Physical and Sexual Abuse Histories in Mitigation

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Introduction

• Mitigating evidence is presented by the defense during the sentencing phase of a capital trial to give jurors potential reasons to reduce a defendant’s sentence.

• “Any aspect of a defendant’s character” that warrants a sentence less than death may be presented as a mitigating factor (Lockett v. Ohio, 1978).

• A history of physical and/or sexual abuse is often considered a mitigating factor in the sentencing phase.

Present Study

• A history of physical and/or sexual abuse is one of the strongest mitigating factors in defense-positive sentencing (Barnett & Brodsky, 2007; Barnett, Brodsky, & Davis, 2004; Tetterton & Brodsky, 2007).

• The purpose of the current study was to examine the circumstances under which presenting a defendant’s physical or sexual abuse history would be interpreted by jurors as mitigating.

• Information about the mock-jurors’ personal histories of abuse was collected to evaluate whether a juror’s experience of abuse interacts with the defendant’s experience of abuse in a way that biases the sentencing decision of the juror.

Design

Design: 2 x 3 between-groups

Independent Variables: 1) Type of defendant abuse (physical vs. sexual), 2) Length of defendant abuse (1 occurrence vs. 3 months duration vs. 9 years duration)

Dependent Variables: 1) Nonrestricted sentence decision. 2) Dichotomous sentence decision (LWOP or death penalty)

Subject Variables: Participants’ demographic characteristics, prior experience or familiarity with, and attitudes toward childhood abuse.

Participants

• 317 undergraduates at a large university

• Demographics: 30% male, 70% female

• 80% White, 10% African American, 10% other

• Mean age: 18.95 years (SD = 3.45)

Stimuli

• Six vignettes were adapted from the sentencing phase of an actual capital trial to match the 6 study conditions.

• The vignettes reported the closing arguments of the guilt phase, judge’s instructions on weighing aggravating and mitigating circumstances, and presentation of direct and cross-examinations of two expert witnesses who addressed the variables of the study.

Measures

• Sentencing Questionnaire

• Abuse History Questionnaire

• Punitiveness Orientation Scale (Capps, 2002)

• Trauma Symptom Orientation Scale (Briere & Runz, 1989)

• Demographics questionnaire

Results

• Our overall MANOVA with nonrestricted sentencing decision as the DV was significant, F(6, 269) = 10.42, p < .001.

• However, neither of our manipulated IVs accounted for a significant portion of the variance.

• Mock jurors did not distinguish a difference between a defendant’s experience of physical or sexual abuse in their sentencing decisions, F(1, 269) = .72, p = .40.

• The length of abuse condition (1 occurrence vs. 3 months vs. 9 years of abuse) also did not elicit differential sentencing from jurors, F(1, 269) = .94, p = .39.

• The only variable that did account for a significant portion of the variance was death penalty support, F(1, 269) = 56.58, p < .001, associated with more punitive judgments.

• Subjects who indicated that someone close to them had gotten into legal trouble for their sexually aggressive behavior gave significantly more “death penalty” sentences than subjects who denied that someone close to them had ever been in legal trouble for sexually aggressive behavior, X^2 (1, 277) = 3.73, p = .05.

• Men gave significantly more “death penalty” sentences than women, X^2 (1, 268) = 13.09, p < .001.

Discussion

• These results suggest that

  1) A defendant’s abuse history is important in mitigation, even though whether it is sexual or physical abuse, or lengthy or short in duration makes no difference.

  2) Defense attorneys should be sure to present abuse histories in mitigation, even if the abuse was brief.

  3) During jury selection, attorneys should ask potential jurors about the abuse histories of family and friends histories of and familiarity with abuse.

  4) More research should be done with jurors who have been sexually abused. Only 1.5% of our sample reported a history of sexual abuse, a rate lower than suggested in the literature. It is possible the significant relation between death penalty sentences and subjects who indicated they knew someone who sexually victimized others suggests these may be potential victims underreporting their victimization status.