JURORS’ DISCUSSIONS OF A DEFENDANT’S HISTORY OF CHILD ABUSE AND ALCOHOL ABUSE IN CAPITAL SENTENCING DELIBERATIONS

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We tested a novel theoretical model explaining the psychological processes underlying jurors’ discussions about a defendant’s history of child abuse and alcohol abuse in a capital case. We coded the extent to which jurors used child abuse and alcohol abuse as mitigating factors, as aggravating factors, or argued that they should be ignored. Relying on attribution theory, we coded the extent to which jurors rendered controllable or uncontrollable and stable or unstable attributions regarding the defendant’s history of child abuse and alcohol abuse. Jurors were more likely to argue that child abuse and alcohol abuse should not be used as mitigators or to even use them against the defendant as aggravators than they were to use them as mitigators. Jurors made more controllable than uncontrollable attributions regarding child abuse and more stable than unstable attributions regarding both child abuse and alcohol abuse. The more jurors supported the death penalty, the more they argued to discount child abuse and alcohol abuse as mitigators or use them as aggravators and the more controllable and stable attributions they made. Political orientation predicted discussions and attributions about alcohol abuse, but not child abuse.

Keywords: mitigation, jury deliberations, capital punishment, child abuse, alcohol abuse

Jurors’ sentences in capital cases determine the ultimate punishment—life versus death. In making this sentencing judgment, jurors are permitted to consider factors that they typically would not be permitted to consider in judging whether to convict a defendant, such as a defendant’s history of child abuse or alcohol abuse. Are jurors sympathetic to a defendant who had a rough childhood, or do...
they use a chaotic, abusive upbringing as an indicator that he or she is “damaged goods,” unlikely to be rehabilitated and therefore deserving of a severe sentence? Do jurors believe that intoxication during a crime or a history of alcoholism makes a defendant less responsible for criminal behavior, or do jurors blame a defendant for choosing to drink and consider him or her unlikely to be rehabilitated? Research on these issues is limited, inconclusive, and does not include jurors’ discussions of these factors during deliberation.

In one of the only mock jury studies exploring jurors’ use of child abuse, Stalans and Henry (1994) found that people, on average, allocate less punitive sentences to abused than nonabused offenders. Jurors’ self-reports, however, indicate that they sometimes ignore a defendant’s history of child abuse or even use it as an aggravating factor that increases sentence severity (Garvey, 1998; Lynch & Haney, 2000). Intuitively, it might seem unlikely that jurors would use a history of child abuse as an aggravating factor, but there is evidence that jurors use other forms of presumably mitigating factors (i.e., drug addiction, mental illness) as a justification for more severe sentences—a phenomenon labeled the backfire effect (Barnett, Brodsky, & Price, 2007). In fact, Grisso (2002) worries that clinicians testifying on behalf of juvenile offenders might use the well-established link between child abuse and juvenile delinquency to argue that a history of abuse is an indicator that a juvenile is permanently damaged, likely to commit future crimes, and thus deserving of a severe sentence. It is possible that jurors in capital sentencing hearings might make similar arguments regarding an adult defendant’s history of child abuse.

Likewise, there is variability in jurors’ thoughts about alcohol use and crime. Some mock jury studies reveal that alcohol abuse is related to less punitive case judgments, and others show it is related to more punitive case judgments (Aramburu & Leigh, 1991; Sobell & Sobell, 1975). In fact, in a review of case law regarding alcohol abuse as a criminal defense, Marlowe, Lambert, and Thompson (1999) argue that many people believe intoxication should not be used as a mitigating factor for a criminal defense and should even sometimes be viewed as an aggravating factor. Such perceptions are, in part, reflected in case law: One fifth of U.S. jurisdictions do not allow voluntary intoxication as a defense in noncapital criminal trials (Marlowe et al., 1999). Furthermore, when voluntary intoxication is used as a defense tactic, it is never introduced as a complete defense but rather merely to negate certain elements of mens rea (criminal intent).

Explaining Jurors’ Perceptions of Presumably Mitigating Factors:
An Attribution Framework

Attribution is the process of inferring causes of others’ behavior (Heider, 1958; Schneider, Hastorf, & Ellsworth, 1979). Attribution theory provides the necessary theoretical perspective to understand the psychological processes underlying the influence of child abuse and alcohol abuse on jurors’ case judgments. In the context of legal attributions, Weiner (1992, 2006) noted, “The person is a judge”—someone who considers evidence, cultural standards of morality, and his or her feelings and emotions in determining an appropriate sentence for an alleged offender. Of course, attribution theory extends beyond the realm of formal justice,
dating back to Heider’s (1958) original conceptualization of locus of control, which is the idea that across social situations, people attribute others’ behavior to factors that are either within the person (e.g., internal or dispositional factors) or within the environment (e.g., external or situational factors). Weiner (1985) found evidence for additional dimensions of causality: (a) stability, which concerns whether the cause of the behavior is constant (stable) or changing (unstable) over time; and (b) controllability, which concerns whether the cause of a behavior is under an actor’s control. Although Weiner (1985, 2006) concedes that controllability is often confounded with locus of control, because controllable attributions are often also internal attributions and uncontrollable attributions are often also external attributions, it is possible for an internal attribution to be uncontrollable, for example, IQ as an explanation for behavior. Thus, the dimension of controllability provides a more detailed conceptualization of attributions than locus of control and is used in the remainder of this discussion.

The types of attributions people make about the cause of a crime predict their perceptions of a defendant’s degree of responsibility and likelihood for future offending. Theoretically, people will render more punitive case judgments when the cause of the crime is perceived to have been internal, controllable, and stable, as opposed to external, uncontrollable, and unstable (Shaver, 1985; Weiner, 2006). The lower the perceived internality, intentionality, and stability of the cause of the crime, the less punitively participants treat an offender (Carroll, 1978; Carroll & Payne, 1977; Graham, Weiner, & Zucker, 1997). Graham and colleagues (1997) theorized that retributive goals of punishing a defendant (i.e., a just deserts desire to “get even” with the defendant) would be predicted by jurors’ perceptions of the controllability of the crime and the defendant’s responsibility for the crime, and in turn, the jurors’ anger and lack of sympathy for the defendant. In contrast, utilitarian goals of punishment (i.e., future crime deterrence) should be predicted by perceived stability of the cause of the crime and expectancy for the crime to occur in the future. Furthermore, endorsement of both retributive goals (e.g., the defendant should “get what he deserves”) and utilitarian goals (e.g., punishment will change the defendant’s future behavior) should lead to especially severe punishment. Graham et al. found empirical support for this model in a study of undergraduates’ perceptions of a murder vignette in which dimensions of controllability and stability were manipulated (see also Carroll, 1978; Carroll & Payne, 1977).

Prior research on attributions about crime typically conceptualized specific causal factors in terms of only one attribution type (e.g., Carroll, 1978; Carroll & Payne, 1977; Graham et al., 1997; Weiner, 2006). That is, jurors are presented with a case-related factor expected to yield a specific attribution (e.g., good mental health, which should yield a controllable attribution). These jurors’ case judgments are then compared with case judgments made by other jurors who are given a different case-related factor expected to yield a different attribution (e.g., schizophrenia, which should yield an uncontrollable attribution). This methodology does not examine the possibility that different jurors make different types of attributions for the same factor. For example, Juror A might make a controllable attribution for alcoholism, whereas Juror B might make an uncontrollable attribution, as described next.
In the present study, we analyzed data from a study in which Illinois community members called for jury duty participated as mock jurors in a realistic capital sentencing trial (Diamond, Casper, Heiert, & Marshall, 1996). As described later, participants completed a measure of their death penalty attitudes, then watched a videotape of the sentencing phase of a simulated capital murder trial, and then deliberated to reach a sentence of life in prison or death. They indicated individual sentence preferences both before and after deliberation. The defendant was portrayed as having been abused as a child and as an alcoholic who was intoxicated during the crime. Jury deliberations were videotaped and transcribed, which provided us with the unique opportunity to examine exactly how jurors discussed child abuse and alcohol abuse as they considered the death penalty.

Figures 1 and 2 depict our theoretical models, which build on Graham and colleagues’ (1997) and Weiner’s (2006) models to specifically explain how jurors use child abuse and alcohol abuse in making punishment decisions. Making the assumption that jurors’ statements reflect their psychological processes, we tested parts of our models by coding mock jurors’ statements during deliberations. On the left side of the figures, we have shown the four levels of coding that we conducted to test the initial observable stages of the theoretical models. The remaining levels (Levels 5–8) represent underlying processes that are not codable, but that we theorize to be mediators between jurors’ attributions and sentence recommendations. The first four levels of our model reflect four goals of our research. The first goal (see “Level 1” in Figures 1 and 2) was simply to determine

![Diagram of Theoretical Model](image)
the amount of discussion jurors devote to the issue of child abuse and alcohol abuse because there are no data that we know of on this topic.

After determining the extent to which jurors discuss the factors of child abuse and alcohol abuse, the second goal was to determine whether jurors interpret these factors in different ways (see “Level 2” in Figures 1 and 2). Specifically, we examined the extent to which jurors use child abuse and alcohol abuse as mitigating factors, aggravating factors, factors that should be ignored as mitigators (i.e., encouraging others to not use it as mitigating evidence), or factors that should be ignored as aggravators (i.e., encouraging others to not use it as aggravating evidence). Note that an argument to not use a statement as a mitigator is quite different from an argument to not use it as an aggravator. That is, an argument to not use a factor as a mitigator is a pro-prosecution statement that supports a death sentence. In contrast, an argument to not use a factor as an aggravator is a pro-defense statement that supports a life sentence.

Thus, we were able to test two competing hypotheses about whether jurors are more likely to use child abuse and, separately, alcohol abuse as factors supporting a life or death sentence. First, in keeping with research demonstrating that jurors tend to perceive child abuse as a mitigating factor (e.g., Stalans & Henry, 1994), one could hypothesize that jurors would be more likely to use child abuse as a mitigator rather than as an aggravating factor. In attributional terms, this could result from jurors perceiving a history of being abused as a child as an uncontrollable cause of the crime. Although not tested with our data, uncontrollable attributions are theorized to reduce perceived responsibility for committing the crime and, in turn, reduce sentence severity. The alternative hypothesis is that jurors might discount child abuse as a mitigator or use it as an aggravator more often than as a mitigator because jurors might use the defendants’ history of being abused as a cue that he has been

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**Figure 2.** Theoretical model explaining jurors’ use of alcohol-related information.
permanently damaged—a stable attribution. Likewise, according to attribution theory, one could hypothesize that jurors would use alcohol abuse as a mitigating factor more than as an aggravating factor because jurors would perceive alcohol intoxication as an uncontrollable cause of the defendant’s behavior. Alternatively, jurors might discount alcohol abuse as a mitigator or use it as an aggravator more often than as a mitigator. That is, they might hold a defendant accountable for choosing to get drunk in the first place—a controllable attribution.

The third goal (“Level 3” in Figures 1 and 2) was to examine the specific aspect of child abuse and alcohol abuse that jurors discussed. That is, the context in which jurors discuss these factors may vary. For instance, jurors might discuss whether the defendant could have prevented his own abuse (the cause of the child abuse) or whether the defendant’s childhood abuse helps explain why he committed the crime (the consequences of the child abuse). For alcohol abuse, jurors might discuss whether the defendant’s alcohol abuse was something that he could have prevented and controlled (the cause of the alcohol abuse), or they might discuss whether the alcohol abuse helps explain why he committed the crime (the consequences of the alcohol abuse).

