not result in a significantly better fit at $p < .05$. What we can conclude from these analyses is that perceived impairment is the best predictor from these three of the vote for life. These results are presented in Table 18.

Table 18. Hierarchical logistic regression model: Perceptions of impairment, judgments of responsibility, and perceptions of defendant effort as predictors of voting for life.

<table>
<thead>
<tr>
<th>Model</th>
<th>$\chi^2$</th>
<th>$p$</th>
<th>Odds Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impairment on life</td>
<td>47.51</td>
<td>.0001</td>
<td>2.562</td>
</tr>
<tr>
<td>Impairment and Responsibility on life</td>
<td>2.68</td>
<td>.1016</td>
<td>1.244</td>
</tr>
<tr>
<td>Impairment, Responsibility, and Effort on Life</td>
<td>1.40</td>
<td>.2400</td>
<td>0.642</td>
</tr>
</tbody>
</table>

Type of mitigation and perceived impairment. The final analysis of interest with regard to impairment was the effect, if any, the type of mitigation would have on the perceptions of impairment. For this analysis, an analysis of variance (ANOVA) was conducted, modeling type of mitigation on perceptions of impairment. Type of mitigation did significantly affect the perceptions of impairment, $F(3, 195) = 4.57, p < .0041$. Perceived impairment was highest in the schizophrenia condition ($M = 4.52$) and lowest in the childhood abuse condition ($M = 3.32$), a significant difference, $p < .0003$. Perceived
impairment was also significantly higher in the schizophrenia condition than in the extreme mental and emotional distress condition ($M = 3.77, p < .03$). The difference was not significant between the schizophrenia and mental retardation ($M = 3.94$) conditions, $p < .08$. There were no other significant differences in the mean impairment scores. These results are presented in Figure 6.

Other effects of type of mitigation. Of final interest in the internal analyses were the effects of the type of mitigation and effort manipulations on the individual dependent items. For these analyses, MANOVA and logistic regression were employed. We will begin with the effects of type of mitigation collapsed into the proximal v. remote-chronic conditions.

*Figure 6.* Results of ANOVA modeling type of mitigation on perceptions of impairment.
In addition to the effects already reported, type of mitigation had a significant main effect on perceptions of the defendant's responsibility for the occurrence of the impairment \((F(3, 195) = 7.74, p < .0001)\) and ratings of how much the defendant was able to control the effects of his impairment \((F(3, 195) = 3.37, p < .02)\).

With regard to perceptions of the defendant's responsibility for the occurrence of the impairment, the mean score was lowest in the childhood abuse condition \((M = 1.73)\), and this score was significantly lower than each of the other three means, 2.52 (mental retardation), 3.00 (distress), and 3.16 (schizophrenia). The only other significant difference in these means was between the schizophrenia and mental retardation conditions \((p < .05)\). Interestingly, none of these means is very high, suggesting that the defendant was perceived as not being very responsible for his impairment regardless of the type of mitigation.

For the defendant's ability to control the effects of his impairment, the means were lowest in the schizophrenia \((M = 3.44)\) and mental retardation \((M = 3.96)\) conditions, a non-significant difference. They were likewise highest in the childhood abuse \((M = 4.43)\) and distress \((M = 4.14)\) conditions, also a non-significant difference. Participants in the childhood abuse condition rated the defendant as significantly more able to control the effects of his impairment than did participants in the schizophrenia condition \((p < .0021)\). Participants in the distress condition also rated the defendant as more able to control the effects of his impairment than did participants in the schizophrenia condition \((p < .0355)\). There were no other significant differences in these means.
Looking at each of the preceding main effects separately, we can make inferences about the suggestions implied by the mean differences. For example, participants in the schizophrenia condition might have rated the defendant as more responsible for the occurrence of his impairment because he was older at the onset than he was in the childhood abuse condition. Also, these same participants might have rated the defendant as being less able to control the effects of his impairment because he had had less time to learn to cope effectively. However, taken together, these results appear to be counterintuitive. In conditions where responsibility for the occurrence is high, ability to control the effects is low. It seems more probable that greater perceived responsibility would be associated with greater perceived ability to control the effects. Due to this seeming inconsistency, we conducted a bivariate OLS regression analysis modeling responsibility for the occurrence of the impairment on the ability to control its effects. The result was a significant model, $F(1, 198) = 8.63, p < .0037$, and a significant slope for responsibility for the occurrence of the impairment ($\beta = 0.198, t = 2.94, p < .0037$). As the defendant was perceived as more responsible for the occurrence of the impairment, he was likewise perceived as having greater ability to control its effects. This relationship was more consistent with our other predictions than the MANOVA results when viewed together. It also suggests the existence of some unknown variable moderating the relationship between the proximal v. remote-chronic distinction and the two dependent variables. As this is not germane to the current research, we will not explore this possibility at the present. However, it may be useful to do so in the future.

*Perceived defendant effort and perceived impairment.* Concluding the internal analyses with regard to impairment, we turned our attention to the effort manipulation
and perceived defendant effort. There were no significant main effects for effort on any dependent items other than the effort manipulation check discussed initially. However, a bivariate OLS regression model of *perceptions* of effort on perceptions of impairment yielded significant results, $F(1, 198) = 12.76, p < .0004, R^2 = .0608$. The model indicated that, as perceptions of defendant effort increased by one point, perceptions of impairment also increased by approximately .70 points ($t = 3.57, p < .0004$). Additionally, the perceptions of defendant effort item was a significant predictor of how much control participants rated the defendant as having over the effects of the impairment ($F(1, 198) = 4.13, p < .04, R^2 = .0205$). The model indicates that, as the defendant was perceived as putting forth greater effort to overcome the effects of his impairment, his ability to control the effects of the impairment was diminished ($\beta = -0.1431, t = -2.03, p < .04$). The ability to control the effects of the impairment, in turn, was a significant predictor of perceptions of impairment, $F(1, 198) = 53.81, p < .0001, R^2 = .2146$. As the defendant was perceived as being less able to control the effects of his impairment, he was perceived as being more impaired ($\beta = -1.4046, t = -7.34, p < .0001$). A hierarchical OLS regression model nesting ability to control the effects of the impairment within the model containing perceptions of defendant effort on perceptions of impairment was significant, $F(2, 197) = 32.27, p < .0001$. Additionally, both variables were significant predictors of perceptions of impairment in this nested model. As perceived defendant effort increased by one point, perceptions of impairment also increased by an average of .52 points ($t = 2.94, p < .0037$). As perceptions of the defendant's ability to control the effects of his impairment increased by one point, perceptions of impairment decreased by an average of 1.32 points ($t = -6.98, p < .0001$). That is, greater perceived effort leads to greater
perceived impairment, and greater perceived control leads to lower perceived impairment. Possible implications of this result are discussed below.

