

# An Examination of Sexual Orientation- and Transgender-Based Hate Crimes in the Post-Matthew Shepard Era

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Recent state and federal legislation such as the Hate Crimes Prevention Act (HCPA) addresses hate crime prevention and punishment. Two pivotal questions that arise in the development of such legislation are (a) should hate crime perpetrators be subject to penalty enhancements? and (b) should protections be extended to sexual and transgender minority individuals? This article presents two studies addressing these questions employing a two-step vignette methodology. Jury-eligible community members provided sentencing and blame attribution ratings for one of three hate crime scenarios (i.e., anti-African American, antigay, or antitransgender), as well as penalty enhancement agreement (i.e., yes/no) and measures of need for affect (Study 1) and need for cognition (Study 2). Patterns of findings across studies suggest that participants comply with hate crime legislation instructions in general, but sentencing decisions are consistently moderated by whether a participant agrees with the penalty enhancement aspect of hate crime legislation. Moreover, need for affect and need for cognition differentially impact perceptions of hate crimes; need for affect demonstrated predictive associations with victim blame, whereas need for cognition moderated relations with perpetrator sentence and blame judgments. Results are discussed with emphasis on the state of federal hate crime legislation, antigay and antitransgender prejudice, and future directions in research and policy.

*Keywords:* hate crimes, gay, transgender, need for affect, need for cognition

Hate, or bias-motivated, crimes pose a unique social and political polemic. Hate crimes are defined as those “motivated by biases based on race, religion, sexual orientation, ethnicity/national origin, and disability” (Federal Bureau of Investigation, 2011). Psychologically speaking, hate crimes are driven by bias based on actual or perceived membership in a minority group (e.g., racial or sexual minority; Herek, 1989; Sullaway, 2004). Given the increasing frequency of hate crimes (Federal Bureau of Investigation, 2011), and their resulting negative social and psychological outcomes for victims and their families (e.g., Cheng, 2004; Herek, 2007), legal and social science perspectives jointly convey that hate crime legislation is a pressing sociopolitical topic of debate.

A basic assumption underlying establishment of hate crime laws is that offenders contribute to unfair treatment of minority group members (Adams, 2005) based on prejudiced attitudes (Bantley, 2008). Moreover, emerging empirical data demonstrates that vicarious victimization in the form of similar emotional and psychological trauma can occur for fellow minority group members (Perry & Alvi, 2012). Many hate crime laws, in turn, include stipulations to enhance punishments for offenders, whereas others contain separate charges for hate crimes (Adams, 2005). In reviewing these laws, morality and equity are often driving forces needing consideration in discussions of hate crime legislation. For example, legal scholars have argued that societal beliefs concerning morality are reflected in the passage and enforcement of hate crime laws (e.g., Berard, 2010). Hate crimes laws are not without their criticisms, however. Numerous concerns have been raised in scholarly literature and public forums, including, but not limited to, violation of free speech (Bessel, 2010), inequity between hate and other types of crime (Sullaway, 2004), and overtaxing the legal system (Glaser, 2005). While empirical support varies for these claims, the implications seem clear: public opinion concerning hate crime legislation is heated and can affect outcomes, such as enhanced punishment for offenders.

What do we know about the frequency and reasons for hate crime law support? Overall, there appears to be some agreement that hate crimes deserve repudiation (Glaser, 2005). However, the

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extent to which agreement with policy is present and enforced is less clear. Empirical data show that law enforcement agencies attempted to enforce laws and build bridges with minority sectors of the community (Haider-Markel, 2001). Public opinion data concerning hate crime legislation suggests that support grossly differs by political beliefs, as well as geographic and socioeconomic factors (e.g., Johnson & Byers, 2003). In one of the only critical empirical investigations assessing rationales for support or dissent with hate crime legislation, Plumm and Terrance (in press) conducted a content analysis of qualitative statements of participants who viewed crime vignette scenarios. Of note is that the authors reported that the most frequent themes in support of conviction of hate crimes were based in legal or morality statements. While not a direct indication of support for hate crime legislation, such rationales for support may imply legal and moral attitudes impact decision making in hate crime cases.

The courtroom is a practical setting in which the hate crime debate can play out. Of particular interest in a trial is whether potential jurors agree with the *penalty enhancement* aspect of hate crime laws. Whether hate crime legislation includes protection of these minority group members has been shown to impact support for hate crime laws (Johnson & Byers, 2003). Following this logic, differing opinions on the matter may contribute to varying degrees of willingness to increase prison terms postcriminal conviction of a hate crime offender. The present studies aimed to more directly investigate whether hate crime law attitudes impact judgments. Evaluation of this question was accomplished in two ways. First, we evaluated the effect of hate crime instruction (see Research Question 1 below). Second, we assessed the effects of agreement concerning the penalty enhancement portion of hate crime laws.

### Sexual Orientation and Transgender Hate Crimes

In October 1998, Mathew Shepard became the victim of one of the most heinous and media publicized antigay hate crimes in the last few decades (Mathew Shepard Foundation). A litany of advocacy, legislative, and research efforts proliferated following this event. Despite these efforts, gay, lesbian, bisexual, and transgender (GLBT) individuals remain among the most victimized groups in the United States (Federal Bureau of Investigation, 2009). Hate crimes are particularly frequent among GLBT persons (Herek, 2009; National Coalition of Anti-Violence Programs, 2009). Anti-GLBT hate crime victims suffer from increased risk for a range of negative psychiatric sequela, including, but not limited to, anger, depression, acute stress, anxiety, and fear of harm (e.g., Herek, 1993; Taylor, 2007). Stacey (2011) demonstrated that anti-GLBT hate crimes tend to be more violent than those against racial minority victims.

With the negative impacts of hate crimes in mind, policies have been implemented to protect the vast range of affected victims (Gerstenfeld, 2011). Contemporary efforts at hate crime legislation began with the Anti-Defamation League of B'nai Brith (ADL), a group that fights against anti-Semitism and other forms of bigotry, who made significant strides in addressing gaps in laws directly addressing hate crimes (Gerstenfeld, 2011). The ADL drafted a model ethnic intimidation statute in 1981 that protected against crimes of intimidation by reason of race, color, religion, national origin, or sexual orientation. This legislation eventually passed in a number of states, and the ADL's (along with various other

organizations) efforts to persuade states to pass hate crime legislation led to other states quickly following suit (e.g., Code of Ala. § 121–5–13, Cal. Pen. Code § 422.6, FL Stat. § 775.085, MI Comp. Laws § 750.147b, TX Code of Crim. P. Art. § 42.014). By 2009, only 5 states had not passed some kind of penalty-enhancement-type law (Leadership Council on Civil Rights, 2009).

Existing hate crimes legislation today is quite diverse, with some laws acting as penalty enhancers, increasing the sentence for crimes motivated by bias, and other laws adding separate substantive offenses for which the offender is convicted in addition to his conviction for the underlying crime (Gerstenfeld, 2011). Differences between states exist as well. For example, some permit any crime to qualify as a hate crime, whereas some limit their definition of hate crimes to particular offenses such as harassment or assault (Jacobs & Potter, 1998). Other states specify that the victim must have been chosen “because of” or “by reason” of his or her group, whereas different states only require some sort of evidence that the crime demonstrates some type of prejudice (Gerstenfeld, 2011). Ultimately, in all of these cases, the defendant faces more severe penalties when a hate crime is committed, whether because of penalty enhancements or separate hate crime charges. Presently, all statutes include at least ethnicity, religion, or race protections, but only 31 include sexual orientation, 27 include gender, 31 include some sort of disability, and 12 include transgender or gender identity (Gerstenfeld, 2011).

The ADL and its allies looked next to the federal government for hate crime legislation. The first federal law relating specifically to hate crimes was the Hate Crime Statistics Act (28 U.S.C. 534), which required the Department of Justice to collect data on hate crimes and publish the results (Gerstenfeld, 2011). The law was strongly supported in Congress. Only four senators voted against the law, and they cited their reasoning to be because sexual orientation was included in the protected categories. This law was eventually permanently extended. The federal government went on to pass the Hate Crimes Sentencing Enhancement Act, (28 U.S.C. 994) and the Violence Against Women Act (Violence Against Women Act, 1994). The Hate Crimes Sentencing Enhancement Act served as a federal penalty enhancement statute requiring penalties to be increased at least three levels if the defendant was convicted of a bias crime. The Violence Against Women Act allowed victims of gender-based crimes to sue their attackers and receive compensatory and punitive damages.

