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# Be careful what you say: The relationship between prosecutorial language in closing statements and sentencing outcomes in real capital cases

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Be Careful What You Say: The Relationship Between Prosecutorial Language in Closing  
Statements and Sentencing Outcomes in Real Capital Cases

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An Honors College Project Presented to  
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College of Health and Behavioral Sciences  
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by Megan Parker

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Be Careful What You Say: The Relationship Between Prosecutorial Language in Closing Statements and Sentencing Outcomes in Real Capital Cases

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## Table of Contents

Acknowledgements	4
Abstract	5
Introduction/Literature Review	6
Method	17
Results	19
Discussion	20
References	24
Table 1	26
Appendix A	27
Appendix B	30

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### Abstract

Moral disengagement refers to how individuals rationalize the decisions they make, especially if they may be immoral or difficult. Individuals can be primed to engage in moral disengagement through the use of specific language. The current study analyzed language strategies used in closing statements of real capital murder cases to investigate which are correlated with a death penalty sentence. Because jurors are responsible for sentencing another individual to death, they may have some difficulty making such a decision. The current study found that future dangerousness and empathetic language were significantly correlated to jurors sentencing the death to the death penalty. This finding suggests that there are types of language strategies that may reduce the guilt associated with jurors' death penalty decisions.

*Keywords: moral disengagement, juror decisions, language*

## Be Careful What You Say: The Relationship Between Prosecutorial Language in Closing Statements and Sentencing Outcomes in Real Capital Cases

Prosecutors play an influential role in capital cases; they must not only represent the state in the case, but they must also seek an appropriate punishment for the crime. Capital cases are composed of two phases –the guilt phase and the sentencing phase. As part of the guilt phase, both the defense attorney and prosecutor present their sides of the case and the jury determines whether the defendant, the individual on trial for the alleged crime, is found guilty or not guilty. If the defendant is found guilty, the trial moves on to the sentencing phase where the defendant’s sentence is determined by the jury. During the guilt phase, a prosecutor’s goal is to seek justice and aim to have the defendant found guilty, if they have truly committed the crime. During the sentencing phase, a prosecutor’s goal is to have the defendant given an appropriate sentence that fits their crime, whether it be the death penalty or life without parole. These goals are accomplished through interactions with the jury, specifically through the language they use. Because of this, prosecutors may choose their words carefully. They aim to convince the jury the defendant is guilty and have him or her given an appropriate sentence (Barkan & Bryjak, 2014). Prosecutorial vocabulary can have a compelling effect on the jury’s decision (Haney, 1997).

After hearing the information given by the prosecutor and defense attorney, jurors must then take what they have heard and decide whether the defendant is innocent or guilty. If the defendant is found guilty, the jurors must then decide the appropriate sentence. When it comes to cases that involve death penalty sentences, or life without parole sentences, this can be a difficult decision to make. When deciding the defendant’s sentence, jurors may engage in moral disengagement methods –strategies that allow individuals to rationalize difficult, and sometimes immoral, decisions –that can allow them to distance themselves from the decision (Haney, 1997). For example, jurors may rationalize their decision by believing that they are simply carrying out the wishes of the law. Once juries employ this moral reasoning, it becomes moral action when they adjudicate the sentence. Language and the way it is used can have very influential effects on jury decision-making, especially in capital murder cases where the defendant’s life is at stake.

Previous studies have found that language can affect decision-making, but few have investigated the effect of language of jury decision-making in the court setting. Schmid and Fielder (1998) explored the use of subtle language strategies in closing statements of simulated court cases. Evidence supports the claim that subtle language strategies are more effective and persuasive than blatant strategies, such as flattery and leading questions. Schmid and Fielder (1998) recorded simulated trials of lawyers in training and then coded the language they used. As a second part of the study, these videos were then shown to randomly chosen students, who were instructed to determine the verdict and punishment of the case they observed, as well as attributions about the defendant's guilt and evaluations the quality of the closing statements. The results from this study support the claim that "language strategies...do have a noticeable effect on the attribution of blame and guilt in the legal setting" (p.1168). Language strategies analyzed in this study include the use of interpretative action verbs, such as hurt or hinder, and descriptive actions verbs, which identify specific contexts that words are used in. The use of such strategies was found to moderate the influence that defense attorneys and prosecutors' language had on what juries believed to be the severity of the crime (Schmid & Fielder, 1998). While Schmid and Fielder examined the use of broad language strategies and how they may affect decisions in their study, Bandura (1999) examines the use of moral disengagement mechanisms and how they affect decision making as a whole.

