

# LIFE QUALIFICATION, AUTOMATIC DEATH PENALTY VOTER STATUS, AND JUROR DECISION MAKING IN CAPITAL CASES\*

MARLA SANDYS AND ADAM TRAHAN

*Voir dire in capital cases requires judges to determine whether prospective jurors would be fair and impartial in the determination of guilt, as well as whether they are willing to consider voting for all available sentencing options should the jury find the defendant guilty. This article looks at the consistency between responses to a general life-qualification question and descriptions of sentencing decisions among former capital jurors. The results suggest that although some jurors are aware and capable of articulating that they would always vote for death upon conviction, others are not. Suggestions for making voir dire more accurate in detecting who would automatically for death upon conviction are offered.*

Jury selection in capital cases poses unique challenges for judges, attorneys, and jurors alike. For judges, there are the inevitable questions of whether to allow juror questionnaires, to grant a change of venue, and to allow individualized sequestered voir dire, as well as how much time to allow for voir dire, and especially how much latitude to grant in the questioning of prospective jurors. More than any other issue, perhaps, the question for judges becomes whether to grant a challenge for cause based on a failure to meet the qualification standards required of capital jurors.

Attorneys are faced with their own set of challenges in capital voir dire, most of which revolve around how to gain enough information to decide how to proceed with a prospective juror. Ultimately, their task becomes whether to challenge a prospective juror for cause, to exercise a peremptory challenge, or to accept the individual as qualified to serve as a juror on a capital case.

While the tasks associated with capital voir dire are at least somewhat familiar to judges and attorneys, the task facing prospective jurors is not; most people likely have no idea what the legal requirements are for jurors to serve on a capital case. Thus, an early stage of voir dire is often spent explaining to prospective jurors what the law is, followed by a series of questions designed to determine whether the person is qualified to serve as a capital juror within the context of that law. The structural dynamics of this procedure produce an environment that is less than conducive for prospective jurors to speak openly and honestly about their views on the death penalty and how those may influence their qualifications to serve (Haney, 2005). For example, few people will look at a judge in court and announce their intention to disregard an instruction by that judge (Blume, Johnson, and Threlkeld, 2001).

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In this article, we look to actual capital jurors' descriptions of their sentencing decision making for a glimpse into whether there is any apparent pattern of inconsistency between those descriptions and their qualification status. In particular, do jurors describe their decision making in a way that suggests a pattern of inconsistency in need of greater attention during voir dire? Thus, this is a study designed to determine whether there are ways to improve the conditions of voir dire so as to increase the likelihood that judges and attorneys alike receive the necessary information to decide who is best qualified to serve as a capital juror.

## DEATH AND LIFE QUALIFICATION STANDARDS

The current standard used to determine whether prospective jurors are qualified to serve as capital jurors was established in *Wainwright v. Witt* (1985) and clarified in *Morgan v. Illinois* (1992). In an effort to ensure that only impartial individuals are seated, the majority opinion in *Witt* established that:

the proper standard for determining when a prospective juror may be excluded for cause because of his views on capital punishment is whether the juror's view would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and oath" (at 424, quoting *Adams v. Texas*, 1980).

This standard has been criticized for being ambiguous and not offering specific criteria that can be applied to determine the eligibility of venirepersons (Dillehay and Sandys, 1996; Haney, Hurtado, and Vega, 1994; Thompson, 1989). In fact, the justices ultimately deferred to the discretion of trial court judges to decide eligibility: "Despite this lack of clarity in the printed record, however, there will be situations where the trial judge is left with the definite *impression* that a prospective juror would be unable to faithfully and impartially apply the law" (*Wainwright v. Witt*, 1985, at 424-25, emphasis added). The opposite holds true as well: the reality of voir dire is that more often than not judges rely on *Witt* to decide that a juror is indeed able "to faithfully and impartially apply the law." This deference to the trial court on the issue of qualification to serve was reinforced more recently in *Uttecht v. Brown* (2007).