Following all of these efforts, the federal government also moved toward a specific hate crime prevention law; accordingly, a law entitled Hate Crimes Prevention Act was proposed in 1998. Serial efforts died in Congress for the next decade until 2009, when the bill—now called the Matthew Shepard and James Byrd, Jr. Hate Crime Prevention Act (HCPA P. L. No. 111–84)—was finally passed by the U.S. House of Representatives (Gerstenfeld, 2011). The HCPA included protection for victims targeted because of their sexual orientation or gender identity (Gerstenfeld, 2011). After much revision, the final version was ultimately signed by President Barack Obama on October 28, 2009 (Bessel, 2010). As enacted, the law includes protections for crimes committed of actual or perceived color, race, religion, national origin, sexual orientation, gender, gender identity, and disability (Gerstenfeld, 2011). Most germane to the present discussion, this federal legislation increases the punishment for hate crime perpetrators and

allows for the Department of Justice to assist in investigations and prosecutions of these crimes (Human Rights Campaign, 2009).

Despite legislation protecting sexual and transgender minority individuals in the courtroom, there appears to be relatively little research on jury perceptions and legal decision making in this area. Instead, antiracial hate crimes have received the most attention from researchers (Stacey, 2011). For example, recent literature suggests that levels of racism are associated with recommended sentence lengths for racially biased motivated hate crime perpetrators and amount of blame attributed to hate crime victims (e.g., Saucier, Hockett, & Wallenburg, 2008; Saucier, Hockett, Zanotti, & Heffel, 2010). Overall, literature to date suggests that a crime committed against an African American by a Caucasian perpetrator is perceived to be less acceptable and more deserving of a harsher sentence than when the same crime is committed with an African American perpetrator and a Caucasian victim.

While antiracial hate crimes have been the center of most research, anti-GLB hate crimes are beginning to gain researchers' interest. The burgeoning literature on lay and student mock juror perceptions of hate crimes against sexual minorities shows two consistent findings: (a) perpetrators of anti-GLB hate crimes are punished and blamed more compared with other types of crimes (e.g., Cramer et al., 2010; Cramer, Wakeman, Chandler, Mohr, & Griffin, in press; Rayburn, Mendoza, & Davison, 2003), and (b) certain participant attitudes influence sentencing and blame judgments of victims and perpetrators in these situations (e.g., Lyons, 2006; Plumm, Terrance, Henderson, & Ellingson, 2010; Rayburn et al., 2003). Perceiver characteristics most relevant to these judgments to date include sexually prejudiced or homophobic beliefs (e.g., Rayburn & Mendoza, 2002), authoritarianism (Cramer et al., in press), and perceptions of the victim (e.g., Plumm et al., 2010).

Although the HCPA includes protection for transgender individuals, juror perception of hate crime research has yet to take this population into consideration. Utilizing jury-eligible members, the present studies aimed to understand perceiver perceptions of antigay and antitransgender hate crimes as indicated by perceptions of blame and sentence lengths. The present studies evaluated the extent to which perceptions of antigay and antitransgender hate crimes were similar or different to anti-African American hate crimes.

### Individual Differences: Cognitive-Experiential Self Theory and Need for Affect (NFA)

Cognitive-Experiential Self-Theory (CEST; Epstein, 1990) is a useful framework for conceptualizing individual differences in information processing. The central tenet of CEST argues for two separate yet correlated methods of receiving and processing stimuli: rational and experiential systems (Kirkpatrick & Epstein, 1992). The rational system is grounded in the understanding of rules and logic, and features conscious processing and decision-making (Kirkpatrick & Epstein, 1992). The experiential system, however, operates via heuristic, intuitive mechanisms such as emotion, focuses more on ultimate outcomes (as opposed to understanding internal processing), and is most often beyond conscious awareness (Kirkpatrick & Epstein, 1992).

CEST has been applied to various domains of psychology, including to mock juror perceptions of defendant attractiveness (e.g., Gunnell & Ceci, 2010) and sexually violent predator evaluations (Lieberman, Krauss, Kyger, & Lehoux, 2007). Much of the

mock juror CEST literature evidences the influence of experiential processing. For example, mock jurors manipulated into an experiential mode find less valid clinical testimony to be more persuasive, while mock jurors in a rational mode found more valid actuarial testimony to be influential (Krauss, Lieberman, & Olson, 2004; Lieberman & Krauss, 2009; Lieberman et al., 2007). Although it is not assessing CEST constructs directly, the present study employs this framework to understand individual differences reflective of the rational (need for cognition [NFC]) and experiential (NFA) modes of viewing stimuli. Indeed, it is noteworthy that development of the rational subsystem in CEST is based, in part, on the NFC scale.

Hate crimes can elicit strong, emotionally charged reactions (Sullaway, 2004). As such, NFA (Maio & Esses, 2001), defined as an individual's preference to avoid and approach positive and negative emotions, may be helpful in understanding how jurors' preferences for emotion influence subsequent opinions and attitudes in a hate crime case. Individuals who are high in NFA may be more inclined to experience extreme opinions or strong attitudes toward controversial issues and social groups because they embrace emotional sensations when processing information (Maio & Esses, 2001). In addition, willingness to engage emotions has been associated with positive attitudes and heightened accuracy and memory when receiving affect-based messages (Haddock, Maio, Arnold, & Huskinson, 2008).

Because emotions can impact legal decision-making (Bornstein & Wiener, 2010), preference for emotion may play a crucial role in the way jurors process information in the courtroom (Griffin & Patty, 2010). To that end, affect has been found to be especially important as a mitigating factor of juror perceptions and judgments in emotionally laden scenarios (e.g., Bright & Goodman-Delahunty, 2006; Kerr, 2010). Empirical data on the exact nature of NFA in juror scenarios is limited, however. In a study investigating behavioral manifestations of defendant remorse, only mock jurors who scored high on the NFA scale were predisposed to recommend a life sentence over the death penalty (Corwin, Cramer, Griffin, & Brodsky, 2012). The authors proposed that mock jurors high in NFA may have been drawn toward a more positive, less severe sentencing decision because of their need to approach emotionally charged situations. In another study depicting graphic crime scene photos, mock jurors high in NFA led to higher ratings of guilt (Adams, Neal, Titcomb, & Griffin, 2010). Contrary to Corwin and colleagues (2012) findings, mock jurors high in NFA identified with negative emotions associated with the graphic stimuli, which led to more severe guilt ratings. Given these studies, NFA may affect perceptions affectively laden based legal scenarios such as a hate crime case.

### The Present Studies

Given the state of hate crime research and policy, we examine the impact of jury instructions, hate crime law penalty enhancement agreement, and victim type on sentencing and blame outcomes across two studies (see Research Questions 1 to 3). In the first study, NFA is examined as an individual difference moderating perceptions of hate crimes (see Research Question 4), whereas study two investigates the potential influence of NFC (see Research Question 5, Study 2). Perceptions of blame were included as criterion measures along with sentencing because attri-



bution of blame is a common metric in hate crime research (e.g., Cramer et al., 2010; Plumm et al., 2010) and a legally relevant aspect of determination of punishment and damages (Fiegeonson & Park, 2006; Wiley, 1999).

In light of the current state of hate crime legislation and research reviewed, we examine the following research questions in the present study.

Research Question 1: Do jury-eligible individuals respond as directed to jury hate crime instructions (following suit with federal hate crime legislation) by decreasing blame toward the victim, and increasing blame and sentence toward the perpetrator?

Research Question 2: Does jury-eligible individuals' agreement with hate crime law penalty enhancement impact, directly or in a moderating manner, perceptions of victim blame, perpetrator blame and sentencing decision?

Research Question 3: Does type of hate crime victim (i.e., African American, gay, or transgender) affect, either directly or via a moderating effect, perceptions of victim blame, perpetrator blame and sentencing decision?

Research Question 4: Does jury-eligible individuals' level of NFA have effects on, either directly or in a moderating manner, perceptions of victim blame, perpetrator blame and sentencing decision?

### Study 1: Juror Instructions, Hate Crime Penalty Enhancement Agreement, and NFA

#### Method

**Participants.** A total of 305 jury panel members from an urban jurisdiction in the southwestern United States participated in research. Twelve participants were dropped prior to analyses because of failure to indicate whether or not the crime in question was a hate crime. We were left with a final sample of 293 participants ( $M_{\text{age}} = 46.88$ ,  $SD = 12.77$ ). The sample was comprised of 166 women (56.70%). The breakdown by race was as follows: 218 Caucasians (74.4%), 30 African Americans (10.2%), 16 Hispanics/Latinos (5.5%), 10 Biracial individuals (3.4%), 7 Asian Americans (2.4%), 3 Native Americans (1%), and 9 individuals who identified themselves as other (3.1%) participated in the study. The sample was slightly conservative ( $M = 4.39$ ,  $SD = 2.35$ ) on a 10-point scale with higher scores indicating more liberal views.