Bandura developed a social cognitive theory that argues moral reasoning becomes moral action through a process of "self-regulatory mechanisms rooted in moral standards" (Bandura, 1999, p. 193). Bandura (1999) listed several mechanisms used by individuals to rationalize immoral actions. These mechanisms were developed as an extension of Bandura's social cognitive theory. Although Bandura (1999) did not analyze the use of these mechanisms in actual decision-making, other studies have. Bandura specified eight mechanisms –moral justification, palliative comparison, euphemistic labeling, displacement of responsibility, diffusion of responsibility, minimizing/ignoring/misconstruing the consequences, dehumanization and attribution of blame (Bandura, 1999). In capital cases, these mechanisms could be used to justify jurors' decision to sentence a defendant to the death penalty –the act



of taking one's life that could be viewed as heinous and immoral or retributive, depending on a person's attitude toward the death penalty.

The first mechanism, moral justification, occurs when individuals engage in immoral actions but justify the actions to themselves through the thinking they employ. For example, before discussing the case with fellow jurors, individual jurors must contemplate about the case on their own and may justify their decision by telling themselves that the defendant deserves a harsh sentence due to the heinous nature of the crime he or she committed. The second mechanism, advantageous/palliative comparison, is used to make hurtful or harmful actions look harmless (ex: if a defendant is charged with attempted murder, the defense attorney may point out that the defendant did not complete the murder, making the crime seem less harmful); this mechanism is highly effective when used in combination with the previously mentioned mechanism, moral justification. Euphemistic language is used when attempting to reduce one's personal responsibility for an action. When an individual views his or her actions as "stemming from the dictates of authorities", he or she is engaging in the displacement of responsibility mechanism (Bandura, p. 196). This is seen in Milgram's famous obedience experiments in which he had participants administer increasingly painful shocks to individuals, who, unknown to the participants at the time, were confederates in the study who did not receive any true shocks (Milgram, 1965). Even though they stated they wished to discontinue, participants continued to administer shocks because they were instructed to do so by an authority figure.

Related to displacement of responsibility is the mechanism of diffusion of responsibility in which individual responsibility is decreased when several individuals are involved in a decision. This mechanism is related to the bystander effect, in which people are less likely to act when they are in a group (Darley & Latane, 1968). Because of the diffusion of responsibility, jurors may feel less responsible, and likely less guilty, when they sentence a defendant to the death penalty because the responsibility is spread out amongst several individuals rather than one person. Bandura (1999) noted that individuals are more likely to act cruelly when acting in groups because responsibility for the group's

actions are diffused among several individuals, thus no one person feels entirely responsible. The next mechanism involves disregarding or distorting the consequences of an action. Ignoring the harm caused from an individual's action minimizes the responsibility the individual feels. This can relate to capital cases because jurors may ignore the fact that they are killing a human being when sentencing a defendant to the death penalty and may instead believe that they are performing their duties as a juror. Another mechanism, dehumanization, includes the process of assigning non-human characteristics to an individual to make the individual's life seem less valuable. This may be seen in court if prosecutors attempt to portray defendants as animals, or describe them as villains or monsters who had committed heinous crimes. Attribution of blame, the final mechanism, involves individuals placing blame for their actions onto others; individuals who act immorally view themselves as victims rather than as the instigator of the action. For example, jurors may not feel responsible for their actions if they place the blame on other jurors, the judge, or the criminal justice system as-a-whole. Bandura noted that these mechanisms are not engaged instantaneously, but instead must first be gradually activated within the individual through deliberation.

Another important concept Bandura (1999) acknowledged is that executioners use these mechanisms often. It is through these mechanisms that executioners are able to carry out their jobs and take the lives of other human beings, while lessening the guilt they may feel. Not only are these mechanisms used in extreme cases, such as executioners, but they are also used every day in non-extreme cases in which one individual benefits at the cost of another. Haney (1997) applied many of the mechanisms Bandura listed to juries and their decisions to incriminate a defendant to death in his article on capital juries and violence and found five mechanisms, described by Bandura (1999), that assisted jurors in making their sentencing decisions.

