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In Search of the Sweet Spot: Jurors' Consideration of Expert Testimony in Sentencing Decisions

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Introduction

- Common factors presented in mitigation (e.g., substance abuse) cause a "backfire effect" (Barnett, Brodsky and Davis 2004; Barnett, Brodsky & Price, 2007)
- Contrary to the defense's intentions, jurors consider the information more aggravating than mitigating
- Ideally, expert testimony makes jurors more informed in their sentencing, but there is risk for the defense because such testimony may underscore unfavorable qualities of the defendant
- The goal of the present study was to better understand the role of mental health experts in capital case sentencing.
- Hypothesis: Participants (mock jurors) exposed to expert testimony regarding a defendant's substance abuse would be more likely to choose the death penalty**

Design

2 (Expert testimony: Present vs. Absent) x 2 (Defendant substance abuse: Present vs. Absent)

	Defendant Diagnosis Present	Defendant Diagnosis Absent	
Expert Testimony Present	n = 153	n = 173	n = 326
Expert Testimony Absent	n = 188	n = 191	n = 379
	n = 341	n = 364	

Participants

- N=705: 229 male (32.50%), 476 female (67.50%)
- College students (n=354), Community members recruited using *MTurk* (n=351)
- White/Caucasian (83.50%), Black/African-American (7.70%), Asian-American (2.60%), Hispanic/Latino (3.80%), Native American (0.10%), Biracial (1.70%) and Other (0.60%)
- Some HS (0.60%), HS Diploma/GED (4.80%), Some College (67.90%), Bachelor's Degree (17.00%), Master's/Doctoral Degree (9.50%) and Other (0.10%)
- Age range: 18 to 71 years old (mean age = 27.91, SD = 12.79 years)

Procedure

- Demographics questionnaire and screened for death qualification per *Witherspoon v. Illinois* (391 U.S. 510, 1968)
- Punitive Orientation Scale (PUN; Smith & Capps, 2000)
- Case information inclusive of aggravating and mitigating factors
 - Some participants viewed expert testimony via simulated courtroom transcript
 - Control group exposed to no expert testimony
- Juror decision-making questionnaire indicating initial inclination toward sentencing on a scale of 1 to 100 (1 = Life Imprisonment; 100 = The Death Penalty)
- Dichotomous choice of Life or Death for the defendant
- Participants completed the study in their own time and space over the internet

Data Analysis

- A hierarchical multiple regression was employed to determine whether Expert Testimony made a significant contribution to predicting sentencing decisions (Aiken and West, 1991)
- We also explored whether such testimony proved significant beyond mock juror demographic and personality variables (i.e., Gender, Race and Punitiveness) established through past empirical research to make a difference in capital sentencing
- To predict a categorical outcome of sentencing decision with two categories (Life in Prison and Death), a logistical regression was used with a Forced Entry Method
- Four variables (Gender, Race, Punitiveness and Expert Testimony) were tested in one block to determine predictive ability
- The final analysis was an ANOVA to uncover any possible interaction effect between Sample Type and Expert Testimony with regard to influence on the continuous dependent variable

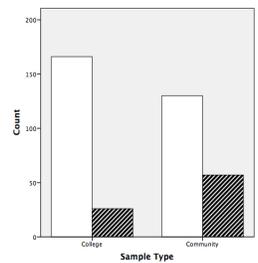
Results

- The defendant's substance abuse did not significantly influence sentencing decisions
- Expert testimony regarding biopsychosocial mitigation did not contribute to a backfire effect
- For college students, the testimony was associated with more leniency, as measured by the continuous dependent variable
- With regard to the ultimate decision of Life in Prison or Death, the average college student was not significantly more or less considerate of testimony than a more venire-representative participant
- Both Sample Type and Expert Testimony were shown to exert significant main effects; however, no interaction was uncovered

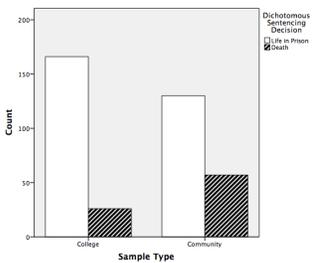
Continuous Sentence Scale Scores by Sample Type



Dichotomous Sentencing Decisions by Sample for Participants Exposed to Testimony (n = 326)



Dichotomous Sentencing Decisions by Sample for Participants Not Exposed to Testimony (n = 379)



Discussion & Implications

- Expert testimony regarding biopsychosocial mitigation did not contribute to a backfire effect; this is noteworthy considering the extant data suggesting substance-themed mitigation is harmful for capital murder defendants
- The present study demonstrated that mental health testimony may hold more weight for jurors with higher levels of educational achievement
- The educational makeup of the jury may help determine the appropriate allocation of time and financial resources spent on retaining mental health experts and preparing them for the witness stand
- Defense attorneys and other strategists should carefully consider how such testimony can make a stronger impression on less educated jurors or jurors who are further removed from the role of student
- For testifying experts, this may take the form of avoiding clinical jargon in explanations of biopsychosocial mitigation evidence
- As always, a testifying expert should strive to be as clear and factual as possible, while at the same time dispelling premature judgments, stigma and inaccurate information laypersons may hold against a capital murder defendant
- Results suggested expert testimony is most powerful for some jurors during the initial stages of decision-making, perhaps just prior to deliberation
- Similar to the "sweet spot" recording engineers speak of, the "sweet spot" in capital case sentencing may be the point at which content of expert testimony is processed by the decision-maker "the way it was intended to be heard" by the expert (Merchel & Groth, 2009)
- This may be the time when, for the juror, the message of the testimony is freest of confounding noise (e.g., other jurors' opinions)
- Future research on expert mental health testimony and capital case sentencing might include mock deliberation, to help elucidate when testimony is most impactful on jurors (i.e., when the "sweet spot" occurs), and what factors cause a juror to be more or less considerate of such information