**Procedure.** Data were collected during juror orientation sessions. Specifically, court staff and a researcher introduced a voluntary research opportunity to jury-eligible community members reporting for jury service. Participants were notified of standard research rights (i.e., confidentiality, anonymity, risks/benefits and the right to withdraw) both verbally and in writing. Participants electing to participate were also provided the opportunity to ask questions. Participation in the study required approximately 20 min per person, and was part of a larger project investigating jury-eligible persons' legal attitudes.

#### Measures/Materials.

**Demographics.** The demographics form asked for the participant's age, gender, race, religion, education level, crime victimization history, and political orientation.

**NFA.** The NFA (Maio & Esses, 2001) scale is a 26-item questionnaire assessing the degree to which people require intense

emotional experiences. Two subscales, avoidance and approach to emotional situations, each contain 13 sum totaled items (all on a seven-point scale). A total NFA score can also be obtained by summing all 26 items. Sample statements include "We should indulge our emotions" and "It is important for me to be in touch with my feelings." Internal consistencies are all over .80 (Maio & Esses, 2001). The total score was used in the present study and had an acceptable Cronbach's alpha ( $\alpha = .75$ ).

**Crime vignette manipulation/jury instructions.** The crime scenario serving as the baseline condition for each participant was modified from Cramer, Chandler, and Wakeman (2010). It featured a two-step jury instruction vignette methodology (see Appendix). Thus, the jury instruction variable is defined by prepost ratings of sentencing or blame after the introduction of step two described below. Step one included details of a crime (2nd degree murder), as well as demographic and situational information about the perpetrator and victim. Jurors were then provided sentencing instructions and federal sentencing guidelines for 2nd degree murder. Participants then indicated ratings of sentencing (in years and months), as well as victim and perpetrator blame (see description below).

In step two, each participant then received one of three supplemental hate crime instruction manipulations. These instructions indicated that the crime was a race-, sexual orientation-, or transgender-based hate crime (see Appendix). Additional sentencing guidelines were provided for increased sentencing enhancement for hate crimes in such a case. The participant then completed identical ratings of sentencing and blame, as in the baseline portion, thereby allowing for prepost hate crime instruction changes in sentencing and blame. It is noteworthy that the task of deciding penalties in hate crimes reflects an externally valid situation in that jurors are involved with the sentencing of hate crimes. In fact, a 2000 Supreme Court ruling based on a racially driven shooting (*Apprendi v. New Jersey*) yielded a decision that jurors should decide penalties in cases where hate-motivation or other factors involved raise maximum potential punishment (Legal Information Institute, n.d.).

**Hate crime penalty enhancement agreement.** After receiving the vignette manipulation and providing sentencing recommendations, participants were asked "Do you think that the fact that this was a hate crime should result in increased punishment for the perpetrator?" (i.e., yes/no). Thus, we evaluated whether participants agreed with the sentencing enhancement portion of federal hate crime legislation.

**Perceptions of blame scale.** The participants were also given the Perceptions of Perpetrator and Victim Blame Scales (PPBS/PVBS; Rayburn et al., 2003), which possesses 14 paired adjective ratings (e.g., harmful-harmless) sum totaled for a score reflecting the degree to which the person is blameworthy for a situation presented in the previous vignette. Instructions for the scale can be applied to blame of a victim or of a perpetrator. The scale demonstrates consistently high reliability (Cramer et al., 2010; Rayburn et al., 2003). The Cronbach's alpha for the scales were as follows in Study 1: Perpetrator blame scale preinstruction ( $\alpha = .85$ ), perpetrator blame scale postinstruction ( $\alpha = .87$ ), victim blame scale preinstruction ( $\alpha = .88$ ), and victim blame scale postinstruction ( $\alpha = .92$ ).

**Sentencing.** Sentence was provided by each participant in years and months. Ratings were converted to years for analyses below.

## Results

**Data analysis.** These results are divided into two sections. First, we examine the main and interaction effects of hate crime instructions, hate crime penalty enhancement agreement, and victim type (i.e., African American, gay or transgender) on sentencing recommendations, victim blame, and perpetrator blame. Second, we examine the main and moderating roles of NFA on the above-mentioned dependent variables. Generalized Estimating Equations (GEEs; Ballinger, 2004; Hanley, Negassa, Edwardes, & Forrester, 2003) were utilized to adequately assess the main and interaction effects while controlling for the correlated nature in our dependent measures.

### Hate Crime Instructions, Hate Crime Penalty Enhancement Agreement, and Victim Type.

**Sentencing.** Generalized Estimating Equations were used to assess whether jury-eligible individuals' agreement with federal hate crimes legislation impacts, directly or via moderating effects, sentencing recommendations, perceptions of victim blame and perpetrator blame. The first model examined sentencing recommendations as a function of hate crime legislation instructions, hate crime penalty enhancement agreement, and victim type, as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>1</sup> Model reduction through backward elimination resulted in a best fitting model including a main effect of hate crime instructions, Wald's chi-square (1) = 336.67,  $p < .001$ . Sentencing length increased from preinstruction,  $M = 21.63$ , 95% confidence interval [CI] [20.83, 22.43], to postinstruction rating ( $M = 28.86$ , 95% CI [27.91, 29.82]). The main effect was qualified by a significant interaction between hate crime instructions and hate crime penalty enhancement agreement, Wald's chi-square (1) = 32.03,  $p < .001$ . Pairwise comparisons revealed, preinstruction, individuals disagreeing with hate crime enhancement ( $M = 22.27$ , 95% CI [21.16, 23.37]) differed significantly in their sentencing recommendations from individuals agreeing with hate crime enhancement ( $M = 20.99$ , 95% CI [20.12, 21.85]),  $p = .03$ . Analogously, but stronger in magnitude, postinstruction, individuals agreeing with hate crime penalty enhancement gave significantly longer sentencing recommendation ( $M = 30.45$ , 95% CI [29.46, 31.45]) than individuals disagreeing with hate crime penalty enhancement ( $M = 27.28$ , 95% CI [25.89, 28.67]),  $p < .001$  (Figure 1a). There was no main effect of victim type and victim type did not interact with any of the other predictors.

**Victim blame.** The second model examined victim blame ratings as a function of hate crime legislation instructions, hate crime penalty enhancement agreement, and victim type, as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>2</sup> Model reduction through backward elimination resulted in a best-fitting model, including a main effect of hate crime instructions, Wald's chi-square (1) = 18.46,  $p < .001$ . Victim blame decreased from preinstruction ( $M = 42.28$ , 95% CI [39.51, 45.04]) to postinstruction rating ( $M = 39.39$ , 95% CI [36.40, 42.37]). This main effect was qualified by a significant interaction between hate crime instructions and hate crime penalty

enhancement agreement, Wald's chi-square (1) = 19.06,  $p < .001$ . Pairwise comparisons revealed victim blame ratings of individuals who disagreed with hate crime penalty enhancement did not change significantly from preinstruction ( $M = 41.84$ , 95% CI [38.45, 45.24]) to postinstruction ( $M = 41.89$ , 95% CI [38.16, 45.62]),  $p = .97$ . Victim blame ratings of individuals agreeing with hate crime penalty enhancement were significantly reduced from preinstruction ( $M = 42.71$ , 95% CI [39.75, 45.68]) to postinstruction ( $M = 36.89$ , 95% CI [33.60, 40.17]),  $p < .001$  (Figure 1b). As with sentencing, no effects involving victim type were observed.

**Perpetrator blame.** The third model assessed perpetrator blame ratings as a function of hate crime instructions, hate crime penalty enhancement agreement, and victim type, as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>3</sup> Model reduction through backward elimination resulted in a best-fitting model, including a main effect of hate crime instructions, Wald's chi-square (1) = 11.47,  $p < .001$ . Perpetrator blame increased from preinstruction ( $M = 78.64$ , 95% CI [75.92, 81.35]) to postinstruction rating ( $M = 80.80$ , 95% CI [77.76, 83.84]). This main effect was qualified by a significant interaction between instructions and hate crime penalty enhancement agreement, Wald's chi-square (1) = 4.30,  $p = .04$ . Pairwise comparisons revealed perpetrator blame ratings significantly increased for individuals agreeing with hate crime legislation from preinstruction ( $M = 79.56$ , 95% CI [76.85, 82.26]) to postinstruction ( $M = 83.05$ , 95% CI [80.18, 85.92]),  $p < .001$ . However, perpetrator blame ratings for individuals disagreeing with hate crime penalty enhancement did not change from preinstruction ( $M = 77.71$ , 95% CI [74.18, 81.25]) to postinstruction ( $M = 78.56$ , 95% CI [74.36, 82.75]),  $p = .41$  (Figure 1c). Again, no significant effects involving victim type were observed.

