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JURY NULLIFICATION IN CAPITAL PUNISHMENT CASES

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Abstract

The introduction starts off by explaining what juries are and why we need them. Following this is a quick explanation of when juries are used (including the distinction between criminal and civil cases) with the laws and regulations that establish and maintain them. Next, the focus will be on who is eligible to be selected for jury service and the jury selection process that goes along with this; this section concludes with the decisions that a jury must make at the end of a trial.

The importance of this paper relies on the differences that come about in the process of death-qualifying a juror. In these terms, “death-qualified” means that a juror has been approved to participate in a trial where if the defendant is convicted it could result in the sentence being capital punishment. The next section of this paper will go into a detailed process of how jurors become “death-qualified” and why this is thought to be necessary in cases that could lead to this punishment. Legal precedent will be discussed along with significant issues raised in this process as well as with the implementation of it during the trial process.

Following this, a conclusion will be drawn. If the “death-qualifying” process and implementation do not have negative consequences to the trial (such as skewing the decision-making process, thus making an unfair or biased decision) then it can be concluded that this process is not interfering with the criminal justice system. But, if reliable data can be found that details any injustices that occur through this process then it will be concluded that “death-qualifying” jurors is not a just process. If the latter is concluded, then possible solutions will be discussed and evaluated.

I. INTRODUCTION

A. WHAT IS A JURY AND WHY DO WE HAVE THEM?

Juries are usually made up of six to twelve people depending on the state as well as the crime of which the defendant is being accused. Typically, if it is a civil case the jury will be six people while serious criminal cases require twelve people to make up the jury. The role of the jury is to listen to evidence conscientiously and to not draw biased conclusions. From there they will determine the verdict of the defendant (the one being accused.)

When the Founding Fathers were drafting the Constitution they wanted to ensure that the government did not have too much power. Thomas Jefferson said, “I consider trial by jury as the only anchor every yet imagined by man, by which a government can be held to the principles of its Constitution.”¹ The idea of juries was not created by the founders of the United States, in fact “the lawful judgment of his peers,” (in other words a trial by jury,) is mentioned in The Magna Carta,² (which was written in 1215, long before the U.S. Constitution was formed.) Essentially, a jury is a way that the people have a say in the punishment of another citizen instead of the government having control over the entirety of the situation.

B. WHEN ARE JURIES USED AND WHAT LAWS ESTABLISHED THEM?

Not every case that goes to court is in need of a jury. To explain this further I will break this into two sections: criminal cases and civil cases.

¹ Ross, K. (2005). Quotes on the Powers and Duties of Juries. *Fully Informed Jury Association*.

² “Magna Carta.” The New Encyclopedia Britannica. 15th ed. 1998. Print.

i. CRIMINAL CASES

The Sixth Amendment to the U.S. Constitution established juries for criminal cases. It states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury or the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.³

Essentially, the Sixth Amendment guarantees a defendant the rights of a speedy and public trial, the allowance of witnesses and to cross-examine them, and counsel that all work toward ensuring that the trial is impartial.

ii. CIVIL CASES

The Seventh Amendment to the US Constitution governs juries in civil cases primarily. It states:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.⁴

This amendment establishes the rights to a jury trial in civil federal cases. Juries are more common in criminal cases than in civil cases with juries deciding less than one percent of all cases in court.⁵

³ U.S. Constitution, Amendment 6

⁴ U.S. Constitution, Amendment 7

⁵ Lettow Lerner, R. & Thomas, S. The Seventh Amendment. *Constitution Center*.

C. JURY SELECTION

All cases that do require a jury must follow the Jury Selection and Service Act of 1968.⁶ This act was established to assure the basic principles of juries were being upheld. It not only guarantees that a random selection of potential jurors comes from a fair cross-section of the community, but also ensures that the opportunity to aid in jury service be open for all qualified citizens.

i. WHO IS ELIGIBLE TO BE ON A JURY?

