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DECISION MAKING THEORIES OF RETALIATION

By

Katlyn S. Farnum

A DISSERTATION

Presented to the Faculty of
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Major: Psychology

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DECISION MAKING THEORIES OF RETALIATION

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University of Nebraska, 2016

Advisor: Richard L. Wiener

In 2013, the Supreme Court decided, in *University of Texas Southwestern Medical Center v Nassar*, that Title VII retaliation claims should be interpreted under the stricter but-for causality instructions. This requires claims of retaliation to show that the plaintiff's discrimination complaint (or involvement in a discrimination claim) is the direct cause of the adverse action, as compared to a motivating factor that is required under the less strict motivating factor causal instructions. The current research examines the role of regulatory focus (promotion v. prevention), causal instructions, employment action (promotion v. dismissal), and number of claims considered on both juror (Study 1 and Study 2) and employer (Study 3) decision making. In line with previous research, jurors in Study 1 and 2 found for the plaintiff more often under mixed motive instructions but for the defendant more often under but-for instructions for retaliation claims. Study 3 did not find effects of causal instructions but did support previous research that people are more likely to take harsher actions for acts of omission (denying a promotion) than acts of commission (dismissing from a job). Implications for psychological theory, policy, law, and future research are discussed.

Dedication

To Ryan, for all of your support and willingness to join me in this journey.

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Chapter 1: Introduction

Retaliation, as defined in §2000e-3a of *Title VII of the Civil Rights Act*, is any discriminatory act against an employee or applicant "because [the employee] has opposed any practice made an unlawful practice by this subchapter, or because [the employee] had made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing." That is, if an employee participates in any claim or investigation concerning a discriminatory practice and the employer treats the employee adversely because of his or her involvement, then the company may be liable for retaliation. Individuals protected under the anti-retaliation provision include those who have filed a complaint (or been involved with the investigation of a complaint) based on race, color, national origin, religion, and sex. The inclusion of an anti-retaliation provision is necessary for the enforcement of Title VII because legally protecting individuals who wish to file a complaint will encourage individuals to make the initial complaint. Specifically, if an employee is unprotected from adverse treatment that results from a complaint, she or he will likely be disinclined to file the initial complaint (Naquin, 2013). Developing an understanding of how jurors and employers perceive acts of retaliation is becoming increasingly important with recent court cases (*University of Texas Southwestern Medical Center v. Nassar*, 2014). Additionally, claims of retaliation filed under Title VII are on the rise. In 2014, 34.7% of the 88,778 total claims made to the EEOC (Equal Employment Opportunity Commission) were Title VII retaliation actions. Though this is down 3% from 2013 (potentially as a result of *Nassar*), the proportion of retaliation claims within the larger EEOC pool has steadily increased in the last 14 years from 24.7% in 2000 to 36% in 2013).

Despite the rise in retaliation claims and the changing case law, very few empirical researchers have investigated the issue. In order to fully understand how to approach the study of retaliation, it is important to understand the legal underpinnings of retaliation in the workplace. The first section of this paper will explore the lengthy and complicated case history and legal doctrine of Title VII retaliation. Then I will introduce social psychological theories of motivation and decision making as possible explanations for the way in which people interpret and consider retaliation both from the perspective of a juror and an employer.

Legal Theory and Doctrine of Title VII Retaliation

Plaintiffs bring discriminatory actions under *Title VII* under two broad definitions: disparate impact and disparate treatment. Disparate impact is any facially neutral employment practice that has a disproportionate adverse impact on a specific protected class (Seiner, 2006; *Griggs v. Duke Power*, 1971). *Griggs v. Duke Power* (1971) was the first case to expand *Title VII* to encompass disparate impact. William Griggs filed a class action lawsuit on behalf of himself and several African American employees working at Duke Power Company alleging that the company's inside transfer policy discriminated against African American employees because it required minimum scores on two aptitude tests in addition to a high school diploma. The Supreme Court, in an 8-0 decision, determined that even though the test was facially neutral, the company intended to use it to keep less educated African American employees from advancing. Chief Justice Burger stated: "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability." The Supreme Court

further extended the prohibition of disparate impact in their decision in *Watson v. Fort Worth Bank & Trust* (1988) where Watson alleged disparate impact after she had applied four times for a promotion within the bank and was denied each time. The company did not have any clear requirements for determination of promotion so that the Supreme Court decided to scrutinize the company's discretionary decision making under a disparate impact theory.

Disparate treatment is an action taken against an individual because of the individual's membership in a protected class (Seiner, 2006; *Teamsters v. United States*, 1977; *Slack v. Havens*, 1975). Unlike disparate impact, disparate treatment requires proof of discriminatory intent or motivation on the part of the employer (*Teamsters v. United States*, 1977). *Slack v. Havens* (1973) illuminates the process that gives rise to an inference of intent. The black plaintiffs worked in the bonding and coating department of a plant alongside a white co-worker. At the end of their workday, the crew chief informed the plaintiffs that they would have to complete a deep and thorough cleaning of the department, a task that their job description did not outline. Organizational officials excused a white co-worker moving her to another department the day of the cleaning and brought in a different worker, who was black, to replace her for the cleaning. During the trial it came to light that one of the supervisors had commented to a plaintiff "colored folks were hired to clean because they clean better" and "colored folks should stay in their place." The 9th Circuit Court found that the company, through the supervisor, intended to discriminate based on race by making their black employees perform more unpleasant and degrading tasks than their white employees. Ultimately, the Supreme Court distinguished between disparate impact and treatment in *Teamsters* when they

wrote that "Undoubtedly disparate treatment was the most obvious evil Congress had in mind when it enacted Title VII" and went on to stress that proof of discriminatory motive is not required for disparate impact but is the cornerstone of disparate treatment. An employee must be able to show that the defendant had intended to discriminate against him or her because the plaintiff was a member of a protected class. The project focuses on cases of disparate treatment.

Burden Shifting Models of Discrimination

Before discussing the case law of Title VII retaliation, an overview of the burden-shifting model of discrimination claims is essential. One of the leading cases for Title VII disparate treatment also set forth the first model of burden shifting. In *McDonnell Douglas Corp. v. Green* (1973), the plaintiff, an African American worker, suspected that McDonnell Douglas laid him off due to his longtime involvement with the Civil Rights Movement. In response to this perceived unfair treatment he, and other activists, planned a protest at the leading plant for the company. Green filed a complaint with the EEOC claiming that McDonnell Douglas refused to rehire him due to his race and involvement with the Civil Rights Movement. The District Court found in favor of the company, agreeing that Green's involvement with the protests, which involved blocking traffic entering the plant, constituted an illegal activity and went well beyond his legitimate civil rights activities. The Court of Appeals, affirmed that illegal activities are not protected, but also remanded the case back to trial to investigate the racially discriminatory hiring practices. The Supreme Court affirmed the Court of Appeals ruling and stated that the lower court should allow Green a fair opportunity to prove McDonnell Douglas' discriminatory intent.

In *McDonnell Douglas the* Supreme Court set the groundwork for the first burden-shifting model first requiring a plaintiff to prove a *prima facie* case that provides evidence that the plaintiff was qualified for the position but was not hired due to his or her protected class. The plaintiff must also show that, the company continued to look for other employees for the job. After proving a *prima facie* case, the burden shifts to the defendant to articulate a legitimate, non-discriminatory reason for their actions. If an employer can provide a legitimate reason, the burden then shifts back to the plaintiff to show this reason is pretext (i.e., not the real reason). Defendants commonly prove pretext by showing that the employer treated an employee, not in the protected class (a White employee in a case of discrimination against a Black employee), differently despite that employee having similar qualities and experience as the plaintiff. For example, in *McDonnell Douglas*, if the company had hired a White employee who participated in the same protest, then their argument that the plaintiff was not hired due to illegal activities would be pretext.

The courts followed the *McDonnell Douglas* scheme for all Title VII cases until *Price Waterhouse v. Hopkins* (1989) in which the defendants denied Hopkins, a female employee partnership in the company despite her being qualified for the position. The Supreme Court adopted a mixed motive model for determining liability. Here, the plaintiff must first prove a *prima facie* case through direct evidence that his or her protected class (e.g., sex) was a substantial factor in the decision. The burden then shifts to the employer who must establish that the same action would have occurred absent the protected class status of the employee. Thus the company must show that a legitimate reason, and not the plaintiff's membership in the protected class, was the driving force of

its aversive action. If the company can show that it would have made the same decision absent the protected class then it faces no liability. However, if the protected class remains a substantial factor in the decision, even if there are other legitimate reasons for the decision, the employer may still be liable for damages.

Amendments to Title VII of the Civil Rights Act in 1991 codified the mixed motive model via additional language in §2000e-2m: "Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a *motivating factor* for any employment practice, even though other factors also motivated the practice" (emphasis added). Under the amended Title VII a plaintiff must show that their protected class motivated the decision. The employer may proffer a partial affirmative defense by showing they would have "taken the same action in the absence of the impermissible motivating factor" (§706g2B). This affirmative defense limits the amount of damages that a court can award to the plaintiff to injunctive relief (i.e., the employer must desist discriminatory action) and court costs. The Supreme Court further defined the issue of causality in *St. Mary's Honor Center v. Hicks* (1993) by extending the application of the mixed motive model to be applicable in all cases under Title VII.

Following the amendments to Title VII and the holdings in *Price Waterhouse* and *St. Mary's*, many lower courts extended the mixed motive model to cases of age discrimination brought under the Age Discrimination in Employment Act (ADEA) (e.g. *Reeves v. Sanderson Plumbing Products Inc.,* 2000; *Rose v. New York City Bd. of Educ., 2001; Rachid v. Jack in the Box, Inc., 2004; E.E.O.C. v. Warfield-Rohr Casket Co., Inc., 2004*). However, in *Gross v. FBL Financial Services* (2009), the Supreme Court

reexamined the language of the ADEA to determine if there existed evidence of Congressional intent to apply the mixed motive model to the ADEA. The discussion in the case hinged upon the language of §623a1 which states: "It shall be unlawful for an employer to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment *because of* such an individual's age" (emphasis added). The Supreme Court determined that the inclusion of the "because of" clause indicates that age must be the determinative factor in the case, and not merely a motivating factor. The justices reasoned that because Congress did not amend the ADEA when it amended Title VII that it did not intend to extend the mixed motive model to age discrimination cases. Thus, lower courts must try cases under the ADEA using the but-for model of causality, which requires the plaintiff to carry the burden of showing the adverse treatment was due *directly* to the plaintiff's age. That is, even if the employer used age in the decision there can be no liability, if a legitimate factor played an equal or greater role. The decision in *Gross*, brought into play the issue of whether the courts should use the mixed motive or but-for model of causality for Title VII Retaliation, because the statutory language in Title VII is retaliation similar to the age discrimination language in the ADEA. The following section will examine the case law leading up to *University of Texas Southwestern Medical Center v. Nassar*, which determined the correct causal model for Title VII retaliation.

Title VII Retaliation

Title VII of the Civil Rights Act protects against discrimination due to terms, conditions, compensation, or privileges of employment based on sex, race, color,

religion, and national origin (§2000e-2). The anti-retaliation provision of *Title VII*, §2000e-3a, prohibits adverse action against employees "because [the employee] has opposed any practice made an unlawful practice by this subchapter, or because [the employee] had made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing.". The anti-retaliation provision includes two clauses prohibiting two types of actions: the opposition clause and the participation clause. The opposition clause bans retaliation because an employee "has opposed any practice" within the company. For example, in *Womack v. Munson* (1980), the Black plaintiff, Womack, worked in various positions for the county sheriff before being discharged. After his discharge he filed a complaint with the EEOC alleging abuses of black prisoners by the sheriff department. Two years after the complaint, the state prosecutor hired Womack as an investigator. During his time with the prosecutor he filed a lawsuit based upon the previous EEOC claim against the sheriff. After learning about the lawsuit, the prosecutor discharged Womack. Though the prosecutor contended to have discharged Womack for his own involvement in the potential abuse, the 8th Circuit Court ruled that the prosecutor had retaliated against Womack for his opposition to the treatment of black prisoners.

The participation clause prohibits retaliation if an employee has "made a charge, testified, or participated in any manner in an investigation, proceeding, or hearing under this title." Activities covered by the participation clause include any type of participation, or refusal to participate in an investigation. For example, in *Smith v. Columbus Metropolitan Housing Authority* (1977), the plaintiff, Smith, worked for the defendant for twenty years without incident. Then, in 1974 the defendant discharged

three black male employees (not including Smith) who later filed a charge with the Ohio Civil Rights Commission alleging racial discrimination under Title VII. At a weekly staff meeting, the supervisor asked the staff, including plaintiff Smith, to sign an affidavit confirming the defendant's reasons for discharging the employees. After Smith returned the affidavit unsigned the defendant demoted her because of her refusal. Even though Smith did not directly participate in the investigation, the court considered her refusal to participate on behalf of her employer to be an action that the participation clause protects. An important and timely issue in both opposition and participation cases is the manner in which the courts have determined which actions the anti-retaliation close covers.

"Employees" protected under anti-retaliation provision. In §2000e-3a of Title VII, prohibits an employer from discriminating "against any of his employees or applicants for employment." Does Title VII reach to only current employees and applicants covered? In *Robinson v. Shell Oil Co.* (1997) the Supreme Court considered whether or not Title VII protected a former employee. After Shell Oil fired Robinson, he filed a complaint of discrimination. While the charge was pending, Robinson applied for another job and the prospective employer contacted Shell Oil for a reference. Robinson did not receive the job and claimed that Shell Oil had given him a negative reference due to his pending EEOC complaint. The Supreme Court, in a 9-0 decision, determined that former employees are protected under Title VII because failing to protect them would offer a "perverse incentive for employers to fire employees who might bring . . . claims" against the company.

Most recently, in *Thompson v. North American Stainless, LP* (2011) the courts considered whether Title VII protects third parties from retaliation. Thompson and his

then-fiancé-now wife worked for North American Stainless. His wife filed a complaint with the EEOC alleging gender discrimination under Title VII and three weeks after the EEOC informed the company of the charge, North American Stainless fired Thompson. Thompson then filed a claim for retaliation, stating that the defendant fired him because of his wife's complaint. The 6th Circuit upheld the lower court's ruling in favor of North American Stainless, saying that third parties are not protected under Title VII. The Supreme Court overturned this holding and remanded the case back to the lower court. Justice Scalia, writing the majority opinion, instructed the lower courts to interpret the anti-retaliation provision to cover a broad range of employees, including third parties. While some cases have limited the reach of Title VII (see the following discussion of *Clark County School District v. Breeden,* 2001and *Laughlin v. Metropolitan Washington Airports Authority,* 1998), more generally federal jurisprudence has extended the reach of Title VII to encompass a greater diversity of actions and plaintiffs under the anti-retaliation provisions. The following section outlines the current status of retaliation law under Title VII.