### NFA.

**Sentencing.** To assess the moderating role of NFA on sentencing recommendations, victim blame, and perpetrator blame, three separate GEE models were run. The first model assessed sentencing recommendations as a function of hate crime instructions, hate crime penalty enhancement agreement, victim type, NFA, and the interaction terms of the predictor variables while controlling for race of the participant. The main effect of NFA did not have an influence on sentencing recommendations and none of the 2-way, 3-way, or 4-way interactions including NFA reached significance.

**Victim blame.** The second model assessed victim blame as a function of hate crime instructions, hate crime penalty enhancement agreement, victim type, NFA, and the interaction terms of the predictor variables while controlling for race. Model reduction through backward elimination revealed a significant main effect of NFA, Wald's chi-square (1) = 6.64,  $p = .01$ . NFA had a negative relationship ( $\beta = -.15$ ,  $p = .003$ ) with victim blame. In other

<sup>1</sup> To ensure that race of participant did not influence our results, the interaction between race of participant and victim type was included in the model. The interaction was nonsignificant, Wald's chi-square (6) = 10.40,  $p = .11$ .

<sup>2</sup> The interaction term of race of participant and victim type was included in the model and was nonsignificant, Wald's chi-square (6) = 8.55,  $p = .20$ .

<sup>3</sup> The interaction between race of participant and victim type was nonsignificant, Wald's chi-square (6) = 2.73,  $p = .84$ .

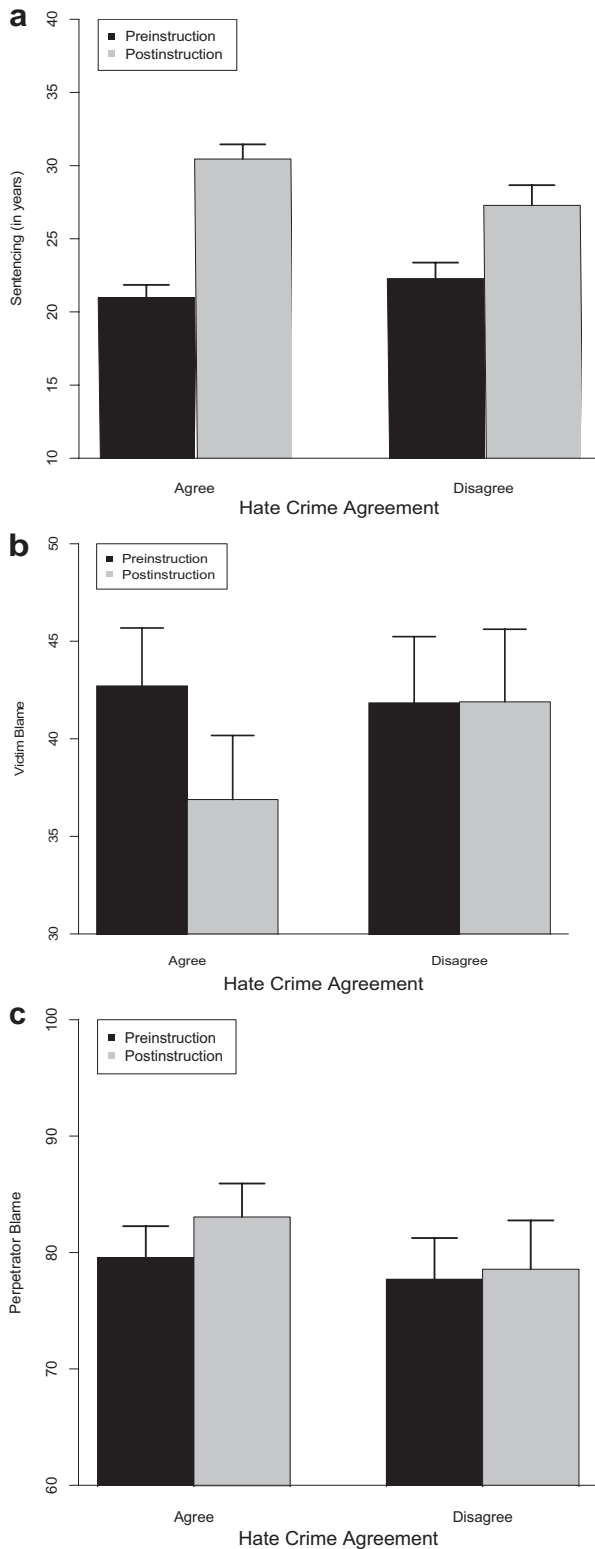


Figure 1. (a) Sentencing recommendations by hate crime penalty enhancement agreement and jury instructions for Study 1. (b) Victim blame ratings by hate crime penalty enhancement agreement and jury instructions for Study 1. (c) Perpetrator blame ratings by hate crime penalty enhancement agreement and jury instructions for Study 1.

words, individuals scoring high on NFA blamed the victim less. The main effect was qualified by a significant interaction between NFA and hate crime instructions, Wald's chi-square (1) = 4.67,  $p = .03$ . As can be seen in Figure 2, preinstructions, NFA did not impact individuals' victim blame ratings. However, postinstructions, individuals high in NFA blamed the victim significantly less than individuals low in NFA.

**Perpetrator blame.** The third model assessed perpetrator blame as a function of hate crime instructions, hate crime penalty enhancement agreement, victim type, NFA, and the interaction terms of the predictor variables while controlling for race. No significant effects (main and interactions) involving NFA were observed.

## Discussion

The most prominent findings in Study 1 were (a) an overall pattern of blame and sentencing consistent with jury instructions, (b) a consistent interactive effect between hate crime instructions and penalty enhancement agreement, and (c) the impact of NFA on perceptions of victims, but not perpetrators. We address each of these in turn.

As dictated by the HCPA and statutes in many states, convicted hate crime offenders face increased sentences (Gerstenfeld, 2011; Human Rights Campaign, 2009). A corollary supposition stemming from enhanced punishment is that hate crime offenders warrant such actions because they have intentionally or blatantly targeted a minority group member (Adams, 2005), an action considered morally reprehensible by some (Berard, 2010). Moreover, intent and moral responsibility are often reflected in evaluation of blameworthiness in the psychological and legal literatures (e.g., Chockler & Halpern, 2004; Wiley, 1999). Interaction findings of hate crime instructions and agreement with policy dovetail well with this legal-moral understanding of hate crimes.

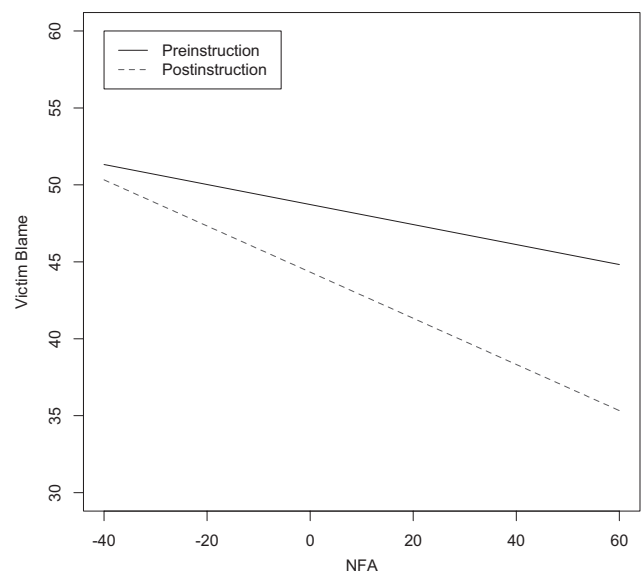


Figure 2. Victim blame ratings by hate crime instructions and need for affect.