There are many psychological processes that equip capital jurors to make the decision to sentence a defendant to the death penalty (Haney, 1997). Without these mechanisms Bandura (1999) defined, jurors would experience much distress and cognitive dissonance at the thought of condemning a person to

death. These mechanisms allow jurors to feel less guilt and help them believe they made an ethical and correct decision. Haney (1999) outlined five mechanisms in his article that assist jurors with their duties. These five mechanisms were developed from the eight mechanisms Bandura (1999) listed; they were chosen based on years of data collected by graduate students and researchers. The five mechanisms are dehumanization, viewing the defendant as defect/different/deviant, using the death penalty as a form of self-defense, displacement of responsibility, and institutionalized authorization for the death penalty. Haney adopted many of the same concepts Bandura originated; however, he labeled some of them differently. Haney's description of dehumanization is very similar to Bandura's (1999). He notes dehumanization is "one of the most powerful cognitive processes that can distance people from the moral implications of their actions" (Haney, p. 1454). When a defendant's human status is taken away, jurors are able to detach themselves from the consequences of their actions. Related to dehumanization is the process of viewing defendants as defect/different/deviant. As Pillsbury (1989) states "the more we designate a person as fundamentally different from ourselves, the fewer moral doubts we have about condemning and hurting that person" (Pillsbury, 1989, p. 692). Thus, when jurors are pressed to view the defendant as different from themselves, it is easier for them to sentence the defendant to death. For example, Masur (1989) found that jurors found it easier to convict "outsiders" (p.39)

The third mechanism Haney (1997) mentions is using the death penalty as a form of self-defense. Using this justification, jurors rationalize sentencing defendants to the death penalty as a way to protect the community. Many jurors use this mechanism of moral disengagement because they are uneducated about sentencing options other than the death penalty. Surveys have found that jurors believe their decision is solely between death penalty or no death penalty; they are unaware of the option of other sentencing arrangements; however, for the purpose of the current study only cases in which the death penalty and life without parole were the only sentencing options were used. When using the death penalty as a method of self-defense, jurors consider the future dangerousness of the defendant. There is some bias in this decision because, in some cases, jurors are not made aware of the context in which the crime was

committed, so they cannot make an educated assessment of the defendant's future dangerousness. Some jurors believe defendants sentenced to life without parole will still have the opportunity to commit criminal acts while in prison (Sorenson & Pilgrim, 2000). Jurors lack a sufficient education about prison systems, making them unaware of the heightened security and protocols in place to prevent offenders from committing crimes in prison. Educating jurors about sentencing options and prison systems may likely prevent them from using the death penalty sentence as a form of self-defense.

The next mechanism Haney (1997) proposes jurors use when convicting defendants to the death penalty involves minimizing the personal consequences of the death penalty sentence. Using this mechanism, jurors distance themselves from the consequences of giving a defendant the death penalty. They feel less responsible for their actions because they themselves are not the individual conducting the execution of the defendant. This mechanism is similar to Bandura's (1999) displacement of responsibility. In fact, many jurors are unaware of what occurs during the execution process, making it easier for them to displace the responsibility of their actions; jurors, just like the public as-a-whole, are very misinformed about the death penalty and its procedures. Psychologists have found that people are less likely to fulfill the orders of an authority figure, in this case, the judge, when they are aware and can see the punishment and harm being imposed on the individual (Haney, 1997). With the death penalty, jurors do not see the defendant being executed, so they do not experience much, if any, dissonance –guilt due to your beliefs and actions not being equivalent –when sentencing the defendant.

The last mechanism Haney (1997) mentions is the use of instructional authorization for the death penalty. Jurors are able to give defendants a death penalty sentence because they feel as though they are carrying out the wishes of the judge or following the law written by the state. Jurors may feel as though their actions do not reflect on themselves, because they believe they are required to sentence the defendant to the death penalty; jurors may also feel as though they have made an unspoken promise to the judge. Prior to trial, jurors who believe they would not be able to sentence an individual to death are removed from consideration. Because of this, most capital juries consist of individuals in favor of the

death penalty, or at least those that would be able to give the death penalty if the evidence called for it, increasing the chances the defendant will receive that sentence (Barkan & Bryjack, 2014). Haney believed that these five mechanisms of moral disengagement allow capital juries to overcome the violence associated with the death penalty; these mechanisms turn ordinary citizens into individuals able to condemn other citizens to death. Haney mentioned the five mechanisms used by jurors when sentencing a defendant to death, but he did not specify which mechanisms are used the most frequently or how jurors utilize these mechanisms in actual capital cases. Although it did not look at how jurors utilize moral disengagement mechanisms, Osofsky, Bandura, and Zimbardo (2005) differs slightly from the Haney (1997) study because they researched how the execution team employs these mechanisms mentioned in the Bandura (1999) and Haney (1997) studies.