Actions protected under anti-retaliation provision. In order for a retaliation complaint to go forward, the complainant must reasonably believe that an illegal activity occurred (*Clark County School District v. Breeden,* 2001), there must be a temporal causal path from the complaint to the adverse action (*Clark County School District v. Breeden,* 2001), the employee must act reasonably in their actions against the company (*Laughlin v. Metropolitan Washington Airports Authority,* 1998), the action must be adverse enough to dissuade a reasonable employee from filing a complaint (*Burlington Northern and Santa Fe Railway Co. v. White*, 2006), and the opposition to the illegal

activity is enough to warrant a retaliation complaint (*Crawford v. Metropolitan Government of Nashville & Davidson County,* 2009).

The reasonable belief that an illegal activity occurred and the temporal causality serve gatekeeping functions in establishing a *prima facie* case. In order to determine whether a claim of retaliation resulting from allegations of discrimination is a frivolous action, the 9th Circuit applied the reasonable belief test in *Clark County School District v. Breeden,* 2001 to determine whether a reasonable employee would find the action discriminatory. At a meeting, with the plaintiff present, her supervisor read aloud a sexually explicit remark that one applicant had made during the interview process. The supervisor stated that he didn't understand what the comment meant and a male co-worker replied "Well, I'll tell you later" and both men laughed. The plaintiff complained to another supervisor about the comment and filed a claim with the EEOC. Twenty months after filing the claim, the plaintiff was transferred to a different department and states this was directly related to her complaint. The Court found that the plaintiff's claim did not fall under the opposition clause because no reasonable employee would have thought that one sexually charged comment was harassment. Further, the Court determined that the plaintiff did not show temporal causation between her claim and the alleged retaliation, because the retaliation came about when she transferred to a different department 20 months after the alleged discriminatory action.

Even if a reasonable belief exists, certain actions remain outside the reach of the anti-retaliation provision. For example, in *Laughlin v. Metropolitan Washington Airports Authority- MWAA* (1998), the 4th Circuit had to determine whether the plaintiff's actions fell under the participation or opposition clause. LaSauce, a co-worker of the plaintiff,

had filed an informal complaint with the EEO officer at MWAA for retaliation. One of the managers worked to settle the complaint informally and drafted a written warning to the supervisor who had allegedly retaliated against LaSauce, but never formally sent the warning because the supervisor had recently accepted a new position at another airport. Laughlin, one of the secretaries at MWAA, found the warning on the manager's desk. Believing that her manager was taking part in a cover-up, Laughlin made copies of the warning and sent it to LaSauce. MWAA terminated Laughlin for copying and releasing confidential documents, after which Laughlin filed a retaliation complaint with the EEOC, alleging retaliation under the participation clause. The District Court found in favor of MWAA and on appeal the 4th Circuit sought to determine if Laughlin had enough evidence for a *prima facie* case of retaliation under Title VII. The 4th Circuit stated that Laughlin's actions did not fall under the participation clause, as there was no ongoing investigation and LaSauce never asked for assistance with the investigation. The Court then had to determine if Laughlin's actions might fall under the opposition clause and developed a balancing test. The 4th Circuit reasoned that the purpose of Title VII was to protect employees who are reasonably engaging in opposition to discrimination and that the lower courts must balance that principle against an employer's "objective selection and control of personnel." In the case of Laughlin, taking confidential documents and sending it to an outside party was not a reasonable action and could be detrimental to a company's security of sensitive documents. Thus, the 4th Circuit test provided a way to determine when an action is too unreasonable to be protected under Title VII.

Though both *Clark County* and *Laughlin* limit the types of actions covered under Title VII, the Supreme Court, in *Burlington Northern and Santa Fe Railway Co. v. White* (2006), recently determined that Title VII does prohibit both employment related retaliations and actions that are not directly related to employment but might negatively impact an employee's willingness to report discrimination. White alleged that Burlington Northern retaliated against her because she filed a complaint of gender discrimination. The retaliation surfaced when Burlington Northern reassigned her to a position with less prestige and more arduous activities as well as when it later suspended her without pay for 37 days. Upon appeal, the Supreme Court addressed 1) the type of adverse action that falls under Title VII and 2) how harmful the action must be to fall within the scope of the anti-retaliation provision. Prior to this case, courts had interpreted an adverse action in different ways with some (e.g., the 7th Circuit) holding that any action that was materially adverse to change the conditions or terms of employment, while other courts used a more restrictive approach and required that the adverse action had to affect an ultimate employment decision (such as hiring, granting leave, discharge, promoting, and compensation). In *Burlington Northern*, the Supreme Court adopted the 7th Circuit's interpretation that a "reasonable employee would have found the challenged action materially adverse." The law now requires that the action in question would dissuade a reasonable employee from filing a complaint or participating in an investigation. Thus, the anti-retaliation provision does not protect against "petty slights and minor annoyances" but actions that would be so negative as to stop an employee from complaining. The courts must decide the issue from the perspective of an objective, reasonable person.

A final consideration on the types of actions that Title VII retaliation covers concerns whether or not the anti-retaliation provision protects an employee who participated in an employer's internal investigation of a sexual harassment complaint (*Crawford v. Metropolitan Government of Nashville & Davidson County,* 2009). Though this case seems to fall under the participation clause, the Supreme Court decided that the opposition clause protected a plaintiff making a sexual harassment claim. The human resources department within the company interviewed Crawford about the several sexual harassment complaints that coworkers had brought against a new employee. During the interview, Crawford described several instances that she had either experienced or witnessed that one could reasonably interpret as sexual harassment. Following the investigation, the company dismissed Crawford and two other co-workers. The 6th Circuit found in favor of the defendant against the plaintiff, saying that Crawford had not played an active role in opposing the conduct involved. The Supreme Court reversed this holding, because such a rule would have undermined the effectiveness of the anti-retaliation provision greatly reducing the law's effectiveness in protecting employees who are oppose, regardless of how actively, an illegal action in the workplace.

The issue of burden-shifting. It is generally agreed upon that the typical retaliation case requires a plaintiff to prove three elements: 1. There was a complaint or investigation of protected conduct, 2. There was an adverse action, and 3. That the protected conducted caused the adverse action (Moberly, 2011). Though this seems straight forward, courts have struggled with the type of causation needed to prove retaliation. Since *Price Waterhouse* (1989), courts have applied the mixed motive burden-shifting model even though there is some doubt as to whether the language of the

anti-retaliation provision provides for this model. For example, in *Woodson v. Scott Paper Co.* (1997) the 3rd Circuit called for the use of the but-for model of causation for retaliation cases and questioned whether or not the plaintiff could prove the but-for causal link between his complaint and the adverse action. In another case, *Hillig v. Rumsfeld* (2004) the 10th Circuit determined that the McDonnell Douglas framework is sufficient for retaliation claims. Recall that this would put the burden first on the plaintiff to produce the *prima facie* case, then the burden shifts to the defendant to articulate a legitimate reason for the action, and finally the burden shifts back to the plaintiff to show that this reason is merely pretext. To further complicate matters, the 5th Circuit decided that mixed motive instructions should apply in Title VII retaliation cases (*Smith v. Xerox Co.*, 2010) by referring to the fact that in *Gross* (2009) the Supreme Court interpreted Title VII and the ADEA independently of each other and so even though the but-for language existed in the Title VII anti-retaliation provision, it was independent of the ADEA. In 2013, the Supreme Court resolved the issue of which model of causality to use in Title VII retaliation cases in *University of Texas Southwestern Medical Center v. Nassar*.

Nassar and the Future of Retaliation

In 2013 the Supreme Court agreed to hear *University of Texas Southwestern Medical Center v. Nassar* to determine the appropriate model of causality to use in Title VII retaliation cases. Dr. Naiel Nassar was a physician, of Middle Eastern descent, working at the University Texas Southwestern Medical Center and at the Parkland Memorial Hospital. The University had arranged an agreement with Parkland Hospital so that the hospital offered physician positions to all medical faculty members in the

Department of Medicine. During his time at the Medical Center, Nassar believed Dr. Levine, the Chair of Infectious Disease Medicine, singled him out due to his Middle Eastern heritage for unfavorable treatment. He alleged that Levine questioned his billing practices, productivity and work ethic due to his national origin. In 2005, Levine opposed hiring another Middle Eastern physician and commented to Dr. Keiser (Nassar's primary supervisor) "Middle Easterners are lazy." After the hospital hired the second Middle Eastern physician, Levine commented that the Hospital had "hired another one." Nassar met with the University's Chair of Internal Medicine, Dr. Fitz, numerous times to complain about the way Levine had treated him. In the end, Nassar arranged to continue working at Parkland Hospital without continuing as a faculty member for the University allowing Nassar to remove himself from Levine's supervision. The University and Hospital negotiated with Nassar to reach this compromise solution. Shortly after reaching the agreement, Nassar wrote to Dr. Fitz (University Chair of Internal Medicine) resigning his position stating the reason was that Dr. Levine had harassed him. Nassar sent copies of this letter to other supervisors as well. Outraged by the letter, Fitz told Nassar's supervisor that the action had publically humiliated Levine and that some action was needed to exonerate her. Fitz opposed the arrangement made for Nassar and the Hospital withdrew the offer. Nassar then filed a complaint of retaliation with the EEOC and finally district court.

At trial, the district court instructed the jury to use mixed motive instructions for both the discrimination and retaliation claims, which led to the jury finding in favor of Nassar for both claims and awarded him $438,167.66 in back pay and over $3 million in compensatory damages. Upon appeal the 5th Circuit vacated the discrimination

complaint for constructive discharge but affirmed the retaliation claim, saying that the University's motivation to withdraw Nassar's offer was, *in part*, Fitz's desire to retaliate for Nassar's complaints against Levine. When the Supreme Court ultimately took up the case, the justices found, in a 5-4 decision, that Title VII retaliation requires a but-for causality model. The Supreme Court finding hinged on two arguments: the finding in *Gross* for causal language and the Congressional intent involved in the amendments of Title VII.

Causal Language. The Supreme Court began its discussion of the case by elaborating on the difference between a status-based discrimination claim and employer retaliation. The Court argued that under Title VII a status-based claim (discrimination based on race, color, national origin, religion, and sex) prohibited employers from using protected class membership as "… a motivating factor for any employment practice, even though other factors motivated the practice" (§2000e-2m). Thus status-based discrimination falls under the mixed-motive model of causality, as the Court first decided in *Price Waterhouse* (1989). However, when examining the language of the anti-retaliation provision Justice Kennedy quoted, "It shall be unlawful…for an employer to discriminate against any of his employees or applicants for employment…*because* he has opposed any practice…or *because* he has made a charge, testified assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII" (§2000e-3a). As in *Gross v. FBL* (2009) the language of the statute specifically uses the word "because." Therefore, as in *Gross*, where the court held that ADEA required but-for causality, it held in Nasser that retaliation claim also required a but-for causality model. Thus, plaintiffs in retaliation claims must show that "the harm would not have occurred"

absent the opposition or participation in a discrimination claim. Even though the Supreme Court said in *Gross* that the ADEA and Title VII should be considered independently, they held in *Nasser* that *Gross* was persuasive in the interpretation of the anti-retaliation provision.

Congressional Intent. To interpret the Congressional intent of Title VII, the Supreme Court considered the structure and language of the statute. The Court argued that since Congress wrote the anti-retaliation provision as a separate section from status-based discrimination that Congress intended the two to be considered as separate entities. Further, the amendments to Title VII in 1991 specifically added the provision for motivating factors for status-based discrimination but such a change was absent for the anti-retaliation provision. The majority concluded that, given this clear language, Congress had intended to limit retaliation claims to stricter liability than status-based claims, therefore, applying the mixed motive model to Title VII retaliation would be inconsistent with the intent of Congress.

The Court also warned that lowering the standard of causation for retaliation claims would have serious repercussions. Specifically, since the number of Title VII retaliation claims with the EEOC had doubled in the past 15 years, lessening the causal standard could lead to more frivolous claims of retaliation. By applying the but-for model, courts could impose a structural barrier to limit the number of baseless claims filed with the EEOC. Some may argue that this last argument is superfluous because the EEOC has already included many safeguards and protections against frivolous claims. For example, in *Ledbetter v. Goodyear* (2007), the lower level court dismissed the claim because the plaintiff filed outside of the timeline required by the EEOC (180 days).

Future of retaliation post-*Nassar*. Legal commentators argue that the effectiveness of the anti-retaliation provision is essential to the enforcement of Title VII anti-discrimination provisions (Naquin, 2013). Specifically, if the law does not protect employees from retaliation then they will be unlikely to file the initial discrimination complaints or participate in discrimination complaint investigations for fear of reprisal from their employers. In fact, research on victims of retaliation reveals that filing a complaint of retaliation can lead to ostracism in the workplace, open the employee up to more retaliation, and lead to higher levels of anxiety and sadness (Cortina & Magley, 2007). Additionally, workers who fear retaliation report being less likely to complain about the initial discrimination than those who do not (Mitchell & Ambrose, 2012). Finally, anti-retaliation provisions benefit society as a whole as well as individual employees. Arguably, employees possess unique knowledge about unlawful actions in the workplace so that when they report discriminatory actions they help to assure that companies will comply with the law improving the level of justice available in society as a whole (Moberly, 2011). Despite the reasons for ensuring an effective the anti-retaliation provision, the decision in *Nassar* could limit the protections by narrowing the availability of relief in retaliation claims.

For example, under the *Nassar* facts with a mixed motive model of causality the plaintiff might have been able to prove a legitimate case of retaliation. However, under the but-for standard, the University only had to point to its own policy to argue that the reason it terminated the contract was that it was following its own internal rules and not Nassar's letter accusing Levine of discrimination. As a result, Nassar lost his claim (Lin, 2014). Most important for understanding the impact of *Nassar* (2013) is the distinction

that the Supreme Court drew between discrimination and retaliation claims, each with different causal requirements. The differences between the causal models underlying each type of claim are subtle so that it might be difficult for a jury to clearly differentiate the two causal theories. Jurors may be confused by the two sets of instructions for the claims, especially when the court instructs them to treat the claims as separate entities that are unrelated (Lin, 2014), each with a different causality requirement. Under such conditions, jurors may inadvertently adopt the higher but-for standard for all discrimination cases regardless of whether they are status or retaliation claims. Therefore, *Nassar* (2013) may result in a type of juror confusion, which may ultimately result in lowered protection in the workplace.

On the other hand, it is possible that people are quite able to see clear differences between retaliation and status discrimination. Sherwyn, Heise, and Eigen (2014) argued that employees alleging retaliation actually fair better at trial than those alleging discrimination. The researchers showed undergraduate mock jurors videotaped reenactments of a retaliation case in which an employee alleged he was denied a promotion due to complaining about racial discrimination and sexual harassment. After watching the case, participants received mixed motive instructions (note: none used but-for comparison instructions) and deliberated the case in groups six to reach their verdicts. Participants filled out individual verdict forms after deliberation. Fifty-nine percent of participants found in favor of the plaintiff. Sherwyn and colleagues compared these results to a previous study that had undergraduate mock jurors watch and deliberate a national origin discrimination case. In that study, 40.1% of mock jurors found in favor of the plaintiff. Based upon these two studies Sherwyn et al. (2014) argued that jurors might

be more likely to find for the plaintiff under retaliation than discrimination. However, a comparison between studies without directly varying the type of causality instructions using an identical fact pattern falls very far short of the rigorous experimental evidence that would support this conclusion. Specifically, Sherwyn and colleagues did not consider the difference between mixed motive and but-for causality instructions in their retaliation study and did not consider other confounding differences (e.g., differences between the fact patterns, participants, and the law under consideration) when coming to their conclusions.