First and foremost, jury-eligible community members complied with federal legislation by increasing perpetrator sentence and blame, as well as decreasing victim blame. Enhancing severity of punishment and blame for hate crime offenders is consistent with previous hate crime studies employing less representative (e.g., undergraduate) samples (e.g., Cramer et al., 2010, Cramer et al., in press), and are in line with prior blame attribution studies in this regard (e.g., Plumm et al., 2010; Rayburn et al., 2003). These bodies of literature were also extended by present findings in that agreement with penalty enhancement laws exacerbated the impact of hate crime legislation on sentencing recommendations and blame in all contexts. Based on established moral-legal perspectives of hate crime legislation discussed above (e.g., Adams, 2005; Wiley, 1999), the implication may be that the impact of hate crime agreement is a direct result of views that targeting any minority group is morally reprehensible, and therefore worthy of increased imprisonment. Additionally, as perceived intent is often subsumed in blameworthiness judgments, increased blame for hate crime perpetrators suggests that intent to target a minority group was present.

NFA is an individual difference characteristic gaining traction in psycho-legal literature (e.g., Corwin et al., 2012; Griffin & Patty, 2010). When interpreting present results, it is important to note that NFA reflects one's penchant to engage both positive and negative emotions (Maio & Esses, 2001). Previous research shows that high NFA mock jurors (i.e., those willing to engage emotion) demonstrate leniency to remorseful defendants (Corwin et al., 2012) and negative views of offenders in the presence of graphic evidence (Adams et al., 2010). Curiously, in a hate crime scenario, one in which emotion is salient (Sullaway, 2004), NFA had no effect on perceptions of offenders. Rather, victim blame was negatively associated with perceptions of victim blame overall. Careful inspection of the NFA by hate crime instructions interaction demonstrated that, after learning the offender committed a hate crime, high NFA individuals blamed the victim less than low NFA counterparts. NFA theory would suggest that those with a preference for engaging emotion felt sympathy/empathy for the victim, resulting in less blame. In all, present findings contribute to an increasing understanding of how NFA differentially influences perceptions of victims and perpetrators by context.

Lack of effects of NFA concerning perpetrator-related judgments is somewhat puzzling. This raises question as to what other individual difference characteristics may operate for jurors during hate crime trials. We addressed this in Study 2 by examining a logical cognitive parallel construct to NFA: NFC. We also evaluated the replicability of findings from Study 1 related to hate crime instructions, agreement, and victim type.

## Study 2: Juror Instructions, Penalty Enhancement Agreement, and NFC

Individual differences in the motivation to engage in effortful, cognitive activities may influence how information is processed, especially when confronting the complex material (Cacioppo, Petty, Kao, & Rodriguez, 1986) that deal with stigmatized individuals (Petty, Fleming, & White, 1999). The NFC represents the extent to which individuals enjoy and put forth effort in thinking (Cacioppo & Petty, 1982). Generally, individuals high in NFC have been found to be more influenced by argument quality and

recall a higher amount of messages than individuals low in NFC (Cacioppo, Petty, & Morris, 1983). When exposed to a cognitive-based message, those who showed a greater level of NFC were associated with a higher number of correct responses pertaining to the argument, and were able to identify more positively with the message (Haddock et al., 2008).

Concerning trial information, individual differences in NFC may influence how jurors perceive evidence, consequently affecting their decision-making. For example, mock jurors high in NFC were more likely to render verdicts supporting high-quality testimony (Salerno & McCauley, 2009) and detect methodological errors in expert testimony (McAuliff & Kovera, 2008). Mock jurors low in NFC more frequently supported low-quality testimony (Salerno & McCauley, 2009). Based on these studies, it may be argued that high NFC mock jurors engage in careful processing of trial information, even when it is complex, whereas low NFC counterparts are less inclined to do so.

NFC may have important implications for decision-making in hate crimes. It is suggested that high-prejudiced individuals may be less motivated to produce nonprejudiced responses (Dunton & Fazio, 1997), which leads to the inference that they would engage in less effortful attention and processing of messages from a stigmatized source (Petty et al., 1999). Low-prejudiced individuals have been found to engage in high elaboration of messages from a sexual minority source, while high-prejudiced individuals had similar processing of messages from sexual minority and heterosexual sources (Petty et al., 1999). However, these findings included stigmatized *sources* of persuasive messages rather than stigmatized *content*, which may yield similar or different findings related to disparities in perceiver NFC. Therefore, Study 2 evaluates the role of NFC in perceptions of victims (i.e., antigay, anti-African American, and antitransgender hate crimes) who may be the targets of prejudice via hate crime victimization.

The goals of Study 2 were (a) to evaluate the replicability of Study 1 findings (see Research Questions 1–3 for Study 1), and (b) to investigate juror NFC as an alternative juror characteristic that may mitigate perceptions of hate crimes.

*Research Question 5:* Does jury-eligible individuals' level of NFC affect, either directly or in a moderating manner, perceptions of victim blame, perpetrator blame and sentencing decision?

## Method

**Participants.** A total of 237 jury panel members from an urban jurisdiction in the southwestern United States participated. Six participants were dropped prior to analyses because of failure of indicating whether or not the crime in question is a hate crime. We were left with a final sample of 231 participants ( $M_{\text{age}} = 46.55$ ,  $SD = 12.45$ ). The sample was comprised of 138 women (59.70%). The breakdown by race was as follows: 159 Caucasians (68.8%), 30 African Americans (13%), 22 Hispanics/Latinos (9.5%), 4 Biracial individuals (1.7%), 8 Asian Americans (3.5%), 1 Native Americans (.4%), and 7 individuals who identified themselves as other (3%) participated in the study. The sample was slightly conservative ( $M = 4.85$ ,  $SD = 2.48$ ).

**Procedure.** The Study 2 procedure was identical as in Study 1.

**Measures/materials.** Demographics, crime vignette manipulations, jury instructions, hate crime penalty enhancement agree-



ment, victim/perpetrator blame, and sentencing were identical to Study 1. The Cronbach's alpha for the victim blame and perpetrator blame scales were as follows in Study 2: Perpetrator blame scale preinstruction ( $\alpha = .84$ ), perpetrator blame scale postinstruction ( $\alpha = .87$ ), victim blame scale preinstruction ( $\alpha = .85$ ), and victim blame scale postinstruction ( $\alpha = .92$ ).

**NFC.** The Need for Cognition-Short Form (NFC-SF; Cacioppo, Petty, & Kao, 1984) scale is an 18-item questionnaire assessing the degree to which people engage in effortful cognitive processing. Each self-statement is rated on a five-point scale for a sum totaled score. Sample items include "Thinking is not my idea of fun" (reverse scored) and "I prefer my life to be filled with puzzles that I must solve." Reliability and validity of the scale are both consistently appropriate (Cacioppo et al., 1984). Cronbach's alpha in the current sample was good ( $\alpha = .87$ ).

## Results

**Data analysis.** The same analytic plan as in Study 1 was employed for Study 2. We assessed the effects of hate crime jury instructions, hate crime penalty enhancement agreement, victim type, and NFC on sentencing recommendations, victim blame ratings, and perpetrator blame ratings.

### Hate crime jury instructions, Hate crime penalty enhancement agreement, and Victim type.

**Sentencing.** As in Study 1, GEE was utilized to assess if jury-eligible individuals' agreement with hate crime penalty enhancement impacts, either directly or via moderating effects, sentencing recommendations, perceptions of victim blame, and perpetrator blame. The first model examined sentencing recommendations as a function of hate crime instructions, hate crime penalty enhancement agreement, and victim type, as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>4</sup> Model reduction through backward elimination resulted in a best fitting model including main effects of hate crime jury instructions, hate crime penalty enhancement agreement, and victim type, as well as an interaction between hate crime jury instructions and hate crime penalty enhancement agreement. The main effect of hate crime instructions was significant, Wald's chi-square (1) = 321.71,  $p < .001$ . Sentencing length increased from preinstruction ( $M = 21.28$ , 95% CI [20.07, 22.49]) to postinstruction rating ( $M = 28.94$ , 95% CI [27.61, 30.28]). The main effect of victim type was significant, Wald's chi-square (2) = 11.91,  $p = .003$ . Participants gave longer sentencing recommendations when the victim was described as gay ( $M = 26.51$ , 95% CI [25.25, 27.77]) compared with when the victim was described as transgender ( $M = 23.82$ , 95% CI [22.40, 25.23]),  $p < .001$ . There was no difference between the African American and gay or the African American and transgender conditions. The main effect of hate crime penalty enhancement agreement was significant, Wald's chi-square (1) = 3.78,  $p = .05$ . Individuals agreeing with hate crime penalty enhancement ( $M = 25.78$ , 95% CI [24.51, 27.06]) gave longer sentencing recommendations than individuals not agreeing with hate crime penalty enhancement ( $M = 24.44$ , 95% CI [22.97, 25.91]).