The fourth goal (“Level 4” in Figures 1 and 2) was to examine whether jurors make different types of attributions about child abuse and alcohol abuse: Do they consider these factors to be controllable, uncontrollable, stable, or unstable? An uncontrollable attribution for child abuse or alcohol abuse would be that these factors caused the defendant to be less able to control his criminal actions; thus, such attributions help explain why he committed the crime. In contrast, a controllable attribution for child abuse or alcohol abuse would be that these factors had no influence on his ability to control his criminal actions; thus, they are no excuse for his crime. A stable attribution for child abuse or alcohol abuse would be that the defendant will never recover from his history of child abuse or will never become rehabilitated from alcoholism; in turn, he will continue to commit crimes. In contrast, an unstable attribution for child abuse or alcohol abuse would be that the defendant will be able to recover from his history of child abuse and can be rehabilitated from alcoholism and, therefore, will not commit future crimes.

According to our theory, attributions of controllability and stability drive underlying perceptions of the defendant’s responsibility for the crime and for expectations about the likelihood that he will commit future crimes. In turn, these judgments lead to emotions, punishment goals, and sentence preferences. The constructs in these levels (see Levels 5–8 in Figures 1 and 2) are theorized internal processes and would be exceedingly difficult if not possible to code given our current methodology. Nonetheless, it is important that we describe these parts of the models because all of the coded statements have implications for punishment decisions, but through different pathways. Specifically, we theorize that two of the pathways in the model (labeled with the circled “1” and “2” in the figures) are attributional in nature (i.e., juror statements about child abuse and alcohol abuse that contain controllable, uncontrollable, stable, or unstable attributions). In line with Graham et al.’s (1997) model, attributions about controllability (not attributions about stability) are theorized to predict judgments about the defendant’s responsibility, and in turn emotions of anger and sympathy, which in turn predict retributive goals of punishment, which predict sentence severity (see Pathway 1 in Figures 1 and 2). Attributions about stability are theorized to
predict one’s expectancy for future crimes, which in turn predicts utilitarian
goals of punishment, which also predict increased sentence severity (see Pathway 2 in Figures 1 and 2). We also expected, however, that some jurors’ statements about child abuse and alcohol abuse would be nonattributional in nature, but would be comments that nonetheless link the factor being discussed to punishment in a mitigating or aggravating way. These kinds of statements (labeled Pathway 3 at the bottom of Figures 1 and 2) are mitigating statements or aggravating statements that are not specific enough to be coded as attributions. They are, however, still linked theoretically to a juror’s emotional reactions and retributive goals. For example, a juror could simply say, “Child abuse is a mitigating factor,” which clearly is a pro-defense statement but does not include an attribution. Of course, these are theorized causal pathways, but there are other causal pathways and other directions of causality that might reasonably be advanced. As will become clear, although the nature of our data meant that we were unable to test directly for causal relationships, we were able to provide significant indirect support for our theory of how abuse affects jurors.

Hypotheses Resulting From Proposed Theoretical Model

We predicted that jurors would be more likely to make uncontrollable and unstable attributions in the context of (a) mitigating statements and (b) arguments to discount child abuse and alcohol abuse as aggravating factors (i.e., pro-defense statements) than in the context of (a) aggravating statements or (b) arguments to discount child abuse and alcohol abuse as mitigating factors (i.e., pro-prosecution statements). Likewise, we predicted that jurors would be more likely to make controllable and stable attributions in the context of (a) aggravating statements and (b) arguments to discount child abuse and alcohol abuse as mitigating factors (i.e., pro-prosecution statements) than in the context of (a) mitigating statements or (b) arguments to discount child abuse and alcohol abuse as aggravating factors (i.e., pro-defense statements). These hypotheses are consistent with attribution theory, which states that controllable and stable attributions lead to punitive sentence preferences through the separate pathways of increased perceived defendant responsibility and likelihood to commit future crimes, respectively (Weiner, 2006).

Hypothesized Relation Between Mitigation or Aggravation Statements, Attributions, and Sentence Preferences

We did not test directly the relations between attributions and perceived defendant responsibility and perceived likelihood to commit future crimes because these theorized underlying processes were difficult if not impossible to observe during jury deliberations. Nor did we test for the theorized causal link between jurors’ attributions and their final sentence preferences because all jurors made private sentence recommendations prior to deliberation and few jurors changed their sentence preference postdeliberation. That is, although we predicted that jurors’ attributions about child abuse and alcohol abuse would influence their final postdeliberation sentence preference, we were not able to code for their attributions until after jurors indicated their initial sentence preferences. Thus, we have no way of discriminating between the possibility that jurors’ initial sentence
preferences caused their attributions or vice versa. We were able, however, to test
the relation between predeliberation sentence preferences and subsequent attribu-
tions made during deliberations, which indirectly tests our proposed models. That
is, we expected that jurors who voted for a death sentence, compared with those
who voted for life, would be more likely to use child abuse and alcohol abuse as
aggravators and discount them as mitigators than to use these factors as mitigators
and discount them as aggravators. We also predicted that jurors who voted for
death would be more likely to make controllable and stable attributions than
uncontrollable and unstable attributions. These hypotheses are in line with attri-
bution theory and research demonstrating that pro-defense attributions (i.e., un-
controllable and unstable) predict pro-defense case judgments (e.g., a life sen-
tence; Weiner, 2006). Likewise, pro-prosecution attributions (i.e., controllable
and stable) tend to predict pro-prosecution case judgments (e.g., a death sentence).

Hypothesized Relative Use of Attributions Regarding Stability
Versus Controllability

Empirical evidence suggests that individuals in the United States primarily
rely on retributive goals during justice decision making (Carlsmith, Darley, &
Robinson, 2002; Darley et al., 2000). For example, Carlsmith et al. (2002) found
that people are more sensitive to factors associated with a retributive approach to
punishment when rendering sentences and are less sensitive to factors associated
with a utilitarian approach, even though most respondents indicate that they
endorse a utilitarian approach. In addition, Darley et al. (2000) found that sentence
lengths were more influenced by the offense severity (a retributive perspective)
than by the likelihood for future offenses (a utilitarian perspective).

To the extent that jurors are more motivated by retribution than by a desire to
protect society, we expected that jurors would make more attributions regarding
controllability than stability for both child abuse and alcohol abuse. This is
because the attribution dimension of stability is relevant only to the extent that
jurors are concerned with a utilitarian approach to punishment. Because research
shows that jurors are primarily motivated by retributive punishment goals, con-
trollability attributions should outweigh stability attributions in jurors’ discus-
sions.

Individual Differences as Predictors of Juror Discussions and Attributions

Death Penalty Attitudes

Jurors in capital cases must be “death-qualified”—indicating that they would
be willing to give the death penalty in some circumstances. Jurors who would
never impose the death penalty regardless of the circumstances are excluded from
capital cases. Compared with excludable jurors, death-qualified individuals are
more conviction-prone in guilt phases of trials (Ellsworth, 1993; Ellsworth &
Mauro, 1998; Filkins, Smith, & Tindale, 1998; Thompson, Cowan, Ellsworth, &
Harrington, 1984), render more severe sentences (Cowan, Thompson, & Ells-
worth, 1984; O’Neil, Patry, & Penrod, 2004), believe that the testimony of
prosecution witnesses is more credible than testimony of defense witnesses
(Poulson, Wuensch, Brown, & Braithwaite, 1997; Thompson et al., 1984), are less
likely to be influenced by mitigating factors and more likely to be influenced by
aggravating factors (Luginbuhl & Middendorf, 1988; Poulson et al., 1997; Butler & Moran, 2002; Butler & Moran, 2007), and have less sympathy for defendants, more positive attitudes toward police and prosecutors and more skeptical attitudes toward the defense, more Impatience with due process rights, and more concern about crime in general (Fitzgerald & Ellsworth, 1984; Thompson et al., 1984; Vidmar & Ellsworth, 1974). Of particular relevance, Butler and Moran (2002) found that compared with excludable jurors, death-qualified jurors reported on a survey that they would be less likely to use a history of alcoholism and a history of child abuse as mitigating factors. Even so, even jurors who are death-qualified vary in their support for the death penalty. Furthermore, Butler and Moran (2007) found that death-qualified jurors were more likely to have a high internal locus of control (i.e., tend to make controllable attributions for causes of events), which in turn predicted a lower endorsement of statutory mitigating factors.

Therefore, we predicted that jurors who are low (compared with high) in their endorsement of the death penalty would more often use a defendant’s history of child abuse and alcohol abuse as mitigating factors and make pro-defense attributions (i.e., unstable and uncontrollable) regarding these factors. Specifically, jurors who are low, rather than high, in endorsement of the death penalty would be more likely to perceive (a) child abuse as something that the defendant could not have prevented, did not deserve (an uncontrollable attribution), and as something from which he could be rehabilitated (an unstable attribution); (b) intoxication as a factor that made him less able to control his behavior and therefore decreased his responsibility for the crime (an uncontrollable attribution); and (c) alcoholism as a disease that he alone could not control, therefore decreasing his responsibility for the crime (an uncontrollable attribution) and as something from which he could be rehabilitated (an unstable attribution).

Political Orientation

People have a nearly automatic tendency to make internal attributions for causes of others’ behaviors—“the fundamental attribution error” (e.g., Jones & Harris, 1967). Recent research shows that political ideology predicts the extent to which individuals correct these initial internal attributions and either blame others or not for behavior or personal problems. For example, conservatives are more likely than liberals to make internal attributions for things like poverty (e.g., laziness, lack of thrift; Sniderman, Hagen, Tetlock, & Brady, 1986; Zucker & Weiner, 1993), homelessness (Pellegrini, Querolo, Monarrez, & Valenzuela, 1997), and crime (Carroll, Perkowitz, Lurigio, & Weaver, 1987). In contrast, liberals are more likely than conservatives to make external attributions for these factors, focusing on situational explanations. Why? Skitka, Mullen, Griffin, Hutchinson, and Chamberlin (2002) found that although liberals and conservatives initially do not differ in their attributions, liberals are more likely than conservatives to later correct their dispositional (i.e., internal) attributions by considering situational (i.e., external) factors. Skitka et al. theorized that inconsistencies between liberals’ attitudes (e.g., support for welfare) and their dispositional attributions (e.g., ascribing a person’s unemployment to laziness) motivated them to correct their initial internal attributions more frequently than conservatives, who lack this inconsistency. Thus, we predicted that, compared
with liberal jurors, conservatives would be less likely to perceive child abuse and alcohol abuse as mitigating factors and less likely to form pro-defense attributions (i.e., unstable and uncontrollable) regarding those factors, whereas liberals would be more likely to correct internal attributions by considering the impact of situational factors (i.e., child abuse and alcohol abuse) on the defendant’s actions and, in turn, would render more lenient sentences.

Method

Participants

Participants were jury-eligible U.S. citizens over the age of 18 years who were called for jury duty at one of two Cook County courthouses, but who were not selected for trials. These prospective jurors, who were required to remain at the courthouse until the end of the day, were randomly invited to participate in the mock trial study or to remain in the jury waiting room for possible assignment to a trial (Diamond et al., 1996). Over 90% of those invited agreed to participate. Those who agreed to participate completed a brief questionnaire before they viewed the videotaped trial. Their answers were used to identify and remove individuals who were not death-qualified so that the deliberating mock juries would be composed of death-qualified participants. The 402 participants in the deliberation portion of the experiment reported on here were assigned to 34 juries (the remaining participants completed questionnaires but did not deliberate). Of these 402, 53% were women, 75% had at least some college experience or a college degree, 63% were married, and 86% were employed. Their median age was 30 to 39 years, and 82% were Caucasian, 13% African American, 4% Asian, and 2% Hispanic.