Nonetheless, this preliminary investigation raises the empirical issue of whether or not instructions for two related claims – discrimination and retaliation – each with a different causality requirement results in different trial processes and verdicts. First, there might be different verdict outcomes for the same retaliation case depending on whether jurors use mixed motive or but-for instructions. In fact, previous research has revealed that but-for instructions in age discrimination claims are more likely to lead to pro-defendant verdicts, regardless of strength of evidence, while mixed motive instructions are more likely to lead to pro-plaintiff verdicts (Wiener & Farnum, 2013; Farnum & Wiener, under review). Extending this program of research to retaliation claims might find similar results. Furthermore, jurors who decide both discrimination and retaliation claims may have difficulty in parsing out and correctly interpreting the facts that could support different causal judgments under the two different sets of instructions. Psychological theories about judgment and decision making hold the promise to help us better understand the way in which jurors will react to retaliation claims in a case that

requires them to render a verdict for separate claims using different causality instructions. I take up the role of psychological models of decision making in the sections to follow.

Perhaps, even more importantly, the decision in *Nasser* likely will have repercussions in the everyday life of the workplace by influencing the way in which employers treat employees. Employers may be more willing to retaliate against an employee if they know they can escape liability by finding another legitimate factor to dilute the retaliating action. Imagine a situation in which an employer faces a discrimination charge from an employee who shows up late for work two days in a row. The employer may be more willing to risk legal action by retaliating against the employee (e.g., firing her) under a but-for model than under the mixed motive theory.

Interestingly, psychological research suggests that observers may perceive differences in the level of legitimacy depending upon the type of retaliatory action. In a study on employee retaliation against a supervisor, participants read one of two situations: 1)A manager, who sexually harassed a friend of theirs, has asked them to find a missing file or 2)A manager, who unfairly passed the participant over for a promotion, asked for help in choosing a marketing plan. Within each scenario participants were then given several options for what they did in the situation. For the missing file scenario these included denying knowing where the file is located, not telling where the file is located, and hiding the file. Participants then rated the acceptableness of the action from the scenario. Participants viewed acts of omission (e.g. not telling where the important file is located) as more acceptable than acts of commission (e.g. hiding an important file) (Charness & Levine, 2010). More generally, it is possible that employers may be more likely to retaliate against an employee via an act of omission, such as failing to promote

or engaging in third-party retaliation, than an act of commission, such as firing or demoting the complainant. Social psychological theories of motivation and decision making provide some guidance on understanding this issue as well as the overall reaction that jurors may have to different forms of causality instructions.

Psychological Theories

Regulatory Focus

Regulatory Focus Theory (RFT) proposes that people are motivated in one of two ways: promotion or prevention (Higgins, 1997; 1998; 2000; 2002). Promotion focused individuals tend to focus on their ideal self, or the person they would ideally like to be with the attributes that make up this ideal. In order to reach this ideal self, promotion focused people tend to seek achievement and advancement through taking risks to attain their goal. People take risks in order to avoid errors of omission, or not acting when they should have acted. In comparison, prevention focused individuals tend to focus on their ought self, or the person they should be in society. To achieve this self-goal, prevention focused people tend to seek safety and security by avoiding risks and therefore mismatches to desired outcomes to attain their goal. By avoiding risks, they seek to avoid acts of commission, or acting when they should not have acted (Higgins, 1997; 1998; 2000; 2002). These different pathways and goals have been well documented in the research literature (e.g. Camacho, Higgins, & Luger, 2003; Crowe & Higgins, 1997; Higgins, 2002; Higgins, Friedman, et al, 2001; Higgins, Shah, & Friedman, 1997; Polman, 2012; Righetti, Finkenauer, & Rusbult, 2011; Santelli, Struthers, & Eaton, 2009; Scholer, Zou, Fujita, Stroessner, & Higgins, 2010; Woltin & Jonas, 2012; Zaal, Laar, Stahl, Ellemers, & Derks, 2012; Zhang, Higgins, & Chen, 2011). There is little doubt that

differences in regulatory focus style exists and a myriad of research documents how and when regulatory focus plays a role in motivation, decision making and the assignment of value to outcomes. Promotion and prevention (effects will be listed in this order) are predictive of several factors such as distant or proximal goals (Pennington & Roese, 2003), abstract or concrete mental representations (Aaker & Lee, 2006), additive and subtractive counterfactual thinking (Roese, Hur, & Pennington, 1999), creativity versus self-control (Freitas, Liberman, & Higgins, 2002; Friedman & Förster, 2001), affective reactions of dejection or agitation (Lee, Aaker, & Gardner, 2000; Sassenberg & Hansen, 2007; Shah, Brazy, & Higgins, 2004), reactions to change or stability (Liberman, Idson, Camacho, & Higgins, 1999), and emergence of approach or avoidance behaviors (Förster, Higgins, & Idson, 1999).

For example, Roese, Hur, & Pennington (1999) found that prevention focused individuals were more likely to generate subtractive counterfactuals (I should never have raised my hand) while promotion focused individuals were more likely to generate additive counterfactuals (I should have raised my hand). In a second study, they prompted participants to generate either additive or subtractive counterfactual thoughts and this, in turn, led to participants adopting either promotion or prevention focused responses. Pennington and Roese (2003) also found that regulatory focus is related to temporal aspects of goals. Participants rated the importance of either promotion goals or prevention goals for an exam at two time points. Some forecasted 2 weeks before the exam and others responded only a few minutes before the exam. When the exam was more distant, participants had more promotion focused goals, but prevention focused goals remained constant across both temporal points. In another study (Study 4),

participants completed a measure of their chronic regulatory focus and were then asked to rate the perceived temporal distance of their future goals. Specifically, participants who are chronically promotion focused believed their goals to be temporally farther away than did chronic prevention focused participants.

Promotion and prevention regulatory focus can result from either dispositional/chronic traits or situational inducements (Higgins, 1997; 1999; Shah, Higgins, & Friedman, 1998). A person with a chronic promotion focus will be gain-focused and more willing to take risks, while a chronic prevention focused person will be loss-focused and be more likely to avoid risks. Higgins (2000) also suggests that certain situations may also lead someone to act in either a promotion or prevention focused way. For example, if a teacher tells a student of a gain concern that includes positive outcomes, such as receiving extra credit for going to a talk, the situation will put the student into a promotion frame. He or she will work harder at finding a way to go to the talk. On the other hand, if a teacher tells a student of a loss concern that includes negative outcomes, such as loosing points on a test, the situation will put the student into a prevention frame. She or he will avoid going out to a movie to have more time to study for the exam.

A typical measure of regulatory focus chronicity consists of measuring participants' reaction times when they list attributes of their ideal self (promotion) or their ought self (prevention) (Shah, Higgins, & Friedman, 1998). If a participant lists the attributes of his or her ideal self faster than the attributes of the ideal self, that implies that that promotion focus attributes are more readily accessible so that the individual is more chronically promotion focused, whereas listing attributes of the ought self more quickly is indicative of a chronic prevention focus. Individuals with chronic promotion focus

approach most tasks with eagerness while those with chronic prevention focus approach the same tasks with vigilance. The former worry more about making errors of omission (missing an opportunity to succeed) and the latter, more about making errors of commission (mistakenly making a response that was wrong) (Higgins, 1997; 1999; Shah, Higgins, & Friedman, 1998).

On the other hand, researchers can also manipulate promotion or prevention focus from the demands of the situations in which they place people. From an experimental research perspective, this allows researchers to manipulate type of regulatory focus (promotion vs. prevention) that participants experience through situational inducements. A common method of inducing regulatory focus is through an open-ended writing prompt that asks participants to write about or list attributes concerning either promotion or prevention goals (Galinsky, Leonardelli, Okhuysen, & Mussweiler, 2005; Roese, Hur, & Pennington, 1999). Galinsky and colleagues used this technique to induce regulatory focus in negotiation situations and found that those participants who wrote about promotion attributes were more likely to negotiate a higher dollar amount than those who wrote about prevention attributes.

Regulatory fit. Whether a person is prevention or promotion focused predicts a number of internal and external response and experience factors, but research also shows that the regulatory fit between a person's motivational state and the situation determines perceptions of value and outcome expectations (Aaker & Lee, 2006; Avnet & Higgins, 2003; Avnet & Higgins, 2006; Gallagher & Updegraff, 2011; Higgins, Idson, Freitas, Spiegel, & Molden, 2003). Regulatory fit occurs when the regulatory focus of the individual matches the regulatory focus of the situation. That is, when a promotion-

focused individual is in a situation, which induces a psychological state that emphasizes gains, eagerness, and achieving objectives, they will experience regulatory fit. Alternatively, if a prevention-focused individual is in a situation, which induces a psychological state that emphasizes safety, avoiding losses, and vigilance, they will experience regulatory fit. People in a state of regulatory fit are more likely to exhibit stronger emotions and behaviors in line with their regulatory focus. Regulatory fit produces motivational properties such that people who are promotion focused and in a state of regulatory fit are more sensitive to the presence and absence of positive outcomes while those in a state of regulatory fit and prevention focused people are more sensitive to the presence and absence of negative outcomes. When chronic regulatory focus fits with the outcome available in a situation, people are more likely to choose the outcome that fits best. This occurs because regulatory fit "feels right", intensifies peoples' beliefs, and the extent to which they value outcomes (Lee & Aaker, 2004). Specifically, when people's decision strategy, promotion or prevention focused, is reinforced instead of discouraged, their motivation to continue a task in a manner consistent with regulatory focus intensifies because they feel it will work best for them (Avnet & Higgins, 2006).

Higgins and colleagues (2003) demonstrated the influence of regulatory fit on subsequent evaluations of an object. They measured chronic regulatory focus by having participants list attributes that are descriptive of the ideal self and the ought self (participants listed these attributes separately). The researchers combined the participants' selection of the traits that best describe them, as well as their reaction times in listing the traits to determine their regulatory focus. That is, those who selected more ideal (ought) traits more quickly were chronically promotion (prevention) focused. Next,

participants selected a gift of their choosing, either a Columbia University coffee mug or an inexpensive disposable pen (the mug was more desirable). Half of the participants (those in the promotion condition) considered what they would gain by choosing the pen or the mug, while the other half considered what they would lose by not choosing the pen or the mug (prevention condition). For participants who chose the mug (almost all participants) they viewed a new, expensive pen worth $3 and estimated the cost of the mug. When regulatory fit was achieved (chronically promotion participants who considered gain – or – chronically prevention participants who considered loss), participants were more likely to overestimate the cost of the mug than when they were in a regulatory misfit condition (chronically promotion/loss situation -- or chronically prevention/gain situation). Higgins and colleagues (2003) replicated this finding in a study using the same procedures but this time participants paid for the mug with their own money. Those in a regulatory fit state paid more for the mug than those in a regulatory misfit state.

Avnet and Higgins (2006) tested the role of regulatory fit in participant decision making by showing participants two types of correction fluid, a newer type and an old fashioned type. The two fluids were shown simultaneously with a short description. The researchers placed half of the participants into a feeling-based strategy (promotion) such that those respondents rated how strongly they felt each emotion for each product, while the other half, those in the reason-based strategy (prevention) gave their overall evaluation for each product. All participants were then told to choose a product. After choosing which product they preferred, participants completed a measure of chronic regulatory focus. Results revealed that participants who experienced regulatory fit (i.e.,

their chronic focus matched the situational focus) felt more confident in their choice, were willing to pay more money, and rated their reactions as more important.

Regulatory fit as compared to regulatory misfit can also lead to greater performances as illustrated on an anagram tasks (Shah, Higgins, and Friedman, 1998) and in exercise habits (Gallagher & Updegraff, 2011). Specifically, Gallagher and Updegraff had participants, all of whom indicated they do not regularly exercise, complete a chronic regulatory focus measure and then asked them to read one of four versions of an article advocating excercise: gain-framed/intrinsic outcomes ("Exercise now and feel better later!), gain-framed/extrinsic outcomes ("Exercise now and look better later!"), loss-framed/intrinsic outcomes ("Lack of exercise will make you feel miserable!"), loss-framed/extrinsic outcomes ("Lack of exercise will make you look miserable!"). Over the next week, participants completed a daily log of their activities. Participants who experienced regulatory fit (promotion focus/intrinsic outcomes and prevention focus/extrinsic outcomes), as compared to misfit, were more likely to increase their exercise habits throughout the week (Gallagher & Updegraff, 2011).

Regulatory focus and fit may also play a role regardless of whether the mental states are integral or incidental to the decision at hand. Integral regulatory focus manipulations are those that are part of the task at hand, while incidental manipulations of regulatory focus are independent of the task at hand and occur before the participant makes a decision (Cesario et al., 2008). The majority of regulatory focus studies use a measure or manipulation of incidental regulatory focus. For example, many researchers ask participants to either list their current hopes and aspirations (promotion focus) or list their current duties and obligations (prevention focus) to manipulate regulatory fit in an

incidental manner. Cesario, Grant, and Higgins (2004) used this manipulation and then either induced regulatory fit or misfit, again incidentally, by having participants either write about how they could achieve their goals through either eager strategies (promotion) or vigilant strategies (prevention). Participants who experienced regulatory fit were more likely to rate a neutral article about an after school program more positively and were more likely to want to volunteer for the program, as compared to participants in a state of misfit.

More recently, Cesario, Corker, and Jelinek (2013) also considered the "hedonic consequences of decisions" that is, the pleasures associated with accepting an argument and the pains of not accepting the argument as a potentially important factor in decision making. People might be motivated by the knowledge of the pleasure of accepting the argument or avoiding the pain of not accepting the arguments. Here, pleasure is not simply the presence or absence of positive and negative information, but instead, could result from either a positive outcome or the absence of a negative outcome—each motivating a similar decision. For example, in study 4, Cesario and colleagues (2013) used an incidental framing prime (prevention vs. promotion) and an integral outcome manipulation (obtaining gains or avoiding losses) to examine the potential importance of both types of manipulations as a source of motivation in decision making. Specifically, participants first completed the incidental framing prime in which they completed a set of anagrams framed as either promotion (can earn 5 extra raffle tickets for getting 70% correct) or prevention (can lose 5 raffle tickets for getting 30% wrong). Following the incidental prime, participants received an integral manipulation in which they read a description about the importance of dental hygiene that was either promotion focused

(how buying mouthwash would advance their hygiene) or prevention focused (how buying the mouthwash would maintain their hygiene and prevent poor hygiene). Participants who were in a state of regulatory fit were willing to pay more money for mouthwash, namely, those in the positive integral outcome condition were willing to pay more if they were also in the promotion incidental condition, and those in the negative integral outcome condition were willing to pay more if they had been in the prevention incidental condition. This implies that regulatory fit between hedonic outcomes and focus using incidental and integral manipulations produces strong effects of motivation in decision making.

