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**HATE: JUROR PERCEPTIONS OF CRIME CLASSIFICATION,
ATTRIBUTIONS OF BLAME, AND IMPACT OF EXTRA-LEGAL FACTORS**

by

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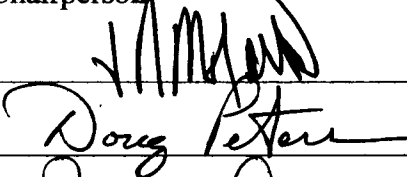
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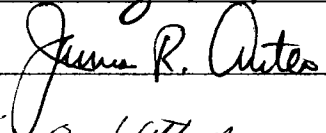
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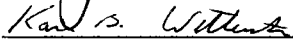
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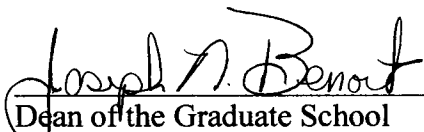


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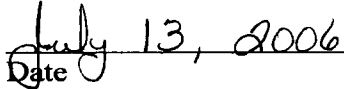


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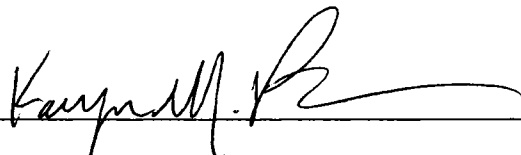
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ABSTRACT

A jury simulation paradigm was employed in this series of studies exploring hate crime. In the first two studies, crime label (i.e., bias-motivated assault vs. first degree assault) and victim gender were varied within the context of a sexual orientation motivated (study 1) or gender motivated (study 2) hate crime scenario. Results from the first study indicated that attributions of blame against the victim varied as a function of participants' attitudes toward minority sexual orientation. Results of study two indicated that participants in the assault condition were more likely to find the defendant guilty than those in the hate crime condition. Participants in study two also made differential attributions of victim blame depending on crime label, such that those in the assault condition found the victim to be more mentally unstable and they also found the defendant to be more reasonable than those in the hate crime condition.

Jurors in the third study read a transcript depicting an attack on a gay man by a man in either a local bar (i.e., not a gay bar) or a gay bar. Within location conditions, jurors were presented with either "provocation" by the victim (i.e., asking the perpetrator to dance and putting his arm around him) or alternatively no "provocation" was presented. Results of study three indicated significant differences of victim blame depending upon condition. Participants in the local bar and "provocation" present conditions were more likely to blame the victim for the attack than those in the gay bar or "provocation" absent conditions. Implications for hate crime law and attribution theory within the courtroom are discussed.

CHAPTER I

INTRODUCTION

Hate crimes have been the topic of much debate among political, psychological and legal scholars. Arguments about determining a biased intent, policing the right of people to feel how they wish, and measuring a hypothetical construct such as “hate” have all been arguments against the use of hate crime laws. Arguments for establishing such statutes are related to the nature of what hate crimes entail and the necessity to have harsher penalties in place for perpetrators of such crime.

A hate crime can be defined as one in which the victim is selected because of his or her actual or perceived race, color, religion, disability, sexual orientation, or national origin (U.S. Department of Justice, 1990). Hate crimes differ from other crimes in that they typically involve excessive violence, are committed against strangers, are often not planned, are typically committed by young, white males, and may involve more than one offender (Downey & Stage, 1999). As a result of the 1990 Hate Crime Statistics Act (U.S. Department of Justice, 1990), state and federal agencies began collecting data on the number and type of hate crimes that were being committed.

The Federal Bureau of Investigations (FBI) reported a dramatic increase in the number of reported hate crimes in the year following the statistics act (FBI, 2001). Although the number of overall crimes increased slightly between 2000 and 2001, hate crimes rose from a total of 8,063 in 2000 to 9,730 in 2001 (FBI, 2001). Since the FBI began collecting hate crime statistics in 1991, reported hate crimes based on sexual

orientation more than tripled. In the FBI's most recent hate crimes statistic report, hate crimes based on sexual orientation remain in the top three of all the reported hate crimes categories (FBI, 2001). Because crimes based on sexual orientation are underreported due to fear (Herek, 1989), these statistics may not adequately represent the breadth of biased crimes based on sexual orientation.

Following obtained results of collected data on bias-motivated crime, hate crime sentencing enhancement was put into place (Hate Crime Sentencing Enhancement Act, 1993). Sentence enhancement was viewed as necessary due to the characteristics of hate crimes that were identified. That is, hate crimes although typically committed against one person are directed at the group to which that person is perceived as belonging to, having negative implications then not only for each individual victim of such crimes but for their community and society as a whole by creating fear among members of targeted groups.

Although a number of states now include hate crime legal statutes, some still exclude particular groups from protection under these laws. The state of Minnesota is one of ten states (plus the District of Columbia) to include specific hate crime laws based on sexual orientation and gender identity (National Gay and Lesbian Task Force, 2005). Because of the nature of hate crimes (i.e., excessive violence, hate for group directed at one group member), it is not surprising that they have a lasting impact on the victims who have experienced such a crime (Herek, 1994).

Attitudes Toward Hate Crime Laws

Numerous objections to hate crime statutes advanced by psychologists and legal scholars have been the basis for much debate over hate crime laws. Gerstenfeld (1992)

argued that the impact of hate crime law is only a symbolic attempt at reducing bigotry. She noted that the major problems with this type of legislation are the difficulties surrounding the identification of these crimes, as well as the challenges of considering the offender's motives. That is, although the collection of information on hate crimes is now required, it is still difficult, if not impossible to identify why a perpetrator commits a crime. Although the crime may be called "hate," there are a number of other reasons the perpetrators of such crimes may be committing them. Fear, ignorance, misunderstanding, anger or hate may all be motivation for a person to commit a crime against another. Bias-motivated crime (i.e., hate crime) however tends to be directed at a group of people even though an individual is targeted. There are many situational variables that may play a role in an attack on an individual (i.e., they may be perceived as belonging to a social group in a number of ways). It is in these cases that teasing apart what constitutes hate crime from other types of crime becomes difficult. Beyond situational factors, inconsistent ways of collecting, reporting, and analyzing data between federal, state and local law enforcement make the label of bias-motivated crime (hate crime) seem more figurative than literal.

Sullaway (2004) discussed the many objections both psychology and legal scholars have to hate crime law. While some are based in constitutional law (i.e., it is unconstitutional to regulate how someone thinks or feels about someone else), others concern measurement of motivation and intent. Furthermore, although an individual may be motivated to commit a crime, he or she may have no intent to do so; and even if she or he had intent to commit a crime, he or she may not actually follow through. Therefore distinctions between these constructs (i.e., motivation and intent) and the culpable

behavior of criminals become difficult to identify. Those who criticize hate crime law from a psychological perspective argue that they are flawed because of the impossibility to measure bias. In this sense therefore, the relationship between attitudes and behavior cannot be stated as causal. Criminal law, however, tends to draw a line between motivation and intent (*mens rea*), intent being more closely tied to behavior. In the instance of hate crimes, however, it becomes difficult to tease them apart (Sullaway, 2004).

Despite these concerns, Sullaway (2004) argued that bias-motivated assault, as a form of criminal activity, does serve the purpose of reducing such crimes as well as increasing awareness of the unacceptability of such behaviors. Nonetheless, Petrosino (1999) argued that hate crimes will become more difficult to prevent and will occur more frequently. Despite this, it may be the case that simply giving these acts the criminal label of bias-motivated crime (i.e., hate crime) may not only serve to increase awareness about the unacceptability of such behavior, but may also lead to reduction in blaming the victim and therefore increase convictions for these types of crime.

Jacobs and Potter (1998) discussed yet other areas of debate over hate crime laws, including justification and enforcement of these laws. They outlined the reasons hate crime offenders are viewed by psychology and legal scholars as “more culpable.” These reasons include the disproportionate severity of these types of attacks, both physically and psychologically, on their victims and the impact of hate crimes on third parties (i.e., reinforcing social division and hatred). Jacobs and Potter (1998) also identified problems with enforcing hate crime laws, including lack of information in the area of jury research. In fact, it has been noted that only 9% to 16% of reported hate crime acts end in arrest,

with even fewer being prosecuted (Jacobs & Potter, 1998). Ignorance about the reasons why an alleged hate crime perpetrator may be arrested but not prosecuted only augments these small numbers of prosecutions. Because little research has been done in the area of juror decision-making, very little is known about why fact-finders (i.e., judges and jurors) reach the decisions they are reaching and what factors within the trial have an influence on these decisions.

Perceptions of Hate Crimes

Hate crimes represent a distinct type of crime unlike other types of criminal activity. Because they are primarily based on the victim's membership in a demographic group, the motivation behind perpetration of such a crime may not only be different than that of other crimes, but may be perceived differently by others as well. Indeed, perceptions of hate crimes appear to vary according to not only the type of crime involved but extra-legal factors such as race and gender as well.

In an effort to understand how people view hate crimes, Craig and Waldo (1996) explored the definitions of such crimes by asking young adults to describe their perceptions of what a typical hate crime consisted of. They found that participants viewed a typical hate crime as involving violence or assault, including a member of a minority group, and as being motivated by fear, anger or ignorance. Although these views are accurate, other assumptions participants stated in this study were not. Participants were able to point out what encapsulates a typical hate crime but did not identify other types of hate crime nor did they correctly state that the victims in these types of crimes were innocent. In other words, participants viewed the victims as at least partially responsible for their victimization. It appears then that certain crimes may fail

to be defined as a 'hate crime' on the basis of failing to fit notions of what typical hate crimes involve.

To further explore perceptions of hate crime, Craig and Waldo (1996) also asked about perceptions of punishment for perpetrators of hate crimes. They found that participants rated the likelihood of punishment for hate crimes motivated by heterosexism to be less than hate crimes motivated by other prejudices (i.e., anti-Semitism, racism). Participants viewed hate crimes based on sexual orientation as less likely to be punished, arguably because of a socially accepted prejudice against homosexuality.

Furthermore, Dunbar and Molina (2004) found that college student participants had a generally positive attitude toward hate crime laws (i.e., were in favor of such laws being in place in the state in which they lived). Nonetheless, it may be that such positive attitudes extend to only certain types of hate crime. In one of the few jury simulation studies examining hate crimes, perceptions of hate crime (assessed by certainty of guilt) varied as a function of the race of the victim and perpetrator (Marcus-Newhall, Blake & Baumann, 2002). Results indicated that certainty of guilt was highest when the victim was African American and the perpetrator was Caucasian. It may be the case that certainty of guilt reflected the stereotypical nature of this crime (i.e., certain scenarios more easily fit the typical idea of a hate crime than other scenarios).

Differential perceptions of such crimes may have an impact on juror decision-making in the courtroom. Consistent with this, Johnson and Byers (2003) found that the major factor determining acceptance or rejection of general hate crime laws was whether or not sexual orientation would be included as a protected bias. They reported that those who wanted inclusion of protection for gay men and lesbians would support such a law in

their state, while those who did not want inclusion would oppose such a law. Clearly then, attitudes toward lesbians and gay men may play an important role in perceptions of hate crime.

Attitudes Toward Lesbians, Gay Men, and Bisexuals

Lesbians and gay men have a long history of persecution and have been consistent targets of prejudice, stereotypes, and discrimination (Yang, 1997). Many researchers have looked at the negative attitudes endorsed by heterosexual men and women toward gay men and lesbians. Overall, Kite and Whitley (1994) found that both heterosexual men and women held negative attitudes toward homosexual men and women. Heterosexual men however were more negative than women toward gay men, lesbians and homosexual behavior. These findings remained consistent in follow-up studies with the added finding that gay men were rated more negatively than lesbians by both heterosexual men and women (LaMar & Kite, 1998). LaMar & Kite (1998) explained this finding in terms of a generalized gender-role belief. They stated that men are expected to hold a stronger rejection of sex-role violations whereas women are allowed greater latitude with sex-role violations. Therefore, social stereotypes may dictate a stronger acceptance of lesbians than of gay men.

Whitley (2001) reported similar findings of negative attitudes toward gay men and lesbians, pointing out that the best predictors of these attitudes were gender (i.e., males held more negative attitudes than females), endorsement of gender role norms, negative attitudes toward women, and sexist beliefs. Herek (1989) pointed out that although other types of hate crime victims (i.e., racial, ethnic, religious) suffer from similar prejudices, the impact of overt discrimination and intolerance is unique to gay

people as government, religious and social institutions often condone prejudices held against them. For example, denying gay men and lesbians the right to marry and hearing certain religious groups state that homosexuality is a sin sends the message to the general public that discrimination against this particular group is, at some level, acceptable. Moreover, these condoned negative attitudes risk being acted upon in the form of physical aggression (D'Augelli, 1989).

The impact of sexual-orientation based hate crimes on the victims of these crimes has been widely studied within the realm of hate crime literature. Victimization of lesbians, gay men and bisexuals (LGB) has been linked to a number of problems for the victim following the attack. Victimization (i.e., ridicule, physical attacks) during childhood for LGB individuals has been associated with a number of mental health problems (Remafedi, Farrow & Deisher, 1991; Shaffer, Fisher, Hicks, Parides & Gould, 1995). Rivers (1996) stated that LGB youths who experience victimization due to their sexual orientation are at greater risk for suicidal behavior. George and Behrendt (1988) suggested that lower self-esteem among victimized LGB individuals is correlated with difficulties in maintaining intimate relationships. Herek (1994) also reported that criminal victimization (i.e., vandalism of personal property, physical attacks) has negative impacts on the victims of such crime, such as emotional and cognitive problems (e.g., depression, anxiety), somatic disturbances (e.g., physical injury related to the crime, sleep disturbances), behavioral problems (e.g., suicidal ideation), and interpersonal problems (e.g., avoidance of social contacts).

The patterns of victimization among LGB individuals have been compared to that of rape victims (Rivers & D'Augelli, 2001). In fact, victims of hate crime assaults are

often blamed and characterized as deserving their attack in much the same way that rape victims have been (Herek, 1994). However, along with the direct impact that victimization has on an individual, secondary victimization (i.e., being outed) is also a problem for LGB individuals. They may often find themselves in situations of discrimination from those who learned about their sexual orientation as a result of the attack. This scenario may lead to further impacts such as loss of employment, child custody, or relationships (Herek, 1994). Further, the impact of secondary victimization is what may prevent reporting of some hate crimes.

Despite the negative consequences associated with hate crimes perpetrated against LGB individuals, little research has examined people's perceptions of sexual-orientation based hate crime in the courtroom. In fact, Jacobs and Potter (1998) pointed out the many ways in which enforcing and prosecuting hate crime laws have not only failed but have led to no further knowledge about the contributions of having such laws in place. Many special interests groups (e.g., Anti-Defamation League, Jewish Defense League, NY City Gay and Lesbian Anti-Violence Project) maintain that hate crime legislation is an important legal issue to help gain equality, yet they do not have much data from law enforcement or prosecution records about how a hate crime is dealt with in the current legal system. Of the crime statistics that are reported, the number of arrests and/or prosecutions for bias-motivated assault are quite low (i.e., ranging from 9% to 16% of reported crimes ending in arrest or prosecution; Jacobs & Potter, 1998).

There are many speculations as to why perpetrators of hate crimes are not arrested and/or charged for their crime (e.g., police indifference, crime not recognized as bias-motivated). However, the reasons a perpetrator may be arrested and charged with a hate

crime but not prosecuted remain equivocal. Insights into how people define and attribute blame for hate crimes may be helpful in this regard. In order for the legal system to bring a perpetrator to trial on charges of bias-motivated assault, they must be able to prove their case to a jury. Since there is no published research in the area of juror decision-making when it comes to bias-motivated assault (based on sexual orientation), prosecutors and defenders are left to try and find the least biased jury through *voir dire* questioning, in which jurors often lie (Ginger, 1990). Trying to find the least biased jury poses a problem for both prosecutors and defenders, especially when they are unaware of what factors may influence juror decision-making in such cases.

Attribution Theory

There are many reasons why someone deciding the guilt or innocence of a person who is accused of committing a crime may make their decision. One of the factors considered by these fact-finders (i.e., judges, jurors) is how much blame or responsibility the person accused of committing a crime holds for the event that took place. There are many different theories about how people attribute blame or responsibility to certain parties (Heider, 1958; Jones & Davis, 1965; Kelley, 1967; Schachter, 1964; Bem, 1967, 1972; Weiner 1979, 1985). What all of these theories have in common is the idea that all people try to form causal explanations for events that have occurred. As social perceivers we arrive at judgments based on the information we have (i.e., what areas are most important to us in making our decision) and how we combine it.

According to Kelley (1972), people try to understand the cause of an event by looking at evidence in three areas: its consistency over time (i.e., whether or not it has happened in similar situations), its distinctiveness (i.e., whether or not it has happened

before), and other people's experiences with it. However, this type of evidence is typically not available in most cases. Rather, the only information we may have is the single occurrence of the event itself. This situation is salient in the courtroom where previous evidence, charges, or convictions are not allowed to be used against a person accused of a crime. Therefore, jurors are left with only the single case on which to base their judgment.

In cases such as this, Kelley (1972) argued that people will give more weight to a facilitative cause (something that promotes that particular event) than to an inhibitory cause (something that would weaken or undermine that particular event). This theory combined with Heider's (1958) contribution of the distinction between internal (generated by the person) or external (caused by the situation) attributions is what leads to errors in attribution. There are many attribution biases and errors that have been identified (Heider, 1958; Kelley, 1967; Jones & Nisbett, 1971). At the heart of these different effects is the fundamental attribution error (FAE).

The FAE states that when the perceiver is attempting to judge an event, he or she will overestimate dispositional (internal) attributions and underestimate situational (external) attributions when judging the behavior of others involved in that event. It may be the case that because so little information is typically available to the perceiver that she or he simply looks at facilitative and internal causes for the event. However, studies have shown (Trope, 1986; Trope, Cohen & Maoz, 1988) that even when the perceiver has some of the information he or she would use to make causal explanations, she or he may still categorize the event, the situation in which it occurs, and the prior information he or she has about the person she or he is judging in terms of disposition-relevant behavior.

Simply put, the information they are gathering is being used to decide whether or not this person is good or bad. Using this information rather than the situation in deciding whether or not someone would (or should) be held responsible for the cause of the event is one such effect of the FAE. This bias is said to stem in part from the actor-observer effect (Jones & Nisbett, 1971).

The actor-observer effect explains that when one (the observer) is making a judgment about another's (the actor) behavior, the observer tends to explain the actor's behavior in terms of dispositional factors and her or his own behavior in terms of situational factors. That is, we tend to ignore situational factors when explaining the behavior of others. Many studies have been conducted producing extensions and qualifications of the actor-observer effect (Goldberg, 1978; Nisbett, Caputo, Legant & Maracek, 1973; Zaccaro & Lowe, 1985). One such extension conducted by Miller and Norman (1975) demonstrated that active onlookers would be even more inclined than passive observers to attribute an actor's behavior to dispositional factors. Therefore, members of a jury may fall victim to the actor-observer effect more so than someone who simply witnessed the event take place. When deciding how to explain an event in most situations, these biases and errors do not have much consequence for those involved. However, for the defendant in a courtroom setting, these errors and biases may be of dire consequence. Along with deciding how to explain an event, there are also errors made in deciding who is to be held responsible for an event, or taking it one step further, who is to blame.

Although attributions of responsibility and attributions of blame both point out who can be held accountable for outcomes of an event, they differ slightly in that

attributions of blame are typically reserved for cases in which the causal agent (or person held responsible) is subject to punishment for a negative event (McGraw, 1987).

Attribution of responsibility depends on the ability to identify the particular person who caused the event, the belief that the person should have been able to foresee the outcome, the perception that the person's actions were not justified by the situation, and the belief that the person acted out of free choice (McGraw, 1987). In the context of the courtroom one might typically think of attributions of blame in the context of deciding whether or not someone is guilty of a crime. However this type of attribution (and its associated errors and biases) may spill over into blaming the victim of a crime. If a decision-maker is unable to pinpoint certain aspects of the defendant's behavior, or he or she feels that she or he may have acted in a similar fashion as the defendant in that situation (c.f., defensive attribution hypothesis, Burger, 1981), he or she may attempt to locate responsibility for the event in terms of the victim's behavior. Related to attributions of blame for a victim is Lerner's (1970) just-world hypothesis which states that people have a need to see the world as a controllable and fair place in which good things happen to good people and bad things happen to bad people. This can lead to blaming the victim through the belief that the person deserved what happened simply because if she or he were a good person the bad event would not have happened in the first place.

Attribution theory is applicable to any area in which people are judging the behavior of others. Examining particular biases and errors may be especially helpful in arenas such as the courtroom, where it is someone's responsibility to judge the behavior of others. In cases such as hate crimes, understanding which errors and biases are present

when making attributions and how potential jurors use these attributions in deciding their verdict may help shape the future of how others view hate crime and hate crime laws.