At the time of *Witt*, the focus of voir dire was on identifying those prospective jurors who would not vote for death. In theory, the holding in *Witt* applied to both ends of the spectrum: One's ability to perform the duties of a juror should be considered impaired by a stated willingness to vote for either *only* the death penalty or *never* the death penalty (McNally, 1985). However, it was not until some seven years later that the Court granted the explicit right to life-qualify prospective jurors, that is, to question prospective capital jurors about their ability to vote for a sentence of less than death (*Morgan v. Illinois*, 1992). According to the Court in *Morgan*:

A juror who will automatically vote for the death penalty in every case will fail in good faith to consider the evidence of aggravating and mitigating cir-

cumstances as the instructions require him to do. Indeed, because such a juror has already formed an opinion on the merits, the presence or absence of either aggravating or mitigating circumstances is entirely irrelevant to such a juror. Therefore, based on the requirement of impartiality embodied in the Due Process Clause of the Fourteenth Amendment, a capital defendant may challenge for cause any prospective juror who maintains such views (at 729).

Thus, according to the *Morgan* standard, capital jurors who are convinced of a defendant's guilt must still be able to consider a sentence of less than death; those who cannot are known as Automatic Death Penalty Voters (ADPs). In contrast, those who would never vote for a sentence of death even if they were convinced beyond a reasonable doubt of the perpetrator's guilt have been ineligible to serve on capital cases since *Witherspoon v. Illinois* (1968).

## THE CONTEXT OF THIS RESEARCH

Prior research on death qualification typically focuses on comparisons between those found qualified and those excluded by a particular standard. For example, Haney, Hurtado, and Vega (1994) found that juror-eligible citizens excluded by either *Witherspoon* or *Witt* were less punitive, more concerned with due process, more receptive to mitigation, and less receptive to aggravation than were includable respondents. More recently, research by Butler and her colleagues suggests that persons excluded from serving as capital jurors are more likely to find nonstatutory mitigating factors, are less persuaded by ambiguous expert scientific testimony, are more responsive to issues related to mental illness and insanity, and appear to be less susceptible to pretrial publicity than persons found qualified to serve as capital jurors (Butler, 2007; Butler and Moran, 2007a, b; Butler and Wasserman, 2006). Generally, the prior research supports the conclusion that persons found qualified to serve as capital jurors are systematically different than those who are excludable in ways that favor the state. The research presented here addresses a slightly different issue, one of whether a particular qualification standard, *Morgan*, adequately captures ADP voters based on actual capital jurors' descriptions of their sentencing decision making.

## METHOD AND RESULTS

We now turn to an analysis of how *Morgan* may apply to actual capital jurors, in terms of both the determination and incidence of ADP status. The data for this article come from the Kentucky portion of the Capital Jury Project (CJP). The CJP was designed to collect data from actual capital jurors on their sentencing decisions (see Bowers, 1995). To date, 1,198 jurors have been interviewed, representing 353 trials from fourteen states. In Kentucky, a total of 113 jurors were interviewed, representing thirty-one trials. Basically, half of these trials resulted in life ( $n=15$ ) and half in death ( $n=16$ ) sentences. Accordingly, a slightly higher number of jurors were interviewed from death cases ( $n=58$ ) than from life cases ( $n=55$ ).

On average, the interviews take a little over three hours to complete. While the primary focus of the interviews is on the jurors' sentencing decisions, the interview protocol addresses all facets of the trial, from pretrial publicity to posttrial emotional effects. The jurors are also asked about their attitudes toward various aspects of the criminal-justice system and the punishments available for convicted murderers.

**Determination of ADPs.** *Morgan* was decided after interviewing began on this project. Thus, while there were certainly questions included in the interview protocol designed to assess the prevalence of ADPs for specific categories of murder (Bowers and Foglia, 2003), there was no general *Morgan*-qualification-status question per se. However, a question designed to capture the essence of the U.S. Supreme Court's opinion in *Morgan* was added to the interviews in Kentucky to allow for the determination of whether ADPs could be reliably determined in response to a general life-qualification question.

The question addressed here is whether a general *Morgan*-type life-qualification question accurately captures jurors who can consider sentences other than death. The question was posed as part of the section pertaining to general attitudes toward crime and punishment, rather than in a section tied directly to the case at hand. The actual question was as follows: "If you were sure, beyond a reasonable doubt, the defendant was guilty of a crime for which s/he could receive the death penalty, would you be able to consider a sentence of less than death?" Of the 66 jurors who were asked this question, 79 percent (n=52) said yes and 21 percent (n=14) said no. Thus, it appears that almost eight out of every ten of these former capital jurors believed that they would indeed consider a sentence of less than death, as the law requires. Alternatively, however, the remaining two of every ten of these jurors believed that they would *not* consider a sentence of less than death if they were convinced, beyond a reasonable doubt, that the defendant was guilty of a death-eligible offense.