Discussion

Mitigation in death penalty trials is a crucial factor for the defense. Its importance is clearly demonstrated in state statutes that allow the inclusion of any testimony that might spare the defendant's life and in criminal procedure that holds the defense to a lesser burden of proof than what prosecutors must achieve to prove aggravation. For mitigation to be considered, it is enough that a lone juror accepts the claims of the defense as probably true. The law is very clear. What is less obvious is what jurors find compelling as mitigation. That is, when mitigation is presented, is it effective and why? In attempting to shed some light on this issue, we have found evidence suggestive of certain elements that help to make mitigation effective.

Previous research points to distinctions between mitigators. Mitigators differ from one another qualitatively (Garvey, 1998; Weeks, 2000, Luginbuhl, Buffaloe & Weeks, 2001). Some mitigation that could argue for mercy is related to factors that are acting on the defendant at the time the crime was committed, while other mitigation seems to relate more to the character of the defendant in general. Additionally, among mitigators that are more related to the context of the crime and less related to the defendant's character, some seem to be located close to the crime temporally while others seem to have their origins in the relatively distance past.

The qualitative research conducted by Garvey (1998) and the experimental research conducted by Weeks (2000) and Luginbuhl, et al. (2001) suggest that the most
effective mitigators are those that are both related to the crime and have their origins in the recent past. Among these, mitigators that suggest that the defendant was somehow impaired at the time of the crime seem to have the most value for jurors. From this extrapolation, the current research was designed to measure the effectiveness of such mitigation. Primarily, we were interested in mock jurors' individual responses to impairment stemming from different types of mitigation and to evidence that the defendant had made efforts to overcome his impairment. These factors were experimentally manipulated in a design that provided participants with evidence of a particular type of impairment that was either proximally or remotely related to the crime in its origin and that the defendant had either tried or not tried to overcome. Outcome variables of interest included the amount of value the mitigation had for participants, perceived defendant impairment and effort to overcome the impairment, perceived responsibility, and the likelihood of voting for a life sentence.

*Experimental Manipulations.* Four different mitigation scenarios were presented to mock jurors. Schizophrenia and extreme mental and emotional distress were located nearer to the crime temporally (proximal: within the last five years) than childhood abuse and mental retardation (remote-chronic: from childhood). We predicted that the two proximal mitigators would have greater mitigating value than the two remote-chronic mitigators.

Prior to hypothesis testing, we conducted a manipulation check for the proximal v. remote-chronic distinction. On the sentencing form, mock jurors were asked to indicate whether the mitigation was something that had initially occurred recently or some time ago. The results indicated that mock jurors in the proximal condition were generally unable to correctly identify the mitigation as something that had occurred recently. In
retrospect, we realized that the question was worded poorly and that it relied on subjective interpretation. The proximal condition located the onset of the mitigation at five years in the past. It seems reasonable that many participants might subjectively view five years as being "some time ago." Thus, the manipulation check could have been constructed to better allow mock jurors to differentiate between the temporal distinction. That it was not doesn't provide sufficient evidence that the construct itself is invalid. It is our opinion that future research should attempt to determine if the proximal v. remote distinction exists as a construct by using a more appropriate manipulation check (e.g. likert rating or other more sensitive measure).

In the initial analyses, we tested whether or not the manipulation had an effect on mitigating value, our key dependent variable of interest which was measured by combining two Likert items. The expected effect was not present; however, the difference between the mean mitigating value scores between proximal and remote-chronic was in the anticipated direction. Expanding to the 4-level manipulation of individual scenarios, we conducted the analysis again, and the results indicated that mock jurors did assign differential value to the various mitigators. The two proximal scenarios were rated as having significantly greater mitigating value than the remote-chronic scenario depicting childhood abuse. Mental retardation, on the other hand, received the highest mean rating for mitigating value, in contrast to our prediction. The high perceived mitigating value of mental retardation (a remote-chronic mitigator) is, thus, the reason for the lack of a proximal v. remote-chronic effect in the initial analysis.

What is it about mental retardation that confers such high mitigating value? Internal analyses suggest that mock jurors perceive the mentally retarded defendant as
being less able to control the effects of his impairments than the abused defendant and the
defendant under extreme mental and emotional distress. However, the mentally retarded
defendant was not perceived as less able to control the effects of his impairments than the
schizophrenic defendant. Still, the perceived lack of control might account for some of
the greater mitigating value that mental retardation received. This issue of control has
been examined experimentally in previous research (Weeks, 2000) and should, perhaps,
be looked at again.

Finally, we should ask whether or not the substitution of another remote-chronic
scenario in place of mental retardation (e.g. loss of a parent at a young age or other
childhood trauma) would result in greater support of our original hypothesis. Given the
significant differences between the two proximal scenarios and the childhood abuse
scenario, this seems likely.

We were also interested in whether or not our mitigation manipulation would
affect the life vote. A direct test of this using logistic regression produced no effect of
type of mitigation the vote for life. This is interesting and suggests that mitigating value
might moderate the relationship between the type of mitigation and the life vote. For
example, if mitigating value is low, there is a relationship between type of mitigation and
the life vote (i.e. with low mitigating value, jurors need to give greater consideration to
the type of mitigating circumstance). However, if mitigating value is high, there is no
strong relationship between type of mitigation and the life vote (i.e. with high mitigating
value, the type of mitigating circumstance is not given as great a degree of consideration).
Internal analyses on these data suggest that this might be the case. Logistic regression
modeling type of mitigation on the life vote when mitigating value was low (based on a
median split for mitigating value) resulted in a differential effect of type of mitigation on the odds of voting for life. However, the same analysis when mitigating value was above the median produced no effect of type of mitigation on the vote for life. The effects of mitigating value are discussed below, and these results lend additional support to a moderation hypothesis. This is one area of mitigation research that should be explored thoroughly in the future with a wider variety of mitigation manipulations.

