
Improving Comprehension of Capital Sentencing Instructions

Debunking Juror Misconceptions

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Previous research has demonstrated that judicial instructions on the law are not well understood by jurors tasked with applying the law to the facts of a case. The past research has also shown that jurors are often confused by the instructions used in the sentencing phase of a capital trial. The current research tested the effectiveness of a “debunking” approach to improving juror misunderstanding associated with capital sentencing instructions. Participants were randomly assigned to hear either Florida’s pattern instructions used in the penalty phase of a capital trial or the same instructions with additional statements that mentioned and refuted misconceptions thought to be associated with established areas of miscomprehension. After participants heard the judicial instructions, their understanding of the law on capital punishment decision making was assessed. The results revealed that comprehension was higher for participants exposed to the bias-refutation statements than for participants who were exposed to only the pattern instructions.

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Most court jurisdictions in the United States use standardized or pattern instructions to inform jurors about points of law. These instructions were developed “to guarantee uniformity and clarity in the presentation of the charge

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to the jury” (Buchanan, Pryor, Taylor, & Strawn, 1978, p. 32). Pattern instructions instruct the jury on the relevant substantive law and give the jury general instructions about their behavior. These instructions have formalized the role of jurors into a specific one: Jurors are to apply the law to the facts of the case. Although juries sometimes ignore the law (i.e., jury nullification), the goal of most courts is for jurors to use the law when making their decisions (Levine, 1992). Presumably, legal instructions promote this objective by informing jurors about aspects of the law that they otherwise might not understand. If jurors, however, do not comprehend the legal instructions, then they cannot apply those instructions. Capital trials raise the stakes on this issue. In such cases, jury misunderstanding of the law directly affects whether defendants live or die.

The extant empirical research has shown that jurors have difficulty understanding typical pattern jury instructions. Techniques for increasing comprehension such as clarifying legalistic language have shown some success, though considerable room for improvement remains. Part of the failure to achieve greater understanding may be because of preexisting, incorrect beliefs that jurors have about capital sentencing procedures. Typical jury instructions do not address these beliefs. The present study continues research into improved juror understanding by using a randomized experimental design to assess the effects of efforts to refute particular misconceptions that may interfere with juries’ abilities to reach appropriate legal decisions on capital sentencing.

Jury Miscomprehension of Instructions

Studies beginning in the 1970s examined how well mock and former jurors understood instructions on points of law necessary to determine criminal guilt or civil liability. By and large, these research projects revealed substantial miscomprehension of judicial instructions (Benson, 1985; Buchanan et al., 1978; Charrow & Charrow, 1979; Elwork, Sales, & Alfini, 1977; Kramer & Koenig, 1990; Reifman, Gusick, & Ellsworth, 1992; Severance, Greene, & Loftus, 1984; Severance & Loftus, 1982; Steele & Thornburg, 1988). More recently, scholars have examined juror understanding of the penalty phase instructions in capital trials. Capital trials are unique among all other felony trials because they are bifurcated into two phases. In the guilt phase, jurors determine guilt or innocence; in the penalty phase, they determine sentence. The weight of the social science research suggests that jurors misunderstand many procedural and substantive aspects of the penalty phase pattern instructions.

First, jurors tend to overestimate the standard of proof for mitigating circumstances. Following the Supreme Court’s ruling in *Walton v. Arizona*

(1990), states can adopt any standard they want for proving mitigating factors so long as the standard does not lessen the prosecution's burden of proving all elements of its case beyond a reasonable doubt. Depending on the state, mitigating factors may have to be proven by a preponderance of the evidence or to a juror's personal satisfaction. Even after hearing judicial instructions on this issue, however, many people believe that the standard is much higher (e.g., beyond a reasonable doubt). For example, Frank and Applegate (1998) reported that although more than 80% of the mock jurors in their study knew that a prosecutor must prove an aggravating factor beyond a reasonable doubt, fewer than 8% knew that a mitigating factor only had to be proven to a juror's personal satisfaction (also see Blankenship, Luginbuhl, Cullen, & Redick, 1997; Luginbuhl, 1992; Luginbuhl & Howe, 1995).