Regulatory focus and policy decisions. Experimental lab studies have consistently shown consistent and strong effects of regulatory focus and regulatory fit on attitudes and perceptions of item value, but does regulatory focus shape decisions and behaviors outside the lab? Boldero and Higgins (2011) examined the role of regulatory focus on support for economic reform. Participants completed a measure of chronic regulatory focus and then read one of three economic reports that described the current economy as poor, average, or good. After reading about the economy, participants were presented with a statement concerning a new economic policy legislators were looking to implement. To measure the influence of regulatory fit, participants completed items assessing their support for the bill when considering their enthusiasm for maximizing the economic future (promotion strategy) or carefully considering how the bill could prevent an economic downturn (prevention strategy). Participants who scored high on promotion focus were more likely to endorse the new bill when asked to consider it from a promotion strategy; whereas prevention focused participants demonstrated higher support

under the prevention strategy. This important finding shows that regulatory fit can play a role in persuasion about policy decisions.

Other research in the context of real world decisions demonstrated that regulatory focus can influence the actual behaviors of home owners living in flood plains with regard to whether they are willing to purchase flood insurance (Botzen, de Boer, & Terpstra, 2013). While, any form of risk framed communication concerning protecting their homes from flooding increased participants' willingness to buy insurance, risk-framed communications influenced those who were chronically prevention focused more as measured through the duration of the policy they purchased as compared to those who were chronically promotion focused. Similarly, Ellemers, Scheepers, & Popa (2010) examined the role of regulatory fit and support for affirmative action laws. They assessed participant regulatory focus at the beginning of the study and then asked participants to consider either what their in-group had to gain from affirmative action (promotion frame) or what their in-group had to lose from affirmative action (prevention frame). Participants who experienced promotion regulatory fit were significantly more likely to support affirmative action laws than those in a misfit. Prevention focused participants were more likely to support affirmative action laws when they experienced regulatory fit than when they experienced a misfit. Other studies have shown regulatory fit influenced support for a tax increase to help an after school programs (Camacho, Higgins, & Luger, 2003). Specifically, chronically promotion focused participants were more likely to support the tax increase when it was likely to advance children's education and likelihood of success (promotion frame) than when the program was likely to prevent children from failing in school and undermining future success (prevention frame). Prevention focused

participants were more likely to support the tax increase when they read the prevention frame as opposed to the promotion frame (Camacho, Higgins, & Luger, 2003).

These studies demonstrate that regulatory focus may be influential in decisions about law and policy and that the regulatory fit may lead to greater support for a law based upon participant's "feeling right". These factors may also play a role in juror decision-making. It is possible that jurors who are high in promotion focus may approach a case differently than those high in prevention focus. Wiener and Farnum (2013) examined the role of regulatory focus on the use of but-for and mixed motive causality instructions on judgments of age discrimination. They measured chronic regulatory focus using the Composite Regulatory Focus Scale (study 1) and the Lockwood Scale (study 2) and found that strong promotion and prevention focus led to more verdicts in favor of the plaintiff, but only under the but-for causality instructions. Though both types of regulatory focus led to more pro-plaintiff verdicts, the pathways leading to this decision were different. Wiener and Farnum argued that promotion focused jurors are more likely to accept the plaintiff's evidence and dismissing the defendant's evidence, thereby risking that they are falsely finding for the plaintiff. Prevention focused jurors may focus more strongly on the defendant's evidence so that they do not risk finding for the defendant when they should find for the plaintiff. It must be pointed out that, Wiener and Farnum (2013) did not manipulate regulatory focus so that additional research that manipulates either incidental or integral regulatory focus (or both) may aid in parsing out the influence of regulatory fit on use of instructions in discrimination cases. The research proposed in this dissertation with regard to retaliation cases will help isolate the effect of regulatory fit on decision making in cases of discrimination.

There are no studies that have examined the role of regulatory focus in retaliation cases and, in fact, no psychological studies that have examined retaliation decisions in discrimination law. However, Brebels, de Cremer, and Sedikides (2008) did conduct a series of five studies to determine when people who perceive a procedure as unfair are most likely to retaliate. Participants in the study completed a packet of information measuring their personality structures as part of a cover story. Procedural fairness was manipulated through the feedback participants received in which the "manager" wrote a note to the participants that said either he reviewed and graded all 5 measures from the information packet to place the participant in a group (procedurally fair) or that he had reviewed only 1 measure to place the participant in a group (unfair). After completing the packet, participants read that a "manager" would review their information and then they completed a regulatory focus "filler" task in which participants either described three accomplishments, hopes, or aspirations and strategies for attaining these goals (promotion focused) or described three responsibilities, duties, or obligations and strategies to attain these goals. At the end of the study Brebels et al. (2008) told participants that they would help decide how much to pay the manager for the study by either subtracting up to $3 (study 1) or allocating a percentage of the total wage (study 2) to the manager. The researchers defined retaliation as participants taking money away from the manager. In the procedurally unfair condition promotion focus participants were significantly more likely to retaliate than were prevention-focused participants.

Supporting the role of regulatory focus and fit, Gino & Margolis (2011) examined the role of regulatory focus in ethical decision making in a series of four studies. Study 1 and Study 2 used chronic regulatory focus to predict how often participants would

overestimate their number of correct answers on an anagram task. The paradigm allowed overestimation of correct answers only if participants cheated while grading their anagrams. Promotion focused participants were significantly more likely to overestimate their performance than prevention focused individuals. This overestimation then mediated (Study 2) whether or not participants donated money to a charity at the end of the study. Thus, promotion focused participants were more likely to donate to the charity, but only if they had cheated in the study. Study 3 and Study 4 examined how incidentally manipulated regulatory focus may influence ethical behaviors on the same anagram task. The results replicated the first two studies showing that participants induced to be promotion-focused were more likely to act unethically than prevention focused participants. These studies applied to retaliation in the workplace, suggest that employers who are more promotion focused will be more willing to retaliate against an employee than employers who are prevention focused.

Regulatory focus and fit in groups. Almost all studies concerning regulatory focus examine the behavior of single individuals. However, group decision making is an extremely influential process with a strong impact in day-to-day life. For example, juries are integral to the legal system and thus it is important to understand the way in which regulatory focus and regulatory fit might influence their deliberations and decisions. Along these lines group goals are one way in which regulatory focus and fit might determine the outcome of the jury decision process. In one study, researchers gave groups of four people a 60 minute training during which they manipulated regulatory focus by either framing the task as one involving safety and security (prevention) or growth and advancement (promotion). Researchers also manipulated whether the goal was group-

based or individual based by telling groups that either the top 3 performing groups (group-based goal) or the top 12 performing individuals (individual based goal) would receive a monetary reward. When working towards a group-based goal, as compared to an individual oriented goal, prevention focused groups, as compared to promotion focused groups, demonstrate higher worker engagement, lower levels of intolerance, more effective coordination, and higher performance (Beersma, Homan, van Kleef, & de Dreu, 2013). Type of goal did not influence promotion focused teams. Sassenberg, Landkammer, and Jacoby (2014), found that when a prevention focus group performed an individually focused task they were more likely to discount information from other group members, but when they experienced regulatory fit and were given a group based goal, they did not discount other group members. Conversely, the promotion groups thrived when given individually focused goals.

Burtscher and Meyer (2014) showed that the type of task interacts with the group's regulatory focus to determine performance. Groups performed the "stranded in the desert" task in which they role played being the lone survivors of a plane crash in the desert and in order to survive they had to complete five decision-making tasks. Each task had six multiple choice options with one correct answer and two partly correct answers. Participants in a promotion focus were able to gain money by correctly solving the task while those in a prevention focus were able to avoid losing money by correctly solving the task. Finally, the researchers measured information processing by coding the sources of information the groups referred to during the task. Sources of information included strategy, items given in the scenario, the cover story, and the six multiple choice solutions. Promotion focused groups, as compared to prevention focused groups,

performed better on the reasoning task, but the style of group information processing moderated this effect. Specifically, promotion focused groups relied more on global and innovative information whereas the prevention focused groups used more of the finite information. Similarly, others have shown that promotion focused groups outperform prevention focused groups in a disjunctive task, one in which high performance by a single individual is enough to complete the task (Faddegon, Ellemers, & Scheepers, 2009). Finally, in line with regulatory focus for individuals, prevention focused groups focus more on losses and make less risky choices, while promotion focused groups focus more on the gains and make more risky choices (Florack & Hartman, 2007).

Making the situation even more complicated group dynamics and not just the type of task, influences the way in which promotion and prevention focused groups perform. For example, when an individual assumes power he or she is more likely to make promotion focused decisions when the group is low status, but when the group is high status the high powered individual is more likely to make prevention focused decisions (Scheepers, Ellemers, & Sassenberg, 2011). The collective regulatory focus of a group can shift individual regulatory focus states, so that individuals either became more promotion or prevention focused in a signal detection task to align with the collective regulatory focus of their group (Faddegon, Scheepers, & Ellemers, 2008).

Furthermore, regulatory focus seems to play a role in attitudinal change in a group setting. Chung & Han (2013) examined the moderating role of regulatory focus in group deliberations with a 2 (regulatory focus: promotion vs. prevention) x 2 (deliberation content consistency: consistent vs. inconsistent) x 2 (information type: hedonic v. utilitarian) between participants study. The researchers manipulated participant

regulatory focus through an anagram task where participants either gained (promotion) or lost (prevention) points based on their correct or incorrect answers. Deliberation content included both information type and consistency with information. Information type was either a news story based on utilitarian topics (such as economic news articles) or hedonic topics (such as entertainment gossip), and then deliberation was consistent if the other group members commented in line with the news article or inconsistent if they diverted from the news article. Finally, the researchers gathered participant attitudes towards the topics before deliberation and after deliberation. They found that regulatory focus moderated the influence of information type on attitude change. Specifically, when working with hedonic information, participants were more likely to experience attitude change when they were promotion focused, but when working with utilitarian information they were more likely to show attitude change when they were prevention focused.

Given the research findings on regulatory focus and groups, it is possible that the regulatory focus of both the individuals within a group and the collective regulatory focus of the group may influence jury deliberations. The way in which the court and attorneys present information to jurors, the framing of the goal of jury deliberation, and perhaps the distribution of power within the group may lead to different verdicts based on regulatory focus predictions. Further, jurors and juries with regulatory fit may be more likely to reach a unanimous verdict, show higher confidence in their verdicts, and higher satisfaction with the process than those jurors and juries that lack regulatory fit. It is also possible that regulatory fit between the jury and the framing of jury instructions may

increase comprehension and application of the instructions to the case facts, leading to verdicts that are more in line with the law than with personal bias.

Prospect Theory

The notion of risk taking and decisions is also a central idea in prospect theory (Kahneman & Tversky, 1979; Kahneman & Tversky, 1983; Tversky & Kahneman, 1992), which posits that when making a decision people derive utility for their decisions by considering the potential gains and losses based on the reference point from which they begin. Tversky and Kahneman (1992) expanded the initial version of prospect theory which explained only two outcome decisions to include multiple outcome domains in cumulative prospect theory (Tversky & Kahneman, 1992). All other aspects of prospect theory remained the same. This paper will focus on prospect theory with two outcomes because that fits most closely with retaliation cases where the primary judgment is liable vs. not liable.

Within prospect theory there are four main tenets: reference dependence, loss aversion, diminishing sensitivity, and probability weighting (Kahneman & Tversky, 1979; Kahneman & Tversky, 1983; Tversky & Kahneman, 1992). *Reference dependence* refers to the notion that we base our decisions on a reference point rather than absolute values of gains and losses. While there has been much debate over whether there is a constant reference point, most researchers accept that the reference point is based on the expectations or beliefs from past outcomes (Köszegi & Rabin, 2006; 2007; 2009). Thus, the reference point could be different for each decision and each person making a decision. *Loss aversion* refers to the phenomenon that people are more sensitive to losses, even small losses, than they are to gains of the same magnitude (Tversky &

Kahneman, 1992; Barberis, 2013). If a person faces either losing $5 or gaining $10, they will be more likely, under prospect theory, to focus on the loss of $5 and make their decision based on the possibility of this loss. Loss aversion is the basis for the tenet of diminishing sensitivity, which states that people are risk averse over moderate gains but risk seeking over moderate losses (Tversky & Kahneman, 1992; Barberis, 2013). In the same decision as before, a person faced with losing $5 will be more likely to make a risky decision to avoid the loss, while the person faced with gaining $10 will avoid risk even though they have more to gain. In other words, people will go a long way in accepting risky choices to avoid a possible loss but will be much more conservative when facing even larger gains. Finally, prospect theory also posits that people do not weight outcomes objectively and are more likely to overweight extreme gains and losses, known as probability weighting (Tversky & Kahneman, 1992; Barberis, 2013). As Barberis (2013) states, the four tenets of prospect theory in combination determine when people are risk averse, risk neutral, and risk seeking.

Recent research has sought to clarify and expand the influence of prospect theory. Caruso, Gilbert, & Wilson (2008) considered the role of temporal value symmetry, which is whether or not gains and losses are more influential given their temporal distance from the present. They had participants, across 7 studies with 6 different scenarios, contemplate completing a task in either in the past or in the equidistant future. Participants then rated how much compensation (Study 1) they should receive, and found that, when contemplating the future, participants wanted significantly more compensation than if they completed the task in the past. Participants' affective response to the task mediated this effect, specifically they rated a future event as having more negative affect

and because of this negative affect they felt they should be compensated more. It is thus important to consider not just the gains and losses involved in a task, but also the temporal distance involved. Supporting this conclusion, Hertwig, Barron, Weber, and Erev (2004) demonstrated the importance of source of information in risky decisions. Half of the participants (decision-relevant group) completed a decision-relevant task in which they read six problems on the computer screen while the other half (experience group) were shown two buttons on the computer screen and were told that each button represented a choice, but were not given any other information. When participants based their decisions on decision-relevant information (typical in a prospect theory task) they were more likely to follow the pattern of probability weighting by overweighting the probability of a rare event. In contrast, participants who were forced to rely solely on their experience underweighted the probability of rare events. Providing feedback to participants reduces the influence of experience on probability weighting in line with prospect theory (Jessup, Bishara, & Busemeyer, 2008).

The richest research area of prospect theory, the study of framing effects has important implications for decision making in cases of retaliation (Tversky & Kahneman, 1991). Framing involves describing gains and losses in terms of certainty/uncertainty or positive/negative outcomes. The certainty effect (Tversky & Kahneman, 1986) occurs when participants prefer a certain gain over a probabilistic gain of equal or more value. Tversky and Kahneman (1986) use the example of presenting someone with either a sure gain of $30 or an 80% chance to win $45 and 20% chance of winning nothing. Even though you would have a very good chance of winning the $45 and the expected value of the second bet ($36) is greater than the expected value of the first bet ($30), more often

than not people prefer the certain gain so that they can avoid the risk of losing. The majority of research applying prospect theory to real world decisions relies on the positive/gain and negative/loss frame findings (e.g. Detweiler, Bedell, Salovey, Pronin, & Rothman, 1999; Gallagher & Updegraff, 2012; Latimer et al., 2008; Rivers, Salovey, Pizzaro, Pizzaro, & Schneider, 2005; Rothman & Salovey, 1997).