The question then becomes whether this general self-categorization in response to a *Morgan*-type life-qualification question is consistent with jurors' actual decision-making practices: As a first step toward answering this question, the transcripts of the interviews of all the jurors who were asked the *Morgan*-type question were reviewed for any elaboration, in the jurors' own words, that would shed light on their willingness to consider a sentence of less than death. Thus, all the jurors' interviews were reviewed, and any narrative reference to their decision making that spoke to their qualification to serve as per *Morgan* was extracted. Then, where there was sufficient information, the authors independently classified each juror as qualified or as an ADP based on these narratives. (The *Morgan* item taps life- not death-qualification status; as such, there was not an option for respondents to indicate that they would never vote for death.) The authors then, again independently, compared each juror's narrative description of their sentencing decision to their response to the *Morgan* question. That is, each author classified the jurors as either a qualified juror or an ADP as per both the *Morgan* question and the jurors' own narrative descriptions of their sentencing decision making.

The authors' initial classifications of the fourteen jurors who said that they would never consider a sentence less than death were fully consistent. Three jurors did not elaborate on their decision making in a way that allowed us to classify their qualification status beyond their response to the *Morgan* question, but of the remaining eleven jurors, both authors classified three (27.3 percent) as non-ADPs and eight (72.7 percent) as ADPs. Thus, when there was sufficient information from the jurors to evaluate their ADP status, that information was inconsistent with their response to a general *Morgan* question almost 30 percent of the time.<sup>1</sup>

Our initial assessments of those jurors classified as non-ADPs by the *Morgan* question, those jurors who said that they would consider a sentence of less than death for someone they were convinced was guilty of a death-eligible offense, were less consistent. However, the majority of these inconsistencies were between the authors' classifications of non-ADPs and "not enough information to determine," rather than between non-ADPs and ADPs. For instance, our initial classifications were the same for ten of the twelve (83.3 percent) jurors who we ultimately classified as ADPs. Our initial agreement on the non-ADPs was 68.4 percent (thirteen of nineteen), and only 52.4 percent (eleven of twenty-one) for the classification that there was not enough information. Even with the most conservative estimate of ten clear ADPs among those initially classified as non-ADPs by the *Morgan* question, we are still left with almost 20 percent (ten of fifty-two, 19.2 percent) of these jurors describing their decision making in a way that gives no meaningful consideration to a sentence of less than death; such a stand is a clear violation of the spirit of both *Witt* and *Morgan*.

## THE JURORS' OWN WORDS

We now turn to the jurors' own descriptions of how and why they reached their penalty decisions. It is through this more nuanced analysis that we can gain a greater understanding of how the broad classification of qualification status is sometimes inconsistent with jurors' actual abilities to perform "the duties of a juror in accordance with [their] duties and their oath" (*Wainwright v. Witt*, 1985, at 424).

**Automatic Death Penalty Voters.** Our review thus far suggests that there are at least two different types of ADPs. First, there are those jurors who state unequivocally that they would never consider voting for a sentence less than death and whose descrip-

<sup>1</sup> Given that the purpose of this article is to examine the correspondence between responses to a general life-qualification question and indications of ADP voting, the inconsistency of the classification of these three jurors does not preclude our proceeding with our analysis. However, a review of their interviews reveals that two of these jurors struggled with their ultimate votes for death. For one of these jurors, it "took 'em about an hour to work me over. I knew what I had to do but I just couldn't bring myself to do it. . . . I thought it would be the easiest thing . . . it isn't so easy" (KY 701). Another juror's hesitancy stemmed from her "Christian beliefs." For this juror, her decision to vote for death was based on the belief that "they're not gonna kill him, he's not gonna die you know. The death penalty just means more control and that's what changed my mind" (KY 687). Thus, this juror was able to rationalize a vote for death by becoming convinced that the person would not be executed. And for the final juror in this group, he "really thought about the death penalty but once we got back there and nobody else felt that way, I just kept my mouth shut" (KY 715).

tions of their sentencing decisions support that categorization: We refer to these jurors as Traditional ADPs. Second, there are jurors who state that they would consider a sentence of less than death yet their descriptions of their sentencing decisions suggest otherwise. We refer to these jurors as Latent ADPs.