CHAPTER II

OVERVIEW OF RESEARCH PROGRAM

Very little research has been done on the juror decision-making process in any type of hate crime. As perceptions of fact-finders (i.e., judges and jurors) are pivotal in the courtroom for those cases that must be tried, how they view and attribute blame for the cases they hear could alter how perpetrators are punished. With a history of successful defenses such as “homosexual advance” defense (Schick v. State, 1991)¹ in which an attack on a gay man was seen as justifiable, it is of utmost importance to know how jurors are influenced by the way the legal system views a crime.

One way jurors may know how the crime is viewed by the criminal justice system is by the label it is given (i.e., first degree assault, bias-motivated assault, etc.) and the choices they have to choose from when handing down their decision and sentence (i.e., guilty of assault, not guilty, etc.). Although many studies have looked at attitudes toward gay men and lesbians (Herek, 1989), the impact hate crimes have on their victims (Herek, 1994; Rivers & D’Augelli, 2001), and attitudes toward hate crime laws (Johnson & Byers, 2003; Miller, 2001) none have empirically examined the effect of labeling a crime as “hate” on juror perceptions of a bias-motivated crime based on heterosexism and those involved.

¹ The case of Schick v. State (1991) involved the murder of a gay man. The facts of the case were that a non-gay man solicited a sexual favor from a gay man and afterward beat him to death. Defense in this case claimed that the non-gay man was so shocked by his actions that his fear and anger overwhelmed him and therefore his behavior (beating a gay man to death) was justifiable. The jury in this case agreed and found the defendant not-guilty.

Giving a crime the label of “hate crime” carries with it the assumption behind why the crime was committed; that is, the perpetrator committed the crime against a victim because of a negative bias towards the social group to which the victim belongs, and further, that the perpetrator intended to inflict harm not only on that individual but against that group as a whole. Furthermore, hate crimes hold greater penalty for the perpetrator than if a crime were labeled as another type of crime (Hate Crime Sentencing Enhancement Act, 1993). Implicitly then, a hate crime is considered more severe because of why it was committed than another type of crime. This may lead fact finders (i.e., judges and jurors) to attribute blame for the crime differently as well as penalize the perpetrator more harshly.

Study one sought to investigate the impact of labeling a crime on juror decision-making and attributions of the crime. As hate crimes have become a topic of mainstream debate, it was anticipated that mock-jurors would make significantly different decisions as well as attributions of the crime based on both the labeling of the crime and the gender² condition of the trial in which they were involved (i.e., gay man or lesbian). By labeling the crime as bias-motivated based on legal standards, it takes the onus off of the juror to decide why the crime was committed. Using the label of hate crime may then serve to reduce any attribution errors (e.g., blaming the victim) that may have been employed by jurors when trying to decide their verdict. Therefore, it was hypothesized that jurors within the “assault” labeled condition would be less likely to find the defendant guilty than those in the “bias-motivated” labeled condition. Furthermore, consistent with stereotypes of gay men and lesbians it was anticipated that jurors would

² The term “sex” is typically used in reference to biological characteristics. However, because people are often judged on the degree to which they conform to culturally constructed notions of what it means to be male or female, the term “gender” will be used throughout this paper.

attribute more blame for the crime to the female than to the male defendant. As has been shown in cases such as *Schick v. State* (1991), jurors may hold stereotypes analogous to “sexual advance defense” in which they more readily see an attack on a gay man as justifiable and in turn may more easily attribute blame to the female perpetrator than the male perpetrator.

As the first study involved a scenario portraying a “typical” hate crime (i.e., perpetrated against minority sexual orientation, involved violence and name-calling), it was also of interest to examine a scenario that does not fit the typical notion of hate crime. In fact, the inclusion of gender or sex as a category of hate crime is a topic of much debate among law enforcement as well as legal and psychology scholars. Although the category has made its way into the statutes of some states (i.e., DC, CA, CO, CT, HI, MD, MN, MO, NM, PA, VT) many argue that gender-based crimes (in most cases, crimes against women) fall under domestic violence statutes rather than bias-motivated crimes. Most domestic violence statutes include crimes against both women and men, however it has been noted that crimes against men are often underreported and that these statutes do not have a great success rate for conviction (U.S. Department of Justice, 2000). Another problem with including gender-based crimes under domestic violence statutes is that these statutes include only partners living together or sharing some form of domestic relationship (i.e., they share children, they were once married).

Cases such as rape and battering of a non-domestic partner may very well fit into hate crime statutes more readily than domestic violence statutes. Studies have suggested that one of the factors that motivate men to rape is hostility toward women (Drieschner & Lange, 1999; Zurbriggen, 2000). Because the motivation behind why the crime is being

committed (i.e., a person hates a group of people with a similar characteristic) is the defining feature of a hate crime, it would seem then that gender-based crimes may fall under hate crime statutes.

To investigate perceptions of non-typical hate crimes, the second study examined the impact of labeling a gender-based crime as assault or bias-motivated and varied the gender of the victim. In this study, the gender of the victim and perpetrator were always opposite. That is, both crimes against women perpetrated by men as well as crimes against men perpetrated by women were examined. As the scenario in this study did not fit the typical notion of a hate crime, it was hypothesized that jurors in this study would find the defendant guilty more often when the crime is labeled as assault than when it is labeled as bias-motivated (hate crime). Also, based on gender stereotypes that characterize women as passive and men as aggressive, it was hypothesized that more blame will be attributed to the female victim than to the male victim.

Taken together, the first two studies examined how victim gender and crime label may influence juror decision-making in both typical (study 1) and non-typical (study 2) hate crime scenarios. As extra-legal factors such as the location and events surrounding the crime may play a role in how jurors perceive a typical (i.e., based on sexual orientation) hate crime, the final study varied both the location and level of “provocation³” within the context of a bias-motivated crime based on sexual orientation. The scenario in the final study was identical to that used in study 1 with the exception that the event always involved two men, one who identified as heterosexual (the alleged

³ Although it is commonly believed that hate crime victims may “provoke” the attack against them, it is important to note that these crimes are inflicted rather than “provoked.” To ensure that readers do not lose site of this distinction, the terms “provocation” and “provoked” will appear in quotations (Kristiansen & Giulietti, 1990).

perpetrator) and one who identified as homosexual (the alleged victim), and the crime was referred to as a bias-motivated assault (hate crime) in all conditions. The conditions that were altered involved location of the crime and “provocation” on the part of the victim. Specifically, the scenarios read by mock-jurors included information that the alleged assault took place in either a local bar (i.e., not a gay bar) or in a gay bar. Within location conditions, jurors read that the alleged victim either “provoked” the assault by putting his arm around the alleged perpetrator and asking him to slow dance or alternatively, he did not “provoke” the assault by simply walking away after talking with the alleged perpetrator.

These types of extra-legal factors may play a pivotal role in the decision-making process on the part of mock-jurors in a case such as this. Approaching someone of the same sex and asking him or her to dance may be seen as more justifiable in a setting such as a gay bar where it might be expected. Jurors may therefore attribute more blame to the perpetrator in that setting. As “provocation” may increase victim blaming on the part of mock jurors, it was expected that in the “provocation” present condition, jurors will attribute more blame to the victim.

Taken together, this program of research consisted of three studies aimed at examining factors that may play a role in juror decision-making in court trial cases involving bias-motivated assault (hate crime). These studies investigated such variables as the court’s labeling of the crime and victim gender in both typical and non-typical hate crime scenarios as well as extra-legal factors such as location and “provocation” that may alter decision-making and attributions of blame. Overall, they may inform the legal field about the aspects of certain types of crime (i.e., typical or non-typical) that may have an

impact on juror decision-making in these much debated hate crime statutes. Finally, this series of studies may also help fill a knowledge gap within the vast area of attribution theory and how it can be applied within the legal arena.

CHAPTER III

STUDY ONE

Purpose

Although many researchers have looked at attitudes toward gay men and lesbians (Herek, 1989), the impact hate crimes have on their victims (Herek, 1994; Rivers & D'Augelli, 2001), and attitudes toward hate crime laws (Johnson & Byers, 2003; Miller, 2001), none have investigated the labeling of the crime on juror verdicts and attributions of blame and responsibility in a bias-motivated crime committed against a gay man or lesbian. The goal of this project was to better understand how potential jurors view hate crime and how they attribute blame for the crime to the perpetrator, victim and situation.

Gaining knowledge as to how these crimes are viewed in the courtroom not only addresses a gap in the knowledge base but may also provide better understanding of the controversy that surrounds the idea of labeling a crime as "hate". Although some may see the label of "hate" or even "bias-motivated" as infringing upon their rights to feel how they want about a person or group of people, the effect of such a label may in turn serve to highlight the difference between feeling how one wants to (i.e., upholding constitutional rights) and committing criminal acts.

The central hypothesis of the current study was that the label hate crime versus alternative labels of crime, would serve to reduce attribution errors, specifically victim blaming, on the part of potential jurors as indicated by their verdict and their ratings of blame for the crime for both the victim and defendant in cases that fit the typical notion

of what a hate crime is. Victim blaming may be reduced by the label of “hate” being added to a crime due to the reason implied about the nature of the crime (i.e., that the perpetrator held prejudice against the victim) as opposed to other reasons jurors may attribute to the nature of the crime when other labels are used (e.g., the victim’s actions, fear of the perpetrator, defense against sexual advance, etc.). Victim blaming may also be influenced by jurors’ attitudes toward gay men and lesbians in cases of bias-motivated crimes due to heterosexism.

Further understanding of how blame is attributed in such crimes may lend itself to help shape public policy on how hate crime laws are developed, enforced and prosecuted in the United States. Gaining knowledge about juror decision-making in such cases will also encourage further work in this and related areas by both psychology and legal scholars. This project explored the factors influencing juror decision making in a case involving bias-motivated assault (hate crime), specifically how the crime was labeled as well as investigating how blame for the crime was attributed to both the perpetrator and victim involved in a hate crime.

Method

Participants

Participants (N=114) were recruited via follow-up phone calls after having filled out a prescreen questionnaire measuring level of heterosexism in an undergraduate psychology course. Participants were asked to play the part of mock-jurors in a study on perceptions of crime. They were randomly assigned to one of four conditions stemming from a 2 (label: assault vs. hate crime) x 2 (victim gender: gay man vs. lesbian) factorial design.

Of the participants, the sample included 79 women. Participants' ages ranged from 18-41, with a majority (81%) of participants being under the age of 21. The majority of participants were also Caucasian/white (95%), and freshman or sophomore status undergraduates (71%). All but one participant (who reported bisexual) reported their sexual orientation as heterosexual.

Materials

The materials for study one included a simulated jury room, trial transcripts and questionnaires. The trial transcripts contained all aspects of a court trial including opening statements from judge, defense, and prosecution, direct and cross examination of witnesses, closing statements, and the judge's charge. The trial transcripts were based on reported incidences of hate crime (Herek, Cogan & Gillis, 2002), Minnesota penal code for assault in the first degree (Penal Code § 609.221(1, 2)) and assault motivated by bias (Penal Code § 609.2231(4)), and similarly conducted trial settings (i.e., jury simulation studies). The facts of the case were as follows: the alleged victim (Gear) and alleged perpetrator (Smith) were in a local bar (i.e., not a gay bar) and they began a conversation. Gear bought Smith a drink. Gear then asked Smith to slow dance and Smith began beating Gear until he or she was unconscious. Throughout the trial the case was referred to as either first-degree assault or bias-motivated assault (hate crime) depending on the condition. Within each condition the alleged victim and alleged perpetrator were of the same gender (Appendix A).

Questionnaires

Prescreen. This measure assessed each participant's level of homophobia, specifically support or non-support of non-heterosexual community members, using the

Index of Homophobia (IHP; Hudson & Ricketts, 1980). Participants were asked to rate the extent to which they agreed with statements such as: “I would enjoy attending social functions at which gay men and/or lesbians were present” and “I would feel uncomfortable knowing that my son's male teacher was gay.” Items were rated on a scale of 1 (strongly disagree) to 5 (strongly agree). Certain items were reverse coded and the scale was scored for each participant. The possible range of scores for this scale was from -4 (non-support) to 4 (support) with recent studies noting that amount of homophobia as measured by this scale was influenced most by social interaction, residence and religiosity, with scores varying as a function of these variables (Snively, Kreuger, Stretch, Watt & Chadha, 2004; Span & Vidal, 2003). The range of participant scores in this study were -3.69 to 3.07 ($M = -0.22$, $SD = 1.42$). A median (0) split was used to categorize participants as either high or low according to their level of support for gay community members.

Demographic questionnaire. Participants were asked to indicate their age, sex, race, education level and sexual orientation.

Individual juror verdict. Participants were asked to indicate whether they support a guilty or not-guilty decision in the case based on legal standards. The label of “assault” or “assault motivated by bias (hate crime)” was varied depending upon condition.

Private belief rating scale. Participants were asked to indicate their private beliefs (not bound by legal standards) concerning the guilt of the defendant on a scale ranging from -5 (certain defendant should not be convicted) to +5 (certain defendant should be convicted), to which the participant believed the alleged perpetrator should be convicted (not bound by legal standards). This scale has been used in previous studies

employing jury simulation paradigms to assess beliefs not bound by legal standards (Kasian, 1991; Terrance, 2000).

Hate crime. Participants were asked to indicate their belief about whether or not the defendant committed a hate crime. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Victim blame. This scale consisted of seven items (Chronbach's $\alpha = 0.79$) and assessed the degree to which participants assigned blame to the victim. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree). These items were summed and averaged to derive a composite score reflecting victim blame, and included the following items: the victim is partly to blame for the action of the defendant, the defendant's actions were reasonable, the victim should know to be more careful about approaching someone whose sexual orientation is unknown, the defendant's actions were the result of unwanted advances by the victim, the defendant was provoked, the defendant's actions were justified, and the victim deserved it.

Personal decision. Participants were asked to list, as briefly as possible, the reasons for their personal decision in this case. This was an open-ended questionnaire limited only by the page length. Responses were classified to include all statements made by participants regarding their reasons for their decision in the case. Statements were dual-coded if necessary. The classification scheme was derived after reading all statements and listing the type of argument presented. Responses were classified into six categories including: legal arguments, physical evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors. Within each category, statements made regarding the decisions of guilty or not guilty were also

classified. Statements were assessed independently by two scorers with a strong inter-rater reliability coefficient ($r=0.93$). Discrepancies were discussed and a decision to classify each statement dually or individually was made (Appendix B).

Procedure

Participants were signed up over the phone for a “jury time” by a research assistant. When they arrived, they were seated in the jury room where the study was explained to them and they read and sign an informed consent form (Appendix C). Each condition consisted of 27 to 30 participants and at least one member of the opposite sex was recruited for each jury. They were each given a random juror number and were asked to fill out a demographic questionnaire. After filling out the questionnaire, they were given one of four trial transcripts (depending upon condition) and asked to read through it carefully. The transcript was then recollected when they were finished reading it and they were asked to fill out questionnaires assessing their verdict in the case as well as their perceptions of the perpetrator and defendant. After filling out all questionnaires, participants were then debriefed and compensated for their time.

Results

Individual Juror Verdict

A Pearson Chi Square analysis was conducted to evaluate the effects of label and gender of victim on ratings of guilt. Results failed to yield significance for label, $\chi^2 = 0.05$, *ns* (guilty votes: assault: $n = 41$; hate crime: $n = 45$), or for victim gender, $\chi^2 = 0.19$, *ns* (guilty votes: male: $n = 42$; female: $n = 44$).

Private Belief Rating Scale

A 2 (label: hate crime vs. assault) x 2 (victim gender) analysis of variance (ANOVA) was conducted on participants' private belief ratings. Results failed to yield significance for either label, $F(1, 110)=2.07$, *ns*, victim gender, $F<1$, or their interaction, $F<1$. In order to assess the extent to which participants believed the defendant should be convicted overall, participant responses were tested against the midpoint of the scale (0). When tested against the midpoint of the scale, there was a significant effect, $t(113)=11.20$, $p<.01$, such that participants overwhelmingly believed that the defendant should be convicted ($M=2.52$, $SD=2.40$).

Hate Crime

A 2 (label: hate crime vs. assault) x 2 (victim gender) ANOVA was conducted on participants' ratings of their belief that the defendant had committed a hate crime. Results failed to yield significance for either label, $F(1, 110)=2.57$, *ns*, victim gender, $F<1$, or their interaction, $F<1$. In order to assess the extent to which participants believed the defendant committed a hate crime overall, participant responses were tested against the midpoint of the scale (3). When tested against the midpoint of the scale, there was a significant effect, $t(113) = 6.09$, $p<.01$, such that participants stated that they believed the defendant did commit a hate crime ($M=3.99$, $SD=1.74$).

Victim Blame

A 2 (label: hate crime vs. assault) x 2 (victim gender) x 2 (support for gay community members: high vs. low) ANOVA was conducted on participants' ratings of victim blame. Results failed to yield significance for either label, $F<1$, or victim gender, $F<1$. Results did indicate a significant difference for support for gay community

members, $F(1, 106)=11.73, p<.01$, such that those who showed low support for gay community members were more likely to blame the victim ($M=2.40, SD=0.97$) than those who showed high support for gay community members ($M=1.83, SD=0.72$). The interactions between label and victim gender, $F(1, 106)=2.83, ns$, label and support, $F<1$, victim gender and support, $F<1$, or label, victim gender and support, $F<1$, were not significant.

Personal Decision

A content analysis was conducted using open-ended participant responses. Each participant made at least one statement with most making more than one. Each statement was classified with the possibility that it could be dual-coded for a total of 310 statements. Responses were classified into six categories (legal arguments, physical evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors) as well as guilty or not guilty within each category (Appendix D). A frequency distribution indicated that participant responses often included statements regarding physical evidence ($n=81$). The next category into which statements fell most often was morality statements ($n=67$) with extra-legal factors being lowest ($n=29$). Others included legal arguments ($n=47$), victim-related statements ($n=31$), and witness and/or perpetrator credibility ($n=55$). More often than not, participants made statements regarding the guilt of the defendant ($n=226$) rather than perception that the defendant was not guilty ($n=84$; Table 1).

Discussion

Although no differences were found between the differential labels of the crime and gender of the victim, results do point to the fact that most participants regardless of

condition, voted guilty, believed that the defendant should be convicted of the crime, and felt the defendant committed a hate crime. Given the relatively equal verdicts for assault and hate crime, it may be the case that the nature of the crime (i.e., assault committed against a member of minority sexual orientation) was too ambiguous and therefore was perceived as fitting both crime labels (i.e., first degree assault and bias-motivated assault) equally. Further, it may be the case that this situation is seen as very typical of both a hate crime as well as first degree assault and jurors responded to it as such.

Since both the victim and defendant were of the same gender, gender stereotypes may have been less salient in that they may have been viewed as being of equal size and strength. If it had been the case of a male assaulting a female or vice versa, gender stereotypes may have been more readily called upon by jurors to help them make their decision (i.e., differential size and strength may have been key factors in attributing blame). If this had been the case, differences corresponding to the gender of the victim based on these stereotypes may have been evidenced.

In terms of the results regarding victim blame, it appears that although the crime label and gender of the victim had no effect, some bias was apparent in attributing blame to the victim. Using the prescreen questionnaire to group participants into high or low support for gay community member (i.e., level of heterosexism), it appears that those who have high support for gay community members (or less heterosexism) are less likely to employ victim blaming in this case. Although participants in all conditions agreed that the defendant should be convicted and that the defendant committed a hate crime, there was a difference as to how much blame they attributed to the victim in the assault

scenario. This difference was not due to the label of the crime or to the gender of the victim but rather to previously held attitudes of support for gay community members.

Those that previously rated their support for gay community members as high were less likely to blame the victim than those that rated their support as low. Given that this case involved gay or lesbian community members, and previous studies have found negative attitudes about lesbians and gay men to be prominently held by heterosexual men and women (Kite & Whitley, 1994; Yang, 1997), it is arguable that previously held attitudes on the parts of the jurors may have played a bigger role in how they attributed blame in this case than the dispositional characteristics of the victim or the situation of the given event at hand.

It may be the case that regardless of whether or not the defendant should be convicted or committed a hate crime, some jurors may still be placing some of the blame on the victim. Implications of this are as far reaching as in the sentence doled out to a convicted hate crime perpetrator. This was evident in samples of the personal decision statements participants made. Statements such as “The victim wouldn’t take no for an answer,” and “The victim pushed it” both indicate some amount of blame directed toward the victim as though the assault would not have occurred had the victim not “provoked” it.