In addition to temporal location of the crime, we also experimentally manipulated the amount of effort the defendant put forth to overcome the impairment caused by the mitigation. Given the attribution theory supporting this research (Weiner, 1985, 1995, 1998), we predicted two main effects. First, we expected mock jurors in the high effort condition to rate the mitigation as having greater value than mock jurors in the low effort condition. Also, we expected mock jurors to rate the defendant as less responsible in the high effort condition as opposed to mock jurors in the low effort condition. Our results did not support these predictions. Ratings of mitigating value and judgments of responsibility were not significantly different between the high and low effort conditions. In fact, the effort manipulation resulted in no significant differences on any dependent measure except the manipulation check, with those in the high effort condition rating the defendant as having put forth significantly more effort to overcome his impairment than did those in the low effort condition. Thus, the difference was perceived, and yet it had no effect on any of the dependant measures.

One possible explanation for this finding is that, as the defendant was perceived as having put forth more effort, he was seen as more impaired. This interpretation is consistent with Heider's notion (1958) of a negative relationship between effort and
ability; the greater the effort one must put forth to achieve a particular task, the less
ability one has to achieve it. Consider alcoholism. A person who is an alcoholic and who
has made serious but unsuccessful attempts to overcome his or her addiction might be
seen as having a level of impairment greater than another alcoholic who has never tried to
overcome his or her addiction. The effort to overcome the addiction underscores the
impairment. Our results lend support to this interpretation in that perceptions of
impairment were positively correlated with perceptions of defendant effort. These
internal analyses and possible interpretations will be discussed more fully later.

**Mitigating Value and Voting for Life.** In addition to the main effects tested for above, we
needed to know if the likelihood of voting for life could be predicted from the ratings of
mitigating value. More specifically, effective mitigation should translate into a higher
likelihood of voting for life, and that was the case in this research. Greater mitigating
value was associated with a significantly greater likelihood of voting for a life sentence
instead of death. Thus, we can infer that mitigating value, as a construct, represents the
effectiveness of the mitigation presented.

We predicted two factors that would mediate the relationship between mitigating
value and the likelihood of voting for life, judgments of responsibility and perceived
defendant effort. The predictive power of mitigating value on the likelihood of voting for
life should be weakened by inclusion of the mediator in each model. The hypotheses
were supported. Mitigating value remained a significant predictor of the likelihood of
voting for life in both models, but the magnitude of the effect was reduced by controlling
for the mediators (individually). This suggests, at the least, that mitigating value remains
a predictor of the likelihood of voting for life even when accounting for variance shared with judgments of responsibility and perceived defendant effort.

In neither of the above cases was the effect of mitigating value on the likelihood of voting for life adequately explained. However, it was clear that something was driving mitigating value. We returned our attention to the issue of impairment. In the first hypothesis, we predicted that type of mitigation, which was a manipulation of the impairment scenario, would affect mitigating value, and the results supported this prediction. Thus, it seemed probable that perceived impairment would be a stronger mediator of the relationship between mitigating value and the likelihood of voting for life than judgments of responsibility or perceived defendant effort. This prediction was also supported. Again, mitigating value remained a significant predictor of the likelihood of voting for life, but the magnitude of the effect was reduced to a greater degree by controlling for perceived impairment than it was when we controlled for either judgments of responsibility or perceived defendant effort. Thus, mitigating value was influenced more by perceptions of impairment than by either of the other two measures.

The above results suggested that we should look more closely at perceptions of impairment and the relationship of this variable to judgments of responsibility, perceptions of defendant effort, and mitigating value. A hierarchical regression model indicated that perceived defendant impairment did the best job at explaining the variance in mitigating value. Controlling for perceived impairment, judgments of responsibility and perceived defendant effort added only negligible explanatory power to the model. In the interests of parsimony, it seems appropriate to concentrate future efforts on developing a better understanding of the relationship between perceptions of impairment
and mitigating value. However, it may also be useful to attempt to uncover the factor structure underlying mitigating value that should include, but not be limited to, perceptions of impairment.

*Perceived Defendant Impairment.* Given that perceived defendant impairment explained much of the variance in mitigating value and that mitigating value was affected by the type of mitigation manipulation, it seemed logical to test for effects of type of mitigation on perceived impairment. Impairment was differentially perceived depending upon the scenario mock jurors received. Perceived impairment was greater in the schizophrenic and mental retardation scenarios than in the childhood abuse and extreme mental and emotional distress scenarios. The mean differences, while significant, were not sufficient to mask the difference in perceived impairment in the proximal vs. remote-chronic experimental conditions. Mock jurors in the proximal condition rated the defendant as significantly more impaired than mock jurors in the remote-chronic condition.

These results suggest that the temporal location of the mitigator does influence perceived impairment. As the mitigation is located closer to the crime temporally, the defendant is seen as more impaired. This would seem to suggest that the nature of the mitigation is less relevant to perceived impairment than is the time of the onset. If this were the case, then one would generally expect recent mitigation to be perceived as more impairing than mitigation whose origin is in the distant past, regardless of the nature of the impairment. It would be interesting to test this using the same impairment evidence and manipulating the temporal location. For example, one could present two schizophrenia scenarios, one where the onset of the illness is in the relatively recent past (i.e. <5 years ago) and one where the onset is in the relatively distant past (i.e. >10 years
If the temporal distinction drives, in part, perceptions of impairment, then one would predict significantly greater ratings of perceived impairment in the proximal condition than in the remote condition.

However, an interaction between type of mitigation and temporal location might also affect perceived impairment. That is, some mitigation could be perceived as more impairing the longer it persists over time (e.g. schizophrenia), while different mitigation could be perceived as less impairing the longer it persists over time (e.g. emotional distress). In the first case, persistence would indicate greater impairment, and in the second case, persistence would indicate dissipated impairment.

The type of mitigation affected more than perceived impairment and mitigating value. The nature of the mitigation also affected mock jurors' judgments of responsibility for the occurrence of the mitigation and the ratings for how much the defendant was able to control the effects of the impairment. Regarding responsibility, mock jurors in the proximal condition rated the defendant more responsible for the onset of the mitigation. However, they also rated the defendant as less able to control the effects of his impairment. These results are not readily interpretable when taken together. An inverse relationship would seem to be more intuitive. That is, mock jurors rating the defendant as more responsible for the occurrence of the impairment should also rate the defendant as more able to control the effects of the impairment. Results of an additional regression analysis using responsibility for the occurrence to predict ability to control the effects indicated the more intuitive relationship. As the defendant was perceived to be more responsible for the occurrence of the mitigation, he was also perceived as more able to control its effects. The contradiction between the ANOVA and regression results suggests
the presence of an unidentified variable that is moderating the relationship between the proximal v. remote-chronic manipulation and its effects on responsibility for the occurrence and ability to control the effects of the illness. The possible existence of such a moderator could be addressed in future study on this issue.