Osofsky et al. (2005) studied the role of moral disengagement in the execution process, specifically within the execution team. Execution teams face moral dilemmas because they are the individuals responsible for taking the life of another. By conducting surveys with execution teams at several prisons, the researchers discovered what types of moral disengagement the executioners engaged in to justify their actions. Osofsky et al. (2005) also interviewed the security staff at the prisons, who had day-to-day contact with the inmates on death row but were not responsible for the executions, as well as the staff who had no contact with the inmates. These two other groups served as comparisons for the execution teams. Results indicated that the execution team used eight mechanisms of moral disengagement – moral justification, euphemistic language, exonerative comparison, displacement of responsibility, diffusion of responsibility, minimization/disregard of the consequences, dehumanization, and attribution of blame. These mechanisms overlap with the ones identified in the Bandura (1999) and Haney (1997) articles mentioned previously. It was hypothesized and supported that the execution team would have the highest levels of moral disengagement, as compared to the security and office staff (Osofsky et al., 2005).

Osofsky et al. (2005) mentioned examples the participants gave of each mechanism of moral disengagement. An example of moral justification was, “If a society is to be law-abiding, murders must be avenged with capital punishment” (p. 379). Euphemistic language referred to the death penalty as a legal penalty for murder. “An execution is merciful compared to a murder”, was an example of advantageous comparison (p.379). “Those who carry out state executions should not be criticized for following society’s wishes”, was an example of displacement of responsibility (p. 379). Using diffusion of responsibility, responsibility was spread out among everyone involved in the process –judge, jurors, prosecutors, execution team –so that no one individual felt entirely responsible for their actions. Engaging in the minimization/disregard of consequences mechanism of moral disengagement, an individual stated, “Nowadays the death penalty is done in ways that minimize the suffering of the person being executed” (p.380). When using the attribution of blame mechanism, individuals stated that murderers can only blame themselves for being sentenced to death –they are the ones who acted in ways that lead to this consequence. Lastly, a sample of dehumanization the researchers found was, “Murders who receive the death penalty have forfeited the right to be considered full human beings” (p.380).

Osofsky et al. (2005) examined moral disengagement of executions, but acknowledged that there are three levels involved in the application of the death penalty –societal, judicial, and execution. They state that future research should examine the role of moral disengagement of jurors. No study, to the current researcher’s knowledge, has examined the role of moral disengagement of jurors in real capital cases. The purpose of the present study is to use real capital cases to investigate moral disengagement at the judicial level by examining prosecutors’ use of moral disengagement language in their closing statements and the influence the language has on jury sentencing. Types of moral disengagement language to be included will be based on those outlined by Bandura (1999), Haney (1997) and Osofsky et al. (2005); however, these categories will be narrowed down to four categories due to some categories overlapping. The four moral disengagement categories to be analyzed in the current study include dehumanizing language, moral justification, displacement, and diffusion of responsibility. Also, future

dangerous and empathetic language toward the victim will be included as categories because they have been deemed important.

Future dangerousness is similar to a strategy Haney (1997) noted as self-defense rationale; however, the criminal justice system has created legal proceedings that consider future dangerousness when sentencing a defendant. Specifically, it is one of three questions jurors must answer “yes” to in order to sentence a defendant to the death penalty. Marquart, Eklund-Olson, and Sorenson (1989) have found that, a vast majority of the time, jurors do not have difficulty answering the first two questions (i.e., was the act the defendant committed deliberate and was the act a response to provocation by the victim), leaving the future dangerousness question to be the determining factor in whether a defendant receives the death penalty. There is evidence showing that jurors are not accurate when it comes to predicting future dangerousness (Marquart et al., 1989), which is why some states, including Florida, Mississippi, and Indiana, do not allow future dangerousness arguments to be made in trials; use of these arguments can be deemed grounds for a mistrial. Nonetheless, research shows that jurors are heavily influenced by future dangerousness arguments in the states that allow them (Marquart et al., 1989). Due to this, future dangerousness will also be included in the current study’s analysis of prosecutorial language.