Although the main hypotheses of the current study were not supported, the information gleaned from the results may illuminate factors that need to be further explored in future studies. Prominent areas to be taken into consideration in future studies include the investigation of how previous attitudes may play a role in juror decision-making in cases involving hate crime, the exploration of hate crime using a non-

typical setting or situation, and extra-legal factors that may play a role in juror decision-making and attributions of blame. The next two studies will explore these last two areas by looking at a hate crime scenario based on gender rather than sexual orientation (Study 2) and investigating two extra-legal factors that may play a role in a typical hate crime scenario (Study 3).

CHAPTER IV

STUDY TWO

Purpose

The previous study focused on hate crime based on heterosexism using a scenario that portrayed the typical idea of what a hate crime consists of (i.e., perpetrated against minority sexual orientation, involves violence, committed by young person). In an effort to further explore perceptions of hate crime, also of interest is a case in which the scenario does not fit the notion of a typical hate crime. One context in particular where this could be examined includes cases involving hate crime based on gender.

Hate crimes based on gender are currently included in the hate crime laws of some states (including MN). However, the inclusion of gender in hate crime statutes is a topic of much debate as many of these crimes may fall under domestic violence statutes. Crimes against women are more often than not committed by a male domestic partner (U.S. Department of Justice, 2000). Although domestic situations fall under domestic violence statutes, the fact that they are crimes based on gender (i.e., crimes against women) may also categorize them under hate crime statutes as well. Following the hate crime sentencing enhancement act (1993) many states have increased penalties for bias-motivated crimes that may serve as harsher punishment than their domestic violence statutes. Although statutes for domestic violence and hate crimes differ from state to state, each perpetrator can only be charged under one statute for each crime. Opponents of including gender or sex as a category of hate crime may argue that a way to convict

criminals who commit these types of crime already exists. Problems with this argument however, are that not every crime motivated by sex or gender stems from a domestic situation, nor is every gender-based crime committed against women.

Crimes against men committed by women also exist and are very often ignored due to lack of reporting stemming from public ridicule of battered men (Steinmetz & Lucca, 1988). A man being assaulted by a girlfriend or wife may be evaluated negatively because he is perceived as violating gender-based stereotypes that place men within positions of power (Broverman, Vogel, Broverman, Clarkson & Rosencrantz, 1972). Although gender or sex as a category of bias-motivation in hate crime is meant largely to protect crimes against women, it may also serve to highlight the often overlooked crime of intimate violence perpetrated against men by women. Given the historical ridicule of battered men, it may be easier for a man to report a crime based on the bias of a woman rather than a domestic dispute. In order to assess possible differential attributions for blame in cases involving a hate crime falling under the category of sex or gender, the crime in this study was presented as an opposite-gender assault.

Study two also sought to investigate the impact of labeling a crime on juror decision-making and attributions of the crime. As the scenario in this study did not fit the typical notion of a hate crime, it was hypothesized that jurors in this study would find the defendant guilty more often when the crime is labeled as assault than when it is labeled as bias-motivated (hate crime). Also, based on gender stereotypes, it was hypothesized that more blame will be attributed to the male victim than to the female victim.

Method

Participants

Participants (N=98) were recruited via follow-up phone calls after having filled out a contact questionnaire in an undergraduate psychology course. Participants were asked to play the part of mock-jurors in a study on perceptions of crime. They were randomly assigned to one of four conditions stemming from a 2 (label: assault vs. hate crime) x 2 (victim sex: male victim vs. female victim) factorial design. In this study the victim and perpetrator were always of opposite gender.

Of the participants in this sample, 58 of them were women. The ages of participants ranged from 18-42 with a majority (86%) under the age of 21. A majority of participants in this study were also Caucasian/white (93%) and freshman or sophomore status undergraduates (86%). All participants except one (who reported bisexual) reported their sexual orientation as heterosexual.

Materials

The materials required for study two included a simulated jury room, trial transcripts and questionnaires. The trial transcripts contained all aspects of a court trial including opening statements from judge, defense, and prosecution, direct and cross examination of witnesses, closing statements, and the judge's charge. The trial transcripts were based on reported incidences of hate crime (Herek, Cogan & Gillis, 2002), Minnesota penal code for assault in the first degree (Penal Code § 609.221(1, 2)) and assault motivated by bias (Penal Code § 609.2231(4)), and similarly conducted trial settings (i.e., jury simulation studies). The facts of the case were as follows: the alleged victim (Gear) and alleged perpetrator (Smith) were in a local bar and they began a

conversation. Gear bought Smith a drink. Gear then asked Smith to slow dance and Smith began beating Gear until he or she was unconscious. Throughout the trial the case was referred to as either first-degree assault or bias-motivated assault (hate crime) depending on the condition. Within conditions the alleged victim and alleged perpetrator were of opposite gender (Appendix E).

Questionnaires

Demographic questionnaire. Participants were asked to indicate their age, sex, race, education level and sexual orientation.

Individual juror verdict. Participants were asked to indicate whether they support a guilty or not-guilty decision in the case based on legal standards. The label of “assault” or “assault motivated by bias (hate crime)” was varied depending upon condition.

Private belief rating scale. Participants were asked to indicate their private beliefs (not bound by legal standards) concerning the guilt of the defendant on a scale ranging from -5 (certain defendant should not be convicted) to +5 (certain defendant should be convicted), to which the participant believed the alleged perpetrator should be convicted (not bound by legal standards). This scale has been used in previous studies employing jury simulation paradigms to assess beliefs not bound by legal standards (Kasian, 1991; Terrance, 2000).

Victim is mentally unstable. Participants were asked to indicate their belief about whether or not the victim was mentally unstable. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Hate crime. Participants were asked to indicate their belief about whether or not the defendant committed a hate crime. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Reasonable. Participants were asked to indicate their belief that a reasonable person would have acted the same as the defendant. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Victim blame. This scale consisted of seven items (Chronbach's $\alpha = 0.82$) and assessed the degree to which participants assigned blame to the victim. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree). These items were summed and averaged to derive a composite score reflecting victim blame, and included the following items: the victim is partly to blame for the action of the defendant, the defendant's actions were reasonable, the victim should know to be more careful about approaching someone whose sexual orientation is unknown, the defendant's actions were the result of unwanted advances by the victim, the defendant was provoked, the defendant's actions were justified, and the victim deserved it.

Personal decision. Participants were asked to list, as briefly as possible, the reasons for their personal decision in this case. This was an open-ended questionnaire limited only by the page length. Responses were classified to include all statements made by participants regarding their reasons for their decision in the case. Statements were dual-coded if necessary. The classification scheme was derived after reading all statements and listing the type of argument presented. Responses were classified into six categories including: legal arguments, physical evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors. Within

each category, statements made regarding the decisions of guilty or not guilty were also classified. Statements were assessed independently by two scorers with a strong inter-rater reliability coefficient ($r=0.91$). Discrepancies were discussed and a decision to classify each statement dually or individually was made (Appendix F).

Procedure

Participants were signed up over the phone for a “jury time” by a research assistant. When they arrived, they were seated in the jury room where the study was explained to them and they read and signed an informed consent form (Appendix C). Each condition consisted of 23 to 29 participants and at least one member of the opposite sex was recruited for each jury. They were each given a random juror number and were asked to fill out a demographic questionnaire. After filling out the questionnaire, they were given one of four trial transcripts (depending upon condition) and asked to read through it carefully. The transcript was then recollected when they were finished reading it and they were asked to fill out questionnaires assessing their verdict in the case as well as their perceptions of the perpetrator and defendant. After filling out all questionnaires, participants were then debriefed and compensated for their time.

Results

Individual Juror Verdict

A Pearson Chi Square analysis was conducted assessing difference in label (hate crime vs. assault) and victim gender for verdict of guilty or not guilty. Results indicated a significant effect for label, $\chi^2=9.96, p<.01$, such that those in the assault condition ($n = 34$) were more likely than those in the hate crime condition ($n = 22$) to find the defendant

guilty. No significant difference was found for victim gender, $\chi^2=0.85$, *ns* (male: $n = 27$; female: $n = 29$).

Private Belief Rating Scale

A 2 (label: hate crime vs. assault) X 2 (victim gender) ANOVA was conducted on participants' private belief ratings. Results failed to yield a significant effect for either label, $F<1$, victim gender, $F<1$, or their interaction, $F(1, 94)=1.71$, *ns*. In order to assess the extent to which participants believed the defendant should be convicted overall, participant responses were tested against the midpoint of the scale (0). When tested against the midpoint of the scale, there was a significant effect, $t(97)=11.62$, $p<.01$, such that participants stated that the defendant should be convicted ($M=2.79$, $SD=2.37$).

Victim is Mentally Unstable

A 2 (label: hate crime vs. assault) X 2 (victim gender) ANOVA was conducted on participants' ratings of the victim as mentally unstable. Results indicated a significant main effect for label, $F(1, 94)=4.48$, $p<.05$, such that participants in the assault condition ($M=1.83$, $SD=1.29$) rated the victim as more mentally unstable than those in the hate crime condition ($M=1.29$, $SD=1.39$). No significant effect was found for victim gender, $F(1, 94)=3.63$, *ns*, or their interaction, $F<1$.

Hate Crime

A 2 (label: hate crime vs. assault) X 2 (victim gender) ANOVA was conducted on participants' ratings of their belief that the defendant had committed a hate crime. Results failed to yield a significant effect for either label, $F(1, 94)=2.32$, *ns*, or victim gender, $F<1$. . In order to assess the extent to which participants believed the defendant committed a hate crime overall, participant responses were tested against the midpoint of

the scale (3). When tested against the midpoint of the scale, there was a significant effect, $t(97) = -3.73, p < .01$, such that participants believed that the defendant did not commit a hate crime ($M=2.28, SD=1.93$).

Reasonable

A 2 (label: hate crime vs. assault) X 2 (victim gender) ANOVA was conducted on participants' ratings of the defendant as reasonable. Results indicated a significant main effect for label, $F(1, 94)=5.67, p < .05$, such that participants in the assault condition ($M=0.70, SD=0.92$) were more likely to see the defendant as reasonable than those in the hate crime condition ($M=0.35, SD=0.62$). This main effect was qualified by its interaction with victim gender, $F(1, 94)=7.95, p < .01$. Simple effect analysis of label at each level of gender indicated a significant effect only for the male victim (or female perpetrator), $F(1, 97)=7.93, p < .01$. Participants reading the transcript depicting the victim as male and perpetrator as female were more likely to rate the perpetrator as reasonable in the assault condition ($M=1.04, SD=0.98$) than in the hate crime condition ($M=0.26, SD=0.45$). Results failed to yield significance for the female victim (male perpetrator), $F < 1$ (hate crime label: $M=0.41, SD=0.73$; assault label: $M=0.35, SD=0.71$). See Figure 1.

Victim Blame

A 2 (label: hate crime vs. assault) X 2 (victim gender) ANOVA was conducted on participants' ratings of victim blame. Results failed to yield a significant effect for either label, $F(1, 94)=3.38, ns$, victim gender, $F(1, 94)=0.42, ns$, or their interaction, $F < 1$.

Personal Decision

A content analysis was conducted using open-ended participant responses. Each participant made at least one statement with most making more than one. Each statement was classified with the possibility that it could be dual-coded for a total of 276 statements. Responses were classified into six categories (legal arguments, physical evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors) as well as guilty or not guilty within each category (Appendix G). A frequency distribution indicated that participant responses often included statements regarding physical evidence ($n=66$). The next category into which statements fell most often was morality statements ($n=62$) with extra-legal factors being lowest ($n=17$). Others included legal arguments ($n=57$), victim-related statements ($n=23$), and witness and/or perpetrator credibility ($n=51$). More often than not participants made statements regarding the guilt of the defendant ($n=177$) rather than perception that the defendant was not guilty ($n=99$; Table 2).

Discussion

This study explored differential crime classification and gender of the victim in a non-typical hate crime scenario. The current study indicated differences for the labeling of the crime. Participants in the assault condition were more likely than those in the hate crime condition to find the defendant guilty. This is not surprising given that the scenario used in this study was a non-typical scenario for hate crime (i.e., committed because of the gender of the victim). Mock-jurors believed the defendant to be guilty of assault, but the scenario was not seen as a hate crime and therefore when only given that option (i.e., guilty of bias-motivated assault or not guilty), jurors were finding the defendant not

guilty. This finding is in contrast to what was found in study 1. Jurors in that study were overwhelmingly finding the defendant guilty with no differences due to whether or not the crime was labeled as bias-motivated or first degree assault. The differences between these two scenarios were twofold.

The first difference was that the study 1 portrayed a scenario thought to be very typical of a hate crime whereas the second study did not. This discrepancy may have been sufficient enough for participants to vote differentially on whether or not the defendant was guilty. The second difference involves the gender of the alleged victim and alleged perpetrator. In the first study both parties involved were consistently the same genders, in the second study they were consistently the opposite. Although differences in voting for guilty or not guilty were not shown via the gender of the victim, the situation of having them be same and opposite genders may have altered the way they were voting or their attributions of blame.

Participants in the assault condition rated the victim as more mentally unstable than those in the hate crime condition. Although again, there was no difference here for the gender of the victim, it would appear that labeling the crime as hate may be giving some legitimacy to the victim in cases of opposite-gender assault (i.e., the victim is not mentally unstable, the perpetrator holds bias). It may be the case that the label is providing a facilitative cause (Kelley, 1972) to the jurors and therefore they are giving more weight to the idea that in a bias-motivated assault, the bias of the perpetrator is what is promoting the assault and not the actions of the victim. Perhaps having some idea of why the attack occurred may have served to lessen victim blaming on the part of the jurors. In this study, not having that label, that built-in reason why, led jurors to rate the

victim as mentally unstable more so than when they were implicitly given that reason (i.e., it was labeled a hate crime).

Additionally, participants in the assault condition also found the defendant guilty more often than those in the hate crime condition. At first glance it would seem that the hate crime label would serve to legitimize the victim and in turn lead to greater conviction for the perpetrator. However in this case, it would seem that the view of the victim as mentally unstable (greater within the assault condition) coincides with increased conviction rates for the defendant. It may be the case that jurors' perception of the victim as mentally unstable was not relevant enough to attribute blame to the victim. Likewise, the perception of the victim as mentally stable may not have been relevant enough to overshadow the fact that this case did not fit the typical notion of a hate crime.

Participants reading the transcript depicting the female perpetrator committing assault on a male victim rated her as significantly more reasonable (although ratings were still in the "disagree" region of the scale) when the assault was labeled as first degree assault rather than when it was labeled as a bias-motivated assault (hate crime). That is, jurors had a more difficult time seeing an attack on a male by a female as a hate crime (i.e., she would be less reasonable in this scenario). Conversely, in the condition where a female victim was assaulted by a male perpetrator, the opposite rating was given (i.e., male perpetrator was rated more reasonable when labeled as hate crime than assault; although the difference did not reach significance). It appears that jurors had an easier time seeing the attack on a female by a male as a hate crime. It is arguable, based on the availability heuristic (i.e., it is much easier to think of instances where a man assaults a woman than vice versa), that misogyny is much more apparent in our culture than

misandry and jurors may have had a difficult time seeing a female to male attack as due to hatred.

The differences in study 2 may have had to do with the fact that the crime committed was an opposite-gender attack. Gender-based stereotypes support expectations regarding “appropriate” behavior for men and women (Hilton & von Hippel, 1990). For example, women are stereotypically viewed as passive while men are seen as aggressive (Corely & Pollack, 1996). Stereotypes delineating the roles of men and women are reflected within characteristics typically ascribed to domestic violence victims and offenders. Although this is not a case of domestic violence, the pairing between a man and woman in an assault scenario may hold some of the same expected descriptions of what roles men and women should play. Within the context of heterosexual domestic violence, women are perceived as the “legitimate” recipients of abuse, whereas men are seen as the perpetrators (Terrance, 2000). This assumption implies that it is more reasonable for a man to hold bias against a woman that may result in assault than it is for a woman to do the same for a man. Simply put, it is easier, given these delineated roles, to identify with the concept of misogyny than misandry.

Although study 2 pinpointed some of the ways gender-role stereotypes may come into play for opposite-gender assault, no differences were found in study 1 with the portrayal of same-gender assault. This may be due to the fact that study 1 involved violence against a non-heterosexual person and this same-gender pairing may be why no differences were shown. In an opposite-gender assault, gender is evident, along with gender-role expectations including the belief that men are stronger and more aggressive than women. In a same-gender assault, the perpetrator and victim may have been viewed

as having the possibility of being mutually combative (i.e., two men are of the same strength and two women are of the same strength). In fact, many participants made personal decision statements in accord with these stereotypes. Statements were made about the female perpetrator having to defend herself. No such statements were made when the perpetrator was depicted as male. It may be the case that when there is no apparent reason (i.e., hatred of men is not as apparent in our culture as hatred of women) for the attack that jurors postulate circumstances that were not provided to them in order to substantiate reasons the attack may have occurred (e.g., “She must have felt threatened to a certain extent” and “I think she had some ulterior motive for continuing to beat him while on the ground that goes beyond his sexual actions”).

Society constructs gender in oppositional terms: what men are, women are not, and vice versa (Renzetti, 1999). It is women’s “nature” to be passive and dependent, while men are described most often as assertive (Hegstrom & McCarl-Nielsen, 2002). If this is the case, why would a woman committing assault against a man have been rated as more reasonable? If gender-role stereotypes are what is at work here, this seems incongruent with the previous finding. It is this incongruence that may explain why the female in this scenario is seen as more reasonable than the male. In searching for the expected gender-role behavior, jurors were left empty-handed reading an assault scenario where a woman attacks a man simply by virtue of his gender. The inability to find an apparent explanation led many participants to assume that there was something else going on. This scenario was often viewed as a self-defense scenario even though the attack was not “provoked” by the man. This type of explanation was evidenced in personal decision statements such as, “She felt uneasy and fighting him off was the only way she felt safe”

and “She must have felt threatened to a certain extent.” In this way then (i.e., self-defense of a woman against a man), the assault is seen as reasonable but not due to hatred of men.

CHAPTER V
STUDY THREE

Purpose

The two previous studies focused on the impact of labeling a crime as hate, the type of crime that was committed (i.e., motivated by sexual orientation or gender) as well as the gender of the victim and perpetrator. In addition to these impacts within legal cases, extra-legal factors such as location and situation also play a role in how jurors make decisions about a crime in a courtroom (Clark, 2000). Studies have looked at some of these factors as they play a role in perceptions of bias-motivated crime based on racism (i.e., gender and race of the perpetrator and victim; Craig & Waldo, 1996; Marcus-Newhall, Blake & Baumann, 2002). However no research has examined extra-legal factors in a case involving bias-motivated crime based on heterosexism. As these factors tend to play a pivotal role in perceptions of other types of hate crime, it was expected that they too will play a role in heterosexist motivated crime.

This study examined two possible extra-legal factors that may play a role in jurors' decision-making. First, the location of the crime was systematically varied. In this study, a similar trial scenario as in study one was presented depicting a case in which a bias motivated assault took place (labeled as a hate crime) between two men. The location of the events of the night in question was varied with the attack taking place in a local bar (i.e., not a gay bar) or in a gay bar. Approaching someone of the same gender and asking them to dance may be seen as more justifiable in a setting such as a gay bar

where it might be expected. Jurors may therefore attribute more blame to the perpetrator in that setting simply because of its unexpectedness or distinctiveness (Kelley, 1972). Second, “provocation” was varied. In the “provocation” present condition, the trial transcript was changed to convey that after the heterosexual man accepted a drink from the gay man, the victim proceeded to then ask the perpetrator to dance as he put his arm around him before being hit by the perpetrator. In the “provocation” absent condition, the transcript was changed to read that after the non-gay man accepted a drink from the gay man, the victim attempted to walk away before being hit by the perpetrator (i.e., he does not touch him or ask him to dance). Kelley (1972) argued that people will give more weight to a facilitative cause (something that promotes that particular event) than to an inhibitory cause (something that would weaken or undermine that particular event). “Provocation” on the part of the victim may very well be viewed in this case as a facilitative cause. As “provocation” may increase victim blaming on the part of mock jurors, it was expected that in the “provocation” present condition, jurors will attribute more blame to the victim.

Method

Participants

Participants (N=77) were recruited via an announcement made in their undergraduate psychology course. Participants were asked to play the part of mock-jurors in a study on perceptions of crime. Jurors were randomly assigned to one of four conditions stemming from a 2 (location: local bar vs. gay bar) x 2 (“provocation”: present vs. absent) factorial design.

Of the participants in this sample, 40 of them were women. Participants' ages ranged from 18-30 with a majority (86%) of them being under the age of 21. A majority of participants in this sample were Caucasian/white (87%), of freshman or sophomore undergraduate status (88%), and all participants reported their sexual orientation as heterosexual.