Two questions were designed to identify participants who would be death-qualified, although this is necessarily an approximation of who would be considered death-qualified because judges have discretion in making this decision. In line with Witherspoon v. Illinois (1968), we assessed death qualification by asking whether the participants would (a) “never vote to impose the death penalty in any case” or (b) “would consider voting to impose the death penalty in some cases.” Participants who indicated they would never vote to impose the death penalty in any case were considered to be not death-qualified. Under the more recent Wainwright v. Witt (1985) ruling, we assessed death qualification by asking jurors’ to select one of four possible positions: (a) “would always vote for the death penalty if the defendant was found guilty of a murder for which the law allowed the jury to impose a death sentence,” (b) “am in favor of the death penalty but would not necessarily vote for it in every case where the law allowed the jury to choose it; rather would consider the facts in the particular case,” (c) “have certain reservations about the death penalty but they would not prevent or substantially interfere with my voting for a death sentence if the facts of the case showed that the defendant should be given a death sentence,” (d) “have such strong reservations that they would prevent or substantially interfere with my voting for a death sentence, no matter what the facts of the case were.” Participants were not death-qualified if they indicated that they would always vote for the death penalty if the defendant was found guilty or that they have such strong reservations about the death penalty that they would interfere with their voting for
Materials

Background questionnaire. A questionnaire assessed participants’ gender, age, race/ethnicity, level of education, marital status, employment status, and occupation.

Political orientation. Participants indicated their political orientation on a scale ranging from 1 (very liberal) to 7 (very conservative).

Endorsement of the death penalty. Participants were also asked to indicate their support for the death penalty on the following scale: 1 (strongly in favor), 2 (somewhat in favor), 3 (somewhat opposed), or 4 (strongly opposed).

Mock trial. The stimulus videotape was the sentencing hearing held to determine whether or not the defendant should be sentenced to death. This videotaped sentencing phase of the mock trial included professional actors playing the role of the judge, attorneys, and witnesses in the case and lasted approximately 1 hr 15 min. Specifically, on the videotape, the judge introduced this case by describing that the defendant had already been convicted of attempted robbery and murder. The judge told the jurors:

Ladies and gentlemen of the jury, we now come to the penalty phase of the criminal trial involving the State of Illinois v. John Henry Smith. Mr. Smith has been convicted by plea of guilty to one count of murder and one count of armed robbery, and the prosecution has asked that a jury be empanelled to consider whether Mr. Smith should receive the death penalty for his conviction for murder. The law in Illinois requires that jurors in proceedings like these consider the nature of the crimes committed by the defendant, as well as a set of aggravating and mitigating factors in deciding whether the defendant shall receive a sentence of death.

Next, the crime was described to the mock jurors in detail through opening and closing attorney statements and the testimony of the witnesses. In brief, the defendant and his friend attempted to rob a man for beer money while they were fishing. When the victim resisted, the defendant shot and killed him.

Testimony from the defense included that the defendant had been drinking at the time of the crime, that he had been an alcoholic since age 12, and that his father had physically abused him when he was a child. The defendant’s sister testified that the defendant’s violence was primarily due to alcohol and that he was good with her children. She also testified that their father had sexually abused her and

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1 All logistic regressions were replicated excluding the 31 jurors who were not death-qualified. There were no differences in results. This is not surprising because this group constituted less than 8% of the 402 deliberating jurors and 0.06% of the total 2,570 comments about abuse made during the 34 deliberations. Moreover, the 31 jurors included 22 who always vote for the death penalty regardless of the circumstances of the case (ADPS), who tended to make pro-prosecution statements about alcohol and child abuse as well as nine Witt-excludables “those who are determined not death qualified according to the Wainwright v. Witt court ruling.” whose comments about abuse did not tend to be pro-prosecution.
physically abused the defendant when they were children, and that their father often
beat the defendant when he was trying to protect her from the father’s abuse. She also
testified that her brother was not normally violent, but that sometimes, when he was
really drunk, he would become violent. In addition, she testified that she believed he
was ready to change and be rehabilitated from his alcoholism. Testimony from the
prosecution included information that the defendant had a history of six prior con-
victions, two of which were armed robberies. Also, a psychiatrist testified that the
defendant was dangerous and likely to commit future crimes.²

**Jury instructions.** Jurors received the Illinois Pattern Jury Instructions given to
actual jurors in capital sentencing trials in Illinois. In the videotape, as in actual
cases, the judge read these aloud to the jury at the end of the trial. Participants
were also provided with a written version of the instructions during deliberations.
The jury instructions included legal descriptions of aggravating and mitigating
evidence. Specifically, jurors were told,

> First, let me describe the statutory aggravating factors. Before the defendant can be
> sentenced to death, you must find beyond a reasonable doubt that the murdered
> individual was killed in the course of another felony, and (a) the murdered
> individual was actually killed by the defendant and not by another party to the
> crime or simply as a consequence of the crime, and (b) the defendant killed the
> murdered individual intentionally or with the knowledge that the acts which
> caused the death created a strong probability of death or great bodily harm to the
> murdered individual, and (c) the other felony was one of the following: armed
> robbery or robbery. Aggravating factors are those facts or circumstances which
> provide reasons for imposing the death penalty. Aggravating factors include, but
> need not be limited to, the required statutory aggravating factors regarding which
> you were instructed in instruction number two.

Mitigating factors are any facts or circumstances that provide reasons for
imposing a sentence less than the death penalty. Mitigating factors may include
that, one, the murder was committed while the defendant was under the influence of
extreme mental or emotional disturbance, although not such as to constitute a defense
to prosecution or, two, the murdered individual was a participant in the defendant’s

² There were four different prosecution expert conditions in the original study, three in which
an expert testified and a fourth in which there was no expert witness. In all three of the conditions
in which an expert testified, the expert (the psychiatrist) testified that the defendant was a sociopath
and was “certain to kill again,” but in the strongest expert condition, the cross-examination was
weak; in the second condition, the cross-examination was strong; and in the third condition, the cross
examination was strong, and an opposing expert witness for the defense (a psychiatrist) testified that
the defendant had the potential for rehabilitation.

There was also a between-subjects condition that specified the sentence the defendant would
receive if not sentenced to death. One instruction condition specified that a life sentence would
be without the possibility of parole, whereas the other version of the instructions provided no
information on how long the defendant would serve in prison. We statistically controlled for the
impact of these variables in our analyses. The prosecution expert variable was coded on a 4-point
scale ranging from 0 (no expert witness) to 3 (strong expert witness with weak cross-examination
and no opposing expert). The instruction variable was coded as 0 (no possibility of parole) or 1 (no
indication of length of prison sentence).

The design was not a complete factorial because of a trial tape error, which led us to drop the
“strong cross with no opposing expert/prison with length unspecified” cell of the design.
homicidal conduct or consented to the homicidal act, or three, the defendant may be rehabilitated or restored to useful citizenship, or four, any other facts or circumstances that provide reasons for imposing less than the death penalty.

Case judgments. Before and after deliberating, participants were asked to render a dichotomous individual sentence preference (life in prison or the death penalty) and state their confidence in their sentence preference both before and after deliberations. Sentence and confidence in sentence were combined to form a 14-point sentence preference scale, ranging from 1 (death, extremely confident) to 14 (life, extremely confident).

Procedure of Original Mock Trial Study

After agreeing to participate, participants were given the background questionnaire and questions assessing death-qualification status and their endorsement of the death penalty, similar to information assessed during voir dire in an actual trial. Participants then watched the videotaped mock trial, followed by the jury instructions. Jurors then indicated their individual sentence preference, and afterward, deliberated in groups of 11 to 12 jurors for no more than 75 min to reach a unanimous decision (or to hang) about the sentence of life in prison or the death penalty. All deliberations were videotaped and transcribed, and transcriptions were verified. After deliberation, participants again indicated their individual sentence preference and completed manipulation checks.

Procedure of Present Research: Coding

The procedure for the current study is the coding of deliberation transcripts. The data set for the present research consists of 34 transcribed (written) mock jury deliberations composed of 11 or 12 mock jurors each. Transcripts of deliberations ranged from 13 to 76 pages in length ($M = 44.4$ pages). To test hypotheses about the nature of jurors’ discussions, we developed a theoretically driven, complex coding scheme to code every statement mock jurors made in reference to the defendant’s history of child abuse and alcohol abuse. The coding scheme was influenced by coding schemes developed and employed by Diamond, Vidmar, Rose, Ellis, and Murphy (2003).

Coding Level 1: Factor (see Level 1, Figures 1 and 2, and Appendix for examples). The first step in this detailed coding scheme was to identify and code each statement for whether it was a statement regarding the defendant’s history of child abuse or the defendant’s alcohol abuse. A comment was coded for child abuse if a remark was made about the defendant’s history of child abuse. A comment was coded for alcohol abuse if a remark was made about the defendant’s alcohol abuse (either voluntary intoxication or alcoholism). Comments (or statements) were defined as complete thoughts. For instance, if a juror was interrupted briefly by another juror and then resumed discussing the same topic, those two comments were linked together and represented just one comment.

Coding Level 2: Mitigation (see Level 2 on Figures 1 and 2, and Appendix for examples). Next, to address the most important portion of this research, we coded the statements identified by Level 1 coding to determine the extent to which jurors used child abuse and alcohol abuse as mitigating or aggravating factors, or when they argued against using them as such. Specifically, a mitigate code applied when
The jurors mentioned the defendant’s child abuse or alcohol abuse in a way that made it clear that they were trying to elicit sympathy on behalf of the defendant and, in turn, a more lenient sentence (i.e., life in prison)—something defense attorneys would like to hear. For example, a representative mitigating statement for child abuse was, “But I think the conditions of his early childhood abuse threw him into this,” and for alcohol abuse was, “He had been drinking. That really kind of constitutes an emotional or mental disturbance.” In contrast, an aggravate code applied when jurors discussed the defendant’s child abuse or alcohol abuse in a way that made it clear that they were advocating for a more severe sentence (death)—something prosecuting attorneys would like to hear. A representative example of this code for child abuse was, “He’s been abused, so he knows how to abuse,” and for alcohol abuse was, “He chooses to drink. No one’s holding a gun to his head to drink. He chooses to commit a crime which he knows he’s got a temper.”

The ignore-as-a-mitigator code applied when jurors tried to encourage other jurors to ignore or not consider the defendant’s child abuse or alcohol abuse as mitigating factors. This is not equivalent to arguing that the factor is an aggravating factor, but it is still something the prosecution would like to hear. A representative example of this code for child abuse was, “A lot of people have problems in their childhoods that affect them . . . but not everyone ends up killing someone,” and for alcohol abuse was, “I mean they could have had one, they could have had three, they could have had three six packs. He still has to take responsibility for his actions.” In contrast, the ignore-as-an-aggravator code applied when jurors encouraged others to not consider the defendant’s child abuse or alcohol abuse as aggravating factors. Similarly, this is not equivalent to arguing that the factor is a mitigating factor, but it is still something defense attorneys would like to hear. A representative example of this code for child abuse was, “Because it suggests to me although certainly he’s picked up some of the ways in which he reacts from his dad, he hasn’t picked it all up. . . . So I think there’s a little more hope there. . . .” and for alcohol abuse was, “We heard he committed crimes while drunk. We really can’t use it against him.”