Second, jurors are often unclear about the appropriateness of using nonenumerated mitigating circumstances. Several studies have demonstrated that many jurors mistakenly believe they can only consider mitigating factors that are specifically stated in the legal instructions (Blankenship et al., 1997; Diamond & Levi, 1996; Frank & Applegate, 1998; Luginbuhl & Howe, 1995; Wiener, Pritchard, & Weston, 1995). People do not understand, even after hearing capital sentencing pattern instructions, that they may consider any factor that they believe is a reason not to execute a defendant (*Lockett v. Ohio*, 1978). For example, Blankenship et al. (1997) reported that less than 40% of the mock jurors they studied realized that the nonenumerated factor of remorse could be considered as a reason to sentence a capital defendant to life instead of death.

Third, jurors frequently fail to understand the rule established by *Mills v. Maryland* (1988) that the jury need not unanimously believe that a mitigating factor exists for one juror to consider that mitigating factor as a reason not to sentence the defendant to death (Blankenship et al., 1997; Diamond & Levi, 1996; Frank & Applegate, 1998; Luginbuhl, 1992; Luginbuhl & Howe, 1995; Wiener et al., 1995). What a capital juror often misses is that he or she may consider a mitigating circumstance if it is proven to his or her personal satisfaction, regardless of what the other jurors believe. As an example, Frank and Applegate (1998) reported that only a little more than 20% of mock jurors realized that they do not have to unanimously agree on a factor for it to be considered for a sentence of life imprisonment.

Fourth, the existing studies consistently show that jurors tend to misunderstand how to weigh aggravating and mitigating factors (Blankenship et al., 1997; Diamond & Levi, 1996; Frank & Applegate, 1998). Blankenship et al. (1997) reported that many mock jurors erroneously believed it was appropriate to simply add up the number of aggravators and mitigators to determine whether the aggravating circumstances outweighed the mitigating

circumstances. Capital jurors seem to not understand that the weighing of aggravators versus mitigators is qualitative not quantitative.

Finally, other research has demonstrated that capital jurors tend to misunderstand the role of the jury in the sentencing phase of a capital trial (Garvey, Johnson, & Marcus, 2000; Geimer & Amsterdam, 1988; Haney, Sontag, & Costanzo, 1994; Hoffman, 1995). The Supreme Court in *Caldwell v. Mississippi* (1985) ruled that a death sentence was invalid if jurors were led to believe that they were not responsible for their decision. The Capital Jury Project (CJP)—a multijurisdictional effort to survey individuals who have served on capital juries—has examined jurors' beliefs on this issue. Using CJP data for Indiana, Hoffman (1995) reported that jurors tend to minimize their perceptions of personal responsibility for a death sentence by wrongly arguing that the capital sentencing instructions demand a particular sentence. Thus, at least some jurors believe that they are not responsible for assigning a death sentence when, in fact, they are.

Improving Jury Comprehension

Because many elements of jury instructions are unclear to jurors, social scientists have attempted to improve jurors' ability to comprehend jury instructions. Wiener and his colleagues (2004) have investigated whether understanding can be improved by providing mock jurors with an opportunity to practice their decision making or by providing them with a flowchart that represents the legal procedures of capital sentencing. A number of researchers have approached the problem of instructional miscomprehension by improving the psycholinguistic features of the instructions themselves. Syntactical and grammatical structures and aspects of the language are simplified so that the instructions can be understood more easily by lay audiences (Imwinkeiried & Schwed, 1987). This approach has shown some success in raising comprehension beyond what is achieved using pattern instructions (Charrow & Charrow, 1979; Diamond & Levi, 1996; Elwork et al., 1977; Frank & Applegate, 1998; Severance et al., 1984; Severance & Loftus, 1982; Wiener et al., 1995, 1998, 2004). Even with simplified instructions, however, comprehension remains deplorably low.