Materials

Materials for study three included the same transcript (hate crime labeled, same sex male conditions) as in study one with the exception of location and "provocation". Participants read a trial transcript that stated that the assault took place in a local bar (i.e., not a gay bar) or alternatively that the assault took place in a gay bar. Within location conditions, participants read a trial transcript that depicted "provocation" on the part of the victim or no "provocation" on the part of the victim (Appendix H).

Questionnaires

Demographic questionnaire. Participants were asked to indicate their age, sex, race, education level and sexual orientation.

Individual juror verdict. Participants were asked to indicate whether they support a guilty or not-guilty decision in the case based on legal standards. The label of "assault" or "assault motivated by bias (hate crime)" was varied depending upon condition.

Private belief rating scale. Participants were asked to indicate their private beliefs (not bound by legal standards) concerning the guilt of the defendant on a scale ranging from -5 (certain defendant should not be convicted) to +5 (certain defendant should be convicted), to which the participant believed the alleged perpetrator should be convicted (not bound by legal standards). This scale has been used in previous studies

employing jury simulation paradigms to assess beliefs not bound by legal standards (Kasian, 1991; Terrance, 2000).

Hate crime. Participants were asked to indicate their belief about whether or not the defendant committed a hate crime. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Defendant solely to blame. Participants were asked to indicate the extent to which they believed the defendant was solely to blame. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree).

Victim blame. This scale consisted of seven items (Chronbach's $\alpha = 0.88$) and assessed the degree to which participants assigned blame to the victim. Possible responses ranged from 0 (strongly disagree) to 6 (strongly agree). These items were summed and averaged to derive a composite score reflecting victim blame, and included the following items: the victim is partly to blame for the action of the defendant, the defendant's actions were reasonable, the victim should know to be more careful about approaching someone whose sexual orientation is unknown, the defendant's actions were the result of unwanted advances by the victim, the defendant was provoked, the defendant's actions were justified, and the victim deserved it.

Personal decision. Participants were asked to list, as briefly as possible, the reasons for their personal decision in this case. This was an open-ended questionnaire limited only by the page length. Responses were classified to include all statements made by participants regarding their reasons for their decision in the case. Statements were dual-coded if necessary. The classification scheme was derived after reading all statements and listing the type of argument presented. Responses were classified into six

categories including: legal arguments, physical evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors. Within each category, statements made regarding the decisions of guilty or not guilty were also classified. Statements were assessed independently by two scorers with a strong inter-rater reliability coefficient ($r=0.93$). Discrepancies were discussed and a decision to classify each statement dually or individually was made (Appendix I).

Procedure

Participants were asked to participate at the end of class time in their psychology course. The study was explained to them by a research assistant and they read and signed an informed consent form (Appendix C). Each condition consisted of 18 to 23 participants and at least one member of the opposite sex was recruited for each jury. They were each given a random juror number and were asked to fill out a demographic questionnaire. After filling out the questionnaire, they were given one of four trial transcripts (depending upon condition) and asked to read through it carefully. The transcript was then recollected when they were finished reading it and they were asked to fill out questionnaires assessing their verdict in the case as well as their perceptions of the perpetrator and defendant. After filling out all questionnaires, participants were then debriefed and compensated for their time.

Results

Individual Juror Verdict

A Pearson Chi Square was conducted assessing the difference in verdict (i.e., guilty vs. not guilty) for location and “provocation.” Results indicated no significant

difference for location, $\chi^2=0.41$, *ns* (guilty votes: gay bar: $n = 29$; local bar: $n = 23$), or for “provocation,” $\chi^2=0.11$, *ns* (guilty votes: present: $n = 25$; absent: $n = 27$).

Private Belief Rating Scale

A 2 (location: local bar vs. gay bar) x 2 (“provocation”: present vs. absent) ANOVA was conducted on participants’ private belief ratings. Results failed to yield significance for either location, $F(1, 73)=2.13$, *ns*, “provocation,” $F<1$, or their interaction, $F(1, 73)=1.67$, *ns*. In order to assess the extent to which participants believed the defendant should be convicted overall, participant responses were tested against the midpoint of the scale (0). When tested against the midpoint of the scale, there was a significant effect, $t(76)=7.96$, $p<.01$, such that participants believed the defendant should be convicted ($M=2.25$, $SD=2.48$).

Hate Crime

A 2 (location: local bar vs. gay bar) x 2 (“provocation”: present vs. absent) ANOVA was conducted on participants’ ratings of their belief that the defendant had committed a hate crime. Results failed to yield significance for either location, $F(1, 67)=1.61$, *ns*, “provocation,” $F<1$, or their interaction, $F<1$. In order to assess the extent to which participants believed the defendant committed a hate crime overall, participant responses were tested against the midpoint of the scale (3). When tested against the midpoint of the scale, results failed to yield significance, $t(70) = 1.55$, *ns*, such that participants did not agree nor disagree with the belief that the defendant committed a hate crime ($M=3.37$, $SD=1.99$).

Defendant Solely to Blame

A 2 (location: local bar vs. gay bar) x 2 (“provocation”: present vs. absent) ANOVA was conducted on participants’ belief that the defendant was solely to blame. Results indicated a significant difference for location, $F(1, 67)=8.70, p<.01$, such that those in the gay bar condition were more likely to state that the defendant was solely to blame ($M=4.24, SD=1.48$) than those in the local bar condition ($M=3.20, SD=1.75$). No significant effect was found for “provocation,” $F(1, 67)=2.10, ns$, or their interaction, $F(1, 67)=2.59, ns$.

Victim Blame

A 2 (location: local bar vs. gay bar) x 2 (“provocation”: present vs. absent) ANOVA was conducted on participants’ ratings of victim blame. Results indicated a significant main effect for location, $F(1, 67)=5.38, p<.05$, such that participants in the local bar condition ($M=2.39, SD=1.29$) were more likely to place blame on the victim than those in the gay bar condition ($M=1.83, SD=1.02$). There was also a significant main effect for “provocation,” $F(1, 67)=6.16, p<.05$, such that those in the “provocation” present condition ($M=2.40, SD=1.20$) were more likely to place blame on the victim than those in the “provocation” absent condition ($M=1.80, SD=1.09$). The interaction between the two was not significant, $F(1, 67)=2.18, ns$.

Personal Decision

A content analysis was conducted using open-ended participant responses. Each participant made at least one statement with most making more than one. Each statement was classified with the possibility that it could be dual-coded for a total of 211 statements. Responses were classified into six categories (legal arguments, physical

evidence, morality statements, victim-related statements, witness and/or perpetrator credibility, and extra-legal factors) as well as guilty or not guilty within each category (Appendix J). A frequency distribution indicated that participant responses often included statements regarding physical evidence ($n=58$). The next category into which statements fell most often was witness and/or perpetrator credibility ($n=48$) with extra-legal factors being lowest ($n=20$). Others included legal arguments ($n=28$), morality statements ($n=34$), and victim-related statements ($n=23$). More often than not participants made statements regarding the guilt of the defendant ($n=148$) rather than perception that the defendant was not guilty ($n=63$; Table 3).

Discussion

Participants in this study believed the defendant should be convicted regardless of condition. Similar to Study 1, the scenario used appeared to lend itself to decisions of guilty on the part of the jurors in both locations as well as whether or not the attack was “provoked” by the victim. However, the area in which extra-legal factors appear to have a more substantial role in jurors’ attributions of victim blame.

Specifically, those in the gay bar condition were more likely to state that the defendant was solely to blame than those in the local bar condition. It may be the case that jurors rated the defendant solely to blame in the gay bar more so than in the local bar because the scenario depicted (i.e., the alleged victim offers to buy the alleged perpetrator a drink) would be expected in that situation. Furthermore, they may have viewed the scenario in such a way that the alleged perpetrator was placing himself in that situation therefore he bore more responsibility for his own behavior.

This is consistent with Kelley's (1972) suggestion that consistency, distinctiveness and other's experiences of an event help shape attributions for the event. Specifically, jurors appeared to alter their attributions based on what they thought the defendant should have expected (i.e., if he was in a gay bar he should have expected to be hit on by men). Attribution of responsibility depends on the ability to identify the particular person who caused the event, the belief that the person should have been able to foresee the outcome, the perception that the person's actions were not justified by the situation, and the belief that the person acted out of free choice (McGraw, 1987b). Placing sole responsibility for the outcome on the defendant in a criminal case also attributes blame to him or her for the outcome by virtue of the setting (i.e., having been charged with a crime).

Likewise, participants in the local bar condition were more likely to place blame on the victim than those in the gay bar condition. Being in a local bar (i.e., not a gay bar) and having someone of the same sex offer to buy you a drink is a situation that is much more unexpected because of the location. In this situation then, the victim tends to be blamed more so for the actions of the perpetrator than he would have been had the event taken place in a gay bar.

Finally, those in the "provocation" present condition were more likely to place blame on the victim than those in the "provocation" absent condition. Again, some of the blame tends to be placed upon the victim if he is doing something that is unexpected or unaccepted by the jurors. Regardless of location, when the victim puts his arm around the perpetrator and asks him to dance, he becomes much more responsible for his own assault than had he simply asked to buy the perpetrator a drink. If a juror is unable to pinpoint certain aspects of the defendant's behavior (i.e., explain the reasons why the

defendant may have behaved in such a way), or the juror feels that she or he may have acted in a similar fashion as the defendant in that situation (c.f., defensive attribution hypothesis, Burger, 1981), he or she may attempt to locate responsibility for the event in terms of the victim's behavior. This type of attribution was evident in some of the personal decision statements as well (e.g., "I would have acted almost the same if a guy, after saying no, wouldn't leave me alone. I wouldn't hit him that much though"). Similar types of blame attributions have been previously used as successful defenses in similar crimes of bias (i.e., Schick v. State, 1991). Furthermore, according to Kelley (1972), people will give more weight to a facilitative cause (something that promotes that particular event) than to an inhibitory cause (something that would weaken or undermine that particular event). Therefore even though participants identified the extent of "provocation," they may have been lending more weight to the "provocation-present" scenario when deciding between guilty or not guilty, generating no differences in guilt ratings between the conditions.

CHAPTER VI

GENERAL DISCUSSION

The current series of studies explored the effects of labeling a crime as hate and the gender of the victim in both a typical and non-typical hate crime scenario, as well as the impact of extra-legal factors on bias-motivated assault due to heterosexism. These studies shed light upon the factors being taken into account by decision makers within the courtroom (i.e., jurors) in cases of bias-motivated assault. Taken together, these studies highlight implications for crimes of “hate” in the courtroom.

Although previous studies investigating perceptions of hate crime noted that potential jurors viewed the typical hate crime as involving violence and including a member of a minority group (Craig & Waldo, 1996), the current series of studies reveals that for a hate crime to simply involve violence and include a member of a minority group may not be typical enough for it to be viewed as a hate crime. Events surrounding the crime as well as characteristics of both the perpetrator and victim are important factors when considering attributions of blame.

The first two studies sought to explore the impact of the labeling of a crime as hate on juror perceptions and judgments of bias-motivated assault. Study 1 focused on a typical hate crime scenario involving same-sex assault motivated by heterosexism. This study indicated no differences for the labeling of the crime. Study 2 focused on a non-typical hate crime scenario involving opposite-sex assault motivated by gender. The

findings of study 2 however did indicate a difference for ratings of guilt such that participants having to decide between not guilty and guilty of assault in the first degree were more likely to choose guilty than those having to decide between not guilty and guilty of bias-motivated assault due to gender. It is arguable that both scenarios fit the notion of assault in the first degree very well. The first study was also quite typical of people's notions of a hate crime and therefore fit that crime classification just as well as assault in the first degree. The second study however was assault motivated by gender (a category that is still being debated as to whether or not it should be included in hate crime statutes), a non-typical hate crime scenario. This study did not fit the notion of hate crime as well and therefore generated differences in juror verdicts based on the labeling of the crime.

Although the original hypotheses of studies 1 and 2 were not entirely supported, both studies served to highlight differences between a typical and non-typical hate crime scenario. In typical hate crime scenarios, it would seem that giving crimes the label of bias-motivated rather than another label does not increase nor decrease the rate of conviction and may therefore serve to punish perpetrators of such crimes more harshly (i.e., Hate Crime Sentencing Enhancement Act, 1993). For example, by charging someone with first-degree assault motivated by bias rather than first-degree assault it enhances the penalty that may be handed down were the defendant found guilty. It may be the case however that labeling crimes as bias-motivated that do not fit the typical notion of a hate crime may actually be serving to decrease the conviction rate. Further studies are needed to explore the extent of "typicality" needed for a crime to be seen as a hate crime as well as how decisions may be made if jurors are given more than one form

of guilty option (i.e., guilty of assault in the first degree or guilty of bias-motivated assault or not guilty).

Unlike the first two studies, study 3 sought to explore two extra-legal factors that were mentioned frequently in study 1 personal decision statements (i.e., “it was assault, but it was provoked” and “he wasn’t in a gay bar”). The scenario for study 3 involved a heterosexual man assaulting a gay man in either a local bar or a gay bar (location) and the gay man either bought him a drink and walked away or put his arm around him and asked him to slow dance (“provocation”). Although no differences were found in the guilt ratings between location and provocation, once again attributions of blame came into play. The location of the assault mattered both for how much blame to attribute to the defendant as well as the victim. Participants reading the gay bar scenario attributed more blame to the defendant and less to the victim. “Provocation” of the victim also made a difference on how much blame was attributed to the victim. Those reading the scenario in which the victim put his arm around the defendant and asked him to slow dance attributed more blame to the victim than those reading the scenario in which he simply buys the defendant a drink and walks away.

Although according to their statements participants seemed to clearly delineate between “provocation-present” (e.g. “He made specific advances even when the defendant objected, provoking anger, which resulted in the clash” and “He was defending his personal space”) and “provocation-absent” (e.g., “The victim realized the defendant was not interested and walked away politely and then was attacked” and “No one saw the victim do anything wrong”) this did not come into play when deciding the guilt or innocence of the defendant. According to Kelley (1972), people will give more weight to

a facilitative cause (something that promotes that particular event) than to an inhibitory cause (something that would weaken or undermine that particular event). Therefore even though participants identified the extent of “provocation,” they may have been lending more weight to the “provocation-present” scenario when deciding between guilty or not guilty, generating no differences between the conditions.

Aside from the extra-legal factors used in study 3, participants frequently made comments regarding the presence of alcohol in the scenario. The assault in all studies took place in a bar setting and although the transcript clearly states that the defendant was not intoxicated, many participants made reference to the fact that the use of alcohol played some role in the assault. This extra-legal factor is certainly worthy of future note as other studies have pointed out the importance of alcohol in violent crimes. For example, Richardson and Campbell (1980, 1982) found that attributions of blame and responsibility in a violent encounter depended on the perpetrator’s consumption of alcohol. Similarly, Hammock and Richardson (1993) found that intoxication may be the factor that both excuses the perpetrator’s actions as well as serves to blame the victim in these types of settings (i.e., violent crimes). Statements made by participants in the current series of studies indicated alcohol as both a reason for the defendant’s behavior as an excuse (e.g., “Alcohol was involved which mixes with anger and creates bad decisions” and “He lost control of his rage because he had been drinking”) as well as poor decision on the part of the victim (e.g., “She made a choice to drink, knowing it could affect her judgment” and “Alcohol was involved on both sides”).

Although attribution theory has been applied in the area of psychology and law in numerous ways, findings from study 1 did not show differences in attribution of blame

based on the event presented in the transcript. It may be the case that potential jurors are relying on previously formed attitudes about the people involved in certain crimes. In fact, the area of hate crime is new even to the legal arena and being unsure of how the judgments for such crimes are made, jurors may be making attributions of blame or responsibility only after other avenues are exhausted. Moreover many of the statements participants made in this series of studies about legal and/or judicial terms were incorrect (i.e., intent was used to mean pre-meditation), pointing toward an even larger misunderstanding of the legal system as a whole. Future research may want to examine this possibility.

Admittedly, the procedure used in the present study limits how broadly the results can be generalized. Limitations of the current study include a homogenous participant sample (e.g., age, ethnicity, sexual orientation) and the use of alcohol in the transcript scenario (i.e., as a confound variable). However it is worth noting that the jury simulation paradigm used was similar to other published research on jury decision making (Bornstein, 1999). Also of importance is the fact that the mock jurors used in this study were young college students, who may be more liberal in their decision-making for these types of crimes than older individuals. However, in several experiments comparing judgments of student and non-student samples, Finkel and colleagues found that although non-student samples tended to be older and more heterogeneous demographically, there were typically no differences in verdict or other factors at trial between student and non-student samples in jury simulation paradigms (Finkel & Duff, 1991; Finkel & Handel, 1989; Finkel, Hughes, Smith, & Hurabiell, 1994; Finkel, Hurabiell, & Hughes, 1993a, b; Finkel, Meister, & Lightfoot, 1991; Fulero & Finkel, 1991). Furthermore, all participants

made statements regarding the facts of the case and none were excluded for containing incorrect information pertaining to the manipulations of the independent variable (i.e., participants understood the facts of the case). Although the present results come from a laboratory-based study that employed college students to read a mock trial transcript they may have profound implications. Further research in this area is warranted as the present studies demonstrate that there are not only stereotypes for victims of hate crime but that there may possibly be a notion of what events do and do not fit the “typical” idea of hate crime. This is important to legal and psychology scholars as well as fact-finders (i.e., judges and jurors) within the courtroom because if the event of the crime itself along with any present extra-legal factors have a larger effect on how judgments are made in these cases, knowledge about the specific factors at play may serve to be of great consequence.

Conclusion

Taken together, this series of studies provides a greater glimpse into the world of juror decision-making in some cases of bias-motivated assault. Although attributions of blame seem to come into play regarding the victim’s role in these types of crimes, they do not lend themselves to ratings of guilt in typical hate crime scenarios. In non-typical hate crime scenarios however, ratings of guilt may stem from attributions of blame. Other factors affecting typical hate crime scenarios include extra-legal factors such as previously held attitudes, location, and “provocation.” Although these studies are exploratory in nature, they do give distinct directions in which future research can be applied.

Many of the personal decision statements made in the hate crime conditions included the notion that jurors believed the defendant to be guilty but not of a hate crime

(i.e., “I believe he should be convicted of something but calling it a hate crime would be too much”). Future studies should investigate how ratings of guilt may be affected when given more than one type of guilty choice in cases of hate crime (i.e., not guilty vs. guilty of assault in the first degree vs. guilty of assault motivated by bias). Other areas for future study may include differential types of hate crime scenarios (e.g., a heterosexual person assaulted for supporting gay rights), gender dyads (e.g., a man assaulting a lesbian), as well as additional extra-legal factors (e.g., perceptions of the role of alcohol in violent crimes).

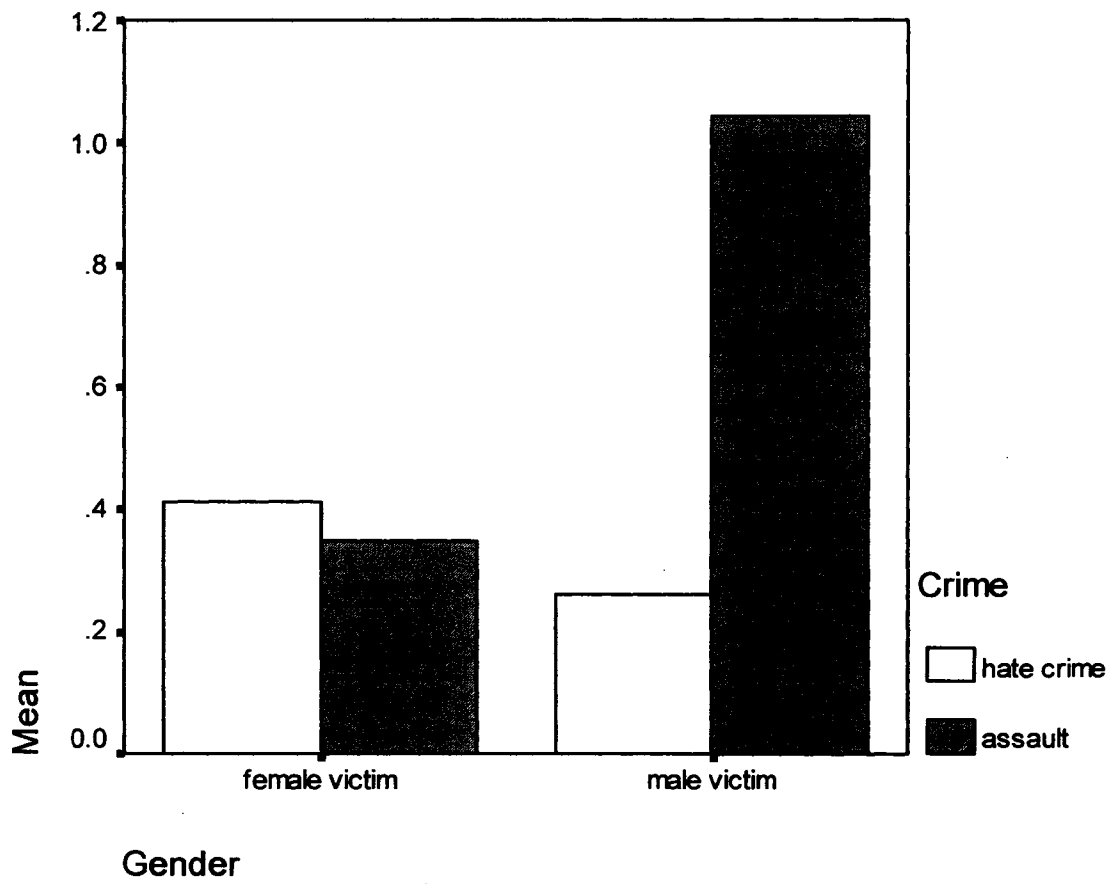


Figure 1. Reasonableness of defendant's actions; study two.