*Traditional ADPs.* A Traditional ADP is someone who believes that all persons guilty of a death-eligible offense should be sentenced to death and is aware and capable of articulating that belief. In effect, this is a person who decides punishment at the guilt phase of the trial—if guilty, death is the only appropriate sentence—and is unimpressed or unconcerned with mitigating circumstances. This is the kind of juror that the *Morgan* Court likely had in mind when it declared: “Any juror who states that he or she will automatically vote for the death penalty without regard to the mitigating evidence is announcing an intention not to follow the instructions to consider the mitigating evidence and to decide if it is sufficient to preclude imposition of the death penalty” (at 738). This kind of reasoning is exemplified by the following juror’s answer to the question of what prosecution evidence or witness at the punishment stage of the trial was most important or influential in his mind and why. “Nothing stands in my mind because when I had decided he was guilty, my mind was saying, if I find him guilty of the murder and robbery, I felt he deserved it [death]. There was nothing, once I decided he was guilty, I didn’t need to hear any more evidence” (KY 716). Another juror echoed this same theme in noting that “you wouldn’t have changed my mind” (KY 649) after responding that he was “absolutely convinced” that death was the appropriate punishment after the jury decided on guilt. Another juror (KY 707) similarly pointed to guilt when asked what was the most important factor in the jury’s punishment decision: “He was guilty of a hideous crime, and he wasn’t going to make any [sic] in his life.”

Two additional Traditional ADPs focused less on the guilt of the defendant and more on the inappropriateness of mitigation to the sentencing decision. As one of these jurors said:

We had copies of his, what homes he was in, evaluation of him. We went over all that—it was a lot of reading. I think the biggest thing we talked about [in reaching the punishment decision], because some said, we, he was abused, and there were two, in fact that just felt like that had a big factor in the person that he was. But then the rest of us said that there comes a time in everybody’s life when you have to take care of your own responsibilities and you know right from wrong, and we just thought that he did (KY 723).

Here is a case where there was evidence of the “homes” the defendant had been in and the jury had copies of “evaluations of [the defendant].” According to this juror, the evidence was compelling to at least a couple of the jurors. Rather than acknowledging that consideration of mitigation is a legitimate, in fact a required, component of a juror’s decision making on what sentence is appropriate, this juror dismisses it as irrelevant, as a veiled attempt to evade responsibility (the guilt-phase determination), and

not indicative of the defendant's (in)ability to know right from wrong (another guilt-phase determination). In the language of *Morgan*, this juror is mitigation impaired.

*Latent ADPs.* Unlike Traditional ADPs, Latent ADPs are those jurors who believe that they would consider a sentence of less than death for persons convicted of a capital offense but in reality see only certainty of guilt as relevant to their sentencing decision. In effect, there is no difference in the decision making between the two types of ADPs; both point to guilt or the irrelevancy of mitigation as the basis of their sentencing decision. The difference between the two types comes in terms of self-awareness: Traditional ADPs know and are able to articulate their belief that guilt equates to death, while Latent ADPs maintain the self-perception that they would consider a sentence of less than death upon conviction yet the description of their own decision making suggests otherwise. Thus, their actual status as ADPs is revealed only through the process of careful examination.

A focus on the circumstances of the crime is a common theme among Latent ADPs. For example, when asked, "In making your punishment decision, did you find one specific feature that made you feel you knew what the punishment should be?" one Latent ADP juror responded: "The actual crime itself, you know what I mean, the actual crime, the murder. It was premeditated and it wasn't an act of self-defense or in temporary, I mean, temporary insanity" (KY 748).

Another juror indicated that he "might consider" a sentence of less than death if the crime had occurred in the "heat of passion" (KY 632). This focus on perceived intention was critical to another juror in this group who pointed to it as the specific aspect of the crime that helped to convince jurors who were initially reluctant to vote for death:

I think one thing that weighed on people's minds was that, you know he hit her with an instrument that was, anybody should know that if they hit anybody on the head with an instrument like that, that the victim is going to die. I think, it was not to us at that time something that was caused by a fit of rage or an uncontrollable thing, it was something that was somewhat planned, because of where it was done. So we didn't think that he just lost control of his temper, that it was, there was something that he thought about it before he did it and it was somewhat planned (KY 686).