The final category to be included in the current study is empathetic language. This type of language involves making the jurors feel sympathy for the victim or those directly related to the victim, such as family and friends. Shelton and Rogers (1981) found that empathy can lead to attitude changes. This is extremely important during capital cases because it is the prosecutor’s goal to persuade the jury to adjudicate the harshest, yet appropriate, sentence. It is because of this, and the overwhelming use of empathetic language by prosecutors, that this is included as a category in the current study.

In analyzing the language used by prosecutors during the sentencing phase of a capital murder case, a coding system investigating four moral disengagement categories (dehumanizing language, moral justification, displacement, and diffusion of responsibility), future dangerousness, and empathy toward

the victim will be used. It is hypothesized that, after controlling for extraneous variables (e.g., number of murder victims, gender of victim), increased use of these types of language will be associated with stronger sentencing outcomes, that is, the death penalty versus life without parole. The present study looks into the relationship between prosecutorial language and sentencing outcomes in capital cases.

## **Method**

### **Materials**

Twenty-eight actual capital cases were used in this study, but three were omitted due to issues with the transcripts. Cases were selected based on several criteria. In all of the selected cases, the defendant is male in order to control for potential differences in sentencing for males and females. Only cases that allow arguments for future dangerousness will be included, meaning only capital cases originating in states that allow for future dangerousness arguments were included. The number of victims was similar across cases, as was the age of the victim(s); however, two cases involved non-adult victims (one aged 15, and one aged 2). The race of the defendant could not be controlled for, as many transcripts do not specify the race of the defendant. The known racial breakdown was fifteen White, eight Black, one Hispanic, and four unknown defendants; there were no subgroup differences based on race in any of the variables of interest.

A coding system (see Appendix A), designed by the researcher and based on the literature cited above, was used to code for the following language categories: dehumanizing language, moral justification, diffusion of responsibility, displacement of responsibility, future dangerousness, and empathy toward the victim(s). These categories were chosen because they were found to be the methods most prominently used by Bandura (1999) and Haney (1997), with the exception of the future dangerousness and empathetic language categories, which were deemed important by the researcher. Future dangerousness was included as a category because it was found to be the determining question, of the three questions asked to jurors, in whether a defendant receives the death penalty. All of the cases



included in the analysis come from states that allow future dangerousness arguments, thus, it is interesting to see if this type of language is used in the cases, and how it may be related to the sentencing, because out of twenty-five cases, only twelve resulted in a death penalty sentence. Lastly, empathetic language was chosen because it was found influential by the researcher, after being validated through the literature (Shelton & Rogers, 1981).

As previously mentioned, the language categories that were analyzed included dehumanizing language, moral justification, diffusion of responsibility, displacement of responsibility, future dangerousness, and empathy toward the victim(s). An example of dehumanizing language would be if the prosecutor referred to the defendant as an “animal” or “monster”, thus brutalizing the defendant. Dehumanizing language was further divided into two subcategories –against the act (e.g. “What this man did to (victim) defies humanity”) and against the person (e.g. “He was a barbarian”). Stating that crimes must be avenged or that murderers must be punished so that other individuals will be deterred from committing crimes is an example of moral justification. Displacement of responsibility can be seen when a prosecutor informs the juror that they are simply carrying out the wishes of the state or following the law. When jurors are told they are not individually responsible for the punishment the defendant receives is an example of diffusion of responsibility. An example of future dangerousness may be when the prosecutor states that the defendant is likely to murder someone in prison. Lastly, an example of empathy toward the victim would be noting that due to the defendant’s action, the victim’s life was cut short.

## **Procedure**

Prior to conducting the study, a coding system was developed that was utilized when coding the capital cases for moral disengagement vocabulary. The coding system considered the information from the previously mentioned studies. Before coding the capital cases, all cases were stripped of any identifying information that indicates the sentencing outcomes. This measure allowed for the coding to be blind and unbiased. The cases were then coded for moral disengagement vocabulary using the designed

coding system and coding sheet (see Appendix B). Only the closing statements from the prosecution were used for the purpose of this study. Each time an instance of moral disengagement vocabulary was found in the case, it was marked and recorded. A second coder also coded the same cases in order to assure inter-rater reliability. Coding was conducted independently, that is, the coders did not code the cases together. After being coded, both coders discussed any discrepancies and any disagreements were recorded. The first author made the final decision in any disagreements and the resulting tallies were statistically analyzed to determine the relationship between prosecutorial language vocabulary and sentencing outcome.