Table 1. Frequency Table, Personal Decision Statements; Study 1

	<i>Condition</i>			
	Female vs. Female	Male vs. Male	Female vs. Female	Male vs. Male
<i>Code</i>	Hate Crime	Hate Crime	Assault	Assault
Legal Argument - Guilty	8	3	7	5
Legal Argument – Not Guilty	5	5	6	8
Total Legal Argument= 47	13	8	13	13
Physical Evidence - Guilty	29	19	12	18
Physical Evidence – Not Guilty	1	0	1	1
Total Physical Evidence= 81	30	19	13	19
Morality Statements - Guilty	13	21	8	11
Morality Statements – Not Guilty	2	2	6	4
Total Morality Statements= 67	15	23	14	15
Victim Statements - Guilty	6	10	4	2
Victim Statements – Not Guilty	1	1	4	3
Total Victim Statements= 31	7	11	8	5
W/P Credibility Statements - Guilty	10	5	10	11
W/P Credibility Statements – Not Guilty	5	5	3	6
Total W/P Credibility Statements= 55	15	10	13	17
Extra-Legal Factors - Guilty	4	4	4	2
Extra-Legal Factors – Not Guilty	4	5	3	3
Total Extra-Legal Factors= 29	8	9	7	5
Total Guilty=226	70	62	45	49
Total Not Guilty=84	18	18	23	25
Total=310	88	80	68	74

Table 2. Frequency Table, Personal Decision Statements; Study 2

	<i>Condition</i>			
	Female Victim	Male Victim	Female Victim	Male Victim
<i>Code</i>	Hate Crime	Hate Crime	Assault	Assault
Legal Arguments - Guilty	3	6	5	4
Legal Arguments – Not Guilty	10	15	10	4
Total Legal Arguments= 57	13	21	15	8
Physical Evidence - Guilty	20	12	16	10
Physical Evidence – Not Guilty	4	2	1	1
Total Physical Evidence= 66	24	14	17	11
Morality Statements – Guilty	18	9	10	16
Morality Statements – Not Guilty	2	4	1	2
Total Morality Statements= 62	20	13	11	18
Victim Statements - Guilty	3	2	2	4
Victim Statements – Not Guilty	2	3	4	3
Total Victim Statements= 23	5	5	6	7
W/P Credibility Statements - Guilty	9	2	9	9
W/P Credibility Statements – Not Guilty	6	9	6	1
Total W/P Credibility Statements= 51	15	11	15	10
Extra-Legal Factors - Guilty	0	2	4	2
Extra-Legal Factors – Not Guilty	2	2	4	1
Total Extra-Legal Factors= 17	2	4	8	3
Total Guilty= 177	53	33	46	45
Total Not Guilty= 99	26	35	26	12
Total=276	79	68	72	57

Table 3. Frequency Table, Personal Decision Statements; Study 3

<i>Code</i>	<i>Condition</i>			
	Gay Bar Provocation	Gay Bar No Provocation	Local Bar Provocation	Local Bar No Provocation
Legal Arguments - Guilty	1	3	2	2
Legal Arguments – Not Guilty	3	5	5	7
Total Legal Arguments= 28	4	8	7	9
Physical Evidence - Guilty	18	15	11	13
Physical Evidence – Not Guilty	0	1	0	0
Total Physical Evidence= 58	18	16	11	13
Morality Statements - Guilty	6	10	7	9
Morality Statements – Not Guilty	0	0	0	2
Total Morality Statements= 34	6	10	7	11
Victim Statements - Guilty	6	1	1	4
Victim Statements – Not Guilty	0	1	6	4
Total Victim Statements= 23	6	2	7	8
W/P Credibility Statements - Guilty	4	9	13	2
W/P Credibility Statements – Not Guilty	7	7	2	4
Total W/P Credibility Statements= 48	11	16	15	6
Extra-Legal Factors - Guilty	1	8	0	2
Extra-Legal Factors – Not Guilty	2	4	2	1
Total Extra-Legal Factors= 20	3	12	2	3
Total Guilty= 148	36	46	34	32
Total Not Guilty= 63	12	18	15	18
Total=211	48	64	49	50

APPENDICES

Appendix A Transcript

Note: This transcript depicts the condition in which participants will read about a same-sex attack by a man against a gay man that has been labeled “assault motivated by bias or a hate crime”.

*Names that will be changed depending upon condition appear in *italics*.

Definition and/or explanation of the crime label that will be changed depending upon condition will appear in *bold italics***.

Judge’s Opening Statement

Judge: Good afternoon. This proceeding is a trial of the defendant, *Mr. Daniel Smith*, who has been charged with assault motivated by bias or a hate crime perpetrated against *Mr. James Grear*. *Mr. Smith* is being prosecuted by the District Attorney’s office for committing assault motivated by bias or a hate crime against *Mr. Grear*. *Mr. Smith* will be represented by *his* lawyer. We will hear opening statements from the prosecution and defense. This will be followed by direct examination of the prosecution’s witnesses and cross examination by the defense. Direct examination of the defense witnesses and cross examination of those witnesses by the prosecution will follow. Each will give closing statements.

The issue at this trial is whether *Mr. Smith* committed ***assault motivated by bias or a hate crime*** against *Mr. Grear* during the evening of May 29th, 2004 at a downtown Minneapolis, MN bar. The defendant pleaded not guilty. Before the defendant can be convicted, the State must prove all the essential elements of the offense beyond a reasonable doubt. The fact that the defendant has been charged with a criminal offense is not evidence and must not be considered by you as evidence.

Assault motivated by bias is defined by this state in the following statute:

609.221 Great bodily harm. Whoever assaults another with intent to inflict great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both. *Plus:*

Hate Crime Sentencing Enhancement Act (28 U.S.C 994)

Congress enacted a federal complement to state hate crime penalty-enhancement statutes in the 1994 crime bill. This provision required the United States Sentencing Commission to increase the penalties for crimes in which the victim was selected "because of the actual or perceived race, color, religion, national origin, ethnicity,

gender, disability, or sexual orientation of any person." This measure applies to attacks and vandalism which occur in national parks and on federal property.

609.2231 Assaults motivated by bias. (a) Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

363A.03 Sexual orientation. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

After all evidence has been heard, you will be required to vote on the guilt or innocence of the defendant.

Prosecution's Opening Statement

Members of the jury, *Mr. Grear* will tell you how *Mr. Smith* assaulted *him* without provocation or apparent regard for anyone in *his* way. *He* will also tell you how *Mr. Smith* shouted slanderous and derogatory remarks toward *him* during this attack. *Mr. Grear* along with two other witnesses at the bar that evening will testify to the horrific nature of the crime. This, ladies and gentlemen, is a clear case of **assault motivated by bias**. **This crime is a hate crime given the reason *Mr. Grear* was attacked is because of his perceived sexual orientation.**

Defense's Opening Statement

Members of the jury, my client, *Mr. Smith* has been charged with **assault motivated by bias**. We will show that there is no evidence whatsoever to find *Mr. Smith* guilty of a **hate crime**. Instead, we will show that *Mr. Smith* was merely defending *himself* against the unwanted sexual advances of *Mr. Grear* and did not intend to cause bodily harm. **This case does not constitute assault motivated by bias.**

Judge: Prosecution, call your first witness.

Prosecution: The state calls *Mr. James Grear* to the stand.

Prosecution Direct Examination of *Mr. Grear*

P: *Mr. Grear* can you tell us in your own words what happened the night of May 29th, 2004?

JG: Yes. Some friends of mine and I decided to go out, have a few drinks, a little fun, nothing too crazy, maybe a little dancing. We went to this place I'd never been to before,

the *****. It was pretty nice when we first got there, we had a drink and my friends went out on the dance floor to dance. I decided to walk around and see if there were any interesting people, you know. Um, then when my friends came back I was pointing out this *guy* that had smiled at me while I was walking around. I said that I thought *he* was pretty cute. My friends encouraged me to go talk to *him* but I was too shy at first. I passed by *him* again later on and *he* smiled and nodded so I said “hi” and just kept walking. I wish I would have left at that point.

P: So what happened next, *Mr. Grear*?

JG: I finally got up the courage to go talk to *him*. I walked over when *he* was only talking to one other person...I didn't want to interrupt their conversation so I waited. I said “hello” and asked *him* if I could buy *him* a drink. *He* seemed a little surprised at first, but then *he* said “sure”. After I introduced myself we talked about what we do for a living, for fun, you know, just trying to get to know each other, I thought... then a slow song came on, one that I really like. I asked *him* to dance. *He* pulled away from me and when he turned back around *he* punched me in the stomach. I was so surprised that I just stood there. The bar was so crowded that I don't think anyone even saw what had happened. Then *he* started yelling at me, things like, “I don't dance with *fags*” and “Keep your *queer* hands off me, you *homo*”. Then *he* just started hitting me over and over again. I backed away and put my arms up, but I couldn't go very far, there were too many people for me to get away from *him* quickly. At some point I fell to the ground and the crowd sort of gathered around me and just watched *him* hitting and kicking me. Some girl got hit in the process of trying to get in the way of *his* punches. Eventually I blacked out and don't remember anything until I woke up in the emergency room at the hospital.

P: Did *Mr. Smith* use a weapon of any sort, other than *his* fist when he was hitting you?

JG: I don't know. I remember that *he* had a drink in his hand and I was told at the hospital that they pulled glass out of my arms, but I'm not sure if *he* hit me with the glass, or if there was just glass on the floor when I fell or what.

P: What injuries were you treated for at the hospital?

JG: I had two broken ribs, a broken finger, a broken nose, a concussion, and many cuts and bruises.

P: Did you receive any stitches for the cuts?

JG: Yes. All together I got 150 stitches in my face, neck, head, and arms.

P: *Mr. Grear*, why do you think *Mr. Smith* attacked you?

JG: I'm not sure. Everything seemed fine and then all of a sudden *he* just lost it. From the things *he* was yelling at me, I would say that I was attacked because I am a *gay man*.

P: *Mr. Grear, do you think this was a hate crime?*

JG: *Yes, definitely.*

P: Thank you Mr. Grear. No further questions.

Defense Cross Examination of Mr. Grear

D: *Mr. Grear, you just testified that you are a gay man. Was the bar you were at considered a gay bar?*

JG: No, I guess not.

D: Would you say that you were “hitting on” *Mr. Smith* at this bar?

JG: No. I mean, I thought *he* was attractive and I was curious if *he* was interested or not, but I didn’t ask for *his* number or ask *him* out for a date or anything like that.

D: But you did ask *him* to slow dance with you?

JG: Yes.

D: When you were speaking with *Mr. Smith* before asking *him* to dance did you touch *him* in any way?

JG: I suppose I probably touched *his* arm when I was talking to *him*. It was loud in the bar with the music and everything so we had to stand very close to carry on a conversation.

D: Did *Mr. Smith* touch you at all during this conversation?

JG: I don’t remember.

D: What was your intention in speaking with *Mr. Smith* and asking him to dance?

JG: I guess to find out if *he* was interested in me or not.

D: Interested how? Sexually?

JG: Romantically maybe, but not sexually. For a possible date. I wasn’t trying to take anyone home with me that night.

D: Couldn’t you have just asked *him* if *he* was interested from the start of the conversation?

JG: I suppose, that just seems a little awkward.

D: *Mr. Grear* have you approached *men* in bars that you know to *not be considered gay bars before*?

JG: Yes.

D: And how have these *men* responded to your advances?

JG: Depends. Sometimes I get a date. Sometimes they say “no thank you”. Sometimes they get upset and tell me to “fuck-off”.

D: So you haven’t always been met with approval in these types of settings?

JG: No. But I don’t think anyone always is.

D: *Isn’t it a greater risk to you knowing that the person you’re hitting on may not be gay?*

JG: I don’t think it makes a difference. If you’re not interested, you’re not interested, regardless of *sexual orientation*. It’s a risk everyone takes if they’re trying to find out if someone’s interested in them or not.

D: You testified that at some point you passed out and don’t remember anything after that, correct?

JG: Yes.

D: Is it possible that someone other than my client may have attacked you?

JG: I only saw *Mr. Smith* hit me.

D: What about after you passed out?

JG: I guess it’s possible.

D: Thank you. No further questions.

Prosecution Direct Examination of Witness #1: Mr. Alan Davis - Bartender

P: Mr. Davis, were you working at the *****on the night of May 29th, 2004?

AD: Yes, I was tending bar at the South entrance.

P: Can you tell me if you recognize the victim, *Mr. Gear* and defendant, *Mr. Smith* from that evening?

AD: Yes. I remember both quite well.

P: Can you tell the court what you saw happen that night?

AD: Well, I didn't notice them talking or anything until they ordered drinks from me, *Mr. Gear* is actually the one who ordered both drinks. After that I didn't pay much attention to them, other than to notice that they were talking. A while later I heard *Mr. Smith* yelling at *Mr. Gear*. At first I assumed they were a couple having a fight and then I saw *Mr. Smith* punching *Mr. Gear*. I immediately called for bouncers to come break it up and tried to get around the bar to help *Mr. Gear* who was lying on the floor by now. I saw *Mr. Smith* punch and kick *him* repeatedly. I saw some girl in the crowd try to break it up and she got hit as well. By the time the bouncers got through the crowd it was obvious that *Mr. Gear* was not conscious so I called the ambulance right away. Then I helped try to clear the crowd out and waited near *Mr. Gear* until the EMTs arrived.

P: Did you hear anything that was said between *Mr. Gear* and the defendant?

AD: I only heard what *Mr. Smith* was yelling.

P: What did you hear *Mr. Smith* yell?

AD: He called *Mr. Gear* a *fag* and told him to *keep his queer hands off him*.

P: Did you see anyone else hit or kick *Mr. Gear*?

AD: No, not that I could tell through the crowd.

P: Did you see *Mr. Gear* hit *Mr. Smith* in an attempt to fight back or otherwise?

AD: No.

P: Thank you Mr. Davis.

Defense Cross Examination of Witness #1: Mr. Alan Davis - Bartender

D: Mr. Davis, how long have you worked at the *****?

AD: Three years.

D: Have you seen many fights in your bar in those three years?

AD: I guess so. Fights occur I'd say about once every couple of weeks.

D: Anyone ever taken to the hospital?

AD: Yes...it's our policy to call an ambulance if there is any blood or if anyone is unconscious.

D: Did you hear the conversation between *Mr. Grear* and my client, *Mr. Smith*?

AD: No, I didn't hear anything they were talking about until *Mr. Smith* starting yelling obscenities at *Mr. Grear*.

D: Thank you Mr. Davis. No further questions.

Prosecution Direct Examination of Witness #2: Ms. Isabel Salva

P: Ms. Salva, were you at the ***** the night of May 29th, 2004?

IS: Yes.

P: Did you see *Mr. Grear* and the defendant there that night?

IS: Yes I did.

P: Can you tell the court what you saw relevant to these proceedings that evening?

IS: I was standing at the bar near *Mr. Smith* most of the evening. I saw *Mr. Grear* come over and start talking to *him*. Then *he* started to yell at *him*. I got kind of nervous because I was standing so close that I couldn't move out of the way when *he* sort of shoved *him*. Then *Mr. Smith* just starting hitting and kicking *him*. After *he* fell to the ground, I could see *he* was bleeding and no one was trying to help, so I stepped in the way of *Mr. Smith* and tried to get *him* to stop. I kept telling *him* "it's not worth it, you'll get arrested". But then *he* hit me and kept kicking *Mr. Grear*.

P: Did you sustain any injuries as a result of trying to help *Mr. Grear*?

IS: Yes, I had a cut above my eye that I had to get stitches for at the hospital.

P: Did you see anyone else hit or kick *Mr. Grear*?

IS: No.

P: Why do you think *Mr. Smith* was attacking *Mr. Grear*?

IS: *Because he's gay.*

P: What made you think that was the reason?

IS: Because of what *he* was yelling at *him*. *He kept calling him a fag and a queer and stuff like that.*

P: *Ms. Salva, would consider this to be a hate crime?*

IS: *Yes.*

P: Thank you, no further questions.

Defense Cross Examination of Witness #2: Ms. Isabel Salva

D: Ms. Salva, you testified that you had been at the bar for a while that night, correct?

IS: Yes.

D: Were you drinking alcohol at the bar that night?

IS: Yes. I had a few drinks.

D: Would you say you were intoxicated at the time the fight broke out?

IS: Um, probably. They wouldn't let me drive home from the hospital because I was over the legal limit.

D: Did you hear *Mr. Grear* ask my client to dance?

IS: No. But I did hear *him* ask *Mr. Smith* if *he* could buy him a drink.

D: How would you describe my client's behavior after the fight broke out?

IS: It was scary. Like *he* didn't even see or hear me when I was trying to talk to *him*. *He* just kept hitting and kicking, like *he* was in a trance or something. *He* seemed very angry.

D: Thank you Ms. Salva.

Defense Direct Examination of Defendant: Mr. Smith

D: *Mr. Smith*, can you please tell the court in your own words what happened the night of May 29th, 2004 at the ***** in Minneapolis?

DS: Yes. I went out with a couple of friends to a different club at first, they were trying to set me up with this *chic*, but I wasn't interested so we left. When we got to the ***** I had already had a few drinks, we were just having a good time. Then this *man* comes up to me and asks if *he* can buy me a drink. I noticed earlier that *he* was with a couple of *cute girls* so I thought maybe one of them was interested and sent their friend

over to talk to me. So *he* starts asking me all these questions about myself then *he* starts touching my arm and leaning in closer to talk to me. I started to get a little uncomfortable so I backed up next to the bar a bit. Then *he* asks me to dance to a slow song and I realized that *he* was hitting on me! Well *I'm no fag*, so I told *him* that and I guess I must of hit *him* when I turned around. But *he* still wouldn't leave. *He* was completely freaking me out. I thought *he* was going to grab me and try to kiss me or something and then I just lost it. I mean *he* obviously wouldn't take "no" for an answer.

D: What happened then?

DS: I don't remember. I just flipped out and I can kind of remember yelling and then when the bouncers grabbed me I remember seeing *him* lying on the ground...but all the stuff in between was just anger. I just wanted *him* to leave me alone.

D: Why didn't you just tell *him* you weren't interested?

DS: I did. I told *him* to get *his* hands off me, but *he* still wouldn't leave.

D: Did you intend to harm *Mr. Gear*?

DS: No, I just felt scared and wanted *him* to go away.

D: Do you remember hitting Ms. Salva?

DS: No. I don't remember seeing her there at all.

D: Were you surprised that *Mr. Gear* asked you to dance?

DS: Hell yeah. *We weren't in a gay bar or anything...maybe if we were I would've expected it or something, but I thought he was asking me questions for one of his friends.*

D: Thank you *Mr. Smith*, no further questions.

Prosecution Cross Examination of Defendant: *Mr. Smith*

P: *Mr. Smith* you said that you had already had a couple of drinks before you got to the ***** , correct?

DS: Yes.

P: Did you have too much to drink that night?

DS: I don't know, I mean I wasn't wasted or anything.

P: You testified that you don't remember part of the evening. Did you black out?

DS: I guess so.

P: If you don't think you had too much to drink, what do you think caused you to black out?

DS: I'm not sure, I was pretty pissed off, maybe I was just too angry.

P: *Do you hate gay men?*

DS: *No. I don't hate them. I don't agree with their lifestyle, but as long as they don't push it on me, they're fine.*

P: *Did you feel that Mr. Grear was pushing his "lifestyle" on you that evening?*

DS: Yes. *He* was hitting on me.

P: And this made you angry?

DS: Well, more like scared.

P: But you blacked out because you were angry?

DS: When *he* hit on me I was scared, but when *he* wouldn't leave me alone, I got angry.

P: I see. *Mr. Smith* you said that you were at a different bar earlier where you were not interested in someone else. Did this person scare you as well?

DS: No.

P: So you didn't get angry at *her* and hit *her*?

DS: No.

P: Why didn't *she* scare you?