For other Latent ADPs, it was not the defendant's premeditation or guilt per se but rather a disregard for mitigation. For example, when one juror was asked what defense evidence or witness at the punishment phase was most important, he stated: "I don't really, by that time I was pretty well convinced. There wasn't nothing, they didn't change my mind any" (KY 720). Thus, it appears that by the time that the defense was able to present its mitigation, this juror had already made up his mind. For another juror, the extensive mitigation presented at trial was "no excuse for what happened" (KY 728). For example, when asked if the defendant had been seriously abused as a child, this Latent ADP said:

He was kicked around, probably. Come from very poor stock, very poor family. His mother had a lot of mental problems. His father didn't care for him. Lot of hitting between his mother and father. Divorced, this, that and the other. But still that, even people that go through what [defendant] has gone through, being in and out of child institutions and foster homes and things like that, they still don't go out and murder people.

Still later in the interview, this juror noted that had the defendant's schoolteacher testified, "it wouldn't have made any difference," and that most people "don't use the alcohol for an excuse." Ultimately, for this juror, what was most important in understanding the jury's punishment decision was that "it boils down to the crime, the act, the appropriate punishment for the act of the crime. Not on yesterday and not on what could happen tomorrow. Just boom, boom, there, there, and that's it. I can't picture anything else" (KY 728). In this case there was ample mitigation presented, but for this juror, none of it was relevant to the question of what sentence was most appropriate—sentences should not be based on what occurred "yesterday" or "could happen tomorrow." It was not a matter of the circumstances of the crime overcoming the mitigation; rather, for this juror there is no indication that he would ever give meaningful or serious consideration to mitigation.

For another Latent ADP, equating guilt with a death sentence was part of the job of being a juror:

We found him guilty and I again believe in the death sentence, believe in it, so in my mind I knew what my vote would be. . . . I think if you murder somebody, you don't deserve to live. . . . I didn't have any feelings of vengeance or revenge. Had I, I would have been wondering what I was doing as a juror. I really honestly tried to be as nonbiased as I could. I felt like I did a good job (KY 695).

Thus, for this juror, once the jury determined that the defendant was guilty, he knew that his vote would be for death. Moreover, while this juror believes that he acted in a nonbiased fashion, his knowledge of what his vote would be upon conviction coupled with his belief that those convicted of murder "don't deserve to live" suggest that mitigation is irrelevant to his sentencing determination and that so long as he was convinced of guilt, death is the appropriate sentence.

## SUMMARY AND CONCLUSION

The data presented here suggest that previous capital jurors, people who by definition were death qualified and sat through an entire trial to reach the difficult sentencing decision, still are often not able to perform the duties required of a juror in accordance with their instructions and their oath. Thus, we see that death-qualification standards—at least as they were applied in these cases—are inadequate by themselves for selecting jurors who can perform the duties expected of capital jurors. As was shown

in the previous research on death qualification, the bias that results is against the defendant.

Our data suggest further that Traditional ADPs may be discovered in the course of more-routine life qualification: Some fourteen jurors readily admitted in response to a general item that they would never consider a sentence of less than death for persons convicted of a death-eligible offense; most of them proceeded to describe their sentencing decision making in like fashion. The same cannot be said of Latent ADPs. These are the jurors most difficult to detect during voir dire because they genuinely believe that they would follow the law and consider a sentence of less than death in some murder cases. However, their conception of cases where a sentence of less than death would be appropriate is not one of death-eligible offenses: A capital offense is not one where the crime was committed in self-defense, in the heat of passion, or while the defendant was suffering from temporary insanity, the conditions mentioned by jurors cited in this article.