Diamond (1993) has argued that simply improving the clarity of judicial instructions is not enough to successfully guide discretion in the penalty phase of a capital trial. Jurors are not blank slates but bring certain expectations, beliefs, and abilities to the sentencing task. Diamond contends that when jurors are confronted with an instruction that is inconsistent with their

preconceived notions about the court system, even the clearest of instructions can fail to instruct. The existence of incorrect beliefs about the law among mock jurors is more than hypothetical; it has been empirically demonstrated for perceptions of homicide (Wiener, Richmond, Seib, Rauch, & Hackney, 2002) and other offenses (Smith, 1991) and, in particular, for capital sentencing concepts (Wiener et al., 2004).

If jurors come to their task with incorrect beliefs about capital sentencing, one way of improving comprehension of instructions is to address and debunk their mistaken ideas. The communication literature convincingly demonstrates that a refutational, two-sided message, which mentions both sides of an issue and rebuts the incorrect one, is most effective in this regard (Allen, 1991; O'Keefe, 1999). Demonstrating the effectiveness of debunking in a legal situation, Smith (1993) was able to eliminate a previously observed increase in guilty verdicts for typical versus atypical crime descriptions by using judicial instructions that addressed and refuted jurors' misconceptions.

We are aware of only one prior study that has tested the influence of this strategy on improving comprehension of capital sentencing instructions. Wiener et al. (2004) examined mock jurors' comprehension of several variations of instructions, including the Missouri Approved Instructions (i.e., pattern instructions), baseline instructions that eliminated certain definitions, and debunking instructions that mentioned and refuted common misconceptions. Although the debunking instructions failed to improve understanding of declarative state law, procedural state law, or procedural constitutional law, the mock jurors showed enhanced comprehension of declarative constitutional law with these instructions.

The present study provides an additional test of including refutational, two-sided messages in pattern instructions to debunk jurors' misconceptions. In particular, we examine whether understanding can be improved using this strategy in the five areas of misunderstanding described above: standard of proof for mitigating factors, appropriateness of nonenumerated mitigating factors, unanimity on existence of mitigating factors, weighing of aggravating and mitigating factors, and responsibility for sentencing.

Method

Participants

A total of 199 Florida undergraduate students enrolled in communication, criminal justice, or legal studies courses participated in this study.

Below, we present analyses based on the entire sample. We also separately report results for the 144 participants who were capital jury eligible. Federal and state laws place restrictions on who may serve on a jury hearing a capital case (see F.S. 40.01; F.S. 40.013; *Wainwright v. Witt*, 1985; *Witherspoon v. Illinois*, 1968). In the current study, participants were eligible if they were 18 or older, believed they were eligible to be a juror, and did not assert that they would always recommend either a death or life sentence regardless of the facts of any individual case.

Of the participants, 63% were female. Participants' ages ranged from 16 to 50 ($M = 21.5$, $SD = 4.6$). The majority of participants, 67%, indicated they were White. The next most common racial group was African American at 14%. Of participants, 91% indicated that they had declared a major. Among these participants, 40% were criminal justice/legal studies majors, and 60% were other majors.

Procedure

Research participants were randomly assigned to one of two conditions that were run simultaneously. In both conditions, research participants listened to an audiotape of an ostensible judge reading a fact scenario. In the pattern instruction condition ($n = 93$), research participants heard a judge read Florida's pattern capital sentencing instructions. In the pattern plus debunking condition ($n = 106$), research participants heard Florida's pattern capital sentencing instructions with additional statements that mentioned and refuted common misconceptions. All research participants, no matter what condition they were assigned to, completed the same questionnaire to assess their comprehension.