DS: Because *she was a woman...not a gay guy.*

P: After *Mr. Grear* fell to the floor and became unconscious why did you continue to hit *him*?

DS: I don't remember doing that.

P: Do you consider yourself to be *homophobic Mr. Smith*?

DS: No, I have *a couple of friends who are gay.*

P: *But if a gay man hits on you this makes you feel scared?*

DS: Yeah, I just didn't know what to do.

P: You couldn't think of another way to handle the situation other than beating *him* to the point of unconsciousness and later hospitalization?

DS: I already said I don't remember doing that.

P: *Mr. Smith do you think this was a hate crime?*

DS: *No way, I don't hate people just because they're different than me, even if I don't agree with what they do.*

P: Thank you. No further questions.

Defense Direct Examination of Witness #3: Mr. Alex Harris - Friend

D: *Mr. Harris, can you please tell us how you know the defendant?*

AH: *Dan and I are good friends. We've known each other for about four years.*

D: *Were you out with Mr. Smith the night of May 29th?*

AH: *Yes.*

D: *Did you see him talking with Mr. Gear?*

AH: *Yes.*

D: *How would you describe his actions after the fight broke out?*

AH: *I've never seen him like that. He seemed completely freaked out.*

D: *Have you ever seen him in a fight before?*

AH: *No, never. He can always find a reason to walk away.*

D: *Why do you think this fight happened?*

AH: *I don't know. It had to be something big for him to go off like that.*

D: *What kind of person would you characterize Mr. Smith to be?*

AH: *A good person. He is very caring, loyal, and he loves his family. He's just an all-around great friend.*

D: Would you consider *Mr. Smith* to be *homophobic*?

AH: No. I've never heard *him* say a bad thing about *homosexuals*.

D: Thank you *Mr. Harris*.

Prosecution Cross Examination of Witness #3: *Mr. Alex Harris* - Friend

P: *Mr. Harris*, you have known the defendant for four years and *he* has never been in a fight that you know of?

AH: Nothing bigger than an argument.

P: You said that *he* "freaked out", what do you mean by that?

AH: *He* just didn't seem like *himself*, like *he* was in a rage or something.

P: To your knowledge has *Mr. Smith* ever been hit on by *a member of the same sex* prior to May 29th?

AH: Yeah, *at a gay bar we went to with some female friends once*

P: And how did *he* react in that situation?

AH: *He* seemed fine. *He* made jokes about it and we sort of teased *him* a little.

P: *He* made jokes about it? What kind of jokes?

AH: Nothing bad, just how *he*'s hot enough to attract *members of both sexes*. Stuff like that.

P: Was *he* polite to the person that hit on *him* then?

AH: Yeah. *He* just said *he was straight and the man* left him alone.

P: *Mr. Smith* testified that *he disagrees with the lifestyle of gay men and lesbians*. *Why would he go to a gay bar?*

AH: We went for a friend's birthday party.

P: *Mr. Harris*, why didn't you do anything to stop the attack on *Mr. Gear* that night?

AH: At first I didn't know what was happening and I wasn't sure why the fight had started in the first place. After *he* fell to the ground I tried to get over to *Dan* to talk *him* down, but the crowd was too full and I couldn't get through.

P: Thank you. No further questions.

Prosecution Closing Statement

Ladies and gentlemen of the jury, there is no dispute that *Mr. Smith* violently attacked *Mr. Gear* the night of May 29th, 2004. All of the witnesses here, including *Mr. Smith's* own friend, saw *him* and only *him*, hit and kick *Mr. Gear* repeatedly. *Mr. Gear* incurred a number of injuries and spent a few days in the hospital as a result of this attack. Both *Mr. Gear* and two other witnesses testified to the slanderous and derogatory remarks that *he* shouted toward *his* victim before and during the attack. Ladies and gentlemen, this clearly shows intent on the part of *Mr. Smith* to inflict harm on *his* victim. After hearing the words that were shouted during the attack, there should be no doubt that *Mr. Smith* is guilty of ***assault motivated by bias*** and ***according to the hate crime sentencing enhancement act***, should be punished accordingly. Thank you for your time.

Defense Closing Statement

Jury members, although others present that evening say they witnessed my client attacking *Mr. Gear*, *he* does not remember that at all. Ladies and gentlemen, my client was so frightened and eventually angered by the actions of *Mr. Gear* that *he* simply reacted poorly to a bad situation. My client, *Mr. Smith* did not intend to harm *Mr. Gear*. *His* only intention was to defend *himself* against the sexual advances of a gay man. This case lacks the intent needed to constitute assault. ***Furthermore, this case is not a hate crime as my client did not seek out Mr. Gear because he was gay. He simply wanted him to leave him alone.*** I am certain that you will find my client, *Mr. Smith* not guilty. Thank you.

Judge's Closing Statement

Members of the jury, you have heard all the arguments presented by both the District Attorney and defense lawyer and are now required to come to a decision regarding the guilt or innocence of *Mr. Smith*.

Jury members are reminded that in order to find *Mr. Smith* guilty of ***assault motivated by bias or a hate crime***, ***there must be sufficient evidence that there was intent to inflict great bodily harm to the victim and that the victim in this case was assaulted because of his actual or perceived sexual orientation.*** The State must prove all of the essential elements of the crime charged by proof beyond a reasonable doubt. The State is not required to prove guilt beyond all doubt, but beyond a reasonable doubt.

Appendix B
Questionnaires

Heterosexism Scale

This questionnaire is designed to measure the way you feel about associating with gay men and/or lesbians. It is not a test, so there is no right or wrong answers. Answer each item as carefully and accurately as you can by placing a number in the blank at the beginning of each question according to the following scale:

- 1 Strongly agree
- 2 Agree somewhat
- 3 Neither agree nor disagree
- 4 Disagree somewhat
- 5 Strongly disagree

- _____ 1. I would enjoy attending social functions at which gay men and/or lesbians were present.
- _____ 2. I would feel uncomfortable if I learned that my neighbor was gay.
- _____ 3. If a member of my own sex made a sexual advance toward me I would feel angry.
- _____ 4. I would feel comfortable knowing that I was attractive to members of my own sex.
- _____ 5. I would feel uncomfortable being seen in a gay bar.
- _____ 6. I would feel comfortable if a member of my sex made an advance toward me.
- _____ 7. I would be comfortable if I found myself attracted to a member of my own sex.
- _____ 8. I would feel disappointed if I learned that my child was gay.
- _____ 9. I would feel nervous being in a group of gay men and/or lesbians.
- _____ 10. I would feel comfortable knowing that my clergyman/woman was gay.
- _____ 11. I would be upset if I learned that my brother or sister was gay.
- _____ 12. I would feel that I had failed as a parent if I learned that my child was gay.
- _____ 13. If I saw two men holding hands in public I would feel disgusted.
- _____ 14. If a member of my sex made an advance toward me I would be offended.
- _____ 15. I would feel comfortable if I learned that my daughter's teacher was a lesbian.
- _____ 16. I would feel uncomfortable if I learned that my spouse or partner was attracted to members of his or her own sex.
- _____ 17. I would feel at ease talking with a gay person at a party.
- _____ 18. I would feel uncomfortable kissing a close friend of my own sex in public.
- _____ 19. It would not bother me to walk through a predominantly gay section of town.

20. It would disturb me to find out that my doctor was gay.
 21. I would feel comfortable if I learned that my best friend of my own sex was gay.
 22. If a member of my own sex made an advance toward me I would feel flattered.
 23. I would feel uncomfortable knowing that my son's male teacher was gay.

Demographic Questionnaire

Please provide the following information:

Age: _____

Sex: Female
 Male
 Prefer not to say

Race: African American / Black
 Asian American
 Caucasian / White
 Hispanic
 Native American
 Other: _____
 Prefer not to say

Sexual Orientation:

Heterosexual
 Gay man
 Lesbian
 Bisexual
 Prefer not to say

Level of Education:

First Year Junior Grad Student
 Sophomore Senior Other/Prefer not to say

“Home” state (i.e., state in which you have lived most of your life): _____

State you live in now: _____

Individual Juror Verdict

Juror Number: _____

On the basis of the evidence, my vote is that *Daniel Smith* is:

Guilty of Assault *motivated by bias (hate crime)* _____

Not-guilty _____

Private Belief Rating Scale

Juror # _____

With this questionnaire, you are being asked to circle the one number that best describes your private belief that *Daniel Smith* should or should not be convicted of assault. You are not being asked to state whether you believe there is sufficient evidence to convict in a court of law. Rather, it is asking about your personal and private belief.

Please circle one number that best describes your private belief about whether *Daniel Smith* should or should not be convicted.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain <i>Daniel Smith</i>						Certain <i>Daniel Smith</i>				
Should NOT BE						SHOULD BE				
Convicted						Convicted				

Perceptions

Juror Number: _____

Given the following rating scale, please indicate the extent to which you agree or disagree with the following statements.

Strongly Disagree				Neither Agree Nor Disagree				Strongly Agree
0	1	2	3	4	5	6		

- _____ 1. The victim is partly to blame for the actions of the defendant.
- _____ 2. The defendant is solely to blame for the events that took place in the bar that evening.

- _____ 3. The defendant's actions are **not** the results of the victim's sexual orientation.
- _____ 4. The defendant's actions were reasonable.
- _____ 5. The victim should know to be more careful about approaching someone whose sexual orientation is unknown.
- _____ 6. The defendant's actions were the result of unwanted advances by the victim.
- _____ 7. The defendant deliberately intended to inflict injury on the victim.
- _____ 8. The defendant's actions were under *his* control.
- _____ 9. The defendant was provoked.
- _____ 10. The defendant's actions were justified.
- _____ 11. The victim deserved it.
- _____ 12. Any reasonable *man* would have acted the same as the defendant.
- _____ 13. The defendant is mentally unstable.
- _____ 14. The victim is mentally unstable.
- _____ 15. The defendant committed a hate crime.

Personal Decision

Juror # _____

1. Please list, as briefly as possible, the reasons for your personal decision in this case.

Appendix C

Informed Consent Form: Perceptions of Crime

My name is Karyn Plumm, I am conducting a study under the supervision of Dr. Cheryl Terrance, a professor in the Department of Psychology at the University of North Dakota, to examine people’s perceptions of crime. This study will take approximately 1 to 2 hours to complete.

You are invited to participate in a study in which we will ask you to read a transcript of a simulated criminal trial wherein the defendant is being accused of assaulting a person in a public bar setting. As part of the study you will as well be asked to respond to questionnaires pertaining to your views about the case, and the guilt or innocence of the defendant.

The benefits from this research will be a better understanding of how people render decisions in similar cases. Specific benefits to you for your participation will be a better understanding of what psychological research is about. As compensation for your participation you will have the opportunity to earn extra credit in your current psychology class. Some people may find the issues involved in this criminal trial to be offensive and/or upsetting, and you are under no obligation to continue with the study. Should you feel upset to the degree that you need assistance, contact numbers for agencies have been provided at the bottom of this consent form. Services listed are free of charge. Any charges for services that may arise are the responsibility of the participant.

Some participants may feel a little apprehensive because this is an evaluative situation, or may feel anxious responding to questions pertaining to personally sensitive issues. You do not have to respond to any questions that you do not want to, and all data will remain confidential and anonymous with respect to your personal identity. To insure privacy concerns, participants will be given numerical identification numbers for processing the data and your names will not be revealed in presentation or publication of the study. Only the researcher, her advisor, research assistants, and people who audit IRB procedures will have access to the data. Questionnaires will be stored separately from consent forms in a locked cabinet in Dr. Terrance’s research lab for a minimum period of 3 years.

Participation is voluntary. Your decision whether or not to participate will not affect your future relations with UND. If you decide to participate, you are free to discontinue participation at any time without prejudice. A copy of this consent form will be made available to you. If you have any questions about this research, you may ask Karyn Plumm at 777-4779. Alternatively, you may contact Dr. Cheryl Terrance at 777-3921. If you have any other questions or concerns, please call Research Development and Compliance at 777-4279.

I have read all of the above and willingly agree to participate in this study.

Participant’s Name

Date

Contact Information:

University of North Dakota Counseling Center
Altru Health System

777-2127
780-5900

Appendix D

Classification Schema; Study 1

Statements made by participants from the Personal Decision questionnaire were classified into six types of arguments used to support their decision in the case. This table provides examples of statements made.

1. Legal Arguments

Guilty

“She is guilty. It was not self-defense.”

“He kept hitting and kicking him with intent to harm him.”

Not Guilty

“I feel it is not a hate crime because he did not seek him out based on his sexual orientation, he just dealt with the situation wrongly.”

“The evidence in the trial did not prove her intent to assault her.”

2. Physical Evidence

Guilty

“She was yelling at her using derogatory terms in reference to her sexual orientation.”

“He beat him repeatedly even while he was unconscious.”

Not Guilty

“She said she did not like her touching her but no one could prove she was acting out.”

“She asked her to leave her alone.”

3. Morality Statements

Guilty

“Gays should not be persecuted for who they are.”

“Violence never solves anything, walking away is an option.”

Not Guilty

“I would have acted almost the same if a guy after saying no wouldn't

leave me alone. I wouldn't hit him that much though."
"I probably would have reacted likewise."

4. Victim-Related Statements

Guilty

"She clearly attacked her because she was a lesbian."
"He did not mean to offend him by hitting on him."

Not Guilty

"The victim wouldn't take no for an answer."
"The victim 'pushed it'."

5. Witness and/or Perpetrator Credibility

Guilty

"Her account for what happened was BS."
"Even though he can't remember, there were witnesses to prove his actions."

Not Guilty

"It was a one-time incident. His previous record showed he wasn't abusive to homosexuals."
"He's considered a great guy."

6. Extra-Legal Factors

Guilty

"Even though she was intoxicated she had a sense of what she was doing."
"She wasn't physically provoked."

Not Guilty

"He wasn't in a gay bar."
"He was drinking, uncomfortable, and in a bad situation."

Appendix E Transcript

Note: This transcript depicts the condition in which participants will read about an opposite-sex attack by a man against a woman that has been labeled “assault motivated by bias or a hate crime”.

*Names that will be changed depending upon condition appear in *italics*.

Definition and/or explanation of the crime label that will be changed depending upon condition will appear in *bold italics***.

Judge’s Opening Statement

Judge: Good afternoon. This proceeding is a trial of the defendant, *Mr. Daniel Smith*, who has been charged with assault motivated by bias or a hate crime perpetrated against *Ms. Jane Grear*. *Mr. Smith* is being prosecuted by the District Attorney’s office for committing assault motivated by bias or a hate crime against *Ms. Grear*. *Mr. Smith* will be represented by *his* lawyer. We will hear opening statements from the prosecution and defense. This will be followed by direct examination of the prosecution’s witnesses and cross examination by the defense. Direct examination of the defense witnesses and cross examination of those witnesses by the prosecution will follow. Each will give closing statements.

The issue at this trial is whether *Mr. Smith* committed ***assault motivated by bias or a hate crime*** against *Ms. Grear* during the evening of May 29th, 2004 at a downtown Minneapolis, MN bar. The defendant pleaded not guilty. Before the defendant can be convicted, the State must prove all the essential elements of the offense beyond a reasonable doubt. The fact that the defendant has been charged with a criminal offense is not evidence and must not be considered by you as evidence.

Assault motivated by bias is defined by this state in the following statute:

609.221 Great bodily harm. Whoever assaults another with intent to inflict great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both. ***Plus...***

Hate Crime Sentencing Enhancement Act (28 U.S.C 994)
Congress enacted a federal complement to state hate crime penalty-enhancement statutes in the 1994 crime bill. This provision required the United States Sentencing Commission to increase the penalties for crimes in which the victim was selected

"because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure applies to attacks and vandalism which occur in national parks and on federal property.

609.2231 Assaults motivated by bias. (a) Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

After all evidence has been heard, you will be required to vote on the guilt or innocence of the defendant.

Prosecution's Opening Statement

Members of the jury, *Ms. Grear* will tell you how *Mr. Smith* assaulted *her* without provocation or apparent regard for anyone in *his* way. *She* will also tell you how *Mr. Smith* shouted slanderous and derogatory remarks toward her during this attack. *Ms. Grear* along with two other witnesses at the bar that evening will testify to the horrific nature of the crime. This, ladies and gentlemen, is a clear case of ***assault motivated by bias. This crime is a hate crime given the reason Ms. Grear was attacked is because of her sex (gender).***

Defense's Opening Statement

Members of the jury, my client, *Mr. Smith* has been charged with ***assault motivated by bias***. We will show that there is no evidence whatsoever to find *Mr. Smith* guilty of a ***hate crime***. Instead, we will show that *Mr. Smith* was merely defending *himself* against the unwanted sexual advances of *Ms. Grear* and did not intend to cause bodily harm. This case does not constitute ***assault motivated by bias***.

Judge: Prosecution, call your first witness.

Prosecution: The state calls *Ms. Jane Grear* to the stand.

Prosecution Direct Examination of *Ms. Grear*

P: *Ms. Grear* can you tell us in your own words what happened the night of May 29th, 2004?

JG: Yes. Some friends of mine and I decided to go out, have a few drinks, a little fun, nothing too crazy, maybe a little dancing. We went to this place I'd never been to before, the *****. It was pretty nice when we first got there, we had a drink and my friends went out on the dance floor to dance. I decided to walk around and see if there were any interesting people, you know. Um, then when my friends came back I was pointing out this *guy* that had smiled at me while I was walking around. I said that I thought *he* was pretty cute. My friends encouraged me to go talk to *him* but I was too shy at first. I

passed by *him* again later on and *he* smiled and nodded so I said “hi” and just kept walking. I wish I would have left at that point.

P: So what happened next, *Ms. Grear*?

JG: I finally got up the courage to go talk to *him*. I walked over when *he* was only talking to one other person...I didn't want to interrupt their conversation so I waited. I said “hello” and asked *him* if I could buy *him* a drink. *He* seemed a little surprised at first, but then *he* said “sure”. After I introduced myself we talked about what we do for a living, for fun, you know, just trying to get to know each other, I thought... then a slow song came on, one that I really like. I asked *him* to dance. *He* pulled away from me and when he turned back around *he* punched me in the stomach. I was so surprised that I just stood there. The bar was so crowded that I don't think anyone even saw what had happened. Then *he* started yelling at me, things like, “I don't dance with *dumb bitches*” and “Keep your hands off me, you *whore*”. Then *he* just started hitting me over and over again. I backed away and put my arms up, but I couldn't go very far, there were too many people for me to get away from *him* quickly. At some point I fell to the ground and the crowd sort of gathered around me and just watched him hitting and kicking me. Some girl got hit in the process of trying to get in the way of *his* punches. Eventually I blacked out and don't remember anything until I woke up in the emergency room at the hospital.

P: Did *Mr. Smith* use a weapon of any sort, other than *his* fist when *he* was hitting you?

JG: I don't know. I remember that *he* had a drink in *his* hand and I was told at the hospital that they pulled glass out of my arms, but I'm not sure if *he* hit me with the glass, or if there was just glass on the floor when I fell or what.

P: What injuries were you treated for at the hospital?

JG: I had two broken ribs, a broken finger, a broken nose, a concussion, and many cuts and bruises.

P: Did you receive any stitches for the cuts?

JG: Yes. All together I got 150 stitches in my face, neck, head, and arms.

P: *Ms. Grear*, why do you think *Mr. Smith* attacked you?

JG: I'm not sure. Everything seemed fine and then all of a sudden *he* just lost it. From the things he was yelling at me, I would say that I was attacked because *he* hates *women*.

P: *Ms. Grear*, do you think this was a hate crime?

JG: Yes, definitely.

P: Thank you *Ms. Grear*. No further questions.

Defense Cross Examination of *Ms. Grear*

D: *Ms. Grear*, would you say that you were “hitting on” *Mr. Smith* at this bar?

JG: No. I mean, I thought *he* was attractive and I was curious if *he* was interested or not, but I didn’t ask for *his* number or ask *him* out for a date or anything like that.

D: But you did ask *him* to slow dance with you?

JG: Yes.

D: When you were speaking with *Mr. Smith* before asking *him* to dance did you touch *him* in any way?

JG: I suppose I probably touched *his* arm when I was talking to *him*. It was loud in the bar with the music and everything so we had to stand very close to carry on a conversation.

D: Did *Mr. Smith* touch you at all during this conversation?

JG: I don’t remember.

D: What was your intention in speaking with *Mr. Smith* and asking *him* to dance?

JG: I guess to find out if *he* was interested in me or not.

D: Interested how? Sexually?

JG: Romantically maybe, but not sexually. For a possible date. I wasn’t trying to take anyone home with me that night.

D: Couldn’t you have just asked *him* if *he* was interested from the start of the conversation?

JG: I suppose, that just seems a little awkward.

D: *Ms. Grear* have you approached *men* in bars before?