To be eligible for jury service one must:

- Be a United States citizen
- Be at least eighteen years of age
- Be primarily a resident in the judicial district that they are being asked to serve for at least one year
- Be proficient in English
- Not have any disqualifying mental or physical conditions
- Not have any pending felony charges that are punishable by imprisonment for more than one year
- Not have any convicted felonies⁷

There are three groups of citizens that are always excused for jury service; these groups are members of the armed forces on active duty, professional fire and police departments, and full-time “public officers” of federal, state or local governments that perform public duties. This is not to say that these are the only individuals that do not have to perform jury services; there are many other optional excuses such as being over the age of 70, serving on a federal jury within the last two years, volunteer firefighters, and much more. Through the Jury Act those who can prove “undue hardship or extreme inconvenience” from serving on a

⁶ Jury Service and Selection Act (2008) *U.S. Courts*.

⁷ Juror Qualifications. *United States Courts*.

jury will also be given a temporary deferral. In other words, they will be excused from the current case, but will be put back in the system to be potentially drawn at a later date to serve. These excuses are granted at the discretion of the court. For the purposes of this paper, it is important to note that these excuses cannot be reviewed or appealed to Congress or any other entity.

ii. HOW ARE JURIES SELECTED?

Jury selection is a crucial part of the court proceedings to both parties involved. If a biased person is selected to be on the jury then the entire court proceedings could be skewed to not be fair and just.

The first part is being chosen from a random selection of eligible jurors. Next, is voir dire, a legal phrase meaning “to speak the truth,” which is when either the judge or lawyers ask the prospective jurors questions in the process of selecting the six to twelve jurors that will actually make up the jury.

To dismiss a potential juror the lawyer can either do it “for cause” or with a “peremptory challenge.” For cause occurs when the lawyer will state a valid reason for wanting to dismiss the juror (e.g., the potential juror is related to someone involved in the case or has some known bias that would make him or her an unfair participant). Peremptory challenges are when the lawyer is not required to give a reason. Depending on the type of case there are a certain number of peremptory challenges allowed. For example, in a capital case, each side has twenty peremptory challenges, versus a misdemeanor case where there are usually only three.⁸

⁸ Rule 24. Trial Jurors. *Cornell University Law School*.

In both circumstances the judge is allowed to deny the lawyer's request. These cannot be used "to discriminate on the basis of race or sex." The Massachusetts Bar Association sums up the expected role of the court accurately:

The appropriate role for the court during jury selection should be as an impartial referee to ensure that neither party unfairly indoctrinates or pre-educates prospective jurors to a particular theory or defense and to ensure the empanelment of the most impartial jury possible.⁹

iii. JURY DECISIONS AT THE END OF TRIAL

In a criminal case the burden of proof must be beyond a reasonable doubt while a civil case only requires a preponderance of the evidence. Preponderance of the evidence is explained as more than a 50 percent likelihood of the defendant committing the crime or not committing the crime.¹⁰ This is a much lower standard than beyond a reasonable doubt, which is considered the highest standard of proof in the American criminal justice system. When instructing juries to decide if the evidence is in fact beyond a reasonable doubt it is pointed out that this is not an absolute certainty, meaning it does not have to be 100 percent. Reasonable doubt is defined in *Black's Law Dictionary* as "the proof that prevents one from being convinced of the defendant's guilt, or the belief that there is a real possibility that the defendant is not guilty."¹¹ When that context is used the standard of beyond a reasonable doubt means that one is convinced of the defendant's guilt. The standard only requires that after hearing all of the evidence one makes a decision that they are "firmly convinced" is the correct verdict.

⁹ Breakstone, M. & White, D. (2010). Lawyers Must Work to Improve Voir Dire System in Massachusetts. *MassBar Association*.

¹⁰ Samaha, J. (2011). *Criminal Law*. Belmont: Wadsworth Cengage Learning.

¹¹ *Black's Law Dictionary*. (2004). 1, 293.

Due to the potential of a more severe punishment and the higher burden of proof to convict an individual in a criminal case (that uses a jury) the jury must decide unanimously. After lengthy deliberations if a unanimous decision can still not be met the judge has a couple of options, the main one being to declare a hung jury. This declaration would then lead to a mistrial, which results in the trial being tried again with an entirely new jury. This is not an ideal situation for any party involved, which is why it is imperative to find the right jury during the selection process.

In the American criminal justice system there is one crime that is sometimes considered so heinous that life imprisonment is not enough. First-degree murder, a murder that is premeditated and deliberate, is the one crime that can lead to another punishment: death penalty. In capital punishment trials the jury first decides innocent or guilty. If a guilty verdict is reached then they must recommend a punishment for the defendant: life or death. Due to this controversial obligation, jurors that are for capital punishment cases must go through an extra step during the selection process: death qualification.