Stimulus Materials

All research participants were exposed to an identical fact scenario that consisted of a summary of the guilt and penalty phase of a capital trial. The circumstances of the murder were recounted, and the evidence offered at trial was described. After being told that the trial jury had found the defendant guilty, the participants heard about mitigating and aggravating factors put forward in the penalty phase.

The fact scenario used in this study is based on a summary of the fact scenario used by Wiener et al. (1995), although it differs from their summary in several ways. The language was revised to make it more understandable for a verbal presentation. The facts were altered to take place in Florida, and one of the aggravating factors was altered to make it consistent with Florida law.

Wiener et al.'s aggravating factor was "depravity of mind" because two shots were fired at point-blank range. This was changed to having the prosecution describe this aspect of the offense as "heinous, atrocious, or cruel," which mirrors the language of Florida's capital sentencing statute (F.S. 921.141).

After relaying the facts of the case, the judge read the capital sentencing instructions aloud. Research participants in the pattern condition heard Florida's standard capital sentencing instructions. For the participants assigned to the experimental condition, five debunking statements were added to the Florida pattern instructions. The statements addressed each of the areas of misconception described above. For example, to correct overestimates of the standard of proof for mitigating factors, the following statement was added:

Many jurors mistakenly believe that because other elements of a criminal proceeding must be proven beyond a reasonable doubt that the defense must prove a mitigating factor beyond a reasonable doubt. This is not the case. You need only be reasonably convinced that a mitigating factor exists in order to consider it established.

All of the debunking statements used such a refutational, two-sided approach.

Comprehension Measures

To assess comprehension of capital sentencing instructions, research participants responded to 12 items, including 4 multiple-choice questions and 8 items asking participants to evaluate jury deliberation scenarios and report on whether the hypothetical jury or juror followed the law. For example, this is one of the items that assessed how well the participants understood that jurors need not be unanimous on the existence of mitigating factors:

Eleven jurors decide from the evidence that the defendant was abused as a child. The same eleven jurors decide that this history of child abuse is a mitigating circumstance. One juror disagrees that such abuse is a mitigating circumstance. Because the jurors cannot unanimously agree that being abused as a child is a mitigating circumstance, they do not consider it any further. Did the jury follow the law? (Correct answer = no)

Most of the comprehension items were based on questions used in previous research on understanding of capital sentencing instructions (Blankenship

et al., 1997; Frank & Applegate, 1998). All responses were coded as either correct or incorrect (i.e., correct = 1 and incorrect = 0). A selection of “I don’t know” or a question left unanswered was coded as incorrect. An overall comprehension score was computed by calculating the percentage of questions that each participant answered correctly.

Results

Instruction Type and Overall Comprehension

Twelve questions assessed participants’ comprehension of those five areas addressed by the debunking statements. Overall, the average was 53.3% ($n = 197$, $SD = 24.4$) of the questions answered correctly. Participants in the treatment condition were exposed to capital jury sentencing instructions that mentioned and refuted known areas of miscomprehension, whereas participants in the control condition heard the capital jury instructions without the additional statements. Participants in the control condition averaged 46.3% ($n = 92$, $SD = 21.0$) correct responses to the comprehension items. Participants in the treatment condition averaged 59.4% ($n = 105$, $SD = 25.6$) correct answers. This difference—an improvement of more than 13 percentage points—was statistically significant, $t(195) = 3.885$, $p < .001$.

A second analysis was performed for those participants who were capital juror eligible. Overall, these participants averaged 55.5% ($n = 142$, $SD = 24.3$) correct responses to the comprehension questions. Participants in the pattern instruction condition on average correctly answered 47.5% ($n = 62$, $SD = 21.2$) of the comprehension questions, whereas those in the debunking condition averaged 61.8% ($n = 80$, $SD = 24.9$) correct responses. This difference of 14.3 percentage points was statistically significant, $t(140) = 3.623$, $p < .001$.