JG: Yes.

D: And how have these *men* responded to your advances?

JG: Depends. Sometimes I get a date. Sometimes they say “no thank you”. Sometimes they get upset and tell me to “fuck-off”.

D: So you haven't always been met with approval in these types of settings?

JG: No. But I don't think anyone always is.

D: You testified that at some point you passed out and don't remember anything after that, correct?

JG: Yes.

D: Is it possible that someone other than my client may have attacked you?

JG: I only saw *Mr. Smith* hit me.

D: What about after you passed out?

JG: I guess it's possible.

D: Thank you. No further questions.

Prosecution Direct Examination of Witness #1: Mr. Alan Davis - Bartender

P: Mr. Davis, were you working at the ***** on the night of May 29th, 2004?

AD: Yes, I was tending bar at the South entrance.

P: Can you tell me if you recognize the victim, *Ms. Grear* and defendant, *Mr. Smith* from that evening?

AD: Yes. I remember both quite well.

P: Can you tell the court what you saw happen that night?

AD: Well, I didn't notice them talking or anything until they ordered drinks from me, *Ms. Grear* is actually the one who ordered both drinks. After that I didn't pay much attention to them, other than to notice that they were talking. A while later I heard *Mr. Smith* yelling at *Ms. Grear*. At first I assumed they were a couple having a fight and then I saw *Mr. Smith* punching *Ms. Grear*. I immediately called for bouncers to come break it up and tried to get around the bar to help *Ms. Grear* who was lying on the floor by now. I saw *Mr. Smith* punch and kick her repeatedly. I saw some girl in the crowd try to break it up and she got hit as well. By the time the bouncers got through the crowd it was obvious that *Ms. Grear* was not conscious so I called the ambulance right away. Then I helped try to clear the crowd out and waited near *Ms. Grear* until the EMTs arrived.

P: Did you hear anything that was said between *Ms. Grear* and the defendant?

AD: I only heard what *Mr. Smith* was yelling.

P: What did you hear *Mr. Smith* yell?

AD: *He* called *Ms. Grear* a *dumb bitch* and told *her* to keep *her* hands off *him*.

P: Did you see anyone else hit or kick *Ms. Grear*?

AD: No, not that I could tell through the crowd.

P: Did you see *Ms. Grear* hit *Mr. Smith* in an attempt to fight back or otherwise?

AD: No.

P: Thank you Mr. Davis.

Defense Cross Examination of Witness #1: Mr. Alan Davis - Bartender

D: Mr. Davis, how long have you worked at the *****?

AD: Three years.

D: Have you seen many fights in your bar in those three years?

AD: I guess so. Fights occur I'd say about once every couple of weeks.

D: Anyone ever taken to the hospital?

AD: Yes...it's our policy to call an ambulance if there is any blood or if anyone is unconscious.

D: Did you hear the conversation between *Ms. Grear* and my client, *Mr. Smith*?

AD: No, I didn't hear anything they were talking about until *Mr. Smith* starting yelling obscenities at *Ms. Grear*.

D: Thank you Mr. Davis. No further questions.

Prosecution Direct Examination of Witness #2: Ms. Isabel Salva

P: Ms. Salva, were you at the ***** the night of May 29th, 2004?

IS: Yes.

P: Did you see *Ms. Grear* and the defendant there that night?

IS: Yes I did.

P: Can you tell the court what you saw relevant to these proceedings that evening?

IS: I was standing at the bar near *Mr. Smith* most of the evening. I saw *Ms. Grear* come over and start talking to *him*. Then *he* started to yell at *her*. I got kind of nervous because I was standing so close that I couldn't move out of the way when *he* sort of shoved *her*. Then *Mr. Smith* just started hitting and kicking *her*. After *she* fell to the ground, I could see *she* was bleeding and no one was trying to help, so I stepped in the way of *Mr. Smith* and tried to get *him* to stop. I kept telling *him* "it's not worth it, you'll get arrested". But then *he* hit me and kept kicking *Ms. Grear*.

P: Did you sustain any injuries as a result of trying to help *Ms. Grear*?

IS: Yes, I had a cut above my eye that I had to get stitches for at the hospital.

P: Did you see anyone else hit or kick *Ms. Grear*?

IS: No.

P: Why do you think *Mr. Smith* was attacking *Ms. Grear*?

IS: Because he obviously hates *women*.

P: What made you think that was the reason?

IS: Because of what *he* was yelling at *her*. *He* kept calling *her* a *dumb bitch* and saying things like "only *sluts* hit on strangers in bars".

P: *Ms. Salva, would you consider this to be a hate crime?*

IS: *Yes*.

P: Thank you, no further questions.

Defense Cross Examination of Witness #2: Ms. Isabel Salva

D: Ms. Salva, you testified that you had been at the bar for a while that night, correct?

IS: Yes.

D: Were you drinking alcohol at the bar that night?

IS: Yes. I had a few drinks.

D: Would you say you were intoxicated at the time the fight broke out?

IS: Um, probably. They wouldn't let me drive home from the hospital because I was over the legal limit.

D: Did you hear *Ms. Grear* ask my client to dance?

IS: No. But I did hear *her* ask *Mr. Smith* if *she* could buy *him* a drink.

D: How would you describe my client's behavior after the fight broke out?

IS: It was scary. Like *he* didn't even see or hear me when I was trying to talk to *him*. *He* just kept hitting and kicking, like *he* was in a trance or something. *He* seemed very angry.

D: Thank you Ms. Salva.

Defense Direct Examination of Defendant: *Mr. Smith*

D: *Mr. Smith*, can you please tell the court in your own words what happened the night of May 29th, 2004 at the ***** in Minneapolis?

DS: Yes. I went out with a couple of friends to a different club at first, they were trying to set me up with this *chic*, but I wasn't interested so we left. When we got to the ***** I had already had a few drinks, we were just having a good time. Then this *woman* comes up to me and asks if *she* can buy me a drink. I noticed earlier that *she* was with a couple of other cute *girls* so I thought maybe one of them was interested and sent their friend over to talk to me. So *she* starts asking me all these questions about myself then *she* starts touching my arm and leaning in closer to talk to me. I started to get a little uncomfortable so I backed up next to the bar a bit. Then *she* asks me to dance to a slow song and I realized that *she* was hitting on me! Well I told *her* that I don't dance with people I don't know and I guess I must of hit *her* when I turned around. But *she* still wouldn't leave. *She* was completely freaking me out. I thought *she* was going to grab me and try to kiss me or something and then I just lost it. I mean *she* obviously wouldn't take "no" for an answer.

D: What happened then?

DS: I don't remember. I just flipped out and I can kind of remember yelling and then when the bouncers grabbed me I remember seeing *her* lying on the ground...but all the stuff in between was just anger. I just wanted *her* to leave me alone.

D: Why didn't you just tell *her* you weren't interested?

DS: I did. I told *her* to get *her* hands off me, but *she* still wouldn't leave.

D: Did you intend to harm *Ms. Grear*?

DS: No, I just felt freaked out and wanted *her* to go away.

D: Do you remember hitting Ms. Salva?

DS: No. I don't remember seeing her there at all.

D: Were you surprised that *Ms. Gear* asked you to dance?

DS: Hell yeah. I thought *she* had come over to talk to me about one of her friends.

D: Thank you *Mr. Smith*, no further questions.

Prosecution Cross Examination of Defendant: *Mr. Smith*

P: *Mr. Smith* you said that you had already had a couple of drinks before you got to the ***** , correct?

DS: Yes.

P: Did you have too much to drink that night?

DS: I don't know, I mean I wasn't wasted or anything.

P: You testified that you don't remember part of the evening. Did you black out?

DS: I guess so.

P: If you don't think you had too much to drink, what do you think caused you to black out?

DS: I'm not sure, I was pretty pissed off, maybe I was just too angry.

P: Do you hate *women*?

DS: No. I don't hate them. I've had plenty of *girlfriends*. I just don't like it when people try to push themselves on you when you're not interested.

P: Did you feel that *Ms. Gear* was pushing *herself* on you that evening?

DS: Yes. *She* was hitting on me.

P: And this made you angry?

DS: Well, more like freaked out.

P: But you blacked out because you were angry?

DS: When *she* hit on me I was freaked out, but when *she* wouldn't leave me alone, I got angry.

P: I see. *Mr. Smith* you said that you were at a different bar earlier where you were not interested in someone else. Did this person freak you out as well?

DS: No.

P: So you didn't get angry at *her* and hit *her* ?

DS: No.

P: Why didn't *she* scare you?

DS: Because *she* wasn't forcing *herself* on me.

P: After *Ms. Grear* fell to the floor and became unconscious why did you continue to hit *her*?

DS: I don't remember doing that.

P: *Mr. Smith do you think this was a hate crime?*

DS: *No way, I don't hate women.*

P: Thank you. No further questions.

Defense Direct Examination of Witness #3: Mr. Alex Harris - Friend

D: Mr. Harris, can you please tell us how you know the defendant?

AH: *Dan* and I are good friends. We've known each other for about four years.

D: Were you out with *Mr. Smith* the night of May 29th?

AH: Yes.

D: Did you see *him* talking with *Ms. Grear*?

AH: Yes.

D: How would you describe *his* actions after the fight broke out?

AH: I've never seen *him* like that. *He* seemed completely freaked out.

D: Have you ever seen *him* in a fight before?

AH: No, never. *He* can always find a reason to walk away.

D: Why do you think this fight happened?

AH: I don't know. It had to be something big for *him* to go off like that.

D: What kind of person would you characterize *Mr. Smith* to be?

AH: A good person. *He* is very caring, loyal, and *he* loves his family. *He's* just an all-around great friend.

D: Do you think *Mr. Smith* hates women?

AH: No.

D: Thank you Mr. Harris.

Prosecution Cross Examination of Witness #3: Mr. Alex Harris - Friend

P: Mr. Harris, you have known the defendant for four years and *he* has never been in a fight that you know of?

AH: Nothing bigger than an argument.

P: You said that *he* "freaked out", what do you mean by that?

AH: *He* just didn't seem like *himself*, like *he* was in a rage or something.

P: To your knowledge has someone ever made an unwanted sexual advance toward *Mr. Smith* prior to May 29th?

AH: Yeah, at bars we hang out at all the time.

P: And how did *he* react in those situations?

AH: *He* seemed fine. *He* made jokes about it and we sort of teased *him* a little.

P: *He* made jokes about it? What kind of jokes?

AH: Nothing bad, just how *he's* hot enough to attract any woman.

P: Was *he* polite to the person that hit on *him* then?

AH: Yeah. *He* just said *he* wasn't interested and the *woman* left him alone.

P: Mr. Harris, why didn't you do anything to stop the attack on *Ms. Grear* that night?

AH: At first I didn't know what was happening and I wasn't sure why the fight had started in the first place. After *she* fell to the ground I tried to get over to *Dan* to talk *him* down, but the crowd was too full and I couldn't get through.

P: Thank you. No further questions.

Prosecution Closing Statement

Ladies and gentlemen of the jury, there is no dispute that *Mr. Smith* violently attacked *Ms. Grear* the night of May 29th, 2004. All of the witnesses here, including *Mr. Smith's* own friend, saw *him* and only *him*, hit and kick *Ms. Grear* repeatedly. *Ms. Grear* incurred a number of injuries and spent a few days in the hospital as a result of this attack. Both *Ms. Grear* and two other witnesses testified to the slanderous and derogatory remarks that *he* shouted toward *his* victim before and during the attack. Ladies and gentlemen, this clearly shows intent on the part of *Mr. Smith* to inflict harm on *his* victim. After hearing the words that were shouted during the attack, there should be no doubt that *Mr. Smith* is guilty of **assault motivated by bias and according to the hate crime sentencing enhancement act**, should be punished accordingly. Thank you for your time.

Defense Closing Statement

Jury members, although others present that evening say they witnessed my client attacking *Ms. Grear*, *he* does not remember that at all. Ladies and gentlemen, my client was so frightened and eventually angered by the actions of *Ms. Grear* that *he* simply reacted poorly to a bad situation. My client, *Mr. Smith* did not intend to harm *Ms. Grear*. *His* only intention was to defend *himself* against an unwanted sexual advance. This case lacks the intent needed to constitute assault. **Furthermore, this case is not a hate crime as my client did not seek out *Ms. Grear* because she was female.** He simply wanted her to leave him alone. I am certain that you will find my client, *Mr. Smith* not guilty. Thank you.

Judge's Closing Statement

Members of the jury, you have heard all the arguments presented by both the District Attorney and defense lawyer and are now required to come to a decision regarding the guilt or innocence of *Mr. Smith*.

Jury members are reminded that in order to find *Mr. Smith* guilty of **assault motivated by bias or a hate crime**, there must be sufficient evidence that there was intent to inflict great bodily harm to the victim and that the victim in this case was assaulted because of *her* actual or perceived sex (gender). The State must prove all of the essential elements

of the crime charged by proof beyond a reasonable doubt. The State is not required to prove guilt beyond all doubt, but beyond a reasonable doubt.

Appendix F
Questionnaires

Demographic Questionnaire

Please provide the following information:

Age: _____

Sex: _____ Female
_____ Male
_____ Prefer not to say

Race: _____ African American / Black
_____ Asian American
_____ Caucasian / White
_____ Hispanic
_____ Native American
_____ Other: _____
_____ Prefer not to say

Sexual Orientation:

_____ Heterosexual
_____ Gay man
_____ Lesbian
_____ Bisexual
_____ Prefer not to say

Level of Education:

_____ First Year _____ Junior _____ Grad Student
_____ Sophomore _____ Senior _____ Other/Prefer not to say

“Home” state (i.e., state in which you have lived most of your life): _____

State you live in now: _____

Individual Juror Verdict

Juror Number: _____

On the basis of the evidence, my vote is that *Daniel Smith* is:

Guilty of Assault *motivated by bias (hate crime)* _____

Not-guilty _____

Private Belief Rating Scale

Juror # _____

With this questionnaire, you are being asked to circle the one number that best describes your private belief that *Daniel Smith* should or should not be convicted of assault. You are not being asked to state whether you believe there is sufficient evidence to convict in a court of law. Rather, it is asking about your personal and private belief.

Please circle one number that best describes your private belief about whether *Daniel Smith* should or should not be convicted.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain <i>Daniel Smith</i> Should NOT BE Convicted						Certain <i>Daniel Smith</i> SHOULD BE Convicted				

Perceptions

Juror Number: _____

Given the following rating scale, please indicate the extent to which you agree or disagree with the following statements.

Strongly Disagree				Neither Agree Nor Disagree				Strongly Agree
0	1	2	3	4	5	6		

_____ 1. The victim is partly to blame for the actions of the defendant.

_____ 2. The defendant is solely to blame for the events that took place in the bar that evening.

- _____ 3. The defendant's actions are **not** the results of the victim's sex (gender).
- _____ 4. The defendant's actions were reasonable.
- _____ 5. The victim should know to be more careful about approaching someone they do not know in a bar.
- _____ 6. The defendant's actions were the result of unwanted advances by the victim.
- _____ 7. The defendant deliberately intended to inflict injury on the victim.
- _____ 8. The defendant's actions were under *his* control.
- _____ 9. The defendant was provoked.
- _____ 10. The defendant's actions were justified.
- _____ 11. The victim deserved it.
- _____ 12. Any reasonable *man* would have acted the same as the defendant.
- _____ 13. The defendant is mentally unstable.
- _____ 14. The victim is mentally unstable.
- _____ 15. The defendant committed a hate crime.

Personal Decision

Juror # _____

1. Please list, as briefly as possible, the reasons for your personal decision in this case.

Appendix G

Classification Schema; Study 2

Statements made by participants from the Personal Decision questionnaire were classified into six types of arguments used to support their decision in the case. This table provides examples of statements made.

1. Legal Arguments

Guilty

“Her violent assault was without question an assault with intent to harm.”
“Self-defense is not a good enough excuse for beating another person unconscious.”

Not Guilty

“Not enough evidence to decide guilty beyond a reasonable doubt.”
“Not guilty of a hate crime/bias because she didn’t seek him out to injure him.”

2. Physical Evidence

Guilty

“He should be punished for physically hurting someone else.”
“She used many derogatory terms.”

Not Guilty

“People yell insulting and derogatory remarks at people all the time, especially in bar situations.”
“There isn’t enough conclusive evidence that connects her to the crime. Three people witnessed her yelling and assaulting him but with the extent of his injuries it couldn’t be her.”

3. Morality Statements

Guilty

“She acted inappropriately.”
“In any case, whether or not she was forcing herself on him, a man should not hit a woman, he should be able to control himself.”

Not Guilty

“She was frightened and panicked. She did it as a means for him to get away from her.”

“He no doubt attacked her. Maybe having a bad week.”

4. Victim-Related Statements

Guilty

“No violence toward a woman that is that extreme should go unpunished. She is far weaker than him.”

“The only thing the man did was touch her arm when she didn’t want to be touched.”

Not Guilty

“He was hitting on her in an obscene way.”

“Advances from the girl means she tried to get him so it shouldn’t be his fault. She is trying to exploit the situation.”

5. Witness and/or Perpetrator Credibility

Guilty

“Just because he doesn’t remember what happened doesn’t make him not guilty.”

“A number of witnesses saw the incident describing him hitting her.”

Not Guilty

“Her friend claimed she was a calm, loyal, caring individual.”

“Never attacked a woman before. Maybe he mistook the situation.”

6. Extra-Legal Factors

Guilty

“The alcohol influenced his anger.”

“He was at another bar and didn’t freak out.”

Not Guilty

“Both had been drinking.”

“It could have been the result of too much alcohol.”

Appendix H Transcript

Note: This transcript depicts the condition in which participants will read about a same-sex attack by a man against a gay man that has been labeled “assault motivated by bias or a hate crime” and has taken place in a local bar (i.e., not a gay bar) and where “provocation” on the part of the victim was present.

*Details of location that will change depending upon condition appear in *italics*.

Details of presence or absence of “provocation” that will change depending upon condition appear in *bold italics***.

Judge’s Opening Statement

Judge: Good afternoon. This proceeding is a trial of the defendant, Mr. Daniel Smith, who has been charged with assault motivated by bias or a hate crime perpetrated against Mr. James Grear. Mr. Smith is being prosecuted by the District Attorney’s office for committing assault motivated by bias or a hate crime against Mr. Grear. Mr. Smith will be represented by his lawyer. We will hear opening statements from the prosecution and defense. This will be followed by direct examination of the prosecution’s witnesses and cross examination by the defense. Direct examination of the defense witnesses and cross examination of those witnesses by the prosecution will follow. Each will give closing statements.

The issue at this trial is whether Mr. Smith committed assault motivated by bias or a hate crime against Mr. Grear during the evening of May 29th, 2005 at a downtown Minneapolis, MN bar. The defendant pleaded not guilty. Before the defendant can be convicted, the State must prove all the essential elements of the offense beyond a reasonable doubt. The fact that the defendant has been charged with a criminal offense is not evidence and must not be considered by you as evidence.

Assault motivated by bias is defined by this state in the following statute:

609.221 Great bodily harm. Whoever assaults another with intent to inflict great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$30,000, or both. *Plus:*

Hate Crime Sentencing Enhancement Act (28 U.S.C 994)

Congress enacted a federal complement to state hate crime penalty-enhancement statutes in the 1994 crime bill. This provision required the United States Sentencing Commission to increase the penalties for crimes in which the victim was selected "because of the

actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." This measure applies to attacks and vandalism which occur in national parks and on federal property.

609.2231 Assaults motivated by bias. (a) Whoever assaults another because of the victim's or another's actual or perceived race, color, religion, sex, sexual orientation, disability as defined in section 363A.03, age, or national origin may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

363A.03 Sexual orientation. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.

After all evidence has been heard, you will be required to vote on the guilt or innocence of the defendant.

Prosecution's Opening Statement

Members of the jury, Mr. Grear will tell you how Mr. Smith assaulted him without provocation or apparent regard for anyone in his way. He will also tell you how Mr. Smith shouted slanderous and derogatory remarks toward him during this attack. Mr. Grear along with two other witnesses at the bar that evening will testify to the horrific nature of the crime. This, ladies and gentlemen, is a clear case of assault motivated by bias. This crime is a hate crime given the reason Mr. Grear was attacked is because of his perceived sexual orientation.

Defense's Opening Statement

Members of the jury, my client, Mr. Smith has been charged with assault motivated by bias. We will show that there is no evidence whatsoever to find Mr. Smith guilty of a hate crime. Instead, we will show that Mr. Smith was merely defending himself against the unwanted sexual advances of Mr. Grear and did not intend to cause bodily harm. This case does not constitute assault motivated by bias.

Judge: Prosecution, call your first witness.

Prosecution: The state calls Mr. James Grear to the stand.

Prosecution Direct Examination of Mr. Grear

P: Mr. Grear can you tell us in your own words what happened the night of May 29th, 2005?