Finally, a neutral code applied when a juror made an impartial or nonvalenced statement about the defendant’s child abuse or alcohol abuse. Representative examples of this code were, “Do you feel that his childhood made him become the person he was and he had no control?” and “The big question here is did the alcohol influence him?”

**Coding Level 3: Aspect (see Level 3, Figures 1 and 2, and Appendix for examples).**

*Cause of the child abuse* was coded when a juror argued that the defendant (a) could have prevented or deserved his own abuse as a child (e.g., “Maybe the damn kid deserved it. Maybe that’s why his dad beat the hell out of him”) versus (b) could have done nothing to stop his own abuse (e.g., in reference to the age at which the defendant was abused, “. . . 10, I mean geez”). *Consequences of the child abuse* was coded when a juror argued that the defendant’s childhood abuse (a) helps explain why he committed the crime because of modeling of his parents’ violent behavior and his poor upbringing (e.g., “But I think the conditions of his early childhood abuse threw him into this”) versus (b) had no influence on his likelihood to commit this crime (e.g., “A lot of people have problems in their childhoods that affect them . . . but not everyone ends up killing someone”). The
cause of the alcohol abuse was coded when a juror argued that the defendant’s alcohol abuse was (a) something that he could have prevented and controlled (e.g., “He chooses to drink. No one’s holding a gun to his head to drink”) versus (b) a disease that he could not control (e.g., “He had an alcoholic father and he became an alcoholic”). Finally, consequences of the alcohol abuse was coded when a juror argued that the defendant’s alcohol abuse (a) helps explain why he committed the crime because it made him less able to control his own behavior (e.g., “He had been drinking. That really kind of constitutes an emotional or mental disturbance”) versus (b) does not explain why he committed the crime because he was able to control his behavior despite the alcohol (e.g., “He said they had been drinking at a good clip, but he didn’t think they were really drunk”).

Coding Level 4: Attribution (see Level 4, Figures 1 and 2, and Appendix for examples). All statements coded at Level 3 were coded for attributions. First, an example of an uncontrollable attribution for the cause of the alcohol abuse was that the defendant could not have avoided drinking alcohol because he was an alcoholic (e.g., “And he had an alcoholic father and he continued and became an alcoholic, but with his condition—and everyone is different—it affected him in such a way as it—he became enraged, became almost a maniac”). In contrast, a controllable attribution for the cause of the alcohol abuse was that the defendant could and should have chosen to abstain from drinking alcohol (e.g., “He chooses to drink. No one’s holding a gun to his head to drink. He chooses to commit a crime which he knows he’s got a temper”). Likewise, an uncontrollable attribution for the cause of the child abuse was that the defendant did not deserve and could not have prevented his own child abuse (e.g., in reference to the age at which the defendant was abused, “... 10, I mean geez”). In contrast, a controllable attribution for the cause of the child abuse was that the defendant was probably such a bad child that he deserved his own abuse (an unlikely attribution, but one that jurors did make; e.g., “Maybe the damn kid deserved it. Maybe that’s why his dad beat the hell out of him”).

An uncontrollable attribution for the consequences of the alcohol abuse was the belief that the defendant was less able to control his behavior because of the influence of alcohol (e.g., “He had been drinking. That really kind of constitutes an emotional or mental disturbance”). In contrast, a controllable attribution for the consequences of alcohol abuse was the belief that the defendant was able to control his behavior and not commit the crime despite being under the influence of alcohol (e.g., “He said they had been drinking at a good clip, but he didn’t think they were really drunk”). Likewise, an uncontrollable attribution for the consequences of child abuse was the belief that the defendant’s history of child abuse explains why he committed the crime (e.g., “But I think the conditions of his early childhood abuse threw him into this”). In contrast, a controllable attribution was the belief that his child abuse does not excuse his behavior and that he does know better (e.g., “A lot of people have problems in their childhoods that affect them ... but not everyone ends up killing someone. ...”).

We also coded for whether jurors argued that these factors were stable or unstable. A stable attribution for alcohol abuse was the belief that the defendant cannot ever recover from alcoholism (e.g., “He had been through other programs they said”), whereas an unstable attribution would be that he can recover from alcoholism (e.g., as part of an argument that the defendant will recover from...
alcoholism if kept in prison, “Well, yeah, he won’t have access to alcohol”). A stable attribution for child abuse was the belief that the defendant is permanently damaged and will never recover from his history of child abuse (e.g., in reference to his childhood abuse, “But the fact is that he’s—you’re not going to cure him of that”), whereas an unstable attribution would be that he can potentially recover from his history of child abuse (e.g., to support an argument that he could be rehabilitated, “Nowhere it was stated that he was . . . given therapy from his childhood”).

Codes are not necessarily mutually exclusive: Pro-defense and pro-prosecution arguments could be made in the same statement, although certain codes did not tend to appear together (i.e., controllable and uncontrollable).

Reliability of coding. Each individual code described above was subjected to reliability analyses. All statements were coded in one pass by two trained coders. Disagreements included coders disagreeing about the unit of coding (i.e., identification of each comment) and coders coding comments with different codes. All discrepancies were resolved by discussion between coders. The two coders reached 84% intercoder agreement collapsed across all codes on 20% of the data (7 of 34 jury deliberations). We achieved no less than 75% intercoder agreement on each individual code (ranging to 100%), for all except one of the 22 individual codes, Alcohol–Stable, on which we achieved 69% intercoder agreement. Cohen’s (1960) kappa values for all codes were above 0.64 (ranging to 1.0), considered to be a good estimate of reliability (Landis & Koch, 1977).

Results

First, we report chi-square analyses testing hypotheses about jurors’ relative use of the various child abuse codes, and second, jurors’ relative use of alcohol abuse codes. Third, we present logistic regression analyses testing hypotheses concerning the influence of juror individual difference factors (i.e., endorsement of the death penalty and political orientation) on jurors’ discussions about child abuse and alcohol abuse. Fourth, we present logistic regressions testing the relation between predeliberation sentence preferences and child abuse and alcohol abuse statements.

Jurors’ Discussions of Child Abuse (see Table 1)

Mitigation. During the 34 deliberations, 152 jurors made 432 statements about child abuse. A chi-square test revealed significant differences in the frequency of each mitigation code, $\chi^2(4) = 282.35, p < .001$. Follow-up chi-square tests, employing the Bonferroni’s correction for Type I error, revealed significant differences among all pairs of codes, $\chi^2 > 71.27, ps < .001$. As hypothesized, a higher proportion of jurors’ total child abuse statements were mitigating ($n = 144, 33\%$) than aggravating ($n = 32, 7\%$) or neutral ($n = 62, 14\%$), but the most frequent type of code was the ignore-as-a-mitigator code ($n = 190, 44\%$). The ignore-as-an-aggravator code was used least frequently ($n = 4, 1\%$).

To test whether jurors were more likely to discuss child abuse in a way that is favorable toward a sentence of life versus death, we collapsed across the two categories that reflect a death sentence preference (i.e., aggravate and ignore-as-a-mitigator) versus the two categories that reflect a life preference (i.e., mitigate...
Table 1
Frequencies of Jurors’ Statements About Child Abuse as a Function of Attribution Type

<table>
<thead>
<tr>
<th>Child abuse attribution</th>
<th>Mitigate</th>
<th>Ignore as a mitigator</th>
<th>Aggravate</th>
<th>Ignore as an aggravator</th>
<th>Neutral</th>
<th>Total collapsed across mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consequence</td>
<td>73</td>
<td>103</td>
<td>24</td>
<td>3</td>
<td>8</td>
<td>211</td>
</tr>
<tr>
<td>Controllable</td>
<td>0</td>
<td>102</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>106</td>
</tr>
<tr>
<td>Uncontrollable</td>
<td>70</td>
<td>1</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>78</td>
</tr>
<tr>
<td>Stable</td>
<td>0</td>
<td>0</td>
<td>18</td>
<td>0</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Unstable</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>Cause</td>
<td>3</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Controllable</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Uncontrollable</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Stable</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>—</td>
</tr>
<tr>
<td>Unstable</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>—</td>
</tr>
<tr>
<td>No attribution</td>
<td>68</td>
<td>87</td>
<td>1</td>
<td>1</td>
<td>54</td>
<td>211</td>
</tr>
<tr>
<td>Total child abuse statements</td>
<td>144</td>
<td>190</td>
<td>32</td>
<td>4</td>
<td>62</td>
<td>432</td>
</tr>
</tbody>
</table>
and ignore-as-an-aggravator) and excluded neutral statements. Significantly more juror statements were aggravate or ignore-as-a-mitigator (i.e., pro-prosecution statements; \( n = 222, 60\% \)) than mitigate or ignore-as-an-aggravator (i.e., pro-defense statements; \( n = 148, 40\% \)), \( \chi^2(1) = 14.80, p < .001 \).

**Aspect.** Of the 221 statements about child abuse that could be coded for an aspect, a significantly greater number were classified as “consequences” (\( n = 211, 95\% \)) than “cause” (\( n = 10, 5\% \)), \( \chi^2(1) = 182.81, p < .001 \).

**Attributions.** Of the 214 abuse-related attributions, collapsed across aspect, a much higher proportion was controllability attributions (\( n = 192, 90\% \)) than stability attributions (\( n = 22, 10\% \)), \( \chi^2(1) = 136.32, p < .001 \). More specifically, 53% of all 214 abuse-related attributions were controllable attributions, 37% were uncontrollable attributions, 8% were stable attributions, and 2% were unstable attributions.

Within the 192 controllability attributions, there were significantly more controllable (\( n = 113, 59\% \)) than uncontrollable (\( n = 79, 41\% \)) attributions made about child abuse, \( \chi^2(1) = 6.02, p < .05 \). Within the 22 stability attributions, there were significantly more stable (\( n = 18, 82\% \)) than unstable (\( n = 4, 18\% \)) attributions made about child abuse, \( \chi^2(1) = 8.91, p < .01 \). For both cause and consequence statements, jurors were significantly more likely to make controllable attributions (\( n = 7 \) and \( n = 106 \)) than uncontrollable attributions (\( n = 1 \) and \( n = 78 \)), \( \chi^2(1) > 4.26, ps < .05 \), respectively. (We did not conduct this analysis for stability attributions because they were made only in the context of consequences, not cause.)

As hypothesized, of the total controllability attributions made in pro-prosecution child abuse statements (i.e., aggravating or ignore-as-a-mitigator; \( n = 115 \)), there was a higher proportion of controllable attributions (\( n = 107, 93\% \)) relative to uncontrollable attributions (\( n = 8, 7\% \)), \( \chi^2(1) = 87.19, p < .001 \), and 100% (\( n = 18 \)) of stability attributions were stable. Of the total controllability attributions made in pro-defense child abuse statements (i.e., mitigating or ignore-as-an-aggravator; \( n = 73 \)), there was a higher proportion of uncontrollable statements (\( n = 71, 97\% \)) relative to controllable statements (\( n = 2, 3\% \)), \( \chi^2(1) = 65.22, p < .001 \), and all of the stability attributions were unstable (\( n = 4, 100\% \)).