**Perceived Defendant Effort.** While the manipulation of defendant effort did not affect mitigating value or judgments of responsibility, internal analyses of perceived defendant effort uncovered several interesting relationships. Perceived defendant effort significantly predicted both perceived impairment (positive relationship) and perceived ability to control the effects of the impairment (negative relationship). That is, as the defendant was perceived as having put forth greater effort to overcome the effects of his impairment, he was also perceived as being more impaired and less able to control the effects of the impairment. Additionally, perceived ability to control the effects of the impairment was a significant predictor of perceived impairment. Again, this is consistent with Heider's work on attribution of effort and ability (1958).

When perceived defendant effort and control were used jointly to predict perceived impairment, the resultant model was significant, and both variables were significant predictors of perceived impairment. Regarding the earlier discussion of the role of defendant effort in ratings of mitigating value and judgments of responsibility, these internal analyses help to clarify the situation. The seemingly most straightforward interpretation is that a defendant who has made an effort to overcome the effects of his impairment and is still impaired is seen as *more* impaired than one who has not tried to overcome his impairment. The higher ratings of perceived impairment then translate into higher ratings of mitigating value (as already established), which in turn translate into a
greater likelihood of voting for life instead of death. This does not explain why there was not a difference in perceived impairment in the high and low effort conditions, but it is supported when using the *perceived* defendant effort variable. All of these relationships suggest a complex underpinning to perceived impairment, which we have already established is the prime predictor in this research of mitigating value and the subsequent vote for life instead of death. Therefore, should future research investigate the foundations of perceived impairment, the role of defendant effort should be included.

**Summary**

The primary goal of this research was to determine if type of mitigation, when confined to impairment scenarios, and level of defendant effort to overcome its effects would affect mock jurors' ratings of mitigating value and final penalty vote. The results indicate that mock jurors do assign differential amounts of mitigating value to mitigation depending upon the type of impairment suffered by the defendant and that this mitigating value is important to the likelihood of voting for life instead of death. In the present experiment, manipulating level of defendant effort did not affect these outcomes. Furthermore, impairment mitigation that is located near to the crime temporally appears to be more effective than mitigation that is located more distally from the crime. This provides empirical support to qualitative results found previously (Garvey, 1998). Finally, this research establishes quite clearly that mitigating value, mock jurors' ratings of the effectiveness of the mitigation, does influence the final penalty vote in that greater mitigating value leads to a greater likelihood of voting for life instead of death. Thus, the construct of mitigating value as a representation of the effectiveness of mitigation is supported empirically.
Additionally, several variables would seem to mediate the relationship between mitigating value and the likelihood of voting for life. Most promising of these is how impaired the defendant is perceived as having been at the time of the crime. Other potential mediators include how much less responsible for the crime the defendant is perceived to be as a result of the mitigation and also how much effort the defendant is perceived to have put forth to overcome the effects of the impairment. Certainly it seems that the defendant's responsibility for his or her actions would be seen as reduced if he or she were impaired at the time at the crime, and that should be seen as mitigating.

However, responsibility was not a powerful predictor in this research. Given the apparent importance of perceived impairment this is a promising avenue for further exploration.

These future endeavors should include replication studies using other impairment mitigation scenarios to rule out simple effects of the type of mitigation used in this research. For instance, is death of a parent at a young age (remote) considered similar to childhood abuse in terms of mitigating value and perceived impairment? Additional possibilities include substance abuse (proximal), other forms of mental illness (e.g. depression, bipolar disorder) (proximal), and low income urban upbringing (remote).

Additionally, the temporal distinction should be explored further. Research using the same impairment scenario and manipulating only the time of onset would help to clarify the effect of proximal v. remote-chronic on key outcome variables. This issue could possibly be addressed within the replication studies mentioned above.

Beyond replication studies, we might consider using the internal analyses from this study to form a possible factor structure for perceived impairment. In other words, if perceived impairment is a powerful mediator of the relationship between mitigating value
and the vote for life as this research suggests, what are the underlying components of perceived impairment? How do variables such as defendant effort, control, responsibility, and others not yet identified work together to create the construct of perceived impairment? This issue should be addressed in the future.

Finally, an attempt to corroborate the general findings of this research through archival means should be made. Data could be gathered on actual capital trials where impairment evidence was presented as mitigation and then analyzed for differences by type of mitigation presented, type of testimony offered during presentation, and final penalty votes.

Clearly, there is much to be learned about the nature of capital mitigation and its effectiveness. However, the research discussed here presents initial evidence with regard to defendant impairment, temporal location of mitigation, and the construct of mitigating value. Qualitative results from previous research have been validated empirically, and some support for an attribution framework surrounding the evaluation of mitigation has been found.
References


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Appendix A

ORAL INSTRUCTIONS

Before we get started, I would like to thank all of you for coming today.

Here at North Carolina State University, we have a research interest in death penalty trials and how jurors make decisions during these trials. Let me explain some of the procedures of death penalty trials.

A death penalty trial (or capital murder trial) is different from other trials in that it is conducted in two separate phases. In the first - the Guilt Phase - the jury decides whether or not to convict the defendant. If the defendant is convicted of first degree murder, the trial moves to the second phase - the Sentencing Phase. During the sentencing phase, the jury will hear additional evidence from both sides that is supposed to help them decide which sentence is most appropriate - death or life in prison.

After hearing all of the sentencing evidence, the jury decides what sentence to give the defendant. In most states, the jurors have to agree unanimously that the defendant should be sentenced to death. Otherwise, the defendant receives a life sentence.

In the study you are participating in today, you are asked to assume the role of a juror in a capital murder trial. You will read a summary of evidence regarding the defendant's guilt that led the jury to convict him of first degree murder. After that, you will read additional evidence that will help you decide how to sentence the defendant. You will then make a sentencing decision and answer some additional questions.

During this study, you will also fill out some questionnaires. Some of these represent questions that actual jurors might be asked while others are being asked for research purposes. All of this will be presented in a booklet that I will hand out now. You may begin as soon as you get the booklet. When all of you are finished, I will tell you a little bit more about the study, and you will have an opportunity to ask any questions you may have.