To assess the impact of major on comprehension, a 2 (treatment versus control) \times 2 (criminal justice/legal studies major versus nonmajor) between-subjects ANOVA on comprehension of the five areas addressed by the debunking statements was calculated. For all participants, a significant main effect was observed for condition with participants in the treatment condition answering more questions correctly, $F(1, 177) = 11.227$, $p = .001$. A significant main effect was also observed for major, $F(1, 177) = 6.317$, $p = .013$. Criminal justice/legal studies majors answered 60.0% ($n = 71$, $SD = 23.0$) of the questions correctly, whereas non-criminal justice/legal studies majors answered only 50.6% ($n = 107$, $SD = 24.7$) of the questions correctly. No interaction of Treatment \times Major was observed.

The above analysis was repeated for capital juror-eligible participants. For these participants, a significant main effect was observed for condition, with participants in the treatment condition answering more questions correctly, $F(1, 129) = 8.573, p = .004$. A borderline significant main effect was observed for major, $F(1, 129) = 3.724, p = .056$. Criminal justice/legal studies majors answered 62.2% ($n = 50, SD = 23.2$) of the questions correctly, whereas nonmajors answered 52.8% ($n = 80, SD = 24.2$) of the questions correctly. For capital juror-eligible participants, no interaction of Treatment \times Major was observed.

Responses to Individual Comprehension Items

Table 1 depicts the relationship between condition and comprehension of the individual items.¹ Significant differences were observed for 7 of these 12 items. Among all of these significant differences, the comprehension level was higher in the treatment condition than in the control condition. A closer examination of Table 1 reveals that the debunking statements were more successful in some areas than in others at improving comprehension of the law. One area of the law on which the bias-refutation statements had no apparent effect was in dispelling the jurors' notion that they were not responsible for their decision. In the other four comprehension areas, at least one of the questions measuring the legal concept showed significant improvement in the treatment condition. In two comprehension areas, standard of proof for mitigating factors and unenumerated mitigating factors, all of the comprehension questions were answered correctly more often by participants in the treatment condition, and these differences were significant. Lastly, one question, the third on unanimity on mitigators, showed borderline statistical improvement in the treatment condition ($p = .06$).

A second analysis of the individual items examined only those participants who were capital juror eligible. Table 2 depicts the relationship between condition and comprehension of the individual items for capital juror-eligible participants. Statistically significant differences were observed for 4 of the 12 comprehension items. Among all of these statistically significant differences, comprehension was higher in the treatment condition. In addition, three questions showed borderline statistical improvement in the treatment condition.

Comparing Table 2 to Table 1, it can be seen that four items showed significant differences in comprehension for both analyses. For these questions, comprehension was at least 15 percentage points higher when debunking statements were included, regardless of whether those who would not be eligible to sit on a capital jury were excluded. Three questions, however, that

Table 1
Comprehension Levels on Individual Items for all Participants

Comprehension Item	Pattern Instructions ^a (%)	Debunking Instructions ^b (%)	Comprehension Difference (%)
Standard of proof for mitigating factors–1*	25.8	41.5	15.7
Standard of proof for mitigating factors–2*	29.0	43.4	14.4
Unenumerated mitigating factors–1*	39.8	54.3 ^c	14.5
Unenumerated mitigating factors–2**	12.9	33.0	20.1
Unenumerated mitigating factors–3*	30.1	45.3	15.2
Perceived personal responsibility–1	62.0 ^c	66.7 ^c	4.7
Perceived personal responsibility–2	65.6	71.7	6.1
Unanimity on mitigators–1	61.3	68.9	7.6
Unanimity on mitigators–2**	44.1	65.1	21.0
Unanimity on mitigators–3	60.2	72.6	12.4
Weighing of aggravators and mitigators–1**	41.9	67.0	25.1
Weighing of aggravators and mitigators–2	79.6	80.2	0.6

a. $n = 93$.

b. $n = 106$.

c. Sample size is reduced by 1 because of nonresponse.