## **Results**

### **Inter-rater reliability**

Coding was done by marking when a phrase of each language type was present within a closing statement. Every time a phrase from a language category was present, it was tallied, then the total tallies for each category within a closing statement were used in the data analysis. During coding, it was determined that the diffusion of responsibility category needed to be omitted due to the ambiguousness of the language; it was too difficult to determine when the prosecutor was referring to you in the collective or individual sense. Due to an inability to be objective, this category was eliminated.

To determine inter-rater reliability, the percentage of agreements on tallies for each category were calculated. If the two coders agreed on three tallies, yet disagreed on one, this would be calculated as an inter-rater reliability of 75% for that category. The percentage of agreements for each language category were averaged for each case, creating the overall inter-rater reliability for that case. Lastly, all of the percentages for each case were averaged together to establish the overall inter-rater reliability, which was 99%.

The final analysis included 25 cases ( $n$  for life without parole = 13,  $n$  for death penalty = 12) coded for five linguistic categories. As previously stated, the diffusion of responsibility category was

eliminated because it was too difficult to objectively determine whether the prosecutor was referring to “you” in the collective or individual sense. Because of this, this category was not included in coding. Also, three cases were eliminated from the final analysis due to issues with the transcripts. In one case, the trial was presented in front of a panel of three judges, rather than a jury. This case was eliminated because it did not use jurors, which is what the current study is analyzing. The other two cases were eliminated from analysis because there were significant portions of the transcripts missing, making it impossible to truly know what language strategies were present. Once these cases were removed from consideration, twenty-five cases were left.

### **Language Strategies Analysis**

Using an alpha of .05, a Pearson correlation was run to determine what relationship, if any, existed between the types of language and sentencing outcome. The results yielded a significant positive correlation between both future dangerousness and a death penalty sentence, and empathy toward the victim and a death penalty sentence. Future dangerousness ( $r = .404, p < .05$ ) and empathetic language ( $r = .400, p < .05$ ) were both positively correlated with a death penalty sentence, suggesting that the more these types of moral disengagement were evoked and activated with the prosecutor’s language, the more likely the defendant was to receive the death penalty. There were no significant relationships among the other language categories –dehumanization, moral justification, and displacement of responsibility ( $p > .05$ ). See Table 1 for a list of all correlation results. A defendant was more likely to be given the death penalty when the prosecutor used future dangerousness and empathetic language.

### **Discussion**

Language has been found to significantly impact decision making (Haney, 1997; Schmid & Fielder, 1998). During trials, attorneys –both defense and prosecution –use language to persuade jurors to convince them of their argument. Determining what types of language are the most persuasive can have significant impacts for attorneys; it would allow them to know how to produce the most effective and

persuasive argument. The current study analyzed prosecutorial closing arguments in real capital murder cases and found that future dangerousness and empathetic language were the most significantly correlated with a death penalty sentence; the other language categories analyzed in this study were not found to have a significant impact on the juries' decision.

Not only does the current study show that language is influential for decision making, but it also shows how everyday citizens (i.e., jurors) detach themselves from the decision to sentence another human being to death. While previous studies have outlined specific moral disengagement strategies (Bandura, 1999), the current study found that those strategies (i.e., dehumanization, moral disengagement and displacement of responsibility) were not correlated with a death penalty sentence. However, the current study expanded on the types of moral disengagement strategies that assist individuals in making, sometimes immoral, decisions. The results found future dangerousness and empathetic language to be the only language strategies that were significantly correlated with a death penalty sentence.

The current study is unique from others previously conducted in two ways. First, it is the only study –to the researcher's knowledge –that has analyzed language strategies in real cases rather than simulated cases (Schmid & Fielder, 1998). By using real cases, the current study analyzed how jurors respond in real legal situations, and this has strengthened research on the impact of future dangerousness. Previous studies (Marquart et al., 1989) found that jurors do not accurately predict a defendant's future dangerousness, yet the current study found that it significantly impacts the jury's decision to sentence a defendant to death. While jurors may not be able to accurately estimate a defendant's possible future dangerousness, the results of the current study show that they strongly consider it when deciding sentencing. Because arguments for future dangerousness do not correspond to actual future dangerousness, many states have banned these types of arguments from being made; mentioning future dangerousness in these states is grounds for a mistrial (Marquart et al., 1989). The current study shows that in states that allow these arguments, it is impacting the juries' decision to sentence a defendant to the

death penalty. By using real cases, the current study expanded on impact that future dangerousness arguments can have on sentencing outcomes.