**Jurors’ Discussions About Alcohol Abuse (see Table 2)**

**Mitigation.** Of the 34 deliberations, 2,138 statements from 319 jurors were about alcohol abuse. There were significant differences in the frequency of each mitigation code (i.e., mitigate, aggravate, ignore-as-a-mitigator, ignore-as-an-aggravator, and neutral), \( \chi^2(4) = 616.36, p < .001 \). Follow-up chi-square analyses, employing the Bonferroni’s correction for Type I error, revealed significant differences among frequencies of each code, which followed a pattern similar to the pattern for child abuse statements. Specifically, jurors made (a) more mitigating statements (\( n = 470, 22\% \)) than aggravating (\( n = 383, 18\% \)) and ignore-as-an-aggravator statements (\( n = 20, 0.01\% \)); (b) more ignore-as-a-mitigator statements (\( n = 563, 26\% \)) than mitigating, ignore-as-an-aggravator, and aggravating statements; (c) more aggravating statements than ignore-as-an-aggravator statements; and (d) more neutral statements (\( n = 702, 33\% \)) than any other type of statement, \( \chi^2\text{'s} > 8.87, ps < .01 \). See Table 2 for raw frequencies of the codes.
Table 2
Frequencies of Jurors’ Statements About Alcohol Abuse as a Function of Attribution Type

<table>
<thead>
<tr>
<th>Alcohol abuse attribution</th>
<th>Mitigate</th>
<th>Ignore as a mitigator</th>
<th>Aggravate</th>
<th>Ignore as an aggravator</th>
<th>Neutral</th>
<th>Total collapsed across mitigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consequence</td>
<td>306</td>
<td>259</td>
<td>31</td>
<td>3</td>
<td>250</td>
<td>849</td>
</tr>
<tr>
<td>Controllable</td>
<td>0</td>
<td>242</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>246</td>
</tr>
<tr>
<td>Uncontrollable</td>
<td>305</td>
<td>6</td>
<td>28</td>
<td>2</td>
<td>25</td>
<td>366</td>
</tr>
<tr>
<td>Cause</td>
<td>76</td>
<td>27</td>
<td>325</td>
<td>4</td>
<td>24</td>
<td>456</td>
</tr>
<tr>
<td>Controllable</td>
<td>1</td>
<td>26</td>
<td>138</td>
<td>1</td>
<td>2</td>
<td>168</td>
</tr>
<tr>
<td>Uncontrollable</td>
<td>29</td>
<td>0</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>38</td>
</tr>
<tr>
<td>Stable</td>
<td>0</td>
<td>0</td>
<td>181</td>
<td>0</td>
<td>0</td>
<td>181</td>
</tr>
<tr>
<td>Unstable</td>
<td>46</td>
<td>0</td>
<td>3</td>
<td>2</td>
<td>0</td>
<td>51</td>
</tr>
<tr>
<td>No attribution</td>
<td>88</td>
<td>277</td>
<td>27</td>
<td>13</td>
<td>428</td>
<td>833</td>
</tr>
<tr>
<td>Total alcohol abuse statements</td>
<td>470</td>
<td>563</td>
<td>383</td>
<td>20</td>
<td>702</td>
<td>2,138</td>
</tr>
</tbody>
</table>
Next, a chi-square analysis collapsed across the two categories that reflect the bottom line of whether alcohol abuse is used in an argument for a life sentence or a death sentence (excluding neutral) revealed that a higher proportion of juror statements was aggravating or ignore-as-a-mitigator (i.e., pro-prosecution statements; $n = 946, 66\%$) than mitigating or ignore-as-an-aggravator (i.e., pro-defense statements; $n = 490, 34\%$), $\chi^2(1) = 144.80, p < .001$. Thus, this supports the hypothesis that jurors are more likely to discount alcohol abuse as a mitigator or even use it against the defendant as an aggravator than they are to use it for the defendant as a mitigator.

**Aspect.** Of the 1,315 statements made about alcohol abuse that could be coded for an aspect, a significantly greater number were classified as “consequences” ($n = 859, 65\%$) than “cause” ($n = 456, 35\%$), $\chi^2(1) = 118.35, p < .001$.

**Attributions.** Next, we tested the relative frequency of the attributions jurors made about alcohol abuse. We predicted that jurors would be more motivated by retributive goals of punishment than by utilitarian goals of punishment, which in turn would result in more attributions about controllability than stability. In line with this hypothesis, of the 1,051 alcohol abuse-related attributions, a significantly greater proportion was controllability attributions ($n = 818, 78\%$) than stability attributions ($n = 233, 22\%$), $\chi^2(1) = 330.54, p < .01$. Specifically, 39\% were controllable attributions, 38\% were uncontrollable attributions, 17\% were stable, and 5\% were unstable.

Next, we tested the relative frequency of controllable attributions (i.e., alcohol abuse does not help explain why he committed this crime) versus uncontrollable attributions (i.e., alcohol abuse does help explain why he committed this crime) about alcohol abuse and stable attributions (i.e., he will never recover from alcoholism) versus unstable attributions (i.e., he can recover from alcoholism). Of the 818 controllability attributions collapsed across cause and consequence, there was no significant difference in proportion of controllable ($n = 414, 51\%$) and uncontrollable attributions ($n = 404, 49\%$), $\chi^2(1) = .54, ns$. The story becomes more complicated, however, when inspecting controllable attributions separately within cause versus consequence statements. That is, within consequence statements (i.e., comments regarding the defendant’s ability to control the effects of alcohol abuse), jurors made significantly more uncontrollable attributions ($n = 366; i.e., the alcohol made him unable to control his criminal behavior$) than controllable attributions ($n = 246; i.e., the alcohol did not make him unable to control his criminal behavior$), $\chi^2(1) = 23.17, p < .001$. Within cause statements (i.e., comments regarding the defendant’s ability to control the decision to drink), however, jurors made significantly more controllable attributions ($n = 168; i.e., the defendant did control the decision to drink$) than uncontrollable attributions ($n = 38; i.e., the defendant was unable to control the decision to drink$), $\chi^2(1) = 82.04, p < .001$. Recall that there was no distinction between cause and consequences for stability because all stability attributions fell under the category of cause of the alcoholism. Of the 233 stability attributions, there were significantly more stable ($n = 182, 78\%$) than unstable attributions ($n = 51, 22\%$) made about alcohol abuse, $\chi^2(1) = 3.65, p < .001$.

As hypothesized, and in line with attribution theory, within the pro-prosecution alcohol abuse statements (i.e., aggravating or ignore-as-a-mitigator), there were far more controllable attributions ($n = 406, 91\%$) relative to uncontrollable
attributions \((n = 42, 9\%)\), \(\chi^2(1) = 297.68, p < .001\), and more stable attributions \((n = 182, 98\%)\) relative to unstable attributions \((n = 3, 2\%)\), \(\chi^2(1) = 173.20, p < .001\). Also as expected, within the pro-defense alcohol abuse statements (i.e., mitigating or ignore-as-an-aggravator), there was a greater proportion of uncontrollable statements \((n = 337, 99\%)\) relative to controllable statements \((n = 2, 1\%)\), \(\chi^2(1) = 312.58, p < .001\), and all \((n = 48, 100\%)\) of the stability attributions were unstable.

**Individual Differences as Predictors of Juror Statements**

**Variable Creation and Transformation**

To examine the influence of death penalty attitudes and political orientation on jurors’ statements regarding child abuse and alcohol abuse, we first created several mitigation variables. First, we created a variable that represents the proportion of each individual juror’s child abuse-related statements that were pro-prosecution (i.e., aggravating or ignore-as-a-mitigator) relative to their total child abuse-related statements, excluding neutral statements. For example, if a juror made 80 aggravating or ignore-as-a-mitigator statements about child abuse, and 20 mitigating or ignore-as-an-aggravator statements about child abuse, this juror would receive a score of 80%. From each score, therefore, one can infer a juror’s proportion of pro-defense statements because we have excluded all neutral statements. Second, and similarly, we created a variable representing the proportion of each individual juror’s alcohol abuse-related statements that were pro-prosecution (i.e., aggravating or ignore-as-a-mitigator) relative to his or her total alcohol abuse-related statements, excluding neutral statements.\(^3\)

Next, we created several attribution variables. First, we created a variable called *controllable attributions* that represents the proportion of each individual juror’s controllable attributions about child abuse relative to his or her total controllability attributions about child abuse. Second, we did the same for alcohol abuse. Third, we created a variable called *stable attributions* that represents the proportion of each individual juror’s stable attributions about child abuse relative to his or her total stability attributions about child abuse. Finally, we did the same for alcohol abuse. One code was excluded from analyses because it was used so infrequently: the stability code for child abuse (used by only 15 jurors). Computing these variables as proportions controls for a juror’s speaking frequency.

None of these newly created dependent variables was normally distributed

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\(^3\) We chose not to create variables representing the proportions of each of the more specific mitigation codes (i.e., mitigate, aggravate, ignore-as-a-mitigator, ignore-as-an-aggravator) because these variables would not be pure representations of the actual nature of jurors’ statements. That is, the proportion of individual juror statements about child abuse that are ignore-as-a-mitigator statements relative to all child abuse statements would have inevitable error: A juror who makes only aggravating statements about child abuse (and no ignore-as-a-mitigator statements) would receive a score of “zero” for the proportion of ignore-as-a-mitigator statements. The same score would apply for someone who makes only mitigating statements about child abuse (and no ignore-as-a-mitigator statements). Clearly, these two jurors differ in important ways, which would not be captured by their score on the ignore-as-a-mitigator variable. Using the combined categories described above is therefore much more meaningful for the purposes of understanding psychologically how jurors perceive child abuse and alcohol abuse.
(variables had either severe skew, kurtosis, or both). This is a logical outcome because it indicates that most jurors discussed child abuse and alcohol abuse in either a consistently pro-prosecution or pro-defense way. Neither logarithmic, square root, nor inverse transformations led to acceptable normality in distributions, so we dichotomized all dependent variables so that participants whose proportion value was above 50% were coded as 1 and participants whose proportion value was below 50% were coded as 0. Participants whose proportion value was exactly 50% (only 0.6% to 3.3% in any category) were excluded. (See Table 3.)

Because the attitudes toward the death penalty variable was positively skewed, we subjected this variable to a logarithmic transformation, which sufficiently reduced skewness, and conducted analyses using the logarithmic transformed values.

We conducted a series of sequential logistic regressions testing the influence of jurors’ endorsement of the death penalty and political orientation on the series of newly created dichotomized dependent variables, first for child abuse, then for alcohol-related variables.4

To eliminate multicollinearity (i.e., correlations above .90) among the interaction terms of attitudes toward the death penalty and political orientation, we centered these variables and created new interaction terms using the centered variables. The two-way interaction terms were entered in the second step of the logistic regression.

Individual Differences as Predictors of Juror Statements About Child Abuse

Logistic regressions revealed no significant main effect of juror political orientation (Wald = .68, ns) on likelihood of making pro-prosecution child abuse-related statements. See Table 4 for the summarized results of these logistic regression analyses (i.e., betas, Wald statistics, odds ratios, and confidence intervals). As expected, however, there was a significant main effect of attitudes toward the death penalty such that as support for the death penalty increased, so did the proportion of pro-prosecution statements about child abuse, LR $\chi^2(3, N = 131) = 33.67, p < .001$. There was no significant two-way interaction of death penalty attitudes and political orientation, Block $\chi^2(1, N = 131) = .01, ns$.