Research in the area of health behavior has found that gain/loss framing can help predict when people choose to take preventive action, though some of the findings is contradictory to prospect theory. Latimer and colleagues (2008) gave sedentary participants either gain framed messages (i.e., emphasizing the benefits of physical activity in reducing risks of diseases), unframed messages, or loss framed messages (i.e., emphasizing the risks of inactivity and the desirable outcomes that would be missed due to a lack of activity). Participants received the messages throughout their 9-week program and completed measures of physical activity, social cognition, and valuation of exercise at week 2 and 9. Participants who were in the gain-framed condition showed consistent increases in valuation of exercise, self-efficacy, and physical activity, as compared to both the mixed and loss-framed conditions over the course of the 9 weeks. This result has been found consistently with prevention of potentially less risky health concerns including smoking cessation (Steward, Schneider, Pizzaro, & Salovey, 2003), dental hygiene (Rothman, Martino, Bedell, Detweiler, & Salovey, 1999), and sunscreen use (Detweiler, Bedell, Salovey, Pronin, & Rothman, 1999). However, when the health concern carries more risk of more serious health outcomes, especially cancer, loss-framed messages as compared to gain framing influence participants to seek preventive measures including mammography (Schneider et al., 2001), HIV testing (Apanovitch McCarthy, &

Salovey, 2003), and pap testing (Rivers, Salovey, Pizzaro, Pizzaro, & Schneider, 2005). These findings confirm some tenets of prospect theory but also challenge other ones. Prevention based on gain-framed messages is in line with diminishing sensitivity in that people are more risk averse over moderate gains (such as using sunscreen). Though seeking prevention based on loss-framed measures for more serious medical conditions is not in line with diminishing sensitivity, it may confirm that these medical conditions are subject to probability weighting, and that emphasizing the loss involved with a rare occurrence is more persuasive than emphasizing the gain.

Framing effects have also been found to influence decisions that occur under high need as well as the propensity of someone to switch their choice. Mishra and Fiddick (2012) examined the role of gain/loss framing under differing levels of need by using classic Tversky and Kahneman scenarios (1982). Specifically, the researchers randomly assigned participants to one of four conditions: gain/low need, gain/high need, loss/low need, and low/high need. Participants played the role of the current health minister of a country in which a fatal and contagious disease had infected 600 people. Serving as the health minister, the participant had to decide between two plans. In the gain/high need condition participants read gain-framed options ("If plan A is adopted, 200 people will be saved" and "If Plan B is adopted, there is a one third probability that none of them will die and a two thirds probability that all of the people will die") as well as a high need statement in which they had to save at least 300 people (low need only required saving at least 100 people). Participants chose riskier options under high need more than under low need, an effect that occurred across frame type. This suggests that the certainty effect and diminishing sensitivity are reversible under conditions of high need. Other

researchers have found that loss framing can influence the decision to switch choices (Yechiam, Zahavi, & Arditi, 2014). Specifically, loss framing can lead to restlessness in decision-making that results in participants switching choices more often than those who receive gain-frames.

Prospect theory and policy decisions. Little research has extended prospect theory to policy decision making and those studies that have shown mixed results. Boettcher (2004) asked participants to place themselves in the role of an advisor to a fictitious president (Study 1). They read a scenario that described a terroristic hostage situation for which they were to advise the president on a course of action that was either gain-framed (number of people that could be rescued) or loss-framed (number of people that will die). Participants were more likely to be risk averse under the gain-framed condition and more risk seeking under the loss framed condition, a finding in line with prospect theory. Another study manipulated gain- and loss-framed information for participants determining whether or not they would support a new climate change policy (Wiest, Raymond, & Clawson, 2012). Although the frame did not change endorsement of the new policy, those in the loss-frame condition reported greater feelings of being threatened by climate change. Finally, Belton, Thomson, and Dhami (2014) gave a hypothetical civil litigation case to lawyers and non-lawyer participants and asked them to put themselves in the position of the claimant in a dispute over how much they should receive for a totaled car due to an accident. The researchers framed damage outcomes as either a loss or a gain and asked participants to determine the appropriate settlement for the case. In the gain framed condition, participants were told their totaled car was worth $14,000 and the settlement was set at $19,000, thus they would gain from taking the

settlement. In the loss framed condition, participants were told their totaled car was worth $24,000 which meant taking the $19,000 settlement would be a loss of value. Regardless of profession (lawyer vs. non-lawyer) all participants showed effects of framing. Specifically, participants were more likely to settle their claim in the gain condition than the loss condition. Belton and colleagues also coded qualitative data of the decision making process and found that participants in the gain-frame condition were more likely to make risk-averse comments ("money in the bank is better than a chance or more or less money") while those in the loss-frame condition were more likely to make risk-seeking comments ("I would feel that given that National Mutual had offered a settlement they were not confident in their position"). Lawyers made similar levels of risk-averse comments across conditions while non-lawyers made more risk-averse comments in the gain condition.

Given the limited research concerning prospect theory and policy it is difficult to predict the influence framing may have on a juror. It is possible that a gain-framed instruction may lead to more risk-aversion, which would manifest as pro-plaintiff verdict under the assumption that jurors tend to be more sympathetic to a plaintiff in a discrimination or retaliation case. If the court provides loss-framed instructions this may elicit risk-seeking behaviors that could manifest in either more pro-plaintiff or defendant verdicts depending upon the jurors initial propensity. The role of prospect theory probably depends upon the strength of evidence in the case. Perhaps risk-averse jurors would be more likely to focus only on the strongest facts, while risk seeking would consider all case facts. Another possibility is that but-for and mixed motive instructions are inherently framed. That is, but-for instructions, due to the limited amount of

information considered and the burden resting on the plaintiff, may be loss-framed, whereas mixed motive is gain-framed with its greater allowance of additional decision factors. This could explain why jurors are, regardless of evidence strength, more likely to find for the plaintiff under mixed motive instructions but more likely to find for the defendant under but-for instructions (Wiener & Farnum, 2013).

Prospect theory and group decisions. There also exists a paucity of research on the way in which prospect theory tenets might influence group decision making. Boettcher (2004) found that for participants who participated in group deliberation concerning a hostage situation, the few framing effects for individual participants disappeared for the group. It is possible that the type of group interaction may predict the influence of prospect theory tenets. When groups engaged in a face-to-fact interaction, framing effects occurred in line with prospect theory but not under a computer-mediated discussion. That is, when participants were discussing face-to-face they were more likely to exhibit risk-aversion for gain-framed decisions and risk seeking for loss-framed decisions (McGuire, Kiesler, & Siegel, 1987). In other work, Whyte (1993) found that members of groups gave in to prospect theory pressures more easily. Participants role played a scenario in which they were in charge of a company that was dealing with a failing investment. They faced either a neutral or loss-framed option for dealing with the failing investment. Finally, participants either made the decision individually or in a group. Both individuals and groups were more likely to escalate their commitment to a failing investment with the loss-frame condition, but this escalation was quicker and more dramatic for the group.

The results of this research offer some suggestions for how prospect theory tenets might influence juries. Jurors acting as individuals are likely to give in to risk-aversion with gain and risk seeking with losses. This may depend on the method of deliberation (McGuire, Kiesler, & Siegel, 1987). If deliberation occurs in person, the effects may be more pronounced. But if a study uses an online deliberation, the usual risk aversion may not manifest. It is also possible that the tenets of prospect theory are more influential in jury deliberation than in individual juror decisions (Whyte, 1993). However, other studies suggest that the effect of prospect theory could disappear with deliberation (Boettcher, 2004).

Other Psychological Theories.

Although they are not central to this process, other social psychological theories including group decision-making, the theory of planned behavior, general emotion theories, and general decision making theories might also influence decision making in allegations of illegal retaliation. I consider each of these briefly as alternative approaches.

Group decision-making. Although the jury is an essential and invaluable aspect of the legal system, little research makes use of jury deliberations due to lack of resources. Jury deliberation studies are costly in terms of both time and money. Yet, it is possible that individual juror judgments could be substantially different from judgments made during or after deliberation (Kerwin & Shaffer, 1994; Kerr, Niedermeier, & Kaplan, 1999). Deliberation may help jurors approach the evidence of the case in a novel way and involve self-corrective measures for individual juror held bias or misinformation (Gastil, Burkhalter, & Black, 2007). In fact, groups operate as their own information

processing systems (Hinsz, Tindale, & Vollrath, 1997; De Dreu, Nijstad, & van Knippenberg, 2008). Although groups do have better collaborative recall of facts than individuals (Maki, Weigold, & Arellano, 2008), research also suggests that collaborative recall is greater when a group interacts less (Thorley & Dewhurst, 2009). This may seem counterintuitive, but individuals in groups with higher levels of interaction are more susceptible to adopting the incorrect responses and facts that fellow group members present (Salerno & Diamond, 2010). This is especially true under certain circumstances: unmemorable stimulus (Walther et al., 2002), smaller group size (Thorley & Dewhurst, 2007), higher pressure to perform (Reyson, 2003), and the absence of dissenters (Walther et al., 2002). There are ways to increase group productivity and interaction, such as developing a more cohesive group that shares a normative goal of productivity (Kerr & Tinsdale, 2004) and whose members are committed to perform to obtain the best result (Mullen & Cooper, 1994). This is in line with research on regulatory focus and groups. Specifically, when a group's regulatory focus fits the regulatory focus of a task, which could be considered cohesion, they are better able to perform the task, as compared to when the task does not fit the regulatory focus (Sassenberg, Landkammer, and Jacoby, 2014).

There is little argument that jury deliberation involves stress, which may decrease group performance. More specifically, stress may increase the quantity but reduce the quality of the group's product because it forces groups to focus only on the most vital tasks (Brown & Miller, 2000; Kelly & Karau, 1993). Increasing time pressure in groups has an even greater effect on group focus (Brown & Miller, 2000; Volpe et al., 1996); however, if groups experience more stress than they can reasonably handle then their

overall performance decreases (Adelman et al., 2003). Stressful conditions also increase a "need for closure" among individuals within the group, which may be a mechanism that actually increases group information exchange and information utilization (Kruglanski, Pierro, Mannetti, & De Grada, 2002).

Theory of planned behavior. The theory of planned behavior (TPB) seeks to explain the predictors of behavioral intentions (Ajzen & Madden, 1985; Ajzen, 1991). The theory posits that intentions result from attitudes, subjective norms, and the perception of behavioral control. Central to TPB is the notion that a person's intention to perform a behavior predicts whether or not they actually perform the behavior. Generally, the stronger the intention, the more likely it is that a person will actually perform the behavior (Ajzen, 1991). Simply having the intention to perform a behavior is not enough to always follow through; in fact, TPB suggests that attitudes, subjective norms, and perception of behavioral control limit intention to behave. A person may have the intention to steal a candy bar from the store, but given the shared subjective norm that this is illegal, the behavior is less likely to happen and ultimately reduces the intention to act. Similarly, if a person does not perceive that he or she can control the behavior then the person is less likely to perform the act. Perceived control can include beliefs about opportunities and resources; for example, having the intention to run a marathon tomorrow may not be realized if a person has never run before. Here, perceived behavioral control is quite low. A meta-analysis of 185 studies found that all three components of TPB predict behavioral intentions (Armitage & Conner, 2001). Successful examples of TPB factors predicting behavioral intentions with a variety of behaviors include, among others, source reduction activity for environmental managers (Cordano &

Frieze, 2000), pharmacists' intention to provide medication therapy (Herbert, Urmie, Newland, & Farris, 2006), and online shopping behavior (Hsu, Yen, Chiu, & Chang, 2006). More importantly for the current project, researchers have applied TPB to predict a variety of ethical and legally relevant intentions and behaviors.

Corporate managers often face situations in which they must either report or ignore a potentially fraudulent behavior. Carpenter and Reimers (2006), gave MBA students one of six scenarios that manipulated the positive or negative acceptance of attitudes concerning fraudulent charges, personal control over reporting, and subjective norms of accepting or rejecting ethical violations. When participants read about a workplace that had positive attitudes towards unethical behavior, high amounts of personal control, and positive subjective norms of participating in unethical activities, they were more likely to not report a potentially fraudulent action. However, when participants read about a workplace that viewed fraudulent activities negatively on all aspects they were more likely to indicate that they would report the behavior. These results supported previous studies in which researchers used TBP to explain whether or not accountants would participate in unethical behavior (Buchan, 2005), intentions of nurses to report inadequate patient care (Randall & Gibson, 1991), and intentions of illegally downloading music (Wang & McClung, 2010).

Researchers have also applied the theory of planned behavior to study how laws and regulations influence intentions to behave. For example, Macy, Middlestadt, Seo, Kolbe, and Jay, (2012) used TPB to show how and why smoke free air laws influence intentions to cease smoking by decreasing attitudes towards smoking and increasing the normative pressure to quit. Additional TPB studies demonstrated that attitudes,

subjective norms and personal control predicted compliance with speed limit laws (Elliott, Armitage, & Baughan, 2003) and prohibitions against other driving violations (Parker, Manstead, Stradling, & Reason, 1992). More specifically, if attitudes were more lenient towards breaking the law, subjective norms indicated that others break the law, and individuals scored higher on the perception of higher personal control people intended to break the law and to actually did so. One study looked at the role of TPB in whistleblowing behaviors within the Greek system at a university (Richardson, Wang, & Hall. 2007). Participants read one of three scenarios that described minor hazing (making a pledge get napkins for dinner), moderate hazing (throwing water balloons at pledges who were dressed up for an event) and severe hazing (forcing pledges to drink alcoholic beverages and complete a number of physical activities). Richardson and colleagues (2007) found that attitudes, subjective norms, and behavioral control predicted intentions to report the hazing. The severity of the hazing served as a moderator determining the predictive strength of the attitudes, norms, and control on intentions.

The theory of planned behavior could explain employer intentions to retaliate and juror intentions toward verdicts favoring defendants or plaintiffs in retaliation cases. Jurors who have strong negative attitudes towards retaliation or discrimination and feel more personal control over rendering a verdict may be more likely to find for the plaintiff. Subjective norms could play a role in deliberation if there is a norm that is salient among a jury. It is also possible that the instructions themselves, but-for versus mixed motive, may serve as a subjective norm. Since but-for instructions require the plaintiff to bear the majority of the burden, this may provide a norm that the plaintiff is typically incorrect in their assertion, whereas mixed motive instructions may create a

norm that the employer wronged the plaintiff if an illegitimate factor came into play at all . Furthermore, employers who choose to retaliate may do so because they hold negative attitudes towards employees who complain, there is a strong subjective norm that suggests people do not tolerate complaining employees, and their own perception of personal control over the decision to retaliate is elevated. It is also possible that the Supreme Court's decision in *Nassar* could influence subjective norms. Specifically, by stating that an employer is not liable if they took other, legal factors into consideration, it could create a norm that retaliation is acceptable if there is some legitimate reason that supports a reprisal. This change in subjective norm may influence intentions to retaliate. Thus, the theory of planned behavior might also be helpful in predicting when and why employers choose to retaliation or discriminate against employees.

General emotion theories. It is difficult to consider decision-making without the influence of emotions. This is particularly true in cases of discrimination and/or retaliation, which are almost always emotionally charged. I will discuss several broad theories of emotion to briefly address some of the most important issues.