Second, this study incorporated empathy for the victim as a variable that may influence jurors' decisions. Empathy is not a variable typically looked at with moral justification and it has not been previously studied in the legal context. The results of this study indicate that empathy for the victim may be an important means by which jurors rationalize sentencing someone to death and should be a variable of interest in future studies on moral disengagement.

While this study has uniquely contributed to moral justification research, it is not without its limitations. One limitation of this study was the limited number of cases that were used. Due to time constraints, it was difficult to obtain additional transcripts, as well as code them. In some cases, the prosecutor's closing argument alone was over 200 pages. Given more time, future studies should use a larger number of closing statements. Another limitation of the study was that it was challenging to control for all possible variables. In the current study, the gender of the defendant, the number of victims, and the state in which the trial took place were all controlled for; however, two of the cases involved non-adult victims. When these cases were omitted from the analyses, the variables of future dangerousness and empathy were only marginally significant. This could mean that these variables are especially influential for non-adult victims; however, one of the cases, which involved a 2 year old child, resulted in a sentence of life without the possibility of parole, so that change in significance can simply be due to a loss of power. It would have been beneficial to control for all possible variables to assure that the cases were as similar as possible; however, time constraints made this unfeasible. Also, variables that were specified in some transcripts were not in others (i.e., race of the defendant and victims).

Future studies could account for the prosecutor's attitudes toward the death penalty to see how it impacts sentencing outcomes because they could subtly lean towards on sentencing outcome in their arguments by employing (or not employing) moral disengagement strategies. In the current study, the

researcher was able to obtain anecdotal evidence from criminal attorneys that prosecutors are not typically trained in those strategies, yet they are trained in argumentative tactics, such as adjusting tone of voice. Knowing what language to use to influence jurors can assist attorneys in making their arguments more persuasive. This becomes more important in capital murder cases when the defendant has the possibility of being sentenced to the death penalty. If a prosecutor knows what types of language to use, they can persuade the juror in their favor –whether that be for the death penalty or for a life without the possibility of parole sentence. The current study adds to the knowledge base of moral disengagement strategies and jury decision making by providing further evidence of the influential nature of future dangerousness arguments and by adding a new moral disengagement strategy, empathy for the victim, in influencing jurors' penalty decisions.

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Table 1

*Correlations Between Five Language Strategies and Sentencing Outcome*

Measure	Verdict (Death Penalty)
1. Dehumanizing Language -Person	.278
2. Dehumanizing Language -Act	.307
3. Moral Justification	.015
4. Displacement of Responsibility	-.126
5. Future Dangerousness	.404*
6. Empathy Toward the Victim(s)	.400*

\* statistically significant

## Appendix A

## Coding Instructions

- I. Dehumanizing Language** is defined as the process of assigning non-human characteristics to an individual in order to make the individual's life seem less valuable (Bandura, 1999). Making the defendant seem less human would be categorized under this type of language. Use of this language includes referring to the defendant as an "animal" or a "monster". Phrases included in this category must reference the defendant as an "animal", "barbarian", or anything of that nature **in the literal sense**. References to the act itself are included in this type of language, as a subcategory, if the act is made to seem inhumane. Examples of dehumanizing language are as follows:

*"Only a monster would commit such a crime"*

*"Murders who receive the death penalty have forfeited the right to be considered full human beings"*  
(Osofsky, 2005, p.380)

*"They killed their prey"*

Examples of what dehumanizing language is **not**:

*"He is a rapist, murdered, burglar, etc."*

*"He is a horrible person for what he did"*

*"He brutally raped and murdered his victims"*

**Note:** This type of language includes two subcategories: 1) dehumanizing language toward the defendant and 2) dehumanizing language toward the defendant's actions (i.e. the crime(s) the defendant committed). Language **against** this category attempts to humanize the defendant.