Before we begin, does anyone have any general questions?
Appendix B

JURY SELECTION QUESTIONNAIRE

1. What is your sex? _____female _____male

2. What is your year in school? _____FR _____SO _____JR _____SR

3. What was your age on your last birthday? _________

4. What was your ethnic background? (Please check the category that best describes you.)
   _____Caucasian/White _____American Indian _____Asian
   _____African American _____Hispanic/Spanish _____Other

5. What was your religious orientation? (Please check the category that best describes you.)
   _____Catholic _____Jewish _____Atheist
   _____Protestant _____Other

6. What was your political orientation? (Please circle the number that best describes you.)
   Conservative 1 2 3 4 5 6 7 8 9 10 Liberal

7. Have you, or any member of your immediate family, or a close friend ever been the victim of a serious crime? _____yes _____no
   If yes, please indicate the nature of the crime. ________________________________

8. Have you, or any member of your immediate family, or a close friend ever been convicted of a serious crime? _____yes _____no
   If yes, please indicate the nature of the crime. ________________________________

9. Please place a checkmark by the statement which most accurately reflects your opinion on the death penalty.
   _____ I strongly favor the death penalty and would vote for it in all cases of first degree murder.
   _____ I generally favor the death penalty but would sometimes vote for life imprisonment instead of death in cases of first degree murder.
   _____ I neither favor nor oppose the death penalty.
   _____ I generally oppose the death penalty but would sometimes vote for it in cases of first degree murder.
   _____ I strongly oppose the death penalty and would never vote for it, even in cases of first degree murder.

10. Please rate your support for the death penalty as an appropriate sentence for defendants convicted of first degree murder.
    Not at all 1 2 3 4 5 6 7 8 9 10 Very Much
On the evening of Wednesday, July 18, 1994, Daniel Davis called a cab to take him home from a bar where he had been hanging out with friends for several hours. He got into the cab, spoke for a minute with the cab driver, then gave the cab driver his home address and said he wanted to be taken there. According to the cab driver, Daniel seemed "strange" in that he had a crazed look in his eyes and was mumbling to himself. The cab driver assumed Daniel was just drunk and proceeded to drive in the direction of the address Daniel had given him.

On the way to his house, when the cab driver stopped at a red light, Daniel asked him to pull in at a convenience store on the opposite corner. He told the cab driver he wanted to go in and buy a pack of gum before going home. The cab driver did as Daniel asked. He was able to see Daniel through the glass window on the front of the store, and he witnessed Daniel picking up a pack of gum and approaching the counter. The driver also noticed another customer in the store standing in a far corner. When Daniel reached the counter, he appeared to speak with the cashier whose name was Bobby Fleming. The cab driver saw Daniel angrily waving his hands and the Bobby looking frightened. Bobby handed Daniel the money that was in the cash register. Daniel said something else, and Bobby shook his head "no". Daniel then pulled out a gun and shot Bobby. Coming out of the store, he looked at the cab driver then took off running down the street.

When Daniel took off running, the cab driver got out of the cab and went into the store. He examined Bobby Fleming and thought he was probably dead. Using the telephone on the counter, the cab driver called 911 and told the operator about the shooting. A patrol car was in the area, and a policeman entered the store a few minutes later. The cab driver told the policeman the direction Daniel had run and also his address. The policeman called for backup, and Daniel was soon pursued. Within 15 minutes, two policemen had caught Daniel. He was arrested and taken to the county jail to be held on murder charges.

The cab driver later identified Daniel as the man who had gotten into his cab that night and had shot Bobby Fleming. A security camera had taped the entire episode, and Daniel was also identified as the shooter through this tape. The cab driver testified in court that he did pick Daniel up from the bar, take him to the convenience store, and witness him shoot the clerk. The customer in the store also identified Daniel Davis as the person who shot Bobby Fleming.

The arresting officer testified to the pursuit of Daniel and to bringing him in to the jail after his arrest. He testified to ordering that Daniel be tested for alcohol and drug use immediately upon arriving at the jail and that the results of these tests were negative. That is, Daniel had neither
consumed any alcohol prior to the murder nor any illegal substances. The arresting officer also testified that Daniel had $240 in a bag stuffed under his shirt when he was arrested.

The state medical examiner testified that he was able to fix the time of death of Bobby Fleming, the murdered store cashier, at between 11:00 pm and midnight the night of July 18, 1994. The medical examiner testified further that the victim died from blood loss and trauma to internal organs.

In addition to the testimony of the medical examiner, a ballistics expert testified that the gun found on Daniel Davis when he was arrested was the same gun that fired the bullet that killed Bobby Fleming and that only Davis' fingerprints were on the gun.

During the trial, Daniel Davis' defense lawyer maintained that Daniel was innocent by reason of insanity. They claimed that his judgment was impaired at the time of the murder. However, a state appointed psychiatrist who examined Daniel shortly after arriving at the jail testified that Daniel was lucid and coherent at that time.

The jury deliberated for 2 1/2 hours and returned a verdict of guilty of first degree murder. Based on the summary of the trial evidence that you have just read, do you think the jury reached the correct verdict?

_____yes  ____no
Appendix D

PENALTY PHASE EVIDENCE SUMMARY

(Effort: High; Type of Mitigation: Proximal (Schizophrenia))

Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

You have heard from the state's psychiatrist who examined the defendant when he was arrested and again later when he was waiting for trial. Dr. Palmer has told you that Mr. Davis was lucid at the time he was examined shortly after arrest. He has also told you that he does not believe there is anything wrong with Daniel Davis today. Dr. Palmer has worked on several of these trials. His experience and his time with Mr. Davis should be enough to convince you that Mr. Davis was in full control of his mental state at the time of the crime and that the appropriate sentence for him is death.

Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

You heard from state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest. This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over the past five years when Daniel first sought help for his problems. Dr. Reilly also testified to the exact nature of Daniel's trouble. Daniel Davis is a paranoid schizophrenic. Dr. Reilly rendered that diagnosis five years ago and said there was no way to know how long before that Daniel had suffered from this illness. Daniel often experiences paranoid delusions, times when he believes that others are out to get him and that he must protect himself. His illness has been helped somewhat by the use of medications prescribed by Dr.
Reilly. Daniel's delusions are not as frequent as they once were, and he often functions quite well. However, as Dr. Reilly told you, there is no cure for paranoid schizophrenia. Daniel Davis will never be cured. His best shot at normalcy is to continue meeting with a psychiatrist and to continue taking his medications. Daniel has been very conscientious about these measures. He has never missed an appointment with Dr. Reilly, and he always takes his medications as they are prescribed. There have been times when Daniel had relapses, but he always contacted Dr. Reilly right away to help himself get back on track.