Mood-as-information suggests that people use the subjective experience of moods and emotions in their decision-making (Schwarz & Clore, 1983; Schwarz & Clore, 2003). In the seminal study, participants reported higher life satisfaction on sunny days than on rainy days, but only when researchers did not draw their attention to the weather (Schwarz & Clore, 1983). Subjective experiences with elements unknown to a person – such as the weather or emotions—can be strong predictors of decision-making. It may be possible that emotions within jurors, unbeknownst to them, influence their overall verdicts. Imagine a juror who feels anger over getting the wrong coffee order before the

trial, and this anger dissipates to annoyance that continues throughout the course of the trial and into deliberation. This juror may interpret this irritation as a sign that that the defendant is liable, not realizing that her or his emotions emerged from a different source having nothing to do with the case under consideration. This is particularly important as anger makes people more certain in their judgments, more punitive, and more likely to render a guilty verdict (Bodenhausen, Sheppard, & Kramer, 1994; Salerno & Peter-Hagene, 2013; Lerner & Tiedens, 2006).

Conscious emotions also influence behavior and decision-making and are at the core of cognitive appraisal theory. Under this theory, emotions result from the interpretations and explanations that people assign to a given circumstance, especially absent physiological arousal (Smith & Ellsworth, 1985; Lazarus, 1991). That is, in the absence of other information we look to our emotions as a source of information for how we should react in many situations. Under appraisal theories emotions give rise to a range of cognitive dimensions including certainty, pleasantness, attentional activity, anticipated effort, and responsibility (Smith & Ellsworth, 1985; Lazarus, 1991). Each individual emotion has its own footprint of cognitive appraisals. Consider the emotions that arise form negative events. For example, anger is associated with the belief that another person, instead of the self or a situation, is responsible for the negative event (Lazarus, 1991; Ortony, Clore, & Collins, 1988; Lerner & Tiedens, 2006; Scherer,1999, 2001; Weiner,1986). When a perceiver attributes a negative event to external situations or to the self, it will likely lead to either sadness or shame. The cognitive appraisal dimensions themselves determine future decisions and judgments.

Jurors likely appraise events that give rise to their current emotions. For example, Kadous (2001) studied jurors' decisions in a negligence case by varying the amount of distressing emotional content in the case description. Overall, the more distressed jurors felt the more likely they were to find the firm liable. This effect, however, dissipated when jurors rated their anxiety levels before reading the case (Kadous, 2001). This study found that when jurors are aware of the source of their anxiety, the emotions that they feel during the trial has less impact on their judgments and decisions. Appraisals of the source of an emotion may also influence employer decisions. Kligyte, Connelly, Thiel, and Devenport (2013) found that anger inhibited ethical decision-making while fear facilitated it. If an employer is angry about receiving a complaint of discrimination, this anger may lead to retaliation, whereas if the complaint made them afraid of the consequences they might refrain from retaliating.

The plaintiff's emotions may also influence juror decision-making. Research has consistently shown that people overestimate how they will emotionally respond to positive and negative situations and this overestimation influences decision-making. These errors in affective forecasting commonly known as the impact bias has important implications for how people make responsibility judgments (Baumeister, Vohs, DeWall, & Zhang, 2007; Gilbert, Pinel, Wilson, Blumberg, & Wheatley, 1998; Baron, 1992; Igou, 2008; Loewenstein & Prelec, 1993; Loewenstein & Schkade, 1999; Wilson & Gilbert, 2003; Zeelenberg 1999; Zeelenberg & Pieters, 2004; Zeelenberg, van Dijk, Manstead, & van der Pligt, 2000). People, in general, are able to predict the valence (positive or negative) of an event, but they are unable to accurately predict the duration and intensity of the same event (Gilbert et al., 1998; Gilbert, Lieberman, Morewedge, & Wilson, 2004;

Wilson & Gilbert, 2003). When forecasting the emotions of others, people over rate the negative affect that someone else will experience in relation to a negative event because they underestimate others' coping mechanisms (Igou, 2008). Most people have an understanding of their own coping behaviors and mechanisms but do not have accurate knowledge of the coping capabilities of others. So we know how we will adapt to our own experiences of negative events (although, Gilbert et al., -- 1998 suggests that we underestimate our own coping abilities) but misjudge the ability of others to do so. Igou (2008) referred to this process as the Asymmetric Immune Knowledge hypothesis.

Affective forecasting and the asymmetric immune knowledge (AIK) hypothesis likely plays a significant role in legal decision-making. Recall that retaliation requires a reasonable belief that an action was discrimination. In determining reasonable beliefs jurors may attempt to forecast the emotions and thoughts that a "reasonable" person experienced. Invoking the AIK theory, jurors are likely to see an action as more negative in affect than the plaintiff experienced. Research has found that affective forecasting the emotional experiences of a sexual misconduct complainant can lead to more judgments of sexual harassment (Wiener, Gervais, Allen, & Marquez, 2013; Kimble, Farnum, Wiener, Gervais, Allen, 2016).

General decision making theories. It is commonly assumed, especially under the law, that decision makers are rational actors. However, research on the psychology of decision making challenges this assumption (Slovic, Fischoff, & Lichenstein, 1977). Central to behavioral decision theory is the notion that people use non-rational information, such as social norms, to make decisions because decision making is complex and contradictory. (Hillman, 2000). Since the world is replete with complex and

contradictory information, people use strategies of bounded rationality, that is, they process information only until they are satisfied with a decision, even if that decision is not the optimal, rational choice (Simon, 1957). Behavioral decision theory shows that decision makers use both normative and descriptive information to reach judgments and decisions (Einhorn & Hogarth, 1981; Slovic, Baruch, Eischoff, & Lichenstein, 1997). Normative information conforms to the beliefs and values of the individual and those around him or her. Descriptive information refers to the beliefs and values associated with the decision in a way that makes it more accessible for incorporating that information into the decision making process. This tradeoff and comparison of normative information with descriptive information has been found to predict decision making in business ethics (Loewenstein, 1996), consumer choices (Khan, Dhar, & Wertenbroch, 2004), and the management and regulation of risk (Slovic, Fischhoff, & Lichtenstein, 1984.).

To make matters even more complex, people rely on heuristics, simple and efficient rules to make a variety of decisions in their daily life (Tversky & Kahneman, 1973). People use a variety of different types of heuristics in their decisions many of which turn out to be robust predictors of decision outcomes (Block & Harper, 1991; Campbell, Chao, Robertson, & Yokum, in press; Marti & Wissler, 2000; Epley & Gilovich, 2002; Epley, van Boven, Keysar, Gilovich, 2004; Robbenolt & Studebaker, 1999; Tversky & Kahneman, 1973; Wansink, Kent, & Hoch, 1998). For example, anchoring and adjustment occurs when people focus on a piece of information (the anchor) that dictates a reference point for a decision (Block & Harper, 1991; Epley & Gilovich, 2002; Epley, Keysar, van Boven, & Gilovich, 2004; Wansink, Kent, & Hoch,

1998). Research studies show that anchoring is influential in determining damages in civil claims such that jurors focus on any suggested amount or a cap and then adjust their decision based on this number (e.g. Campbell, Chao, Robertson, & Yokum, 2014; Marti & Wissler, 2000; Robbenolt & Studenbaker, 1999). Another commonly used heuristic, the availability heuristic, occurs when people base their current decision on the ease with which they can remember concepts or past experiences related to the decision at hand (Tversky & Kahneman, 1973). In a trial, if the defendant was recently in the news as a paragon of charity, the availability of this memory could lead to more pro-defendant verdicts. The availability heuristics influences moral perceptions (Wasieleski & Hayibor, 2008) and verdicts in criminal cases (Kassin & Garfield, 1991; Lieberman, 2002) especially when there is an abundance of pretrial publicity (Greene, 1990; Greene & Wade, 1988; Steblay, Besirevic, Fulero, & Jimenez-Lorento, 1999). The representative heuristic is similar to the availability heuristic, but under this mental shortcut people focus on recalling the prototype, or representative, of a group or situation (Kahneman & Frederick, 2002; Tversky & Kahneman, 1983). This heuristic is most salient in cases in which jurors view groups or individuals stereotypically (Darby & Jeffers, 1988; FörsterLee, FörsterLee, Horowitz, & King, 2006; Lieberman, 2006).

Understanding Causality in Retaliation

The recent decision in *Nassar* (2013) brings the issue of causality into the forefront of retaliation law. Plaintiffs are filing an increasing number of claims of retaliation each year, making it imperative to understand how jurors interpret case facts under both mixed motive and but-for causality instructions. Further, the application of but-for causality may influence the decision making of employers who are contemplating

retaliation either deliberatively or unconsciously. While many social psychological theories of decision making can shed light on these issues, regulatory focus and its close cousin, prospect theory may be particularly useful in understanding how people evaluate risk in reaching retaliation judgments. Regulatory focus provides a framework for understanding the psychological pathways that jurors traverse and the effects of their motivational states when contemplating a retaliation case. To study this effect researchers can manipulate regulatory focus incidentally or integrally to determine when and why regulatory focus influences decisions. Prospect theory may explain the relationship between perceived risk and decision making by offering guidance to understand the way in which jury instructions frame losses and gains and thereby influence juror verdicts. Where gain framed jurors may act in risk averse ways loss framed jurors may seek out risky decisions. Employers may also act in accordance to gains or losses when reacting to employee discrimination claims. Gain framed employers may be less likely to retaliate than loss framed employers.

Chapter 2: Current Research

The current studies first seek to extend Wiener and Farnum's (2013) findings on age discrimination to cases of retaliation. The studies manipulated participant regulatory fit and examined the pathways that participants use to reach their decisions by measuring how they weigh plaintiff and defendant evidence. Study 1 focused on a retaliation case following the firing of an employee while Study 2 used a case based upon failure to promote a deserving employee. The current research also seeks to understand the influence of regulatory fit and knowledge of retaliation law on decisions concerning promoting or firing employees. Study 3 included measures to examine the pathway that defendants use when determining if retaliation is an acceptable reaction to an employee complainant. All three studies measured regulatory focus incidentally and manipulated task focus integrally to extend the understanding of how regulatory fit influences the comprehension and application of jury instructions as well as employment decisions when there are opportunities for retaliation.

Overall Hypotheses

Hypothesis 1. In line with previous research (Wiener & Farnum 2013; Farnum & Wiener, 2016; Wiener & Farnum, 2016), participants using but-for instructions will be more likely to find for the defendant, while participants using mixed motive instructions will be more likely to find for the plaintiff.

Hypothesis 1a. When participants face two different sets of instructions, mixed motive for a discrimination claim and but-for for a retaliation claim, the but for instructions will bleed over and dilute participants use of the mixed motive instructions. Thus, in cases that include both statutory and retaliation claims jurors will be more likely

to find for the defendant in the discrimination case when they must use both types of instructions as opposed to when the law instructs them to apply only mixed motive instructions. However, it is possible (but less likely) that participants will compare the instructions, notice the differences in the decision criterion, and adhere even more closely to the mixed motive approach in the discrimination case and be more likely to find for the plaintiff than those who either used but-for instructions for both claims, or those who only decided a retaliation claim with but-for instructions.

Hypotheses 1b. When jurors are rendering a verdict for a retaliation case in which an employer denied the plaintiff a promotion, they will show less instruction effects than in a retaliation case in which the employer fired the plaintiff.

Hypotheses 1c. When making employment decisions (firing or promoting) in a system that relies upon but for causality instructions, participants playing the role of employers will be more likely to retaliate, while those operating in a system that uses mixed motive causality will be less likely to retaliate.

Hypothesis 2. In line with previous research (Wiener & Farnum, 2013), participants high in either chronic promotion or prevention focus, as compared to participants low on either, will be more likely to find for the plaintiff.

Hypothesis 2a. Participants who are in a state of regulatory fit (i.e. chronic promotion/promotion manipulation) will be more likely to find for the plaintiff than those who are in a state of regulatory misfit. Promotion focused regulatory fit will lead to participants overvaluing the plaintiff's evidence, while participants in a state of prevention focused regulatory fit will undervalue the defendant's evidence (Wiener & Farnum, 2013).

Hypothesis 3. When making employment decisions (promoting or firing), participants high in promotion focus playing the role of employers will be more likely to retaliate against the plaintiff, whereas participants high in prevention focus will be less likely to retaliate against the plaintiff. Participants low in both will fall back on the causality instructions and show but for versus mixed motive effects on their verdicts.

Hypothesis 3a. Retaliation will be more likely to occur when making a promotion decision as compared to termination judgment, because the promotion decision is an act of omission while the termination decision is an act of commission (Charness & Levine, 2010).

Hypothesis 3b. Participants who are in a state of regulatory fit will weigh the resumes differently. Specifically, participants in a state of promotion regulatory fit will more value the good work qualities of the applicants who did not complain about discrimination more highly than the applicant who did complain about discrimination. Participants in a state of prevention regulatory fit will be more likely to undervalue the negative aspects of the applicant who complained about discrimination, as compared to the applicants who did not complain about discrimination.

Hypothesis 4. Regulatory focus, and especially regulatory fit, will be the most influential under but-for causality than mixed motive causality because it discourage respondents from considering all the case information so that they resort to their own feelings and motivations to make a decision.

Chapter 3: Study 1

Study 1: Regulatory Focus and Jury Decision Making in Retaliation Cases involving firing an employee

Study 1 seeks to replicate and extend previous research on the influence of jury instructions (Wiener & Farnum, 2013; Farnum & Wiener, in press; Wiener & Farnum, in press) to cases of retaliation. Specifically, does the use of different instructions, mixed motive versus but-for, influence juror decision making in cases of retaliation and cases where jurors have to decide both discrimination and retaliation claims. Participants were given a case vignette and had to render a verdict for the case. Additionally, Study 1 also examines the role of regulatory focus on juror decision making.

Research Design and Procedure. Study 1 was a 2 (Regulatory frame: promotion v. prevention) x 2 (Claim type: Retaliation v. Discrimination/Retaliation) x 2 (Instruction: mixed motive v. but-for) + 1 (Mixed Motive and But-for instructions for a Discrimination/Retaliation claim) between participants design with chronic prevention and promotion as continuous variables. Participants signed up for the study on Mechanical Turk, which directed them to the survey link. Participants had to complete the survey in one sitting. Participants read the informed consent and indicated (yes or no) whether they consented to participate in the study. They completed the chronic regulatory focus measure before reading the trial transcript and then read the framing instructions, completed the decision motivation questionnaire, read the causality instructions, and then rendered their verdicts. Lastly, participants completed the manipulation check and demographic questionnaire. After completing the study, the program thanked participants and paid them $1 for their time.

Participants. Only participants who were 18 or older and a U.S. citizen were able to see the survey on Mechanical Turk. Participants were 210 community members recruited via Mechanical Turk. Eleven participants were dropped from the dataset for falling outside two standard deviations of response time for the survey. The final 199 participants were 50% (N = 100) women, had a mean age of 35.71, and 83.8% of them were employed. The ethnic breakdown of the participants was representative of the Mturk community with 79.3% European American, 6.6% African American, 4.5% Asian American, 4% Hispanic, 2% Latino/a, 1.5% Native American, and 1.5% other. Participants were well educated with 57.8% holding at least a college degree, 30.7% having completed some college, and 11.6% holding a high school diploma. Finally, 42.2% of participants had occupied a work position in which they had made hiring or firing decisions.