- II. Moral Justification** is defined as engaging in immoral actions but justifying the actions to oneself through the thinking one employs (Bandura, 1999). Through moral justification, jurors warrant why they are imparting the defendant with the sentence they have agreed upon. References to avenging the actions that the defendant has committed by the prosecutor are included within moral justification language. Also, any reference to deterring society from committing crimes similar to the ones committed by the defendant are included in this category. Any mention of what the defendant deserves is included in this category. Examples of moral justification include:

*"The punishment must fit the crime"*

*"We execute people to show others that murder is wrong"*

*"The defendant **deserves** the death penalty due to the crime they committed"*

Examples of what moral justification is **not**:

*“The State recommends the death penalty as an appropriate sentence”*

**III. Displacement of Responsibility** is defined as attempting to reduce one’s personal responsibility for an action (Bandura, 1999). Prosecutors use this type of language to lessen the guilt jurors may feel for sentencing a defendant. References to sentencing requirements and carrying out the wishes of the law are included in this type of language. With this type of language, jurors are made to feel as if they are just following orders and carrying out the wishes of the judge and of society as a whole. This category of language **must** be related to the decision –whether to sentence the defendant to the death penalty or to a life without the possible of parole sentence – that the jurors must make regarding the sentencing of the defendant. References to the defendant’s decision that caused him/her to be on trial, thus leading to the jurors needing to impose a decision are included in this category. It should be noted that this does **not** include phrases such as “He murdered her, not you”, but instead should include phrases such as “Because of the decisions the defendant, you (the jury) must impose a decision”. It removes the responsibility, and possible guilt, from the jury and places it on the defendant because his/her actions caused the necessity for a jury to impose a sentence. Examples of displacement of responsibility include:

*“Those who carry out state executions should be not criticized for following society’s wishes” (Osofsky, 2005, p. 379)*

*“Your job (as jurors) is to uphold the law”*

*“Follow the law”*

*“Do your duty”*

*“The defendant made the decision(s), that brought him here today. Not you.”*

**Note:** Language **against** this category places guilt and blame on the jurors for making their decision. The jurors are made to feel as though it is entirely up to them what happens to the defendant, when it reality their duty is to uphold the law.

**IV. Future Dangerousness** is defined as “the probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society” (Marquart, Ekland-Olson, & Sorenson, 1989, p. 450). It refers to whether the defendant may be dangerous in prison or out in society. References to the likelihood the defendant will commit another murder are included in this type of language. Hypothetical situations of what the defendant may do in the future if incarcerated, or out in society, are included in this type of language. Examples of future dangerousness include:

*“If the defendant were to be incarcerated, it is likely he will commit more crimes”*

*“The defendant is a threat to society’s safety”*

*“The defendant has a high likelihood of violence”*

*“The defendant will kill again...rape again...harm again”*

**Note:** References to protecting society are to be counted as **both** future dangerousness and moral justification.

- V. Empathetic Language Toward the Victim** is defined as making the jurors feel sympathy for the victim. References to the victim(s) and the harm they suffered are included in this category. This type of language includes the victim, as well as anyone who may have a direct connection to the victim, such as friends and family. References to the trauma the victim and/or those close to the victim suffered and feelings that those related to the victim felt during and/or around the time of the incident are included in this type of language. References to those the victim left behind are included in this type of language. Phrases included in this category must directly mention how the victim(s) were feeling at the time of the incident or how those the victim left behind are currently feeling and suffering from. Words frequently used with this type of language include “innocent” and “victim”. Examples of empathetic language toward the victim include:

*“Because of the defendant’s actions, the victim will never be able to see her children graduate”*

*“The victim was a mother, daughter, and wife”*

*“He spent many sleepless nights wondering what happened to his daughter”*

*“They won’t be going to the library anytime soon”*

**Notes:** Any type of explanation of the law or instructions by the Judge or prosecutor are not included in any of the categories. Specifically, instructions refer to the prosecutor detailing how the jury should fill out the sentencing verdict slip. Any references to “the State” (i.e. prosecutors) or “the Court” (i.e. the Judge) are not to be included in any of the categories. Any quotes from the defendant used by the prosecutor(s) are not to be included in any of the categories because they are not the prosecutor’s own language.

Appendix B  
Coding Sheet

Trial Case #: \_\_\_\_\_

<b>I. Dehumanizing Language</b>	
<b>II. Moral Justification</b>	
<b>III. Displacement of Responsibility</b>	

IV. Diffusion of Responsibility	
V. Future Dangerousness	
VI. Empathy toward Victim	