JG: Yes. Some friends of mine and I decided to go out, have a few drinks, a little fun, nothing too crazy, maybe a little dancing. We went to this place I'd never been to before, the *****. It was pretty nice when we first got there, we had a drink and my friends went out on the dance floor to dance. I decided to walk around and see if there were any interesting people, you know. Um, then when my friends came back I was pointing out this guy that had smiled at me while I was walking around. I said that I thought he was pretty cute. My friends encouraged me to go talk to him but I was too shy at first. I passed by him again later on and he smiled and nodded so I said "hi" and just kept walking. I wish I would have left at that point.

P: So what happened next, Mr. Grear?

JG: I finally got up the courage to go talk to him. I walked over when he was only talking to one other person...I didn't want to interrupt their conversation so I waited. I said "hello" and asked him if I could buy him a drink. He seemed a little surprised at first, but then he said "sure". *After I introduced myself we talked about what we do for a living, for fun, you know, just trying to get to know each other, I thought... then a slow song came on, one that I really like. I put my arm around him and asked him to dance.* He pulled away from me and when he turned back around he punched me in the stomach. I was so surprised that I just stood there. The bar was so crowded that I don't think anyone even saw what had happened. Then he started yelling at me, things like, "I don't dance with fags" and "Keep your queer hands off me, you homo". Then he just started hitting me over and over again. I backed away and put my arms up, but I couldn't go very far, there were too many people for me to get away from him quickly. At some point I fell to the ground and the crowd sort of gathered around me and just watched him hitting and kicking me. Some girl got hit in the process of trying to get in the way of his punches. Eventually I blacked out and don't remember anything until I woke up in the emergency room at the hospital.

P: Did Mr. Smith use a weapon of any sort, other than his fist when he was hitting you?

JG: I don't know. I remember that he had a drink in his hand and I was told at the hospital that they pulled glass out of my arms, but I'm not sure if he hit me with the glass, or if there was just glass on the floor when I fell or what.

P: What injuries were you treated for at the hospital?

JG: I had two broken ribs, a broken finger, a broken nose, a concussion, and many cuts and bruises.

P: Did you receive any stitches for the cuts?

JG: Yes. All together I got 150 stitches in my face, neck, head, and arms.

P: Mr. Grear, why do you think Mr. Smith attacked you?

JG: I'm not sure. Everything seemed fine and then all of a sudden he just lost it. From the things he was yelling at me, I would say that I was attacked because I am a gay man.

P: Mr. Gear, do you think this was a hate crime?

JG: Yes, definitely.

P: Thank you Mr. Gear. No further questions.

Defense Cross Examination of Mr. Gear

D: Mr. Gear, you just testified that you are a gay man. Was the bar you were at considered a gay bar?

JG: *No, I guess not.*

D: Would you say that you were "hitting on" Mr. Smith at this bar?

JG: No. I mean, I thought he was attractive and I was curious if he was interested or not, but I didn't ask for his number or ask him out for a date or anything like that.

D: *But you did ask him to slow dance with you?*

JG: *Yes.*

D: When you were speaking with Mr. Smith *before asking him to dance* did you touch him in any way?

JG: *I put my arm around him before I asked him to dance.* It was loud in the bar with the music and everything so we had to stand very close to carry on a conversation.

D: Did Mr. Smith touch you at all during this conversation?

JG: I don't remember.

D: What was your intention in speaking with Mr. Smith *and asking him to dance?*

JG: I guess to find out if he was interested in me or not.

D: Interested how? Sexually?

JG: Romantically maybe, but not sexually. For a possible date. I wasn't trying to take anyone home with me that night.

D: Couldn't you have just asked him if he was interested from the start of the conversation?

JG: I suppose, that just seems a little awkward.

D: Mr. Gear have you approached men in bars *that you know to not be considered gay bars* before?

JG: Yes.

D: And how have these men responded to your advances?

JG: Depends. Sometimes I get a date. Sometimes they say "no thank you". Sometimes they get upset and tell me to "fuck-off".

D: So you haven't always been met with approval in these types of settings?

JG: No. But I don't think anyone *always* is.

D: Isn't it a greater risk to you knowing that the person you're hitting on may not be gay?

JG: I don't think it makes a difference. If you're not interested, you're not interested, regardless of sexual orientation. It's a risk everyone takes if they're trying to find out if someone's interested in them or not.

D: You testified that at some point you passed out and don't remember anything after that, correct?

JG: Yes.

D: Is it possible that someone other than my client may have attacked you?

JG: I only saw Mr. Smith hit me.

D: What about after you passed out?

JG: I guess it's possible.

D: Thank you. No further questions.

Prosecution Direct Examination of Witness #1: Mr. Alan Davis - Bartender

P: Mr. Davis, were you working at the ***** on the night of May 29th, 2005?

AD: Yes, I was tending bar at the South entrance.

P: Can you tell me if you recognize the victim, Mr. Gear and defendant, Mr. Smith from that evening?

AD: Yes. I remember both quite well.

P: Can you tell the court what you saw happen that night?

AD: Well, I didn't notice them talking or anything until they ordered drinks from me, Mr. Gear is actually the one who ordered both drinks. After that I didn't pay much attention to them, other than to notice that they were talking. A while later I heard Mr. Smith yelling at Mr. Gear. At first I assumed they were a couple having a fight and then I saw Mr. Smith punching Mr. Gear. I immediately called for bouncers to come break it up and tried to get around the bar to help Mr. Gear who was lying on the floor by now. I saw Mr. Smith punch and kick him repeatedly. I saw some girl in the crowd try to break it up and she got hit as well. By the time the bouncers got through the crowd it was obvious that Mr. Gear was not conscious so I called the ambulance right away. Then I helped try to clear the crowd out and waited near Mr. Gear until the EMTs arrived.

P: Did you hear anything that was said between Mr. Gear and the defendant?

AD: I only heard what Mr. Smith was yelling.

P: What did you hear Mr. Smith yell?

AD: He called Mr. Gear a fag and told him to keep his queer hands off him.

P: Did you see anyone else hit or kick Mr. Gear?

AD: No, not that I could tell through the crowd.

P: Did you see Mr. Gear hit Mr. Smith in an attempt to fight back or otherwise?

AD: No.

P: Thank you Mr. Davis.

Defense Cross Examination of Witness #1: Mr. Alan Davis - Bartender

D: Mr. Davis, how long have you worked at the *****?

AD: Three years.

D: Have you seen many fights in your bar in those three years?

AD: I guess so. Fights occur I'd say about once every couple of weeks.

D: Anyone ever taken to the hospital?

AD: Yes...it's our policy to call an ambulance if there is any blood or if anyone is unconscious.

D: Did you hear the conversation between Mr. Gear and my client, Mr. Smith?

AD: No, I didn't hear anything they were talking about until Mr. Smith starting yelling obscenities at Mr. Gear.

D: Thank you Mr. Davis. No further questions.

Prosecution Direct Examination of Witness #2: Ms. Isabel Salva

P: Ms. Salva, were you at the ***** the night of May 29th, 2005?

IS: Yes.

P: Did you see Mr. Gear and the defendant there that night?

IS: Yes I did.

P: Can you tell the court what you saw relevant to these proceedings that evening?

IS: I was standing at the bar near Mr. Smith most of the evening. I saw Mr. Gear come over and start talking to him. Then he started to yell at him. I got kind of nervous because I was standing so close that I couldn't move out of the way when he sort of shoved him. Then Mr. Smith just starting hitting and kicking him. After he fell to the ground, I could see he was bleeding and no one was trying to help, so I stepped in the way of Mr. Smith and tried to get him to stop. I kept telling him "it's not worth it, you'll get arrested". But then he hit me and kept kicking Mr. Gear.

P: Did you sustain any injuries as a result of trying to help Mr. Gear?

IS: Yes, I had a cut above my eye that I had to get stitches for at the hospital.

P: Did you see anyone else hit or kick Mr. Gear?

IS: No.

P: Why do you think Mr. Smith was attacking Mr. Gear?

IS: Because he's gay.

P: What made you think that was the reason?

IS: Because of what he was yelling at him. He kept calling him a fag and a queer and stuff like that.

P: Ms. Salva, would consider this to be a hate crime?

IS: Yes.

P: Thank you, no further questions.

Defense Cross Examination of Witness #2: Ms. Isabel Salva

D: Ms. Salva, you testified that you had been at the bar for a while that night, correct?

IS: Yes.

D: Were you drinking alcohol at the bar that night?

IS: Yes. I had a few drinks.

D: Would you say you were intoxicated at the time the fight broke out?

IS: Um, probably. They wouldn't let me drive home from the hospital because I was over the legal limit.

D: Did you hear Mr. Grear ask my client to dance?

IS: No. But I did hear him ask Mr. Smith if he could buy him a drink.

D: How would you describe my client's behavior after the fight broke out?

IS: It was scary. Like he didn't even see or hear me when I was trying to talk to him. He just kept hitting and kicking, like he was in a trance or something. He seemed very angry.

D: Thank you Ms. Salva.

Defense Direct Examination of Defendant: Mr. Smith

D: Mr. Smith, can you please tell the court in your own words what happened the night of May 29th, 2005 at the ***** in Minneapolis?

DS: Yes. I went out with a couple of friends to a different club at first, they were trying to set me up with this chic, but I wasn't interested so we left. When we got to the ***** I had already had a few drinks, we were just having a good time. Then this man comes up to me and asks if he can buy me a drink. I noticed earlier that he was with

a couple of cute girls so I thought maybe one of them was interested and sent their friend over to talk to me. *So he starts asking me all these questions about myself then he starts touching my arm and leaning in closer to talk to me.* I started to get a little uncomfortable so I backed up next to the bar a bit. *Then he put his arm around me and asked me to dance to a slow song and I realized that he was hitting on me!* Well I'm no fag, so I told him that and I guess I must of hit him when I turned around. But he still wouldn't leave. He was completely freaking me out. I thought he was going to grab me and try to kiss me or something and then I just lost it. I mean he obviously wouldn't take "no" for an answer.

D: What happened then?

DS: I don't remember. I just flipped out and I can kind of remember yelling and then when the bouncers grabbed me I remember seeing him lying on the ground...but all the stuff in between was just anger. I just wanted him to leave me alone.

D: Why didn't you just tell him you weren't interested?

DS: I did. I told him to get his hands off me, but he still wouldn't leave.

D: Did you intend to harm Mr. Grear?

DS: No, I just felt scared and wanted him to go away.

D: Do you remember hitting Ms. Salva?

DS: No. I don't remember seeing her there at all.

D: *Were you surprised that Mr. Grear asked you to dance?*

DS: Hell yeah. *We weren't in a gay bar or anything...maybe if we were I would've expected it or something, but I thought he was asking me questions for one of his friends.*

D: Thank you Mr. Smith, no further questions.

Prosecution Cross Examination of Defendant: Mr. Smith

P: Mr. Smith you said that you had already had a couple of drinks before you got to the ***** , correct?

DS: Yes.

P: Did you have too much to drink that night?

DS: No. I wasn't wasted or anything.

P: You testified that you don't remember part of the evening. Did you black out?

DS: I guess so.

P: If you don't think you had too much to drink, what do you think caused you to black out?

DS: I'm not sure, I was pretty pissed off, maybe I was just too angry.

P: Do you hate gay men?

DS: No. I don't hate them. I don't agree with their lifestyle, but as long as they don't push it on me, they're fine.

P: Did you feel that Mr. Grear was pushing his "lifestyle" on you that evening?

DS: Yes. He was hitting on me.

P: And this made you angry?

DS: Well, more like scared.

P: But you blacked out because you were angry?

DS: When he hit on me I was scared, but when he wouldn't leave me alone, I got angry.

P: I see. Mr. Smith you said that you were at a different bar earlier where you were not interested in someone else. Did this person scare you as well?

DS: No.

P: So you didn't get angry at her and hit her?

DS: No.

P: Why didn't she scare you?

DS: Because she was a woman...not a gay guy.

P: After Mr. Grear fell to the floor and became unconscious why did you continue to hit him?

DS: I don't remember doing that.

P: Do you consider yourself to be homophobic Mr. Smith?

DS: No, I have a couple of friends who are gay.

P: But if a gay man hits on you this makes you feel scared?

DS: Yeah, I just didn't know what to do.

P: You couldn't think of another way to handle the situation other than beating him to the point of unconsciousness and later hospitalization?

DS: I already said I don't remember doing that.

P: Mr. Smith do you think this was a hate crime?

DS: No way, I don't hate people just because they're different than me, even if I don't agree with what they do.

P: Thank you. No further questions.

Defense Direct Examination of Witness #3: Mr. Alex Harris - Friend

D: Mr. Harris, can you please tell us how you know the defendant?

AH: Dan and I are good friends. We've known each other for about four years.

D: Were you out with Mr. Smith the night of May 29th?

AH: Yes.

D: Did you see him talking with Mr. Grear?

AH: Yes.

D: How would you describe his actions after the fight broke out?

AH: I've never seen him like that. He seemed completely freaked out.

D: Have you ever seen him in a fight before?

AH: No, never. He can always find a reason to walk away.

D: Why do you think this fight happened?

AH: I don't know. It had to be something big for him to go off like that.

D: What kind of person would you characterize Mr. Smith to be?

AH: A good person. He is very caring, loyal, and he loves his family. He's just an all-around great friend.

D: Would you consider Mr. Smith to be homophobic?

AH: No. I've never heard him say a bad thing about homosexuals.

D: Thank you Mr. Harris.

Prosecution Cross Examination of Witness #3: Mr. Alex Harris - Friend

P: Mr. Harris, you have known the defendant for four years and he has never been in a fight that you know of?

AH: Nothing bigger than an argument.

P: You said that he "freaked out", what do you mean by that?

AH: He just didn't seem like himself, like he was in a rage or something.

P: To your knowledge has Mr. Smith ever been hit on by a member of the same sex prior to May 29th?

AH: Yeah, at a gay bar we went to with some female friends once

P: And how did he react in that situation?

AH: He seemed fine. He made jokes about it and we sort of teased him a little.

P: He made jokes about it? What kind of jokes?

AH: Nothing bad, just how he's hot enough to attract members of both sexes. Stuff like that.

P: Was he polite to the person that hit on him then?

AH: Yeah. He just said he was straight and the man left him alone.

P: Mr. Smith testified that he disagrees with the lifestyle of gay men and lesbians. Why would he go to a gay bar?

AH: We went for a friend's birthday party.

P: Mr. Harris, why didn't you do anything to stop the attack on Mr. Grear that night?

AH: At first I didn't know what was happening and I wasn't sure why the fight had started in the first place. After he fell to the ground I tried to get over to Dan to talk him down, but the crowd was too full and I couldn't get through.

P: Thank you. No further questions.

Prosecution Closing Statement

Ladies and gentlemen of the jury, there is no dispute that Mr. Smith violently attacked Mr. Grear the night of May 29th, 2005. All of the witnesses here, including Mr. Smith's own friend, saw him and only him, hit and kick Mr. Grear repeatedly. Mr. Grear incurred a number of injuries and spent a few days in the hospital as a result of this attack. Both Mr. Grear and two other witnesses testified to the slanderous and derogatory remarks that he shouted toward his victim before and during the attack. Ladies and gentlemen, this clearly shows intent on the part of Mr. Smith to inflict harm on his victim. After hearing the words that were shouted during the attack, there should be no doubt that Mr. Smith is guilty of assault motivated by bias and according to the hate crime sentencing enhancement act, should be punished accordingly. Thank you for your time.

Defense Closing Statement

Jury members, although others present that evening say they witnessed my client attacking Mr. Grear, he does not remember that at all. Ladies and gentlemen, my client was so frightened and eventually angered by the actions of Mr. Grear that he simply reacted poorly to a bad situation. My client, Mr. Smith did not intend to harm Mr. Grear. His only intention was to defend himself against the sexual advances of a gay man. This case lacks the intent needed to constitute assault. Furthermore, this case is not a hate crime as my client did not seek out Mr. Grear because he was gay. He simply wanted him to leave him alone. I am certain that you will find my client, Mr. Smith not guilty. Thank you.

Judge's Closing Statement

Members of the jury, you have heard all the arguments presented by both the District Attorney and defense lawyer and are now required to come to a decision regarding the guilt or innocence of Mr. Smith.

Jury members are reminded that in order to find Mr. Smith guilty of assault motivated by bias or a hate crime, there must be sufficient evidence that there was intent to inflict great bodily harm to the victim and that the victim in this case was assaulted because of his actual or perceived sexual orientation. The State must prove all of the essential elements of the crime charged by proof beyond a reasonable doubt. The State is not required to prove guilt beyond all doubt, but beyond a reasonable doubt.

Appendix I
Questionnaires

Demographic Questionnaire

Please provide the following information:

Age: _____

Sex: _____ Female
_____ Male
_____ Prefer not to say

Race: _____ African American / Black
_____ Asian American
_____ Caucasian / White
_____ Hispanic
_____ Native American
_____ Other: _____
_____ Prefer not to say

Sexual Orientation:

_____ Heterosexual
_____ Gay man
_____ Lesbian
_____ Bisexual
_____ Prefer not to say

Level of Education:

_____ First Year _____ Junior _____ Grad Student
_____ Sophomore _____ Senior _____ Other/Prefer not to say

“Home” state (i.e., state in which you have lived most of your life): _____

State you live in now: _____

Individual Juror Verdict

Juror Number: _____

On the basis of the evidence, my vote is that Daniel Smith is:

Guilty of Assault motivated by bias (hate crime) _____

Not-guilty _____

Private Belief Rating Scale

Juror # _____

With this questionnaire, you are being asked to circle the one number that best describes your private belief that Daniel Smith should or should not be convicted of assault. You are not being asked to state whether you believe there is sufficient evidence to convict in a court of law. Rather, it is asking about your personal and private belief.

Please circle one number that best describes your private belief about whether Daniel Smith should or should not be convicted.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain Daniel Smith Should NOT BE Convicted						Certain Daniel Smith SHOULD BE Convicted				

Perceptions

Juror Number: _____

Given the following rating scale, please indicate the extent to which you agree or disagree with the following statements.

Strongly Disagree				Neither Agree Nor Disagree					Strongly Agree
0	1	2	3	4	5	6			

- _____ 1. The victim is partly to blame for the actions of the defendant.
- _____ 2. The defendant is solely to blame for the events that took place in the bar that evening.

- _____ 3. The defendant's actions are **not** the results of the victim's sexual orientation.
- _____ 4. The defendant's actions were reasonable.
- _____ 5. The victim should know to be more careful about approaching someone whose sexual orientation is unknown.
- _____ 6. The defendant's actions were the result of unwanted advances by the victim.
- _____ 7. The defendant deliberately intended to inflict injury on the victim.
- _____ 8. The defendant's actions were under his control.
- _____ 9. The defendant was provoked.
- _____ 10. The defendant's actions were justified.
- _____ 11. The victim deserved it.
- _____ 12. Any reasonable man would have acted the same as the defendant.
- _____ 13. The defendant is mentally unstable.
- _____ 14. The victim is mentally unstable.
- _____ 15. The defendant committed a hate crime.

Personal Decision

Juror # _____

1. Please list, as briefly as possible, the reasons for your personal decision in this case.

Appendix J

Classification Schema; Study 3

Statements made by participants from the Personal Decision questionnaire were classified into six types of arguments used to support their decision in the case. This table provides examples of statements made.

1. Legal Arguments

Guilty

“He obviously attacked him with intent to severely hurt him.”

“Not considered self-defense.”

Not Guilty

“He did not seek him out and ask him if he was gay, it wasn’t his intent to harm.”

“He was being defensive.”

2. Physical Evidence

Guilty

“He beat him unconscious while yelling obscenities.”

“He did hit him.”

Not Guilty

“I think more went on than just words exchanged between them.”

3. Morality Statements

Guilty

“I don’t think it is right for someone to get hurt because they were hitting on them.”

“You can’t just go beat someone because they are gay.”

4. Victim-Related Statements

Guilty

“No one saw the victim do anything wrong.”

“No harmful actions initiated by victim.”

Not Guilty

“He didn’t feel comfortable with a gay pushing his lifestyle on him. When he didn’t go away, he got upset and defensive like any man would.”

“The victim should go to gay bars if he is looking for men.”

5. Witness and/or Perpetrator Credibility

Guilty

“He could have avoided harming him if he had the ability to control himself.”

“Claiming he didn’t hate gay people but his actions showed differently.”

Not Guilty

“The friend’s account of what the defendant is really like.”

“He had been hit on by gay men before and did not have a problem.”

6. Extra-Legal Factors

Guilty

“He shouldn’t have acted that way at a gay bar.”

“The attack was unprovoked.”

Not Guilty

“It is an awkward situation and he probably had too much to drink.”

“Something must have been done to provoke such a brutal attack.”

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