There was no significant main effect of juror political orientation on likeli-

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4 Because the composition of and experiences within each individual jury might have a unique influence on the nature of jurors’ discussions during deliberations, we also tested a series of hierarchical linear models in which jury was treated as a nested group variable. There were, however, no differences in results of the analyses with jury as a nested group variable and the logistic regression analyses without including jury as a nested group variable. Therefore, we report the results of the logistic regressions in which jury was not treated as a nested group variable but in which we still controlled for expert testimony condition and jury instructions regarding life without parole. Specifically, we entered the expert testimony condition and the life without parole condition as variables in the first step of the regression. In the second step of the regression, we added attitudes toward the death penalty and juror political orientation. Because gender is a pervasive predictor of a juror’s perceptions of child sexual and physical abuse (for a review, see Bottoms, Golding, Stevenson, Wiley, & Yowziak, 2007), we included gender as a predictor of jurors’ discussions regarding child abuse. Gender did not emerge as a significant predictor of any child abuse-related discussion variables.
hood of making controllable child abuse-related attributions (see Table 4). There
was, however, a significant main effect of attitudes toward the death penalty such
that as support for the death penalty increased, so did the proportion of control-
lable attributions about child abuse, LR $\chi^2(3, N = 92) = 15.78, p < .001$. There
was no significant two-way interaction between death penalty attitudes and
political orientation, Block $\chi^2(1, N = 92) = 1.28, ns$.

### Individual Differences as Predictors of Juror Statements About Alcohol Abuse

There was a significant main effect of attitudes toward the death penalty and
a marginally significant main effect of political orientation such that as conserva-
tive orientation and endorsement of the death penalty increased, so did the propor-
tion of pro-prosecution statements about alcohol abuse, LR $\chi^2(3, N = 259) = 36.01, p < .001$ (see Table 4). There was no significant two-way interaction involving death penalty attitudes and political orientation, Block $\chi^2(1, N = 259) = .70, ns$.

There was a significant main effect of juror political orientation and attitudes
toward the death penalty on likelihood of making controllable attributions, LR $\chi^2(3, N = 229) = 19.16, p < .01$ (see Table 4). Specifically, jurors who opposed
the death penalty and who were liberal made fewer controllable attributions.
There was no significant two-way interaction of death penalty attitudes and political orientation, Block $\chi^2(1, N = 229) = 1.38, ns$.

There was no significant main effect of juror political orientation on likeli-
hood of making stable alcohol abuse attributions (see Table 4). There was,
however, a significant main effect of attitudes toward the death penalty such that
jurors who opposed the death penalty made more stable attributions about alcohol
abuse than did those who favored the death penalty, LR $\chi^2(3, N = 102) = 18.35,
p < .001$. There was no significant two-way interaction of death penalty attitudes and political orientation, Block $\chi^2(1, N = 102) = .02, ns$.

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5 There was a significant positive correlation between general attitudes toward the death penalty and the sentence preference scale ($r = .49, p < .001$).
Table 4

Logistic Regression Analyses Testing Individual Differences as Predictors of Juror Statements About Child Abuse and Alcohol Abuse

<table>
<thead>
<tr>
<th>Block/predictor</th>
<th>B</th>
<th>Wald χ²</th>
<th>Odds ratio</th>
<th>95% CI Lower</th>
<th>95% CI Upper</th>
</tr>
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<tbody>
<tr>
<td>Pro-prosecution statements about child abuse</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>Block 1</td>
<td></td>
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<td></td>
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<tr>
<td>Endorsement of death penalty</td>
<td>-8.63**</td>
<td>18.18**</td>
<td>0.00</td>
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<td>Political orientation</td>
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<td>0.83</td>
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<td>Endorsement of death penalty</td>
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<td>Political orientation</td>
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<td>0.05</td>
<td>0.87</td>
<td>0.26</td>
<td>2.86</td>
</tr>
<tr>
<td>Political Orientation × Endorsement of Death Penalty</td>
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<td>0.01</td>
<td>0.86</td>
<td>0.03</td>
<td>27.72</td>
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<td></td>
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<tr>
<td>Endorsement of death penalty</td>
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<td>1.05</td>
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<td>Endorsement of death penalty</td>
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<td>1.98</td>
<td>0.56</td>
<td>7.00</td>
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<td>Political Orientation × Endorsement of Death Penalty</td>
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<td>1.19</td>
<td>0.12</td>
<td>0.00</td>
<td>5.46</td>
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<td></td>
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</tr>
<tr>
<td>Endorsement of death penalty</td>
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<td>23.07**</td>
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<td>0.06</td>
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<td>Political orientation</td>
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<td>Endorsement of death penalty</td>
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<td>0.00</td>
<td>0.06</td>
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<td>1.46</td>
<td>0.89</td>
<td>2.3947</td>
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<td>Political Orientation × Endorsement of Death Penalty</td>
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<td>0.55</td>
<td>0.13</td>
<td>2.25</td>
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<td>Controllable attributions about alcohol abuse</td>
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<td>11.01**</td>
<td>0.05</td>
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<tr>
<td>Political orientation</td>
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<td>3.82*</td>
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<tr>
<td>Endorsement of death penalty</td>
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<td>11.13**</td>
<td>0.05</td>
<td>0.01</td>
<td>0.29</td>
</tr>
<tr>
<td>Political orientation</td>
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<td>3.95*</td>
<td>1.55</td>
<td>1.01</td>
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<tr>
<td>Political Orientation × Endorsement of Death Penalty</td>
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<td>1.37</td>
<td>0.45</td>
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<td>1.71</td>
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<tr>
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<td></td>
</tr>
<tr>
<td>Endorsement of death penalty</td>
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<td>0.04</td>
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<tr>
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</tr>
<tr>
<td>Endorsement of death penalty</td>
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<td>12.17*</td>
<td>0.00</td>
<td>0.00</td>
<td>0.04</td>
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<td>Political orientation</td>
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<td>0.01</td>
<td>0.94</td>
<td>0.30</td>
<td>2.90</td>
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<tr>
<td>Political Orientation × Endorsement of Death Penalty</td>
<td>0.22</td>
<td>0.02</td>
<td>1.25</td>
<td>0.08</td>
<td>20.21</td>
</tr>
</tbody>
</table>

Note. a p < .10,  *p < .05,  **p < .01.
Finally, we conducted a series of logistic regressions to explore whether predeliberation sentence preference scale (ranging from 1 to 14) predicted jurors’ statements about child abuse and alcohol abuse. See Table 5 for the summarized results of these logistic regression analyses (i.e., betas, Wald statistics, odds ratios, and confidence intervals). As expected, predeliberation sentence preference significantly predicted all child abuse and alcohol abuse mitigation and attribution dependant variables, LR $\chi^2$s $> 26.74$, $p < .001$. Specifically, as predeliberation death sentence preference increased, pro-prosecution statements (i.e., aggravate and ignore-as-a-mitigator) and attributions (i.e., controllable and stable) about child abuse and alcohol abuse also increased.

**Discussion**

As we elaborate below, our theoretically derived hypotheses regarding jurors’ use of child abuse and alcohol abuse in a capital trial were generally supported. There were also some counterintuitive findings that are of practical importance.

**Jurors’ Discussions About Child Abuse**

As hypothesized, jurors were more likely to use child abuse directly as a mitigating factor than to use it directly as an aggravating factor. This is in line with past research showing that a majority of jurors self-reported that they considered child abuse as a mitigating factor in a mock capital case (Lynch & Haney, 2000). The actual nature of jurors’ discussions of child abuse, however, was more complex than this. Surprisingly, jurors were more likely to argue that other jurors should ignore child abuse as a mitigating factor or to actually use it against the defendant as an aggravating factor than they were to use it as a mitigating factor as the defense had intended. For example,

> You can’t blame that on his childhood. He’s an adult now. He knows what he’s doing. He knows it’s wrong. All of us had some outstanding circumstances as a child. But there’s a point where you stop crying over spilt milk. Maybe your dad was cruel to you, or maybe your mother made you work so hard. But how often can you use that as a rubber crutch. In other words, there’s a point in your life when you have to get up on your own two feet and look straight ahead.

These findings are particularly interesting given that the murder in this case was not particularly heinous or premeditated. Furthermore, testimony about the defendant’s child abuse was quite poignant—it included that he was frequently beaten while defending his younger sister from sexual abuse by his father. In essence, the defendant was practically described as heroic as a child. Yet, jurors were still more likely to argue that his history of child abuse should be ignored as a mitigator than to use it as a mitigator. Arguably, then, this case is among the most liberal tests of jurors’ tendency to use child abuse as a mitigating factor

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6 Five juries reached a life sentence and four reached a death sentence. The remainder of the 34 juries did not reach consensus. This is yet another reason why predeliberation sentence preference is a better variable to examine given the high proportion of hung jury verdicts.
because the case was so sympathetic to the defendant. This suggests that child abuse is even less likely to be used as a mitigator in cases involving more heinous crimes.

An attributional analysis of jurors’ discussions of these factors revealed that jurors were more likely to focus on how the defendant’s past child abuse influenced his future criminal behavior (i.e., the consequences of child abuse) than they were to focus on why he was abused in the first place. This is probably because the latter issue is more relevant to jurors’ decisions because it pertains more directly to understanding the cause of the crime at hand rather than the cause of the child abuse, which is less proximal to the crime and therefore arguably less relevant to their task as jurors. Furthermore, examining how jurors discussed the consequences of abuse in attribution terms allows us to see how jurors ended up reasoning that child abuse should not be considered a mitigator. Specifically, jurors were more likely to believe that the defendant could have controlled the negative effects of his childhood abuse than they were to believe that his child abuse made him unable to control his criminal behavior. That is, they did not excuse his crime by arguing that the effects of child abuse were an explanation for his behavior. Instead, jurors were most likely to argue that his child abuse was not a factor that reduces criminal responsibility, holding the abused defendant accountable for his actions. Below are representative juror statements including controllable attributions about his childhood abuse:

You can say, you know, I know, I feel sorry for a kid who grows up with a father like that. But his sister also had the same life. She’s not killing people. There’s something wrong with him, you see? He has a choice. He has a choice.

Right. And many people have dysfunctional lives, come from dysfunctional families and grow up in chaos with abuse and all that and they don’t necessarily turn to this type of lifestyle or choose this kind of lifestyle. He is an adult. And he has chosen the path he’s going to take. And yeah I feel bad for him that he grew

---

Table 5
Logistic Regression Analyses Testing Predeliberation Sentence Preference as a Predictor of Juror Statements About Child Abuse and Alcohol Abuse

<table>
<thead>
<tr>
<th>Predictor: Sentence recommendation</th>
<th>B</th>
<th>Wald χ²</th>
<th>Odds ratio</th>
<th>95% CI Lower</th>
<th>95% CI Upper</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pro-prosecution statements about child abuse</td>
<td>-0.25**</td>
<td>32.07**</td>
<td>0.78</td>
<td>0.71</td>
<td>0.85</td>
</tr>
<tr>
<td>Controllable attributions about child abuse</td>
<td>-0.22**</td>
<td>21.48**</td>
<td>0.80</td>
<td>0.73</td>
<td>0.88</td>
</tr>
<tr>
<td>Pro-prosecution statements about alcohol abuse</td>
<td>-0.29**</td>
<td>72.86**</td>
<td>0.75</td>
<td>0.70</td>
<td>0.80</td>
</tr>
<tr>
<td>Controllable attributions about alcohol abuse</td>
<td>-0.16**</td>
<td>34.56**</td>
<td>0.85</td>
<td>0.81</td>
<td>0.90</td>
</tr>
<tr>
<td>Stable attributions about alcohol abuse</td>
<td>-0.38**</td>
<td>20.86**</td>
<td>0.69</td>
<td>0.58</td>
<td>0.81</td>
</tr>
</tbody>
</table>

Note. ** p < .01. Predeliberation death sentence preferences ranged from 1 (death, extremely confident) to 14 (life, extremely confident).
up under those circumstances, but that doesn’t give him the right to ignore the rules of society.