II. DEATH-QUALIFIED JURORS

A. WHY A JUROR NEEDS TO BE “DEATH-QUALIFIED”

To be a “death-qualified” juror the individual must be willing to consider all of the sentencing options – usually death and life imprisonment without parole- without their personal opinions hindering their decision. Those that do not meet this standard are dismissed. In capital cases the jury must be tested to see if they are “death-qualified” during the voir dire process. During this a judge must ask questions such as “do you support the implementation of death penalty?” or “would you be able to convict someone to capital

punishment?” If potential jurors says no to any question like this they are then dismissed from jury duty.

It is thought that a juror who is against death penalty may not proceed in a impartial manner if they are a juror for a potential capital punishment case. Legal precedent establishes the laws for death qualifications in the form of United States Supreme Court Cases.

B. LEGAL PRECEDENT

Death qualifying a jury has been a controversial issue in the court system for decades. The current regulations for this process are outlined in the decisions of many cases; the following are the most influential.

Starting out with *Witherspoon v. Illinois* (1968)¹² the issue was whether a jury was impartial (in other words, abiding by the Sixth Amendment) due to a large number of prospective jurors being released based on their religious beliefs of capital punishment during the death qualifying process. The Court ruled in a 6-3 decision that the defendant’s Sixth and Fourteenth Amendment rights were being violated due to remaining jurors all being in favor of death penalty and as the court opinion puts it the jurors left would be bias in favor of a death sentence. However, this decision only affects cases that deal with religious beliefs against death penalty, a state may still allow lawyers to dismiss potential jurors if they think the juror could not impartially decide on guilt or innocence when capital punishment is a possibility. *Witherspoon v. Illinois* set a loose standard for the criminal justice system that was continued in *Wainwright v. Witt* (1985).¹³

¹² *Witherspoon v. Illinois*. 391 US 510 (1968)

¹³ *Wainwright v. Witt*. 469 US 412 (1985)

Wainwright v. Witt led to a decision that allows judges to decide if a jurors' stance on death penalty could "prevent or substantially impair" their decision as an impartial member of the jury. The effects of this case replaced the stipulations outlined in *Witherspoon v. Illinois* and set forth a standard where even more people could potentially be excluded from capital cases. Shortly after this the Supreme Court took on *Lockhart v. McCree* (1986).¹⁴ The Justices concluded that death qualifications are constitutional and that dismissing jurors that are against death penalty is not biased.

This leniency continued to increase in the 2007 Supreme Court case *Uttecht v. Brown*.¹⁵ During the jury selection process a potential juror was asked if he would have a problem imposing death penalty, he hesitated before answering. His hesitation became grounds for dismissal, even though his answer eventually was no. The Supreme Court upheld the ruling that this is an acceptable practice and continues to be used as a standard to this day.

The first major case that put a minimal halt on the power of the courts in death qualifying cases is *Hurst v. Florida* (2015), also the most recent United States Supreme Court case on this matter. This case discussed whether it is constitutional to have a jury give an "advisory opinion" and then the judge decide the exact punishment to impose. In a 8-1 decision the Justices ruled that it is unconstitutional due to the judge having far too much power than what is outlined in the Constitution. Part of Justice Sonia Sotomayor's opinion states: "The Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence to death," (Sakuma, 2016). Another component of this case was whether a unanimous decision needed to be met by the jury in order to impose death penalty. Most

¹⁴ *Lockhart v. McCree* 476 US 162 (1986)

¹⁵ *Uttecht v. Brown*. 551 US 1 (2007)

states do require a unanimous decision, but Florida was not among these. Due to the verdict it was decided that this is in fact unconstitutional and a unanimous decision must be met.

Legal precedent has given us the rules for dismissal of a potential juror in death qualifying cases such as that an individual may not be dismissed due to religious scruples, but if those scruples could make the individual bias then they may be dismissed. If one hesitates during certain voir dire questions then one may also be dismissed and much more. The rules for death qualifying juries are getting more and more lenient for pro-death jurors. This may not have an impact on the criminal justice system if juries are still working for their intended purposes and are following the amendments that guide them such as being impartial. The next section will examine if this is in fact true.