Chronic Regulatory Focus. Participants first completed Shah and Higgins (1997) incidental measure of regulatory chronicity by listing four attributes of their ideal self and four attributes of their ought self. They rated the extent to which they actually possess each attribute on a 1 to 5 scale (Ideal M = 2.77, SD = .69 ; Ought M = 2.84, SD = .63). The sum of the amount of time it took them to rate the ideal and ought attributes served as the measure of chronic prevention and promotion focus, respectively (Ideal M = 72.82, SD = 61.66; Ought M = 76.49 , SD = 63.66) (Appendix A).

Trial Transcript. The trial summary was a modified version of the case facts in *University of Texas Southwestern Medical Center v. Nassar* (Appendix B). In the first version of the summary *(retaliation only),* the plaintiff only brought a claim of retaliation but in the second version (*discrimination and retaliation*) the plaintiff brought two claims

– discrimination and retaliation. In the transcript, the plaintiff alleges that the hospital fired him in retaliation to his national origin discrimination complaint that he had brought while he worked as a University affiliated doctor. The plaintiff's complaint of national origin discrimination was based on treatment from his supervisor in which she scrutinized his work more than she scrutinized other employees and she made offensive ethnic comments to other co-workers regarding the defendant's ethnicity, such as "Middle Easterners are lazy." After he filed a complaint and sent a letter detailing the discrimination and resigned from the University, the hospital fired the plaintiff from his newly negotiated position as a non-University affiliated doctor. Pilot testing using Mechanical Turk found that respondents viewed the scenario as neutral with 50% (20) finding for the plaintiff and 50% (20) finding for the defendant.

Decision Motivation Measure. Participants assessed the extent to which each of the following was a motivating factor in the University Medical Center's actions that ultimately led to the decision to fire Dr. Ahmad on a 0 (not at all) to 11 (extremely) scale. The factors included 1. "Dr. Ahmad's national origin."(M = 4.25, SD = 3.04) 2. "Meadowood's rehiring policy" (M = 5.03, SD = 3.26) 3. "Dr. Ahmad's adversarial relationship with his supervisors" (M = 6.52, SD = 3. 28) 4. "Dr. Ahmad's discrimination complaint" (M = 5.95, SD = 3.50) and 5. Dr. Ahmad's letter to the University Medical Center's faculty." (M = 6.80, SD = 3.23) (Appendix C).

Framing manipulation. Immediately after reading the trial transcript, participants read the judge's explanation of the juror's task akin to jury instructions in a real trial. There were two versions of these instructions: promotion framed and prevention framed. The promotion framed instructions informed the participants that it was their job to

achieve the satisfaction that comes from knowing they completed their job and achieved the best possible outcome. The prevention framed instructions informed the participants that it was their job to avoid the dissatisfaction that comes from knowing they improperly completed their job and contributed to a miscarriage of justice (Appendix D).

Causal Instructions. After reading the transcript, half of the participants received mixed motive instructions while the other half received but-for jury instructions. These were the instructions that Wiener and Farnum (2013) used modified to include language from Title VII that explained retaliation. The mixed motive instructions informed participants that for a retaliation claim three elements must be met: 1. The plaintiff complained about national origin discrimination, 2. The defendant took a materially adverse action, and 3. That the discrimination complaint was a motivating factor for the defendant's actions. "*A "motivating factor" is a factor that played some part in the defendants decision.*" For the but-for retaliation instructions, elements 1 and 2 were the same but element 3 required that the discrimination complaint be a determinative factor. "*A determinative factor means the Defendant would not have taken the challenged employment decision but for the Plaintiff's protected class.*"

For the discrimination instructions, there were only two elements: 1. The defendant's actions led to the plaintiff being fired and 2. The plaintiff's national origin was the determinative/motivating factor. Participants in the discrimination and retaliation condition either received but-for instructions for both charges, mixed motive for both charges, or mixed motive for the discrimination charge and but-for, for the retaliation charge (Appendix E).

Verdict and Case Decisions. Participants then completed a verdict ballot where they indicated whether they found in favor of the plaintiff or the defendant. For retaliation verdicts 48.2% (N = 96) found for the defendant and 51.8% (N = 103) found for the plaintiff. For discrimination verdicts 55.8% (N = 67) found for the defendant and 44.2% (N = 53) found for the plaintiff. Jurors also completed a verdict certainty scale on an 11-point scale ranging from -5 (*completely certain the defendant is not liable*) to 5 (*completely certain the defendant is liable*) (retaliation verdict certainty M = .64, SD = 2.86; discrimination verdict certainty M = .14, SD = 3.03). Next jurors rated the strength of the plaintiff and defendant's evidence on 1 (*not at all convincing*) to 9 (*very convincing*) separate Likert Scales for both retaliation verdicts (plaintiff evidence M = 5.21, SD = 2.29; defendant evidence M = 4.66, SD = 2.25) and discrimination verdicts (plaintiff evidence M = 4.66, SD = 2.28; defendant evidence M = 5.28, SD = 2.10). Finally participants completed an item that measured their perception of the burden of proof in the case by marking how certain (0-100%) they had to be of the evidence in order to find the defendant liable (retaliation verdict burden of proof M = 70.41, SD = 2.25; discrimination verdict burden of proof M = 72.51, SD = 21.35)(Appendix F).

Manipulation Check. To determine whether participants' understood the instructions, they answered 2 true/false questions regarding the discrimination charge: 1. "*University Medical Center violated Title VII only if Dr. Ahmad's national origin was the determining factor in University Medical Center's efforts to have Dr. Ahmad fired.*" 2. "*University Medical Center violated Title VII if they merely considered Dr. Ahmad's national origin in University Medical Center's efforts to have Dr. Ahmad fired.*" Participants also answered 2 true/false questions regarding the retaliation charge: 1.

"*University Medical Center violated Title VII only if Dr. Ahmad's discrimination charge was the determining factor in University Medical Center's efforts to have Dr. Ahmad fired.*" 2. "*University Medical Center violated Title VII if they merely considered Dr. Ahmad's discrimination charge in University Medical Center's efforts to have Dr. Ahmad fired.*" As an added manipulation check, participants indicated if they had heard of the case before, if they answered "*yes,*" (N = 2) they then rated their familiar with the facts of the case (neither was familiar with the facts of the case). Since neither participant was familiar with the facts, they were kept in the data analyses (Appendix G).

Demographics. Participants also completed a brief demographic survey on which they supplied their age, ethnicity, marital status, and other relevant self-report statistics. See Appendix H for the full survey.

Results

The results of this study appear in four phases. Phase 1 displays preliminary analyses of the experimental task to determine which factors predict verdict and verdict certainty using only simple main effects. Phase 2 presents the full model analyses of the experimental task, absent the added condition of mixed motive instructions for discrimination and but-for instructions for retaliation, to test the influence of significant predictors. This analysis was a 2 (Regulatory frame: promotion v. prevention) x 2 (Claim type: retaliation v. discrimination/retaliation) x 2 (Instruction: mixed motive v. but-for) factorial design. Phase 3 presents the full model analyses including the added condition to test the influence of manipulations on the dependent variables. Finally, phase 4 examined in more detail the moderators that emerged as viable during phase 1 and 2 of the analyses.

Phase 1: Preliminary Analyses of Verdict and Verdict Certainty

Manipulation checks. A causal knowledge index was created in which participants who correctly identified the instruction type in the manipulation check were coded as 1 and those who incorrectly identified the instruction type were coded as 0. A binary logistic regression predicting accurate understanding of the instruction with the instruction manipulation (which included the condition in which participants had both instructions) revealed that for retaliation claims, instruction did predict accuracy, $\chi^2(2) = 7.10$, $p < .03$, Nagelkerke $R^2 = .05$. Categorical contrasts showed that participants who received both instructions were significantly less accurate in their knowledge of instructions compared to those who only received but-for, $\beta = .975$ ($SE = .406$), $Wald = 5.76$, $p < .016$, LLCI = 1.20, ULCI = 5.88, or only mixed motive instructions, $\beta = .979$ ($SE = .411$), $Wald = 5.675$, $p < .017$, LLCI = 1.19, ULCI = 5.96. Table 3.1 shows the breakdown for accuracy by instructional condition. A binary logistic regression predicting accurate understanding of instruction by the instruction manipulation for discrimination claims was not significant, $\chi^2(2) = .113$, $p < .945$, Nagelkerke $R^2 = .001$.

Table 3.1: Instruction Accuracy by Instruction Condition

	Retaliation Claim Instruction Accuracy					
	Inaccurate		Accurate		Total	
	N	%	N	%	N	%
But-for Only	19	23.8	61	76.3	80	100
Mixed Motive Only	18	23.7	58	76.3	76	100
Mixed Motive and But-for	19	45.2	23	54.8	42	100
Total	56	28.3	142	71.7	198	100

A binary logistic regression predicting retaliation verdict by accuracy knowledge of the retaliation instruction approached significance, $\chi^2(1) = 3.42$, $p < .06$, Nagelkerke $R^2 = .02$, such that those who were accurate were marginally more likely to find for the plaintiff, $\beta = .587$ ($SE = .320$), $Wald = 3.372$, $p < .066$, LLCI = .96, ULCI = 3.37. Table 3.2 displays the retaliation verdict breakdown by accuracy. A binary logistic regression predicting discrimination verdict by instruction accuracy was not significant, $\chi^2(1) = .074$, $p = .785$, Nagelkerke $R^2 = .001$.

Table 3.2: Retaliation Verdict Decisions by Instruction Accuracy

	Retaliation Claim Instruction Accuracy					
	Plaintiff		Defendant		Total	
	N	%	N	%	N	%
Inaccurate	23	41.1	33	58.9	56	100
Accurate	79	55.6	63	44.4	142	100
Total	102	51.5	96	48.5	198	100

To assess the influence of instruction accuracy on retaliation verdict certainty, a one-way ANOVA predicting retaliation verdict certainty revealed a non-significant effect of instruction accuracy, $F(1, 196) = 2.927$, $p = .09$, partial $\eta^2 = .022$. A one-way ANOVA predicting discrimination verdict certainty by instruction accuracy also failed to reveal a significant effect of instruction accuracy on certainty, $F(1, 116) = 1.865$, $p = .175$, partial $\eta^2 = .016$.

Motivational Analyses. A preliminary forced entry binary logistic regression predicting retaliation verdict with the five motivating factors (plaintiff national origin, rehiring policy, relationship with supervisors, discrimination complaint, and the letter to the university) produced a significant overall model $\chi^2(5) = 24.67$, $p < .001$, Nagelkerke $R^2 = .157$, but only one of the motivating factors, plaintiff's national origin, was significant, $\beta = .244$ ($SE = .054$), $Wald = 20.626$, $p < .001$, LLCI = 1.15, ULCI = 1.42. A

forced binary logistic regression predicting discrimination verdict from the motivating factors also produced a significant model, $\chi^2(5) = 23.706$, $p < .001$, Nagelkerke $R^2 = .242$, again only plaintiff's national origin was a significant predictor of verdict, $\beta = .331$ ($SE = .077$), $Wald = 18.215$, $p < .001$, LLCI = 1.20, ULCI = 1.62. In both retaliation and discrimination verdicts, those who thought the defendant took into consideration the plaintiff's national origin were more likely to find for the plaintiff. This is interesting because under the law, the plaintiff's national origin should not be a factor in determining a retaliation verdict. Instead, the participants should only have considered whether the hospital relied on the plaintiff's discrimination complaint in its adverse employment decision.

Next, to determine the influence of motivating factors on retaliation verdict certainty, a multiple regression predicted certainty with a significant model, $R^2 = .18$, F (5, 196) = 8.48, $p = .001$. The plaintiff's national origin was the only significant predictor, $\beta = .37$ ($SE = .06$), $t = 1.16$, $p < .001$, LLCI = .25 ULCI = .49. Finally, a multiple regression predicting discrimination verdict certainty by the five motivating factors produced a significant model, $R^2 = .12$, F (5, 120) = 3.30, $p = .001$. Only national origin significantly predicted discrimination verdict certainty, $\beta = .33$ ($SE = .09$), $t = 3.72$, $p < .001$, LLCI = .15 ULCI = .51.

Strength of Evidence Analyses. To understand how participants weighed the evidence of the plaintiff and defendant in deciding a verdict, I performed a preliminary forced entry binary logistic predicting retaliation verdict with strength of plaintiff and defendant evidence. The model was significant, $\chi^2(2) = 127.556$, $p < .001$, Nagelkerke $R^2 = .631$, with both plaintiff, $\beta = .783$ ($SE = .140$), $Wald = 31.151$, $p < .001$, LLCI = 1.66,

ULCI = 2.88, and defendant evidence, β = -.516 (*SE* = .121), *Wald* = 18.304, $p < .001$, LLCI = .47, ULCI = .76, as significant predictors. Importantly, participants who viewed the plaintiff's evidence as strong were more likely to find for the plaintiff, while those who viewed the defendant's evidence as strong were more likely to find for the defendant. A forced entry binary logistic regression predicting discrimination verdict by plaintiff and defendant evidence also produced a significant model, $\chi^2(2) = 84.925$, $p < .001$, Nagelkerke $R^2 = .683$. For discrimination verdicts only plaintiff evidence emerged as a significant predictor, β = 1.155 (*SE* = .228), *Wald* = 26.632, $p < .001$, LLCI = 2.03, ULCI = 4.96, such that participants who believed the plaintiff's evidence is stronger more likely to find for the plaintiff. The defendant's evidence did not factor into this decision, β = -.25 (*SE* = ..19), *Wald* = 1.75, $p = .19$, LLCI = .53, ULCI = 1.13.

To examine the influence of strength of evidence on verdict certainty, separate multiple regressions predicting certainty by strength of evidence were conducted. For retaliation verdict certainty, the model was significant, $R^2 = .48$, F (2, 198) = 89.19, $p = .001$ and both plaintiff evidence, β = .67 (*SE* = .09), t = 7.84, $p < .001$, LLCI = .50 , ULCI = .84, and defendant evidence, β = -.26 (*SE* = .09), t = -2.95, $p = .004$, LLCI = -.43, ULCI = -.08, were significant predictors. For discrimination verdict certainty, the overall model was significant, $R^2 = .39$, F (2, 120) = 37.77, $p = .001$. Plaintiff evidence was significant, β = .69 (*SE* = .13), t = 5.46, $p < .001$, LLCI = .44 ULCI = .94, but defendant evidence was not significant, β = -.21 (*SE* = .14), t = -1.51, $p = .13$, LLCI = -.48, ULCI = .06.

Trait regulatory focus analyses. Trait regulatory focus was not analyzed in this study due to a failure in the regulatory focus measure to differentiate between promotion

and prevention focused individuals. Specifically, the reaction times did not correlate with the ratings of the traits (ideal rating $r = -05$, $p = .44$, ought rating $r = -.06$, $p = .36$, even when transforming the data to be a normal distribution. More concerning, individuals who rated themselves high in ideal/promotion traits also significantly rated themselves high in ought/prevention traits (Pearson $r = .51$, $p = .001$). This suggests that the measure was not sensitive enough to parse out participants' trait regulatory focus.