In terms of stability attributions, jurors were more likely to argue that the defendant’s childhood abuse had permanently damaged him and that he could not be rehabilitated than they were to argue that he could recover from his child abuse. It is interesting that some jurors actually go as far as to use the defendant’s history of child abuse as a cue that he is permanently damaged and likely to commit future crimes—an argument favoring a death sentence. For example,

You could say he came from a dysfunctional home, etc., etc. But the fact is that he’s . . . you’re not going to cure him of that. And I think treating him for these problems is impossible too. So at this point, at this point he’s not going to be. . . .

In general, our data support our attributional model. For example, controllable and stable attributions were more likely to be made in the context of pro-prosecution statements than in the context of pro-defense statements. In addition, uncontrollable and unstable attributions were more likely to be made in the context of pro-defense statements than in the context of pro-prosecution statements. This suggests that, in support of our model, uncontrollable and unstable attributions were most likely made in the context of arguments that the defendant was not responsible for the crime and could be rehabilitated, respectively. Also, as jurors’ initial predeliberation sentence preferences became more pro-prosecution, so too did their discussions of these factors. Although we were unable to test whether juror discussions about child abuse caused postdeliberation sentence preferences, as is predicted by our full model, the relation between predeliberation sentence preferences and juror discussions about child abuse certainly provides indirect support. Future research should be conducted to determine more directly the relation between jurors’ attributions about child abuse and their ultimate sentence preferences. For example, although attribution theory would predict that attributions cause sentence preferences, it is possible that the relationship between attributions and sentence preferences is bidirectional. That is, some research demonstrates that jurors are motivated to achieve and maintain coherence in their assessments of case-related information when reaching a case decision (e.g., Holyoak & Simon, 1999). In other words, if a juror supports the death penalty, he or she is likely to be motivated to evaluate all additional case-related information in a way that is consistent with a death sentence preference. Perhaps jurors are so motivated to reach coherence that they actually go as far as to use evidence presented by the defense as mitigating factors (e.g., child abuse) against the defendant. This motivation to maintain coherence might be particularly strong in the context of the sentencing phase of a capital case where jurors’ decisions are of ultimate importance. Evidence of the magnitude of this pressure is evident in the distribution of jurors’ comments about child abuse in our study. That is, very few jurors (only 0.6%–3.3%) made equal numbers of pro-defense as pro-prosecution statements about child abuse. In fact, jurors’ comments were so nonnormally distributed that we were forced to dichotomize the variables: The vast majority of jurors made either primarily pro-defense or primarily pro-prosecution statements. Perhaps other types of cases (e.g., civil cases), in which life or death
is not at stake, would allow more room for complex, within-person variability in
jurors’ discussions about child abuse.

As predicted, jurors made fewer attributions of stability than of controllability
in their discussions about child abuse. This supports social psychological research
demonstrating that despite self-reported reliance on utilitarian over retributive
goals of punishment (e.g., Ellsworth & Ross, 1994), jurors are more motivated by
retributive than utilitarian punishment goals (e.g., Carlsmithe et al., 2002; Darley
et al., 2000). For example, Darley et al. (2000) found that jurors’ case judgments
were more influenced by the offense severity (a retributive perspective) than by
the likelihood that the defendant would commit future offenses (a utilitarian
perspective). A similar pattern of results was borne out in our analysis of jurors’
attributions about child abuse, providing additional support for this general social
psychological phenomenon. However, we do not know whether this finding
would generalize to other types of less severe cases. Thus, future research should
examine the extent to which our theoretical model depicts jurors’ discussion of
other types of mitigating factors in other types of scenarios.

Jurors’ Discussions of Alcohol Abuse

As with child abuse, jurors were more likely to use alcohol abuse as a directly
mitigating than as a directly aggravating factor. This is in line with some research
showing that jurors perceived an intoxicated defendant as less responsible for his
criminal actions than a nonintoxicated defendant (Critchlow, 1985; Norris &
Cubbins, 1992; Richardson & Campbell, 1982). Even so, jurors were more likely
to discount alcohol abuse as a mitigating factor or to actually use it against the
defendant as an aggravating factor than they were to use it as a mitigating factor
as the defense had intended. In fact, a sizable minority (18%) of jurors’ statements
about alcohol abuse were directly aggravating. This lends some support to
Marlowe and colleague’s (1999) concern that jurors perceive substance abusers
negatively, and that presenting alcohol abuse as a defense tactic might not be
effective. These findings also are in line with other research showing that jurors
sometimes react more punitively toward an intoxicated defendant than a nonin-
toxicated defendant, likely because they hold him accountable for choosing to
become intoxicated in the first place (Aramburu & Leigh, 1991; Schuller & Wall,
1998; Wall & Schuller, 2000). Representative juror statements regarding alcohol
abuse as a defense tactic are as follows:

- He drinks while he carries the gun. So if he knows he’s got a drinking problem, he
  shouldn’t drink. I mean he was responsible—he’s responsible for taking those drinks.

- The alcohol couldn’t be such a problem because he was able to handle it at work
to the point where he got a job as a driver. So how bad of a problem could it be?

- They didn’t just, you know, walk out of somewhere and the guy was standing
  there. I mean they thought about what they were doing. But then after they did it,
  he said he was so drunk he didn’t know what he was doing. Convenient excuse. . .

- So he can’t remember what he did, yet his partner was drinking the same thing he
  was, the same amount, he remembered everything.

- He won’t get rehabilitated. One drink and they’re back.
An attributional analysis of jurors’ discussions of these factors revealed that jurors were more likely to focus on how the defendant’s use of alcohol influenced his behavior while committing the crime than they were likely to debate whether he controlled his decision to drink in the first place. This is probably because the former issue is more relevant to the jurors’ decision because it pertains more directly to understanding the cause of the crime at hand (i.e., intoxication) rather than the cause of the intoxication (i.e., alcoholism).

J most likely to make uncontrollable attributions about the consequences of the defendant’s alcohol abuse (i.e., his intoxication explains why he committed the crime) than controllable attributions (i.e., his intoxication does not explain why he committed the crime). In contrast, jurors were more likely to make controllable attributions about the cause of his alcohol abuse (i.e., he chose to drink) than uncontrollable attributions (i.e., he was an alcoholic and could not control his drinking behavior). That is, although they sometimes argued that he was unable to control his actions because of alcohol intoxication, they often held him accountable for his criminal behavior by arguing that he was able to control the decision to drink. Below are two representative juror statements including controllable attributions, followed by two representative uncontrollable attributions about his alcohol abuse:

He was responsible to a certain extent because he knows when he drinks he’s not—he gets violent.

The fact that he carried a gun and he knew he had an alcoholic problem. He knew he got violent. I think he’s pretty responsible.

Well, he was intoxicated. Some people get to that point that they don’t remember what they’re doing.

Cause he was drunk. How can he make that decision whether he was doing great bodily harm to somebody who was drunk.

Finally, jurors were more likely to believe that the defendant would never be rehabilitated from alcoholism than they were likely to believe that he could recover from alcoholism. In line with attribution theory, this argument was most often made to support a death sentence. Below are two representative juror statements including a stable attribution about his childhood abuse:

And he may even have been, you know, every time I got drunk and got a hangover, I swore I was never going to do it again. And there I am right back at it again.

Well, that’s why the doctor said it could happen—that if he’s out, it’s going to happen again. Cause he’s not going to go back to reform. He’s not going to try to go to Alcoholics Anonymous and so forth. He had the opportunity two or three times before that and he never took it. His sister said that he tried the reform programs and then quit.

As with child abuse, and adding more significant support for our attributional model, controllable and stable attributions about alcohol abuse were more likely to be made in the context of pro-prosecution statements than in the context of pro-defense statements. In addition, uncontrollable and unstable attributions about alcohol abuse were more likely to be made in the context of pro-defense state-
ments than in the context of pro-prosecution statements. And, jurors’ initial predeliberation sentence preferences predicted their discussions about alcohol abuse.

Finally, jurors made fewer attributions of stability than of controllability in their discussions about alcohol abuse, as they also did for child abuse. This again is consistent with social psychological research demonstrating that jurors are primarily motivated by retributive punishment goals rather than utilitarian punishment goals (e.g., Carlsmith et al., 2002; Darley et al., 2000). Still, future research should include an examination of other case scenarios and other mitigating factors to test the generalizability of our theoretical model.

**Juror Individual Differences as Predictors of Jurors’ Discussions About Child Abuse and Alcohol Abuse**

As hypothesized, politically conservative jurors were more likely than politically liberal jurors to make pro-prosecution statements and controllable attributions about alcohol abuse. This supports research demonstrating that conservatives are more likely than liberals to make internal and controllable attributions (e.g., Sniderman et al., 1986; Skitka et al., 2002; Zucker & Weiner, 1993). In line with this theory, political orientation did not predict stability attributions about alcohol abuse or child abuse. Even so, political orientation did not predict pro-prosecution statements about child abuse or controllable attributions about child abuse. Thus, it seems that conservatives are not more likely than liberals to discount a defendant’s child abuse or to hold it against him. Perhaps alcohol abuse is simply more relevant to conservative values of self-control and personal discipline than child abuse. Furthermore, there is a crucial distinction between child abuse and alcohol abuse: Unless forced to drink, it is true that initiating what results in being alcohol abuse is the result of the individual’s actions, whereas being the victim of child abuse is a situation within which the victim has no control. In fact, because most people are against child abuse, it is highly unusual for jurors to argue that the defendant brought his own child abuse on himself (exactly \( n = 7 \) in this study). In contrast, jurors much more frequently argued that the defendant was responsible for his own alcoholism (\( n = 138 \)). In other words, the personal blame attributed to the defendant for his alcoholism, but not for his child abuse, splits along conservative versus liberal lines. The differences we found in jurors’ discussions of these two forms of mitigating factors illustrate the importance of examining different types of mitigating evidence.

Attitudes toward the death penalty emerged as a pervasive predictor of juror discussions. As predicted, jurors who supported the death penalty were more likely than jurors who did not to (a) make pro-prosecution statements about child abuse and alcohol abuse, (b) make controllable attributions about child abuse and alcohol abuse, and (c) make stable attributions about alcohol abuse. Thus, our research adds a further empirical example of just how powerful attitudes toward the death penalty are; it seems they nearly function as a proxy for a general punitive worldview. In addition to relations between pro–death penalty attitudes and pro-prosecution attitudes and judgments we noted in the introduction, research finds that those who support the death penalty also tend to be higher in authoritarianism, dogmatism, a belief in a just world, and need for vengeance and
retribution (O’Neil et al., 2004). They are also more likely to endorse controversial or inaccurate beliefs about the death penalty, such as that the death penalty is less expensive than life without parole, and that a sentence of life without parole does not actually guarantee that an offender will never receive parole (O’Neil et al., 2004).

These findings have serious policy implications regarding the consequences of excluding non-death-qualified jurors from death penalty cases. By excluding jurors who are opposed to the death penalty from capital cases, juries are composed of jurors who are more prone to discounting mitigating factors, such as child abuse and alcohol abuse. As we have shown, holding a defendant accountable for his actions by discounting factors such as child abuse and alcohol abuse is associated with an increased likelihood of allocating a death sentence—a relationship that is likely mediated by increased perceived defendant responsibility and increased anger and decreased sympathy toward the defendant, triggering retributive goals of punishment (e.g., Weiner, 2006). In other words, excluding non-death-qualified jurors surely produces capital juries that are biased toward a death sentence. In fact, our research shows that mitigating factors of a history of child abuse and alcohol abuse are ironically likely to be least effective in capital cases, where non-death-qualified jurors are excluded, even though these are the only types of cases where such factors are permitted as mitigating factors. This poses serious implications for defendants in these types of cases, whose lives often depend on how jurors interpret and weigh mitigating and aggravating factors during deliberations.