C. ISSUES WITH DEATH-QUALIFIED JURORS

Death-qualifying a jury has become a controversial subject due to the possibility that this extra step in the jury selection process creates a predisposition to support the prosecution of the defendant as well as the jury not being representative of the general population.

i. A NOT-SO REPRESENTATIVE JURY

A jury is supposed to be a representative sample of the general population. “A jury is seen as a fair tribunal because it represents the coalescence of a great diversity of community attitudes.”¹⁶ The Capital Jury Project studied the general population to see if there are specific groups of people that do not support death penalty. Their conclusions are that most minorities, women, and some religious groups are just a couple of the groups that do not

¹⁶ Cowan, C., Thompson, W., & Ellsworth, P. (1984). The Effects of Death Qualification on Jurors’ Predisposition to Convict and on the Quality of Deliberation. *Law and Human Behavior*.

support death penalty at rates equivalent to other groups. Thus, these groups are more likely to be excluded from death-qualified juries.¹⁷

Peremptory challenges have been seen as a loophole to dismiss minority jurors, specifically Blacks: “Numerous studies demonstrate that prosecutors use peremptory strikes to remove Black jurors at significantly higher rates than white jurors.”¹⁸ Supreme Court cases on death qualifications have established that a peremptory challenge is not necessary to dismiss a juror if their views could potentially alter their impartial deciding process in a capital case.

Death-qualified juries are more likely to be made up of White males that are moderately educated, conservative, Catholic or Protestant, and middle-class.¹⁹ Robert Fitzgerald and Phoebe Ellsworth found that 25 percent of Blacks were excluded where as only 15 percent of Whites were excluded.²⁰ A study of select counties in Florida found that the number of eligible Black jurors was five percent of all eligible jurors, yet in 40 percent of jury trials there was not a single Black juror.²¹ Another study of a county in Alabama found that eight out of ten African American jurors were excused from capital cases.²²

Every eligible juror is not actually eligible in the current jury selection process, specifically for capital punishment cases: “A lack of representativeness tends to compromise

¹⁷ Death Qualification. *Capital Punishment in Context*.

¹⁸ Totenberg, N. (2015). Supreme Court Takes on Racial Discrimination in Jury Selection. *NPR*.

¹⁹ Butler, B. (2007). The Role of Death Qualification in Jurors’ Susceptibility to Pretrial Publicity. *Florida Capital Resource Center*.

²⁰ Fitzgerald, R. & Ellsworth, P. (1984). Due Process vs. Crime Control. *Law and Human Behavior*.

²¹ Anwar, S., Bayer, P., & Hjalmarsson, R. (2012). A Jury Pool’s Race can Deny Justice. *CNN*.

²² Illegal Racial Discrimination in Jury Selection: A Continuing Legacy. (2014). *Equal Justice Initiative*.

the jury as an institution and undermine the judicial process.”²³ The implications of this will be explained in the following section.

ii. CONVICTION PRONE JURIES

The prolonged exposure of capital punishment discussions can lead jurors to go into the trial predisposed to the idea that the defendant is guilty, which goes against the defendant’s Sixth Amendment right to a fair trial.

Robert Fitzgerald and Phoebe Ellsworth studied the effects of death qualifications on juries. Their results showed that jurors who are pro-capital punishment are more “conviction prone” and that the death qualifying process in itself makes these jurors more likely to go into the trial with bias.²⁴ This is continued through the work of Craig Haney who found that the death qualifying process makes the jurors believe that there will be a sentencing phase, meaning that the defendant has to be guilty.²⁵ Sociologists call this a “conviction mentality.”

“Death-qualified jurors, when compared to excludables, are also more likely to have a high belief in a just world, an internal locus of control, and espouse legal authoritarianism.”²⁶ One that has an internal locus of control believes that they can govern what happens around them such as outcomes and actions in their surrounding environment. People that fall into this category tend to work hard, are confident when facing problems, and are less likely to be

²³ Kairys, D., Kadane, J., & Lehoczky, J. (1977). Jury Representativeness: A Mandate for Multiple Source Lists. *California Law Review*.

²⁴ Fitzgerald, R. & Ellsworth, P. (1984). Due Process vs. Crime Control. *Law and Human Behavior*.

²⁵ Haney, C. (2005). Death by Design: Capital Punishment as a Social Psychological System. *American Psychology-Law Society Series*.