Dr. Reilly also told you about Daniel's delusions, when he believes that others are out to get him. These delusions, while they may seem crazy to us, are very real to Daniel. They often cause him to act in unpredictable ways. When Daniel suffers a delusion, he is not able to control his behavior. He is at the mercy of the delusion, and he acts in whatever way seems to protect him from these unseen foes that we can only imagine.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was under the grip of a delusion when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such delusions. Daniel did not remember all of the events surrounding the murder, but he did remember the feeling that someone was trying to hurt him. He said that he began to feel that way when Bobby Fleming asked for the money to pay for the pack of gum. Bobby Fleming, for whatever reason, appeared to be a threat in Daniel's disturbed mind. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs treatment for his disorder. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

Prosecution: We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state and that death is the only appropriate sentence.
PENALTY PHASE EVIDENCE SUMMARY

(Effort: Low; Type of Mitigation: Proximal (Schizophrenia))

**Summary of the Prosecution's Argument:** As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

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**Defense:** As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

You heard the state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest. This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over the past five years when Daniel first sought help for his problems. Dr. Reilly also testified to the exact nature of Daniel's trouble. Daniel Davis is a paranoid schizophrenic. Dr. Reilly rendered that diagnosis five years ago and said there was no way to know how long before that Daniel had suffered from this illness. Daniel often experiences paranoid delusions, times when he believes that others are out to get him and that he must protect himself. His illness has been helped somewhat by the use of medications prescribed by Dr.
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Dr. Reilly was not called to Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was under the grips of a delusion when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such delusions. Daniel did not remember all of the events surrounding the murder, but he did remember the feeling that someone was trying to hurt him. He said that he began to feel that way when Bobby Fleming asked for the money to pay for the pack of gum. Bobby Fleming, for whatever reason, appeared to be a threat in Daniel's disturbed mind. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs treatment for his disorder. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

Prosecution: We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state. However, we would also like to remind you of Mr. Davis' own psychiatrist's testimony on cross-examination and some things he said that Mr. Davis' attorney understandably failed to remind you of. Dr. Reilly admitted to you that Mr. Davis often missed his appointments and that Mr. Davis was not very consistent with taking his medications. This should lead you to believe that, if Mr. Davis is a paranoid schizophrenic, he is not concerned with making himself better. He doesn't care enough about his own mental health or the well-being of others around him to do as his psychiatrist recommends. Therefore, Mr. Davis' illness, if it does exist, is not mitigating. It doesn't reduce the culpability of Mr. Davis for taking the life of Bobby Fleming. We maintain that death is the only appropriate sentence.
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Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

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bills. He has had to borrow against his home, his retirement plan, and his car, and he was still six months behind in his bills. Then, just when Daniel was beginning to see the light at the end of the tunnel, his wife left him, taking with her Daniel's two sons. His wife's abandonment was completely unexpected. So, in the past five years, Daniel Davis has lost both of his parents, his wife, and his children. He knew that he was in trouble when his parents were ill, and so he sought help from Dr. Reilly. He has seen him consistently for the past five years and, as Dr. Reilly testified, Daniel has been very conscientious in following Dr. Reilly's advice for improving his mental and emotional state. Still, sometimes, it all gets on top of Daniel. There have been times when Daniel had relapses, but he always contacted Dr. Reilly right away to help himself get back on track.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was again dealing with the weight of all his problems when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, but he did remember the feeling that he was losing control of the situation and his life. He said that he began to feel that way when Bobby Fleming asked for the money to pay for the pack of gum. Bobby Fleming, for whatever reason, appeared to be a threat in Daniel's disturbed mind. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

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Prosecution: We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state and that death is the only appropriate sentence.
Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

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Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

You heard the state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest. This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over the past five years when Daniel first sought help for his problems. Dr. Reilly also testified to the exact nature of Daniel's trouble. Daniel Davis has been under extreme mental and emotional distress chronically for the past five years. During that time, he has cared for ill and aging parents, watching first his mother succumb to cancer and, two years later, his father die after a series of increasingly debilitating strokes. Daniel's financial resources were stretched beyond what most of us can imagine due to his parents' medical
bills. He has had to borrow against his home, his retirement plan, and his car, and he was still six months behind in his bills. Then, just when Daniel was beginning to see the light at the end of the tunnel, his wife left him, taking with her Daniel's two sons. His wife's abandonment was completely unexpected. So, in the past five years, Daniel Davis has lost both of his parents, his wife, and his children. He knew that he was in trouble when his parents were ill, and so he sought help from Dr. Reilly and has done so repeatedly over the past five years. Still, sometimes, it all gets on top of Daniel.

Dr. Reilly did not see to Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was again dealing with the weight of all his problems when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, but he did remember the feeling that he was losing control of the situation and his life. He said that he began to feel that way when Bobby Fleming asked for the money to pay for the pack of gum. Bobby Fleming, for whatever reason, appeared to be a threat in Daniel's disturbed mind. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs treatment for his distress. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

Prosecution: We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state. However, we would also like to remind you of Mr. Davis' own psychiatrist's testimony on cross-examination and some things he said that Mr. Davis' attorney understandably failed to remind you of. Dr. Reilly admitted to you that Mr. Davis often missed his appointments and that Mr. Davis was not very consistent in following Dr. Reilly's recommendations for reducing his distress. This should lead you to believe that, if Mr. Davis is under extreme mental and emotional distress, he is not concerned with making himself better. He doesn't care enough about his own mental health or the well-being of others around him to do as his psychiatrist recommends. Therefore, Mr. Davis' illness, if it does exist, is not mitigating. It doesn't reduce the culpability of Mr. Davis for taking the life of Bobby Fleming. We maintain that death is the only appropriate sentence.
Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of
first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The
prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one
aggravating circumstance existed. An aggravating circumstance is something about the murder that makes
it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes
this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the
purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an
actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming
gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of
Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death
is the appropriate sentence.

You have heard the state's psychiatrist who examined the defendant when he was arrested and again later
when he was waiting for trial. Dr. Palmer has told you that Mr. Davis was lucid at the time he was
examined shortly after arrest. He has also told you that he does not believe there is anything wrong with
Daniel Davis today. Dr. Palmer has worked on several of these trials. His experience and his time with Mr.
Davis should be enough to convince you that Mr. Davis was in full control of his mental state at the time of
the crime and that the appropriate sentence for him is death.

Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis
lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider
sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances.
These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell
you about these now.

You heard the state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest.
This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's
own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over
the past fifteen years when Daniel first was brought in for his problems. Dr. Reilly also testified to the exact
nature of Daniel's trouble. Daniel Davis is mentally retarded. His IQ is 71, far below the average person's
intelligence. His retardation is so severe that Daniel's capacity for understanding and daily functioning is
that of a young child. During the past decade and half, Dr. Reilly has worked with Daniel to improve his
level of functioning. He has seen Daniel through several life adjustment programs as well as helped him
increase his level of comprehension to some small degree. Through it all, Daniel has been very conscientious about meeting with Dr. Reilly and following his recommendations for improvement. Even so, as Dr. Reilly testified, there is a limit to just how well Daniel can function in society, and Daniel cannot be expected to have any better control over his actions than one would expect of a 10 year old. There have been times when Daniel has regressed in his progress, but he always contacted Dr. Reilly right away to help himself get back on track.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was simply not able to understand that his actions were wrong when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, and he couldn't understand the enormity of what he had done. He thought that killing Bobby was like shooting someone on a cartoon. Bobby would be back in the next episode. He thought that Bobby was robbing him when he asked Daniel for money to pay for the pack of gum. Of course, we know that Bobby was not a threat. Daniel Davis doesn't understand that. What you have to decide is if Daniel understood that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs continued assistance in learning to function with his retardation. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

Prosecution: We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state and that death is the only appropriate sentence.
Appendix I

PENALTY PHASE EVIDENCE SUMMARY

(Effort: Low; Type of Mitigation: Remote-Chronic (Mental Retardation))

Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

You have heard the state's psychiatrist who examined Mr. Davis when he was arrested and again later when he was waiting for trial. Dr. Palmer has told you that Mr. Davis was lucid at the time he was examined shortly after arrest. He has also told you that he does not believe there is anything wrong with Daniel Davis today. Dr. Palmer has worked on several of these trials. His experience and his time with Mr. Davis should be enough to convince you that Mr. Davis was in full control of his mental state at the time of the crime and that the appropriate sentence for him is death.

Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

You heard the state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest. This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over the past fifteen years when Daniel first was brought in for his problems. Dr. Reilly also testified to the exact nature of Daniel's trouble. Daniel Davis is mentally retarded. His IQ is 71, far below the average person's intelligence. His retardation is so severe that Daniel's capacity for understanding and daily functioning is that of a young child. During the past decade and half, Dr. Reilly has worked with Daniel to improve his level of functioning. He has seen Daniel through several life adjustment programs as well as helped him
increase his level of comprehension to some small degree. Even so, as Dr. Reilly testified, there is a limit to just how well Daniel can function in society, and Daniel cannot be expected to have any better control over his actions than one would expect of a 10 year old.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was simply not able to understand that his actions were wrong when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, and he couldn't understand the enormity of what he had done. He thought that killing Bobby was like shooting someone on a cartoon. Bobby would be back in the next episode. He thought that Bobby was robbing him when he asked Daniel for money to pay for the pack of gum. Of course, we know that Bobby was not a threat. Daniel Davis doesn't understand that. What you have to decide is if Daniel understood that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs continued assistance in learning to function with his retardation. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

**Prosecution:** We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state. However, we would also like to remind you of Mr. Davis' own psychiatrist's testimony on cross-examination and some things he said that Mr. Davis' attorney understandably failed to remind you of. Dr. Reilly admitted to you that Mr. Davis often missed his appointments and that Mr. Davis was not very consistent in following Dr. Reilly's recommendations for coping with his retardation. This should lead you to believe that, if Mr. Davis is too retarded to understand the consequences of his actions, he is not concerned with making himself better. He doesn't care enough about his own mental abilities or the well-being of others around him to do as his psychiatrist recommends. Therefore, Mr. Davis' retardation, if it does exist, is not mitigating. It doesn't reduce the culpability of Mr. Davis for taking the life of Bobby Fleming. We maintain that death is the only appropriate sentence.
Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

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Defense: As the state's attorney has told you, it is now your responsibility to decide whether Daniel Davis lives or dies. He also told you that you must find at least one aggravating circumstance in order to consider sentencing Daniel to death. However, he didn't tell you that you can also find mitigating circumstances. These are factors that suggest you should be merciful when sentencing Daniel Davis. We are going to tell you about these now.

You heard the state's psychiatrist that Daniel was perfectly sane, that he was lucid at the time of the arrest. This testimony, from someone who only saw Daniel two times, contradicts the sworn testimony of Daniel's own psychiatrist. Dr. Reilly has testified that his professional relationship with Daniel has stretched over the past fifteen years when Daniel first was brought in for his problems. Dr. Reilly also testified to the exact nature of Daniel's trouble. Daniel Davis was severely abused by his parents for several years when he was a young boy. This abuse was both physical and mental. When Daniel was a teenager, he went to live with his grandmother who was the person that first brought him to Dr. Reilly. Since that time, Dr. Reilly has worked with Daniel to come to terms with the abuse he suffered at the hands of his parents, to put the pain behind
him and move on. As Dr. Reilly testified, this has been extremely difficult for Daniel. At times, Daniel is very angry about his parents' abuse. He seems to be out of control whenever this anger overtakes him. Dr. Reilly stated that this anger was something they had worked on together. Through all of this, Daniel has conscientiously kept his appointments with Dr. Reilly and followed his advice for putting the past behind him. Still, Dr. Reilly believes that the abuse may have so shaped Daniel's character through the years that Daniel is less able to control his angry actions than most people. There have been times when Daniel had relapses, but he always contacted Dr. Reilly right away to help himself get back on track.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was simply not able to control his actions when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, but he did remember that he had been thinking about his parents that evening. When he saw Bobby Fleming, he remembered his father beating him, and in his mind, he was stuck in that period of time as a child. He felt powerless to stop his parents' abuse. He thought that killing Bobby would make the abuse stop. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs continued assistance in dealing with the abuse he suffered as a child at the hands of his parents. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

**Prosecution:** We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state and that death is the only appropriate sentence.
Summary of the Prosecution's Argument: As a member of the jury that has convicted the defendant of first degree murder, you must now decide whether to sentence Daniel Davis to life or to death. The prosecution is asking for the death penalty. To consider a sentence of death, you must find that at least one aggravating circumstance existed. An aggravating circumstance is something about the murder that makes it worse than the "typical" murder, something that calls for the death penalty. The circumstance that makes this particular murder deserving of the death penalty is that Mr. Davis committed the murder for the purpose of obtaining money. This makes the murder more terrible than other murders, because he placed an actual dollar value on the life of Bobby Fleming. That amount was $240.00, the money Bobby Fleming gave to Mr. Davis from the store cash register. Daniel Davis demonstrated by his behavior that the life of Bobby Fleming was worth sacrificing to get this money. For this reason, the prosecution believes that death is the appropriate sentence.