The main effects of hate crime instructions and hate crime penalty enhancement agreement were qualified by a significant interaction between the two predictor terms, Wald's chi-square (1) = 17.78,  $p < .001$ . Pairwise comparisons revealed, preinstruc-

tion, hate crime penalty enhancement agreement did not influence sentencing recommendations ( $p = .52$ ). However, postinstruction, individuals agreeing with hate crime penalty enhancement gave significantly longer sentencing recommendations ( $M = 30.51$ , 95% CI [29.14, 31.88]) than individuals disagreeing with hate crime legislation ( $M = 27.37$ , 95% CI [25.59, 29.16]),  $p < .001$ , Figure 3a). In other words, although sentencing recommendations increased from preinstruction to postinstruction, the sentencing recommendations given by individuals who also agree with hate crime legislation was 3 years longer than sentencing recommendations given by individuals disagreeing with hate crime legislation.

**Victim blame.** The second model examined victim blame ratings as a function of hate crime jury instructions, hate crime penalty enhancement agreement, and victim type as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>5</sup> Model reduction through backward elimination resulted in a best fitting model including a main effect of hate crime jury instructions, Wald's chi-square (1) = 9.73,  $p = .002$ . Victim blame decreased from preinstruction ( $M = 46.81$ , 95% CI [44.76, 48.85]) to postinstruction ( $M = 44.95$ , 95% CI [42.68, 47.23]). This main effect was qualified by a significant interaction between hate crime jury instructions and hate crime penalty enhancement agreement, Wald's chi-square (1) = 9.80,  $p = .002$ . Pairwise comparisons revealed victim blame ratings of individuals who disagreed with hate crime penalty enhancement did not change significantly from preinstruction ( $M = 46.49$ , 95% CI [43.53, 49.46]) to postinstruction ( $M = 46.50$ , 95% CI [43.22, 49.77]),  $p = .99$ . Victim blame ratings of individuals agreeing with hate crime penalty enhancement were significantly reduced from preinstruction ( $M = 47.14$ , 95% CI [45.00, 49.27]) to postinstruction ( $M = 43.41$ , 95% CI [40.83, 45.99]),  $p < .001$ , Figure 3b). Victim type was not a significant predictor in the model and no interactions involving victim type reached significance.

**Perpetrator blame.** The third model assessed perpetrator blame ratings as a function of hate crime jury instructions, hate crime penalty enhancement agreement, and victim type, as well as the interaction terms of the predictor variables while controlling for race of the participant.<sup>6</sup> Model reduction through backward elimination resulted in a best fitting model including only a main effect of hate crime jury instructions, Wald's chi-square (1) = 15.29,  $p < .001$ . Perpetrator blame increased from preinstruction ( $M = 76.79$ , 95% CI [74.55, 79.03]) to postinstruction rating ( $M = 79.66$ , 95% CI [77.34, 81.98]). No other main effects or interactions reached significance.

### NFC.

**Sentencing.** As in Study 1, three GEE models were run to assess the moderating role of NFC on sentencing recommendations, victim blame, and perpetrator blame. The first model assessed sentencing decisions as a function of hate crime jury instructions, hate crime penalty enhancement agreement, victim

<sup>4</sup> The interaction between race of the participant and victim type was nonsignificant, Wald's chi-square (6) = 5.88,  $p = .44$ .

<sup>5</sup> The interaction between race of the participant and victim type was nonsignificant, Wald's chi-square (6) = 3.97,  $p = .68$ .

<sup>6</sup> The interaction between race of the participant and victim type was nonsignificant, Wald's chi-square (6) = 4.30,  $p = .64$ .



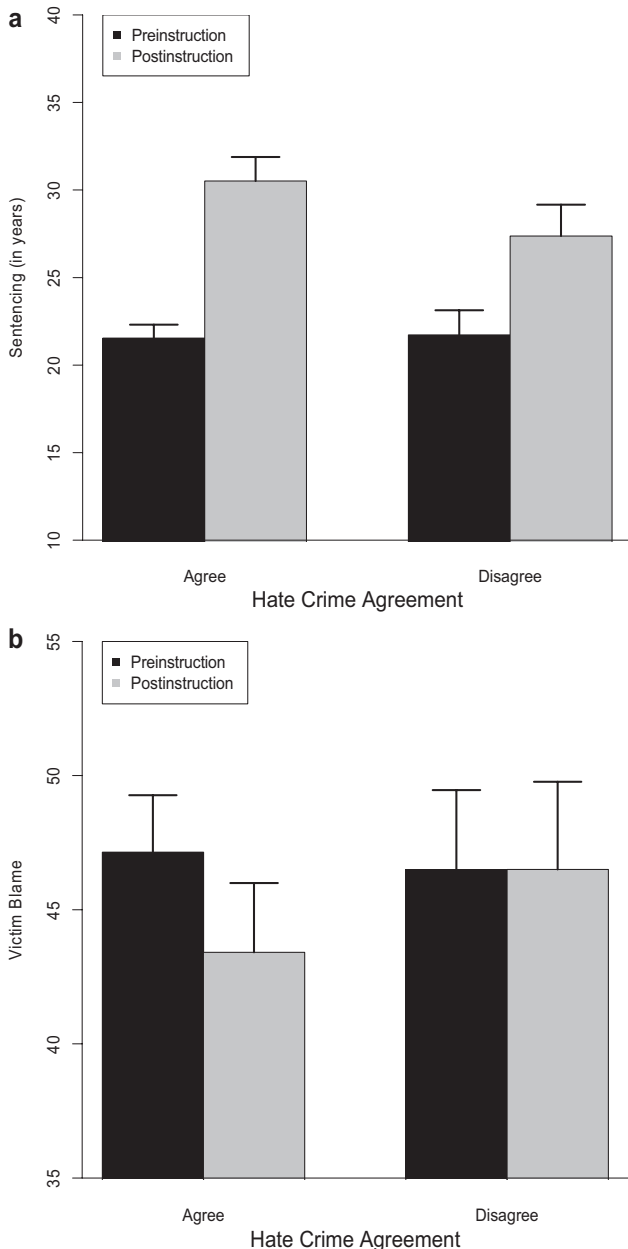


Figure 3. (a) Sentencing recommendations by hate crime penalty enhancement agreement and jury instructions for Study 2. (b) Victim blame ratings by hate crime penalty enhancement agreement and jury instructions for Study 2.

type, NFC and the interaction terms of the predictor variable while controlling for race of the participant.<sup>7</sup> Model reduction through backward elimination resulted in significant 3-way interaction between victim type, hate crime agreement, and NFC, Wald's chi-square (2) = 9.77,  $p = .01$ . As seen in Figure 4, the combination of disagreement with hate crime penalty enhancement and low NFC appears to account for significant findings. Individuals who disagree with hate crime penalty enhancement and were low in NFC provided the longest sentencing recommendations when the victim was described as gay, and shortest when the victim was

transgender. Sentencing was approximately equal across other combinations of victim type, penalty enhancement agreement and NFC.

**Victim blame.** The second model assessed victim blame as a function of hate crime jury instructions, hate crime penalty enhancement agreement, victim type, NFC and the interaction terms of the predictor variables. No significant effects (main or interactions) involving NFC were observed.

**Perpetrator blame.** The third model assessed perpetrator blame as a function of hate crime jury instructions, hate crime penalty enhancement agreement, victim type, NFC and the interaction terms of the predictor variables. Model reduction through backward elimination resulted in a best fitting model including an interaction between hate crime instructions and NFC, Wald's chi-square (1) = 5.63,  $p = .02$ . As can be seen in Figure 5, preinstructions, individuals high in NFC blamed the perpetrator less than individuals low in NFC. Postinstructions, this trend reversed and individuals high in NFC blamed the perpetrator more than individuals low in NFC.

## Discussion

Perhaps the most robust outcome of the present investigation concerns penalty enhancement agreement and instructions with hate crime penalty enhancement. Study 2 results replicated the interactive effect of hate crime instructions and agreement; it failed to emerge when predicting perceptions of perpetrator blame, however. Taken as a whole, present findings portray an intriguing picture of jury-eligible community members' approaches to hate crimes. In accordance with the HCPA, offenders were repeatedly punished with increased prison terms across studies. Despite this general trend, beliefs concerning these penalty enhancements widened the gap in blame and punishment. This raises the possibility that mock jurors did not remain completely impartial in following the law, a potentially concerning finding addressed in more detail below.