²⁶ Butler, B. & Moran, G. (2007). The Impact of Death Qualification, Belief in a Just World, Legal Authoritarianism, and Locus of Control on Venirepersons’ Evaluations of Aggravating and Mitigating Circumstances in Capital Trials. *Behavioral Sciences and the Law*.

influenced by others.²⁷ Those that “espouse legal authoritarianism” are those that support their ruling-body, a.k.a. the government. These individuals also conform to their society’s customs, rules, overall view, and much more. Continued research on these characteristics suggests that when an unjust event occurs (such as a first-degree murder) one must attribute blame and alleviate the victim’s suffering, which in turn relates to these individuals being extremely skeptical of mitigating factors.

Mitigating factors are circumstances that may be a type of excuse for the defendant’s actions. An example of this is if a woman kills her husband. A mitigating circumstance could be that he has been sexually abusing her leading up to her actions. Mitigating factors are required in death penalty cases. They are often used when determining if the defendant should serve life in prison or be executed. According to Craig Haney and Mona Lynch. “It [Mitigating factors] is literally the only thing that stands between a capital defendant and a death sentence in virtually every instance.”²⁸ In other words, jurors who exhibit the characteristics mentioned above are more likely to ignore evidence that goes against their desired outcome. Along with this, death-qualified jurors are more likely to trust the prosecution as well as believe that the criminal justice system is infallible. Part of this might be that juries that have been death qualified deliberate less before coming to a consensus of the verdict.

Robert Young, a sociologist for the University of Texas, found “that death penalty supporters were nearly twice as likely to say it was worse to let the guilty go than to convict

²⁷ Cherry, K. (2016). What is Locus of Control? *Verywell*.

²⁸ Lynch, M. & Haney, C. (2011). Looking Across the Empathic Divide: Racialized Decision Making on the Capital Jury. *Michigan State Law Review*.

an innocent defendant.”²⁹ This is just some of the ample evidence that death-qualifying a jury is flawed to the point of diminishing the rights of the defendant. This continues with racial bias that goes along with the lack of representativeness in any jury, but even more so in capital cases.

iii. RACIAL BIAS

Juries are made up predominately of White middle-class men. The Capital Jury Project has labeled this as “white male dominance.” This translates into influence that race has on the final verdict. Robert Young reported that death penalty supporters who are also eligible for jury service are about a third more likely to be prejudiced against African-Americans.³⁰ In a study of 1,000 Philadelphia murder cases with defendants of all races it was discovered that Black defendants were four times more likely to be sentenced to death.³¹ This race issue also is relevant in regards to the victim: “Similarly situated defendants convicted of killing Whites are more likely to receive a death sentence than those of killing Blacks.”³²

The Capital Jury Project did a similar study using nationwide data and found that there was a higher rate of death sentences when the jury was made up of at five or more White males. A counter to this was when a Black male was present on the jury; in these cases, the death-sentencing rate was lower. Non-White men and women of all races were concluded to empathize more with the defendant no matter their color, leading to less death

²⁹ Morin, R. (2004). Bias in the Jury Box? *The Washington Post*.

³⁰ Morin, R. (2004). Bias in the Jury Box? *The Washington Post*.

³¹ Moran, R. (1998). Study: Racial Bias in Sentences an Analysis of 1,000 Philadelphia Cases Shows that Blacks are Four Times More Likely to get the Death Penalty. *Inquirer Harrisburg Bureau*.

³² Lynch, M. & Haney, C. (2011). Looking Across the Empathic Divide: Racialized Decision Making on the Capital Jury. *Michigan State Law Review*.

sentences in similar cases to those that were sentenced to death by White men. This study also found that groups with the “white male dominance” presence had the White men persuading other jurors for a death verdict even when the other jurors supported more pro-life positions. This proves that race does play a role in the decision-making process and trials by juries that include five or more White men will have a higher probability of producing racially biased outcomes.

III. POSSIBLE SOLUTIONS

It has been proven that there are many negative factors that come from the death qualification process. The jury selection process itself is biased in the case of death qualifications by dismissing those that do not align with the death penalty, which are usually minority groups. This leads to juries that are not representative of the population. From there these juries tend to be skewed in their decision-making processes, which translates to a partial verdict being reached by a jury that is more likely to encompass a conviction mentality. This being said, should prospective jurors be dismissed purely on their beliefs of capital punishment? The next section will discuss possible solutions. First I will start out with the more unlikely solutions and gravitate towards ones that have a greater potential.