Finally, our research suggests that policy regarding jury instructions in death penalty cases should be re-evaluated. The results of this research indicate that many jurors do not understand that a history of child abuse is always a potential mitigator, and never a potential aggravator. Although alcohol abuse can sometimes be considered an aggravator (e.g., if the defendant voluntarily drank alcohol to build his courage to commit a heinous crime), this was not the case here, and jurors still frequently considered alcohol abuse an aggravator. Thus, our research suggests that jurors may need more information regarding the definition of mitigating factors in addition to the current simple definition they are given: “any other facts or circumstances that provide reasons for imposing less than a death penalty.” Instead, jurors must be explicitly told that factors regarding a history of child abuse and alcohol abuse can be considered as mitigators.

Conclusions, Implications, and Future Directions

The present research is an important step toward understanding how jurors discuss evidence presented as mitigating factors, yet it would be useful to examine additional factors that might predict jurors’ discussions, including, for instance, jurors’ personal history of child abuse. In addition, perhaps jurors would be more willing to use child abuse as a mitigating factor if the defendant’s crime was in some way related to his past abuse, such as, for example, child abuse. Additional factors that might influence jurors’ tendency to use child abuse or alcohol abuse as mitigating factors include defendant race, gender, and the offender’s history of juvenile delinquency. Finally, future research should test more directly the underlying processes that are theorized to mediate the influence of jurors’ attribu-
tions on their sentences, including responsibility, emotions, and punishment goals via experimental manipulation of a defendant’s history of child abuse and alcohol abuse.

Not only does the present research provide important theoretical advances in the field of psychology and law, but it also has the potential to improve law and public policy. In addition to implications we have already drawn, understanding how jurors discuss evidence presented as mitigating factors during deliberations in the sentencing phase of a capital trial provides information relevant to attorneys when they decide how to prepare and present their cases. For example, we have shown that factors such as child abuse and alcohol abuse are frequently ignored by the jury or even used against the defendant. Some attorneys might find this information useful as they develop their trial strategy. Given the results of this research, attorneys might choose to employ expert witnesses who could testify about the actual consequences of child abuse and alcohol abuse to ensure that jurors are provided with all the necessary information about these factors, rather than depending on jurors to fully understand them and interpret them in the same way without further guidance.

Furthermore, this research has revealed that some jurors hold inaccurate beliefs about the legal ways in which evidence about child abuse and alcohol abuse can be used. Specifically, some jurors indicated during deliberations that they were not legally permitted to consider alcohol and child abuse as mitigating factors, which, of course, is not true—jurors are allowed to consider these factors as mitigating factors. Unfortunately, when capital jury instructions do not explicitly tell jurors how they can use evidence on child and alcohol abuse, jurors may guess about the legal standards and apply the law incorrectly. In fact, it is well established that instructions as to the standard of proof and decision rules regarding mitigation and aggravation are not well understood by jurors (e.g., Diamond & Levi, 1996). Future research should be aimed at improving jurors’ understanding of jury instructions to help prevent this type of misunderstanding in capital jury instructions—arguably the most important of circumstances.

In conclusion, not only does this research fill the gap in information regarding jurors’ use of mitigating factors such as child abuse and alcohol abuse, it does so by employing a novel methodology. By examining how jurors use evidence presented on child abuse and alcohol abuse during their deliberations to test a theoretically driven model, we uncovered a counterintuitive finding that jurors are actually more likely to discount child abuse and alcohol abuse, or even use them against a defendant, than to use them as purely mitigating factors. An attributional analysis of jurors’ statements helped reveal the underlying nature of jurors’ discussions regarding child abuse and alcohol abuse. Thus, this research not only provides a theoretical contribution to the field of psychology and the law, but it also provides information that has the potential to help ensure fair trials and secure the implementation of justice in arguably the most important of circumstances—when jurors deliberate on death.

References


(Appendix follows)
## Appendix

### Representative Examples of Jurors’ Coded Statements About Child Abuse and Alcohol Abuse

<table>
<thead>
<tr>
<th>Coded statement</th>
<th>Mitigate $(n = 144)$</th>
<th>Aggravate $(n = 32)$</th>
<th>Ignore as a mitigator $(n = 190)$</th>
<th>Ignore as an aggravator $(n = 4)$</th>
<th>Neutral: “Was he abused?” $(n = 62)$</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child abuse</strong></td>
<td><strong>Consequence</strong></td>
<td><strong>Consequence</strong></td>
<td><strong>Consequence</strong></td>
<td><strong>Consequence</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Uncontrollable: “But I think the conditions of his early childhood abuse threw him into this.” $(n = 70)$</td>
<td>Uncontrollable: “He’s been abused, so he knows how to abuse.” $(n = 7)$</td>
<td>Uncontrollable: “Child abuse could affect him. Not on this particular crime. On his personality yes, but not on the crime.” $(n = 1)$</td>
<td>Uncontrollable: “Because it suggests to me although certainly he’s picked up some of the ways in which he reacts from his dad, he hasn’t picked it all up.” $(n = 2)$</td>
<td>Uncontrollable: n/a</td>
</tr>
<tr>
<td></td>
<td>Controllable: n/a</td>
<td>Controllable: n/a</td>
<td>Controllable: “A lot of people have problems in their childhoods that affect them . . . but not everyone ends up killing someone. . . .” $(n = 102)$</td>
<td>Controllable: n/a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stable: n/a</td>
<td>Stable: “But the fact is that he’s—you’re not going to cure him of that [his childhood abuse].” $(n = 18)$</td>
<td>Stable: n/a</td>
<td>Stable: n/a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Unstable: n/a</td>
<td>Unstable: n/a</td>
<td>Unstable: n/a</td>
<td>Unstable: n/a</td>
<td>Uncontrollable: n/a</td>
</tr>
<tr>
<td><strong>Cause</strong></td>
<td>Uncontrollable: (in reference to the age at which the defendant was abused) “. . . 10, I mean geez.” $(n = 1)$</td>
<td>Uncontrollable: n/a</td>
<td>Uncontrollable: n/a</td>
<td>Uncontrollable: n/a</td>
<td>Neutral: “Was he abused?” $(n = 62)$</td>
</tr>
<tr>
<td></td>
<td>Controllable: n/a</td>
<td>Controllable: “Maybe the damn kid deserved it. Maybe that’s why his dad beat the hell out of him.” $(n = 7)$</td>
<td>Controllable: “Because it suggests to me although certainly he’s picked up some of the ways in which he reacts from his dad, he hasn’t picked it all up.” $(n = 1)$</td>
<td>Controllable: n/a</td>
<td></td>
</tr>
<tr>
<td><strong>Neutral</strong></td>
<td>“Was he abused?” $(n = 62)$</td>
<td>“Was he abused?” $(n = 62)$</td>
<td>“Was he abused?” $(n = 62)$</td>
<td>“Was he abused?” $(n = 62)$</td>
<td>“Was he abused?” $(n = 62)$</td>
</tr>
</tbody>
</table>
Appendix (continued)

37 ATTRIBUTIONS IN CAPITAL TRIALS

Coded statement

- Consequence
  - Uncontrollable: n/a
  - Controllable: “OK because—so what we’re saying is that—so what you’re saying is that there’s a lot of people, as she mentioned, there’s a lot of people that have been abused. Some of them don’t even say anything. They walk around here, you know. . . .” \((n = 2)\)
  - Stable: n/a
  - Unstable: n/a
- Cause
  - Uncontrollable: n/a
  - Controllable: n/a

Alcohol abuse
- Mitigate \((n = 470)\)
  - Consequence
    - Uncontrollable: “He had been drinking. That really kind of constitutes an emotional or mental disturbance.” \((n = 302)\)
    - Controllable: n/a
  - Cause
    - Uncontrollable: “And he had an alcoholic father and he continued and became an alcoholic, but with his condition—and everyone is different—it affected him in such a way as it—he became enraged, became almost a maniac.” \((n = 29)\)
    - Controllable: Juror argues alcohol was mitigating after implying that he agrees the defendant chose to drink. \((n = 1)\)
    - Stable: n/a
    - Unstable: (as part of an argument that the defendant will recover from alcoholism if kept in prison) “Well, yeah, he won’t have access to alcohol.” \((n = 46)\)
- Aggravate \((n = 383)\)
  - Consequence
    - Uncontrollable: “You know? I mean, do you want to put your son in this guy’s path when he’s drinking and not really himself? I wouldn’t.” \((n = 28)\)
    - Controllable: n/a
  - Cause
    - Uncontrollable: (in an argument explaining why he is dangerous) “And he’s a drinker.” \((n = 8)\)
    - Controllable: “. . . if this was the first time he did it, I would definitely not be saying the death penalty at all. He chooses to drink. No one’s holding a gun to his head to drink. He chooses to commit a crime which he knows he’s got a temper.” \((n = 138)\)
    - Stable: (as part of an argument that he cannot be rehabilitated from alcoholism) “He had been through other programs they said.” \((n = 180)\)
    - Unstable: “There’s no guarantee. See, there’s no guarantee with the system of justice there is right now. If he gets sentenced to life in prison, he’s eligible for parole in seven years. There’s nothing to say that after seven years he’s not going to walk right out that door. He’s rehabbed, he’s dried out, he’s been in there for seven years supposedly not drinking or doing drugs in prison.” \((n = 3)\)

(Appendix continues)
Appendix (continued)

Coded statement

- Ignore as a mitigator \( (n = 563) \)
  - Consequence
    - Uncontrollable: “He aggravated himself with the booze and everything. But that still is no excuse.” \( (n = 6) \)
    - Controllable: “He said they had been drinking at a good clip, but he didn’t think they were really drunk.” \( (n = 242) \)
  - Cause
    - Uncontrollable: n/a
    - Controllable: “So, where do you draw the line on that one. I mean they could have had one, they could have had three, they could have had three six packs. He still has to take responsibility for his actions.” \( (n = 26) \)
    - Stable: n/a
    - Unstable: n/a
- Ignore as an aggravator \( (n = 20) \)
  - Consequence
    - Uncontrollable: “We heard he committed crimes while drunk. We really can’t use it against him.” \( (n = 2) \)
    - Controllable: n/a
  - Cause
    - Uncontrollable: (in response to the argument that he knew he got violent when drunk) “Yeah, but the evidence showed that he never had gotten this violent before. It was a rare occurrence. So, a case of he might have told himself, I can handle this, I don’t get violent. And his past history kind of supported it.” \( (n = 1) \)
    - Controllable: “I think he was aware that when he drank—right—I think he was aware—but I don’t believe this man should be sentenced to death.” \( (n = 1) \)
    - Stable: n/a
    - Unstable: (in response to the argument that he had been to Alcoholics Anonymous and did not become rehabilitated from alcoholism) “That’s not rehab.” \( (n = 2) \)
- Neutral \( (n = 702) \)
  - Consequence
    - Uncontrollable: (a discussion of case-related facts) “Yeah, if he wasn’t drinking he was OK” \( (n = 25) \)
    - Controllable: “You can be a career criminal, you can be an alcoholic and go to work every day. You can be a career criminal and hold down a job.” \( (n = 4) \)
  - Cause
    - Uncontrollable: n/a
    - Controllable: “But alcoholics have to want to get better because. . . .” \( (n = 2) \)
    - Stable: n/a
    - Unstable: n/a

Note. Total number in each category is noted parenthetically.