Most empirical data addressing support or dissent for hate crime laws pertains to inclusion of specific victim groups (e.g., Johnson & Byers, 2003; Plumm & Terrance, in press). Building on this trend, our findings revealed empirical support that perceptions of the penalty enhancement can matter across type of victim, especially in terms of blame attributions (an exception to this is the significant three-way interaction on sentencing involving policy agreement, NFC and victim type discussed later). Numerous explanations may explicate the potency of agreement with policy. Previous research shows a multitude of individual differences such as low authoritarianism to be important in perceptions of hate crimes (e.g., Cramer et al., in press). Also, criticism of hate crime policy abound. Rationales against hate crime laws include violating free speech (Bessel, 2010), creating systemic inequity in the punishment of offenders (Sullaway, 2004), and prosecuting crimes unnecessarily, further taxing the criminal justice system (Glaser, 2005). Belief structures underlying support and disagreement alike are important to examine in a nuanced fashion to continue to promote understanding the impact of agreement with hate crime policy in and out of the courtroom.

<sup>7</sup> No effects involving race of participant and need for cognition on any of the dependent measures were significant.

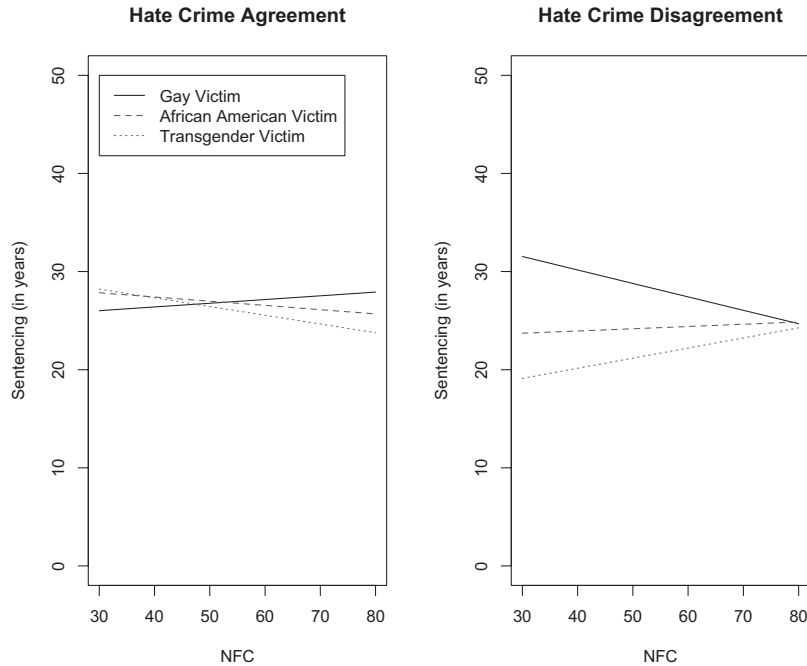


Figure 4. Sentencing recommendations by victim type, hate crime penalty enhancement agreement, and need for cognition. Hate Crime (Dis)agreement refers to whether participants agree with the penalty enhancement portion of the hate crime laws.

An aim of this set of studies was to assess whether victim type mattered in the blame and punishment of hate crime victims and perpetrators. Overall, the answer appears to be that ‘it depends on other factors.’ Study 1 results yielded no significant effects of victim group membership, defined by being African American, gay or transgender. In Study 2 a qualified main effect of victim type emerged dependent on factors of perceiver NFC and agree-

ment with penalty enhancement policy. While the influence of NFC is explored further below, the consistent pattern that emerged concerning victim type is that, when discrepancies appeared, gay and transgender victims were treated differently. It is necessary to keep in mind that differences by victim type only emerged in Study 2.

The HCPA provides the legal backdrop to understand analyses of victim type. Finding roots in prior equal rights movements such as African American and other civil rights of the 1960s and 1970s (Gerstenfeld, 2011), GLBT civil rights have gained traction in the last two decades, resulting in legislation such as the HCPA. Among the various alterations to existing federal hate crime legislation incorporated in the HCPA was inclusion of gay and transgender individuals (Human Right Campaign, 2009). Study 1 results alone suggest equitable treatment of gay and transgender victims. However, Study 2 paints a more complicated picture.

Perpetrators of all three types of crimes were sentenced equally until perceiver NFC and instructions were factored into the equation. Inspection of Figure 4 indicates that low NFC (i.e., less preference for critical thinking and cognitive stimulation) and hate crime disagreement foster differential punishment of hate crime perpetrators. Surprisingly, the combination yields harsher punishment of antigay hate crime perpetrators, perhaps because of contemporary shifts in acceptance of gay individuals. In essence, the simplistic thinking underlying punishment of antigay hate crime offenders may take the effect of “public perceptions of gay people are getting better, so I should follow suit.” It is equally plausible that low NFC individuals engaged in impression management, punishing an offender because they believe following jury hate crime instruction to be a socially desirable response.

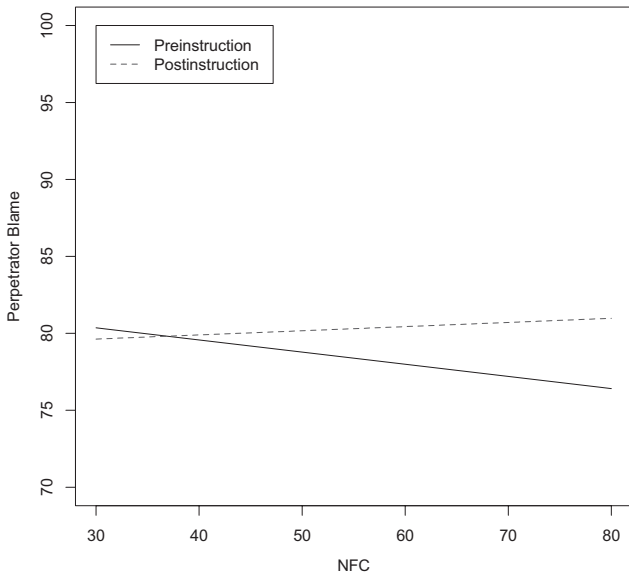


Figure 5. Perpetrator blame ratings by hate crime jury instructions and need for cognition.

Despite HCPA inclusion of transgender individuals as a protected group, individuals who disagree with penalty enhancement and fail to critically analyze the information presented in the trial scenario do not follow HCPA requirements pertaining to transgender individuals. This may be because of both a lack of understanding of who transgender individuals are (i.e., lack of exposure/knowledge), and a lack of critical processing of information (i.e., low NFC; Cacioppo et al., 1986). Given this possibility, low NFC individuals disagreeing with penalty enhancements may find it a cognitively easier decision to downgrade sentence severity toward a victim type they possess no knowledge of. Alternative explanations exist, however, including that a lack of familiarity with transgender persons may coincide with transphobia, generally defined as an irrational fear of transgender individuals (Nagoshi et al., 2008). If this is the case, irrational fear of unknown transgender minorities may drive the improved situation for perpetrators of antitransgender hate crimes.

A final domain warranting comment is the role individual differences in preference for emotion and cognition play in the assignment of blame and sentencing. As in previous jury research, both NFA (e.g., Adams et al., 2010; Corwin et al., 2012) and NFC (e.g., McAuliff & Kovera, 2008; Salerno & McCauley, 2009) proved useful in illuminating juror perceptions of hate crimes. As summarized earlier, NFA was related only to attributions of victim blame. On the contrary, NFC moderated perceptions and decisions about hate crime offenders. The three-way interactive effect on sentencing summarized above is consistent with previous NFC findings that low NFC persons display simpler views of human behavior when increasing offender punishment (Sargent, 2004). In the case of present findings, low NFC individuals disagreeing with penalty enhancements for hate crimes may have been more punitive to antigay offenders because of simplistic interpretations of the offender's behavior (e.g., "the offender is a bigot, and should therefore be punished"). This pattern may have reversed for punishment of antitransgender offenders because of a lack of clarity of transgender issues. The lack of understanding, paired with necessity for increased thinking through the issue, may have yielded decreased sentences among low NFC participants.

NFC also moderated the impact of instructions on perpetrator blame, such that high NFC participants, compared with low NFC individuals, blamed perpetrators more after receiving instructions and information that the crime was hate-motivated. The supposition here is that high NFC individuals were likely more motivated to consider the law (i.e., jury instructions) and incorporate them into perceptions of offender intent and blame. Consideration of legal instructions resulting in negative views of the offender contradicts the findings of Leippe, Eisenstadt, Rauch, and Seib (2004) who reported that high NFC persons gave greater scrutiny to strong evidence cases, resulting in less conviction proneness. The case evidence, by inference, is arguably strong in the present study because the offender was already convicted, yet blame toward that offender was greater among high NFC persons. The disparate findings suggests that the high level of scrutiny applied by high NFC persons to the guilt phase of a trial operates differently in the sentencing phase.