There is the obvious (and very unlikely to occur in the near future) solution of terminating death penalty in its entirety, which is a states’ issue. In a sample that was deemed representative of the general population it was discovered that only 27 percent were

adamantly against death penalty. The majority could be swayed if certain circumstances were involved.³³

Abolishing juries is a solution for the problems presented here, but there are so many problems that would arise with this solution that it is not feasible, nor constitutional. For those matters, we will move along to another resolution.

As discussed in the case *Hurst v. Florida* a solution could be to not require the jury to decide on the sentencing outcome of the case. Instead, the jury would decide if they think the defendant is guilty or innocent of the charges and then the judge takes that into consideration when deciding on the punishment that the defendant must face. Going back to the decision of this case, as of now this is also unconstitutional and would require another case to overturn it. There are many pitfalls with this solution however, such as giving too much authority to the government and taking power away from the citizens.

Another potential solution is not requiring jurors to go through a death-qualifying voir dire process. However, due to the current need for a jury's decision to be unanimous, this solution is unlikely if not combined with another solution since the broad ideological beliefs will hinder the decision making process.

Eligible jurors are picked out of a pool using their license registration. When getting a license one could be asked then their views on death penalty and that could be recorded in the system that randomly selects potential jurors. If a potential capital punishment case arises then the jury pool could come from only those that support with the death penalty. This does not necessarily erase the bias of other races that the juror may have, however, it would get rid

³³ Butler, B. & Moran, G. (2007). The Impact of Death Qualification, Belief in a Just World, Legal Authoritarianism, and Locus of Control on Venirepersons' Evaluations of Aggravating and Mitigating Circumstances in Capital Trials. *Behavioral Sciences and the Law*.

of the death-qualifying voir dire process that has been proven to create a more conviction prone juror, however this does not rid the individuals that are conviction prone before the voir dire process.

Less than ten percent of criminal cases go to trial.³⁴ Most trials end in a plea bargain. Some say that this is because the American criminal justice system is flawed and one has better luck with a plea bargain than to go to trial: “The truth is that government officials have deliberately engineered the system to assure that the jury trial system established by the Constitution is seldom used.”³⁵ A solution to this is for individuals that are charged with a crime to exercise their rights instead of accepting a plea bargain. If one person or a few do this however it will not move the system towards a change. Instead it needs to be a mass movement towards trials. This would force policy makers to either reduce the number of criminal cases filed or to amend the Constitution: “People should understand that simply exercising their rights would shake the foundation of our justice system which works only so long as we accept its terms.”³⁶

³⁴ Alexander, M. (2012). Go to Trial: Crash the Justice System. *The New York Times*.

³⁵ Alexander, M. (2012). Go to Trial: Crash the Justice System. *The New York Times*.

³⁶ Alexander, M. (2012). Go to Trial: Crash the Justice System. *The New York Times*.

CONCLUSION

The Federal Bureau of Investigation (FBI) index for overall error rate of convictions of serious crimes may be less than one percent; however, the errors can be fatal:

“Exonerations of 13 death row inmates in Illinois between 1977 and 2000 prompted that state’s governor, George Ryan, to declare a moratorium on executions.”³⁷ Potentially, this and many other similar situations could have been avoided if one of the solutions above were implemented.

According to Emily Green: “Finding people who are considered qualified to decide a death penalty case and possibly vote for that penalty is not easy.”³⁸ Due to this, the trial process is slowed down and could take months longer. Is this really abiding by the Sixth Amendment to a speedy trial? Continuing, death-qualifying a jury takes away an individual’s rights to a fair and impartial trial as well. In order to maintain the Founding Fathers’ intentions a change must occur. However, deciding on which solution will be difficult due to the controversial nature and the altering of such a familiar system.

³⁷ Morin, R. (2004). Bias in the Jury Box? *The Washington Post*.

³⁸ Green, E. (2015). Why Finding a Jury for Death Penalty Cases is Complicated. *NPR*.

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U.S. Constitution, Amendment 6

U.S. Constitution, Amendment 7

Uttecht v. Brown. 551 US 1 (2007)

Wainwright v. Witt. 469 US 412 (1985)

Witherspoon v. Illinois. 391 US 510 (1968)