* $p < .05$, Pearson chi-square. ** $p < .01$, Pearson chi-square.

were statistically significant for all participants—the second question on standard of proof for mitigating factors, the third item on unenumerated mitigating factors, and the second question on unanimity on mitigators—showed no significant differences between instruction type when only capital jury-eligible participants were included. Still, the degree of difference in comprehension for these items is quite similar in both tables. Because the pattern of results shown in Tables 1 and 2 is quite similar, the differences in statistical significance likely reflect the smaller number of cases—and, thus, reduced statistical power—of the analysis using only capital juror-eligible respondents.

Two additional questions, not listed in the tables, addressed participants' understanding of the meaning of *aggravation* and *mitigation*. Among all participants who responded ($n = 198$), 60.1% were able to correctly identify the meaning of a mitigating factor, and 82.3% were able to correctly identify the meaning of an aggravating factor. Among capital juror-eligible participants ($n = 143$), 62.9% were able to correctly identify the meaning of a mitigating factor, and 83.2% were able to correctly identify the meaning of an aggravating

Table 2
Comprehension Levels on Individual Items
for Capital Jury-Eligible Participants

Comprehension Item	Pattern Instructions ^a (%)	Debunking Instructions ^b (%)	Comprehension Difference (%)
Burden of proof for mitigating factors-1*	23.8	44.4	20.6
Burden of proof for mitigating factors-2	31.8	45.7	13.9
Unenumerated mitigating factors-1*	38.1	58.8 ^c	20.7
Unenumerated mitigating factors-2**	14.3	33.3	19.0
Unenumerated mitigating factors-3	31.8	44.4	12.6
Perceived personal responsibility-1	64.5 ^c	66.3 ^c	1.8
Perceived personal responsibility-2	71.4	74.1	2.7
Unanimity on mitigators-1	63.5	70.4	6.9
Unanimity on mitigators-2	50.8	66.7	15.9
Unanimity on mitigators-3	58.7	72.8	14.1
Weighing of aggravators and mitigators-1**	34.9	74.1	39.2
Weighing of aggravators and mitigators-2	81.0	86.4	5.4

a. $n = 63$.

b. $n = 81$.

c. Sample size is reduced by 1 because of nonresponse.

* $p < .05$, Pearson chi-square. ** $p < .01$, Pearson chi-square.

factor. Because the debunking statements did not address the meaning of these words, it was expected that for these questions no significant differences would be observed between the instruction condition. This expectation was borne out by the results. For the question on the meaning of an aggravating factor, there was no significant difference between the treatment and control groups when examining all participants, $\chi^2(1) = 0.289$, $p = .591$, or capital juror-eligible participants, $\chi^2(1) = 0.503$, $p = .478$. For the question on the meaning of a mitigating factor, there was no significant difference between the treatment and control groups when examining all participants, $\chi^2(1) = 0.103$, $p = .748$, or capital juror-eligible participants, $\chi^2(1) = 0.015$, $p = .903$.

Discussion

These results suggest that Florida's pattern capital sentencing instructions are not well understood. These findings also indicate that exposing participants to statements that mention and refute the relevant preexisting beliefs can improve comprehension. Because previous research (Diamond & Levi, 1996; Wiener et al., 1995, 1998) has presented empirical evidence consistent with the views of legal commentators that miscomprehension of capital sentencing instructions favors the prosecution (Eisenberg & Wells, 1993; Hoffman, 1995; Luginbuhl, & Howe, 1995), improving the comprehension of capital sentencing instructions will increase both the legality of capital sentencing decisions and the fairness of those decisions. Based on the results of this study, it is recommended that Florida's judicial policy makers consider changing capital sentencing pattern instructions in the following three areas: burden of proof for mitigating factors, unenumerated mitigating factors, and weighing of aggravating and mitigating factors. These recommendations are based on the observed results for capital jury-eligible participants—those participants who are most comparable to actual capital jurors.