Given that the findings reported here are based on actual capital jurors, death qualified in court, we have every reason to believe that the prevalence of ADPs is substantially higher among prospective capital jurors. As such, the question becomes what conditions and procedures of voir dire would be most conducive to discovering ADPs, both Traditional and Latent ADPs, among prospective capital jurors?<sup>2</sup>

Because there are two different types of ADPs, it seems reasonable that the procedures for discovering them might be different as well. For Traditional ADPs, those who willingly acknowledge their belief that death is the only appropriate punishment for persons convicted of a death-eligible offense, the parties could draft a pretrial juror questionnaire to be used as the basis for initial challenges for cause. The benefit to this approach is that the parties could agree ahead of time on what responses would be required to substantiate someone as a Traditional ADP or *Witherspoon*-excludable. Excluding persons for cause ahead of time would allow for precious in-court time to be devoted to discovering the Latent ADPs. There can be no substitute for a careful, thorough, and expansive face-to-face voir dire to uncover Latent ADPs. These are the people who must come to understand what truly constitutes a death-eligible offense. They must come to appreciate the *realities* of a capital offense; this means going beyond reading the charges in an indictment to making the circumstances of the offense real for the prospective juror. One possibility is to use crime photographs: if there are pictures that will be stipulated to demonstrate the cause of death, it might be possible to present those to prospective jurors and then ask them if, in the face of those pictures, they would still consider a sentence of less than death for the person who is guilty of committing that offense. Similarly, in the face of seeing the crime

<sup>2</sup> This is a different question than whether the current process of voir dire results in a fair jury. As Haney (2005:222) notes: "Because the negative effects of death qualification flow from its structurally anomalous position in the jury selection process, they can be remedied only by addressing that fact—by somehow eliminating the death qualification of the guilt-phase jury."

pictures, prospective jurors could be asked about potential mitigation in the case. Ultimately, discovering ADPs rests on the ability to engage prospective jurors in an in-depth and expansive discussion of their perceptions of a capital offense and their ability to vote for all penalty options given the circumstances of the case at hand, as well as the ways in which they would consider aggravation and mitigation in their sentencing decision. It stands to reason that prospective jurors who genuinely understand both the context and tasks that await them will be in a better position to determine their ability to serve in accordance with their instructions and their oath. **jsj**

## REFERENCES

- Blume, J., S. Johnson, and B. Threlkeld (2001). "Probing 'Life Qualification' Through Expanded Voir Dire," 29 *Hofstra Law Review* 1209.
- Bowers, W. J. (1995). "The Capital Jury Project: Rationale, Design, and Preview of Early Findings," 70 *Indiana Law Journal* 1043.
- Bowers, W. J., and W. D. Foglia (2003). "Still Singularly Agonizing: Law's Failure to Purge Arbitrariness from Capital Sentencing," 39 *Criminal Law Bulletin* 51.
- Butler, B. (2007). "The Role of Death Qualification in Jurors' Susceptibility to Pretrial Publicity," 37 *Journal of Applied Social Psychology* 115.
- Butler, B., and G. Moran (2007a). "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," 25 *Behavioral Sciences and the Law* 57.
- (2007b). "The Role of Death Qualification and Need for Cognition in Venirepersons' Evaluations of Expert Scientific Testimony in Capital Trials," 25 *Behavioral Sciences and the Law* 561.
- Butler, B., and A. W. Wasserman (2006). "The Role of Death Qualification in Venirepersons' Attitudes Toward the Insanity Defense," 36 *Journal of Applied Social Psychology* 1744.
- Dillehay, R. C., and M. Sandys (1996). "Life Under *Wainwright v. Witt*: Juror Dispositions and Death Qualification," 20 *Law and Human Behavior* 147.
- Haney, C. (2005). *Death by Design: Capital Punishment as a Social Psychological System*. New York: Oxford University Press.
- Haney, C., A. Hurtado, and L. Vega (1994). "'Modern' Death Qualification: New Data on Its Biasing Effects," 18 *Law and Human Behavior* 619.
- McNally, K. M. (1985). "The Death Penalty," 7 *The Advocate* 12.
- Thompson, W. C. (1989). "Death Qualification after *Wainwright v. Witt* and *Lockhart v. McCree*," 13 *Law and Human Behavior* 185.

## CASES CITED

*Adams v. Texas*, 448 U.S. 38 (1980).

*Morgan v. Illinois*, 504 U.S. 719 (1992).

*Uttecht v. Brown*, 127 S. Ct. 2218 (2007).

*Wainwright v. Witt*, 469 U.S. 412 (1985).

*Witherspoon v. Illinois*, 391 U.S. 510 (1968).