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him and move on. As Dr. Reilly testified, this has been extremely difficult for Daniel. At times, Daniel is very angry about his parents' abuse. He seems to be out of control whenever this anger overtakes him. Dr. Reilly stated that this anger was something they had worked on together. Still, Dr. Reilly believes that the abuse may have so shaped Daniel's character through the years that Daniel is less able to control his angry actions than most people.

Dr. Reilly did not see Daniel when Daniel was arrested. However, he did meet with him two days later. After that meeting, Dr. Reilly believed that Daniel was simply not able to control his actions when he committed the murder. Daniel's conversation with Dr. Reilly was consistent with others they had shared in the past after such times. Daniel did not remember all of the events surrounding the murder, but he did remember that he had been thinking about his parents that evening. When he saw Bobby Fleming, he remembered his father beating him, and in his mind, he was stuck in that period of time as a child. He felt powerless to stop his parents' abuse. He thought that killing Bobby would make the abuse stop. Of course, we know that Bobby was not a threat. Daniel Davis knows that now. What you have to decide is if Daniel knew that at the time of the murder.

We believe that Daniel Davis does not deserve to die. Daniel needs continued assistance in dealing with the abuse he suffered as a child at the hands of his parents. He needs continued contact with a psychiatrist. As he was not fully responsible for his actions at the time he killed poor Bobby Fleming, he does not deserve to die. For that reason, we ask that you sentence Daniel Davis to life in prison without the possibility of parole and not to death.

**Prosecution:** We maintain that the state's psychiatrist, Dr. Palmer, rendered the correct judgment of Mr. Davis' mental state. However, we would also like to remind you of Mr. Davis' own psychiatrist's testimony on cross-examination and some things he said that Mr. Davis' attorney understandably failed to remind you of. Dr. Reilly admitted to you that Mr. Davis often missed his appointments and that Mr. Davis was not very consistent in following Dr. Reilly's recommendations for coping with his childhood abuse. This should lead you to believe that, if Mr. Davis was so abused as a child that it shaped his character, he is not concerned with making himself better. He doesn't care enough about his own mental health or the well-being of others around him to do as his psychiatrist recommends. Therefore, Mr. Davis' illness, if it does exist, is not mitigating. It doesn't reduce the culpability of Mr. Davis for taking the life of Bobby Fleming. We maintain that death is the only appropriate sentence.
Appendix L
Sentencing Questionnaire

In an actual trial, jurors would now deliberate and review the evidence before making a decision about the penalty. Instead of deliberating, we want you to answer a few questions about the evidence before deciding on the penalty. Feel free to look back at the material you read if you need to.

What evidence (aggravating circumstances) did the prosecutor use to argue for the death penalty? 

What evidence (mitigating circumstances) did the defense attorney use to argue for life imprisonment instead of death? 

Was the mitigating circumstance something that had happened to the defendant recently, or was it something that initially occurred some time ago?

Recent____  Some time ago____

Did the prosecutor present any evidence to argue against the claims of the defense?

Yes____  No____

If the prosecutor did present evidence that argued against the claims of the defense, what was it?

Now we would like you to take a minute and think about all the information you read and all the evidence presented, and make a penalty decision. When you are ready, please indicate below whether you sentence the defendant to life or to death?

Life____  Death____

Now please turn to the next two pages and answer the remaining questions.
Please answer the following opinion questions. There are no right or wrong answers. We simply want to know your perceptions about the evidence and the defendant. Please circle the number that best reflects your opinion on each question.

1. How strongly do you believe the defendant deserved a life sentence?
   Not at all 1 2 3 4 5 6 7 A Great Deal

2. How strongly do you believe the defendant deserved a death sentence?
   Not at all 1 2 3 4 5 6 7 A Great Deal

3. To what extent did you feel the defendant was responsible for the actual occurrence of the [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] in the first place?
   Not at all 1 2 3 4 5 6 7 A Great Deal

4. To what degree do you think the effects of the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] are something he can control?
   Not at all 1 2 3 4 5 6 7 A Great Deal

5. How much do you think the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] impaired his ability to understand that what he was doing was wrong?
   Not at all 1 2 3 4 5 6 7 A Great Deal

6. How much of a role did the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] play in your decision to sentence the defendant to life or death?
   None at all 1 2 3 4 5 6 7 A Great Deal

7. Whether you voted for life or for death, how much did the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] suggest that the penalty should be life?
   Not at all 1 2 3 4 5 6 7 A Great Deal

8. To what extent do you think the defendant has tried to overcome the effects of his [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse]?
   Not at all 1 2 3 4 5 6 7 A Great Deal

9. How much do you think the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] impaired his judgment at the time of the murder?
   Not at all 1 2 3 4 5 6 7 A Great Deal

10. How much more responsible does the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] make him for the crime?
    Not at all 1 2 3 4 5 6 7 A Great Deal

11. How much did you think about the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] while you were deciding on the penalty?
    Not at all 1 2 3 4 5 6 7 A Great Deal

12. Whether you voted for life or for death, how much did the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] suggest that the penalty should be death?
    Not at all 1 2 3 4 5 6 7 A Great Deal
13. To what extent do you feel the defendant was responsible for the effects of his [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] that were present when he committed the murder?

| Not at all | 1 | 2 | 3 | 4 | 5 | 6 | 7 | A Great Deal |

14. To what degree do you think the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] lessened his ability to behave within the bounds of the law at the time of the murder?

| Not at all | 1 | 2 | 3 | 4 | 5 | 6 | 7 | A Great Deal |

15. How involved were you in your sentencing decision, that is, how much did you really think about what the appropriate penalty should be?

| Not at all | 1 | 2 | 3 | 4 | 5 | 6 | 7 | A Great Deal |

16. How much less responsible does the defendant's [schizophrenia/extreme mental and emotional distress/mental retardation/childhood abuse] make him for the crime?

| Not at all | 1 | 2 | 3 | 4 | 5 | 6 | 7 | A Great Deal |