Fewer than 2 out of 5 participants who heard Florida's pattern instructions understood that the process of weighing aggravating and mitigating factors was not a quantitative one. In contrast, nearly three fourths of participants exposed to the debunking statement on this matter recognized that a quantitative approach is legally incorrect. Of all the comprehension questions, the improvement on this weighing question was the most dramatic—understanding was nearly 40 percentage points higher.

These results were not reflected, however, in the second question on this issue. We suspect the null effects were because of the item tapping a different aspect of the weighing task. Rather than measuring understanding of how to weigh aggravating and mitigating factors, the second question addressed what jurors should do as a result of their decision on the relative weights. It appears that on this issue, little confusion exists. This question was answered correctly more often than any other, regardless of what instructions the participants heard.

In contrast, most participants did not understand that they could consider any factor supported by the evidence as a reason not to sentence a defendant to death and that they were not bound to only consider the mitigating factors stated in the sentencing instructions. For one of the questions measuring understanding of this concept, fewer than 1 out of 5 participants in the pattern instruction condition understood this concept. Showing marked improvement, one third of participants exposed to the relevant debunking statement were able to correctly answer this question. In addition, on one other measure

of participants' understanding of this concept, comprehension was increased by more than 20 percentage points for those participants who heard instructions with the added statements debunking common misconceptions.

Understanding of the standard for proving mitigating factors was also exceptionally low. Fewer than one fourth of participants in the control condition were able to correctly answer one of the questions measuring understanding of the rule that jurors only need to be reasonably convinced that a mitigating factor exists to consider it established. Nearly half of the participants exposed to the improved instructions were able to answer this question correctly. The other question measuring this concept showed a similar pattern of improvement, although the difference in comprehension did not reach significance with the reduced sample.

These findings suggest that judicial policy makers should set about making changes in Florida's capital sentencing instructions. It is possible to dramatically improve jurors' understanding of the burden for proving mitigating factors, consideration of unenumerated mitigators, and understanding of how to weigh aggravating and mitigating circumstances by addressing biases that hinder comprehension. It is not yet clear why bias-refutation efforts enjoyed less success with refuting the jurors' belief that they were not personally responsible for the sentence.

Conclusion

The response of judicial policy makers to social scientific findings on the comprehensibility of legal instructions has been mixed (Tanford, 1991). Tanford's (1991) findings suggest that judicial commissions have been the most responsive to social science research on instructions comprehension but that legislatures have made only a few changes because of social scientific findings. Furthermore, the courts have not been receptive to appeals based on claims that the jury did not understand the sentencing instructions (Lieberman & Sales, 1997). More broadly, Acker's (1993) analysis revealed that social science research had little influence on Supreme Court decisions in late-1980s death penalty cases. Thus, direct constitutional challenges based on juror miscomprehension may meet with little success. Still, the growing body of research showing that laypersons misunderstand the formal legal language of death penalty instructions, coupled with research demonstrating the ability to improve comprehension, may motivate the legal community to revisit death sentencing procedures in an effort to prevent future constitutional challenges (Frank & Applegate, 1998).

This study's results also have implications at the level of legal practice. Attorneys could clarify the law using debunking statements in their closing arguments. In an analysis of closing arguments in California capital cases, Haney and Lynch (1997) found that attorneys "spent surprisingly little time attempting to clarify the capital penalty phase instructions" (p. 584). When they did discuss the process of decision making, they defined terms (e.g., *aggravating*), reminded the jury of particular case factors (e.g., a defendant's prior crime), or discussed weighing of aggravating and mitigating factors in "very superficial or cursory fashion" (p. 588). Haney and Lynch report that seldom did an attorney's arguments truly clarify how the jury should reach a sentencing decision. Thus, it appears that attorneys have not yet availed themselves of an opportunity to clarify the law for jurors. The results reported here suggest that closing arguments could be more persuasive if they sought to address preexisting juror misconceptions of the law using refutational, two-sided messages.

Note

1. The wording of all items is available from the lead author on request.

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