Placed in the CEST (Epstein, 1990) framework, NFA and NFC findings offer insight into logic and experience driven processing preferences in a hate crime context. Recalling that hate crimes tend to evoke strong emotions (Sullaway, 2004) and that NFA impacted

only perceptions of victims in the present investigation, CEST suggests that jurors may be engaging primarily in experiential system when viewing victims of hate crimes. Susceptibility to heuristically or emotionally driven processing of hate crime victims is consistent with previous findings that experiential processors respond to surface level cues such as defendant attractiveness (Gunnell & Ceci, 2010). Operating on the assumption that high NFC is reflective of preference for a logical, effortful processing subsystem (Cacioppo et al., 1986, 1983), CEST would support that this style of processing may be consistent with a rational system in light its logic-driven nature (Kirkpatrick & Epstein, 1992). Therefore, placed in a CEST framework, the moderating effects of NFC observed in the present study suggest a rational-dominant style in perceptions of hate crime offenders.

### Limitations and Implications for Policy, Practice, and Research

Our research also possesses limitations worthy of noting. Methodologically, a growing trend is inclusion of jury deliberation in experimental paradigms (Wiener, Krauss, & Lieberman, 2011). Moreover, vignette methods, while valuable and commonly employed, are limited in terms of over isolation of just one or a few aspects of a trial. Our two-step vignette requiring jurors to provide multiple ratings of sentencing and blame is clearly limited in regard to external validity, as jurors only render such decisions once in a trial. Another limitation pertains to the assessment of hate crime agreement in that it is foreseeable that a participant could disagree with the policy but still follow the law. The sample used, while more representative than prior research in this area of research in many regards, was drawn only from one region of the United States. Because attitudes toward sexual minorities can influence perceptions of hate crimes (e.g., Cramer et al., *in press*), these attitudes were not controlled for in the present study. In regard to external validity, while hate crime research is important, the ability to apply individual-level juror findings is also hampered by the fact that many hate crimes do not reach trial, as they are often difficult to prosecute for many reasons. As hate crime research progresses, our findings, especially the inconsistent main effect of victim type between Studies 1 and 2, can be tested using these variations in methodology and sample. Also of note for future research is the potential utility of transphobia, attitudes toward sexual minorities, knowledge of and exposure to GLBT persons, and morality beliefs concerning the justice system and hate crime policies.

Differential treatment toward gay and transgender victims may benefit from a metaperspective of prejudice, especially given the potentially far-reaching implications beyond the courtroom. From a public perception standpoint, successive decades have witnessed new civil rights movements. Social-legal perspectives demonstrate time shifts in types of prejudice and potential social acceptance of each minority group. For example, empirical data suggest both racism and sexism transitioned from overt hostility to subtle discrimination (e.g., Sears, 1988; Swim, Aikin, Hall, & Hunter, 1995). Moreover, negative racial attitudes impact public perception of a range of crime policies (Green, Staerkie, & Sears, 2006). While racial prejudice has changed in many respects, political reform also reflects some gained social and legal equity (e.g., inclusion of racial minorities in hate crimes legislation). It is possible that the same shifts are occurring for gay individuals. In short, this data provides preliminary evidence that gay individuals

are treated equally in the context of a hate crime. Moreover, the HCPA and various state laws now protect sexual minority persons. Overt discrimination such as inequitable treatment in a jury context may have given way to other forms of subtle discrimination beyond the courtroom. Based on interactive effects with policy accord and NFC, the same may not be true for transgender individuals; despite being protected under some legislation, overt discrimination may still exist in the courtroom.

From a public policy perspective, hate crime legislation and associated GLBT issues have pervaded the political consciousness and coverage, especially since [Mathew Shepard's 1998 murder](#). In evaluating the extent to which anti-GLBT prejudices may or may not have changed, social scientists and policymakers may endeavor to examine how such controversial issues impact not only jury behavior, but other policy-relevant domains such as voting, housing, and marriage decisions. Indeed, these are ripe topics to address existing levels and manifestations of overt or subtle sexual prejudice, transphobia, and social equality for GLBT individuals.

The present set of studies also may inform jury selection for attorneys and trial consultants. Briefly, jury consultants and attorneys aim to de-select, or strike, potential jurors who cannot be impartial given the unique set of facts in a given case ([Brodsky, 2009](#)). For example, [Cramer, Adams, and Brodsky \(2009\)](#) illustrate how a range of individual differences such as authoritarianism and NFC may be utilized during jury selection in a child sexual abuse trial. The present study possesses similar potential utility insofar as agreement with penalty enhancement and NFC are germane to the case facts in a criminal hate crime trial. For instance, defense attorneys in a hate crime against a gay victim may strike low NFC individuals who agree with penalty enhancement, as such individuals appear to view perpetrators in a rather extreme manner. Likewise, as blame or culpability attributions often factor into civil trial outcomes, NFA and NFC may be considered for their respective impacts on perceptions of victims and perpetrators of hate crimes.

The present study possesses potential strengths in that it is consistent with current directions in juror research. [Wiener et al. \(2011\)](#) recommended a two-step process where principles are first established using student and other convenience samples. Then, such findings can be replicated and extended among community samples in order to enhance various types of validity. Previous research in and beyond a jury context established well-grounded, testable hypotheses concerning blame and sentencing in hate crimes (e.g., [Cramer et al., 2010](#), in press; [Lyons, 2006](#); [Plumm et al., 2010](#); [Rayburn et al., 2003](#)). Using a more ecologically and representative sample offers additional confidence in findings concerning punishment and blame of hate crime perpetrators. Moreover, NFC and NFA appear to be important constructs for future investigation in a juror paradigm.

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## Appendix

### Two-Step Vignette Methodology

#### Step 1: Pre-Hate Crime Instruction Vignette/Sentencing Form:

This is the sentencing phase of Morgan Jones, case # 12517. Mr. Jones has already been found guilty of **2nd degree murder**. The only question before you, the jury, is to determine Mr. Jones's sentence.

Below are the details for the jury's consideration:

#### The Victim

- Mr. Anthony Smith
- 44 year-old male
- Professor of chemistry at the University of Miami since September of 1992

#### The Perpetrator

- Mr. Morgan Jones
- 40 year-old male co-worker of Mr. Smith's

On February 3, 2001 Mr. Jones arrived unexpectedly at the home of the victim, Mr. Smith, at approximately 7:30 p.m. After a short argument at the front door, Mr. Smith attempted to shut the door on Mr. Jones. Mr. Jones reportedly over-powered Mr. Smith and forced his way into the victim's home. As shown in the trial, Mr. Jones drew a gun from inside his coat and shot the victim twice in the chest.

According to witness testimony, Mr. Jones and Mr. Smith were professional colleagues, but not close friends. Several of the victim's family members and colleagues testified that Mr. Jones had never been to Mr. Smith's home. Before the night of the crime, Mr. Jones had verbally expressed dislike of the victim. Mr. Jones' background revealed no prior criminal record.

#### Sentencing Instructions:

Federal sentencing guidelines for 2nd degree murder suggest a sentence of 235-293 months (19 years, 7 months – 24 years, 5

months). Given the federal sentencing guidelines for 2nd degree murder, how many months or years would you recommend for the above crime? There is no minimum amount of time to assign. Please **write your answer in the space below and indicate months/years**. It is important that you **use only the information provided in the case summary and on this sheet; please answer honestly**.

Your recommended sentence: \_\_\_\_\_ (years) \_\_\_\_\_ (months)

#### Step 2: Hate Crime Instruction Manipulation and Postinstruction Sentencing Rating

#### Additional Sentencing Information

At his trial the perpetrator, Mr. Jones, a white male, testified that he was overcome by rage and targeted the victim because he was a *black/gay/or transgender* male. Hence, the murder was a hate crime.

#### Sentencing Instructions:

Federal sentencing guidelines for hate crimes suggest an increase of 3 punishment levels. Therefore, federal sentencing guidelines for a 2nd degree murder hate crime suggest a sentence of 324-405 months (27 years, 0 months – 33 years, 9 months). Given the federal sentencing guidelines for a 2nd degree murder hate crime above, how many months/years would you recommend for the above crime? There is no minimum amount of time to assign. Please **write your answer in the space below**. It is important that you **use only the information provided in the case summary and on this sheet; please answer honestly**.

Your recommended sentence: \_\_\_\_\_ (years) \_\_\_\_\_ (months)

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