Phase 2: Full Experimental Model Analyses

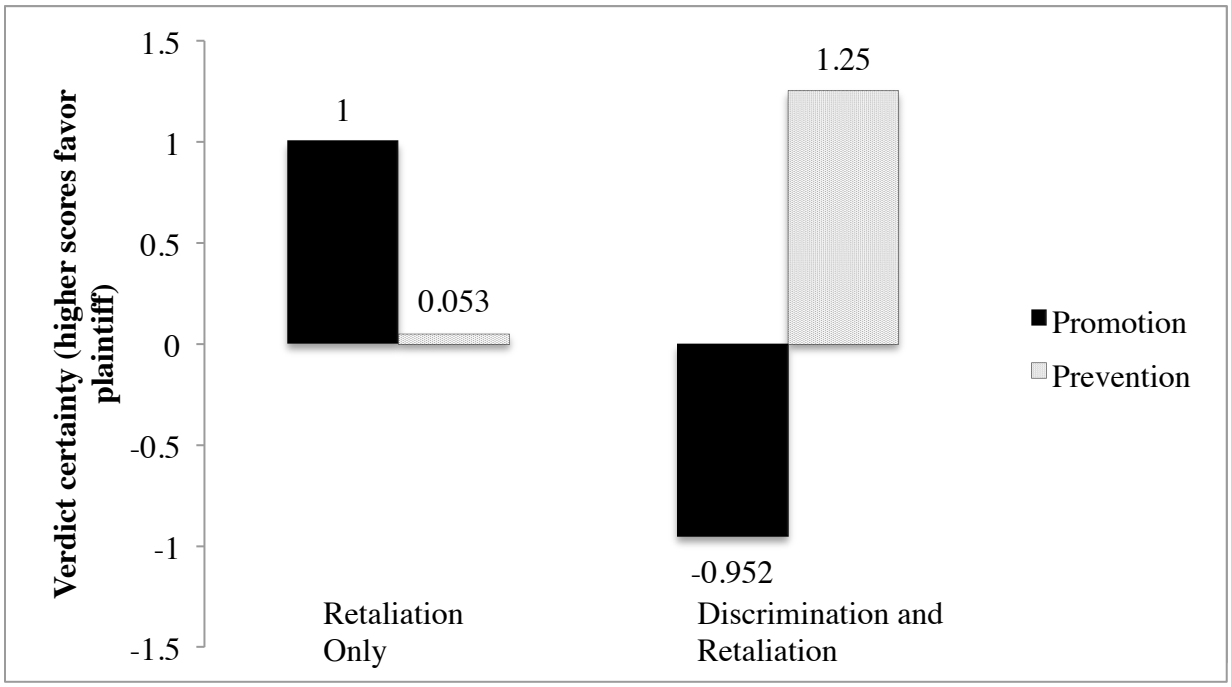
In the analyses of the full model, participants from the different instruction condition (discrimination complaint with mixed motive instruction and retaliation complaint with but-for instruction) were left out. A separate analysis in phase 3 examined these participants' responses.

Predicting retaliation verdict by instruction, regulatory focus, and claim type. A forced binary logistic regression predicting retaliation verdict (0 = plaintiff, 1 = defendant) by instruction (0 = but-for, 1 = mixed motive), regulatory focus manipulation (0 = prevention, 1 = promotion), and claim type (0 = retaliation only, 1 = discrimination and retaliation) failed to produce a significant model, $\chi^2(3) = 1.27$, $p = .736$, Nagelkerke $R^2 = .011$ and none of manipulated variables predicted retaliation verdict, all ps > .429. To test for interactions between the variables, a second forced entry binary logistic regression included the three manipulated variables and their interactions to predict retaliation verdict. The model was not significant, $\chi^2(7) = 4.454$, $p = .726$, Nagelkerke $R^2 = .038$, with none of the variables or interactions reaching significance, all ps > .109.

Predicting retaliation verdict certainty by Instruction, Regulatory Focus, and Claim Type. An ANOVA predicting retaliation verdict certainty by instruction,

regulatory focus manipulation, and claim type revealed no main effects (all *F*s < 1.541, all *p*s > .216) and no significant two-way interactions (all *F*s < 2.16, all *p*s > .144) but there was as significant three-way interaction, $F(1, 148) = 5.617$, $p = .019$, partial $\eta^2 = .037$. In order to more closely examine this three-way interaction, I split the data by instruction type and performed an ANOVA testing retaliation verdict certainty as a function of the regulatory focus manipulation and claim type. For but-for instructions there was a significant two-way interaction between regulatory focus and claim type, $F(1, 76) = 6.541$, $p = .013$, partial $\eta^2 = .079$ but that interaction was not significant in the mixed motive instruction condition, $F(1, 72) = .768$, $p = .384$, partial $\eta^2 = .011$. Figure 3.1 displays the but-for instruction results. Participants who only made a retaliation claim showed no regulatory focus effect, $F(1, 37) = 1.120$, $p = .297$, partial $\eta^2 = .029$; however, for those that had to make both a discrimination and retaliation claim, regulatory focus was significant, $F(1, 39) = 6.759$, $p = .013$, partial $\eta^2 = .148$. Figure 1 shows that participants who used the prevention focused judge's instructions were more certain that the defendant was liable while participants who received the promotion focused judge's instructions were more certain that the defendant was not liable.

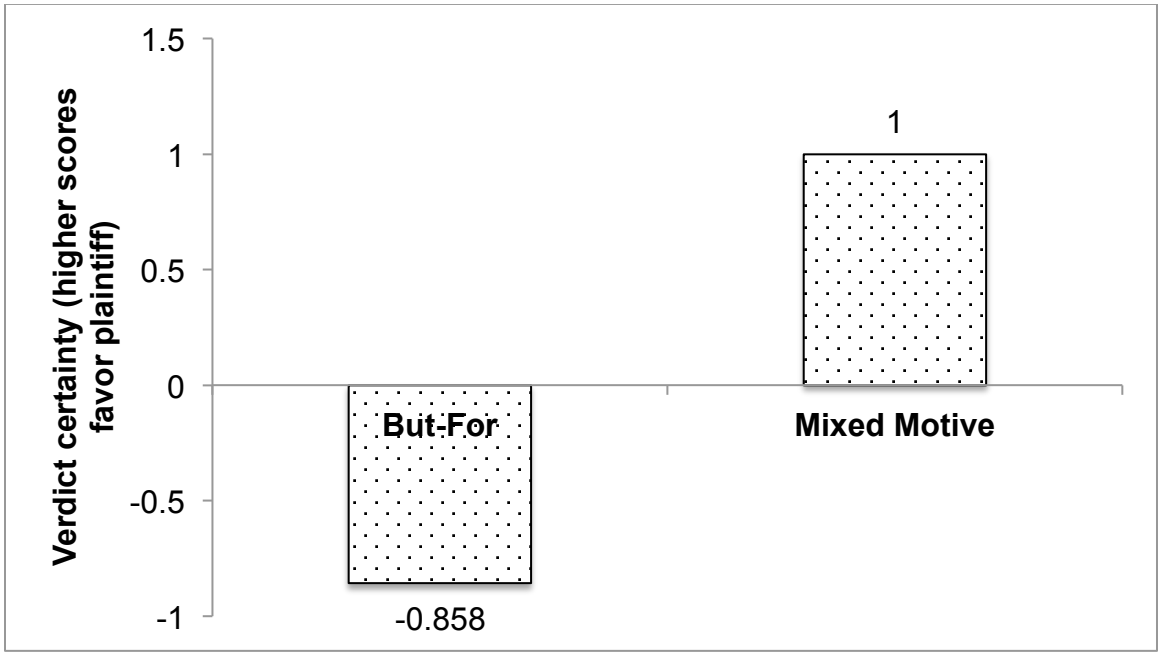
Figure 3.1: Retaliation Verdict Certainty predicted by Regulatory Focus x Claim Type for But-For Instructions



Predicting discrimination verdict by instruction, regulatory focus, and claim type. A forced entry binary logistic regression with instruction and regulatory focus manipulation predicting discrimination verdict produced a non-significant model, $\chi^2(2) = 1.60$, $p = .449$, Nagelkerke $R^2 = .028$. Neither instruction ($\beta = -.401$, $p = .401$) or regulatory focus manipulation ($\beta = -.463$, $p = .334$) were significant predictors. Claim type is not included in this analysis because in order to evaluate a discrimination complaint participants also had to evaluate a retaliation complaint. A second forced entry binary logistic regression predicting discrimination verdict by instruction, regulatory focus manipulation, and the added instruction X regulatory focus interaction also resulted in a non-significant model, $\chi^2(3) = 1.698$, $p = .637$, Nagelkerke $R^2 = .030$, with none of the predictors significant, all ps > .370.

Predicting discrimination verdict certainty by instruction and regulatory focus. A 2 (instruction type) by 2 (regulatory focus) ANOVA on discrimination verdict certainty demonstrated a main effect of instruction, $F(1, 75) = 7.809$, $p = .007$, partial $\eta^2 = .094$, but no two-way interaction between regulatory focus and instruction, $F(1, 75) = .001$, $p = .977$, partial $\eta^2 = .000$. The main effect of instruction (see Figure 2) shows that participants who received but-for instructions were significantly more certain (M = -.858, SD = .461) that the defendant was not liable, whereas participants who received mixed motive instructions were significantly more certain (M = 1.00, SD = .479) that the defendant was liable (See Figure 3.2).

Figure 3.2: Discrimination Verdict Certainty predicted by Instruction



Phase 3: Experimental Model Analyses with +1 Instruction Condition

The following analyses examine the full model effects on the dependent variables, taking into consideration the third level of instruction: mixed motive for discrimination claims and but-for for retaliation claims. These analyses do not include claim type

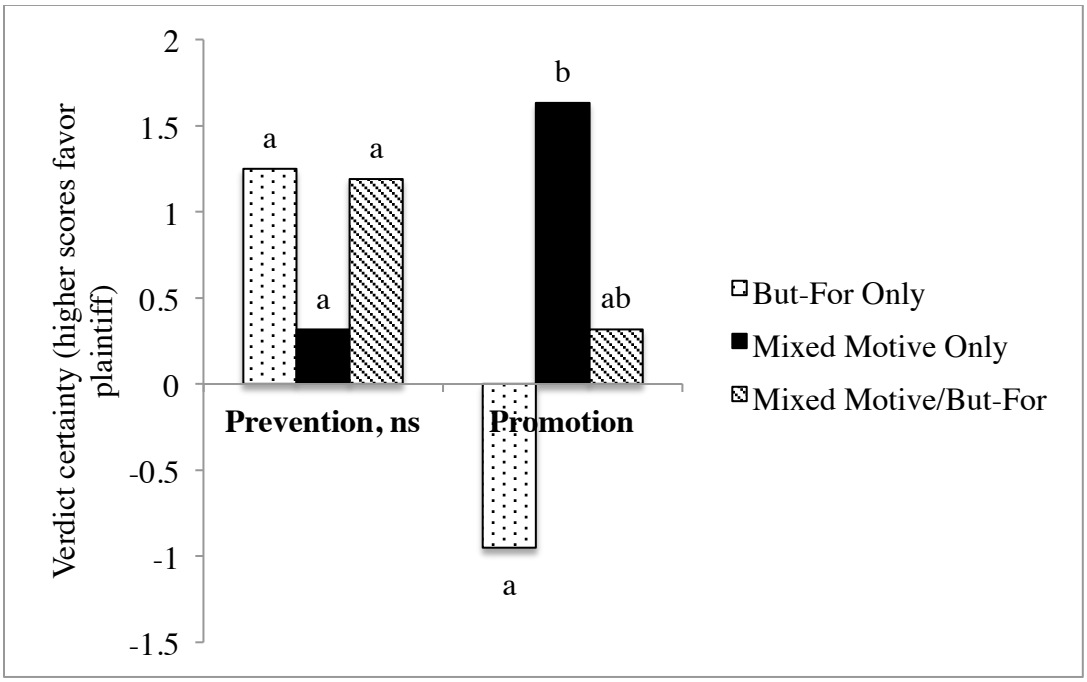
because all participants who received the added level of instruction decided both claims. As such, all analyses in this phase only examine participants who made both a discrimination and retaliation claim.

Predicting retaliation verdict by instruction and regulatory focus. A forced entry binary logistic regression predicting retaliation verdict from instruction (coded with the mixed motive/but-for condition as the comparison) and from regulatory focus resulted in a non-significant model, $\chi^2(3) = 2.93$, $p = .40$, Nagelkerke $R^2 = .03$. There was a no effect of instruction (*Wald* = 2.35, $p = .31$) or regulatory focus ($\beta = -.27$, $p = .46$). A second forced-entry binary logistic regression predicting retaliation verdict with instruction, regulatory focus, claim type, and the added interaction of instruction x regulatory focus produced a non-significant model, $\chi^2(5) = 5.96$, $p = .31$, Nagelkerke $R^2 = .06$. There were again no significant effects of instruction (*Wald* = 2.38, $p = .30$), regulatory focus ($\beta = -.51$, $p = .42$), or their interaction ($\beta = 1.15$, $p = .21$).

Predicting retaliation verdict certainty by Instruction and Regulatory Focus. A 3 (Instruction type: but for vs. mixed motive vs. combined) by 2 (Regulatory Focus) ANOVA on verdict certainty produced no significant main effects, all *F*s < 1.33 and all *p*s > .25, but there was a significant two-way interaction between instruction and regulatory focus, $F(2, 116) = 3.94$, $p = .02$, partial $\eta^2 = .06$. To better understand this interaction, I split the data into promotion and prevention focus and performed two ANOVAs. For participants in the prevention focused condition there was no effect of instruction, $F(1, 57) = .72$, $p = .49$, partial $\eta^2 = .02$; however, participants in the promotion focused condition did show an instruction effect, $F(1, 59) = 3.99$, $p = .02$, partial $\eta^2 = .12$ (See Figure 3.3). Participants who were in the promotion focused

condition and received only mixed motive instructions were significantly more certain in their verdict for the plaintiff than those in the but for only condition. Neither of these instruction conditions was significantly different combined condition.

Figure 3.3: Instruction x Regulatory Focus Interaction for Retaliation Verdict Certainty



Note: Different subscripts are significantly different

Predicting discrimination verdict by instruction and regulatory focus. A separate forced entry binary logistic regression predicting discrimination verdict with all three levels of instruction (coded with the mixed motive/but-for condition as the comparison) and regulatory focus again failed to produce a significant model, $\chi^2(3) = 6.85$, $p = .08$, Nagelkerke $R^2 = .07$. However, there was a main effect of instruction, *Wald* = 6.61, $p = .04$. The comparisons reveal that there is a significant difference in discrimination verdicts when comparing participants who used only but-for instructions to those who used mixed motive instructions for the discrimination claim, $\beta = -.1.15$ (*SE*

= .46), *Wald* = 6.29, p = .012, LLCI = .13, ULCI = .78 (See Table 3.3 for percentages). This suggests that participants who used only but-for instructions for both claims were more likely to find for the defendant on the discrimination charge as opposed to those who used separate instructions for the two claims. The difference between those who only used mixed motive instructions and those who used both instructions was not significant (β = -.77, p = .09).

Table 3.3: Discrimination Verdict Decisions by Instruction Condition

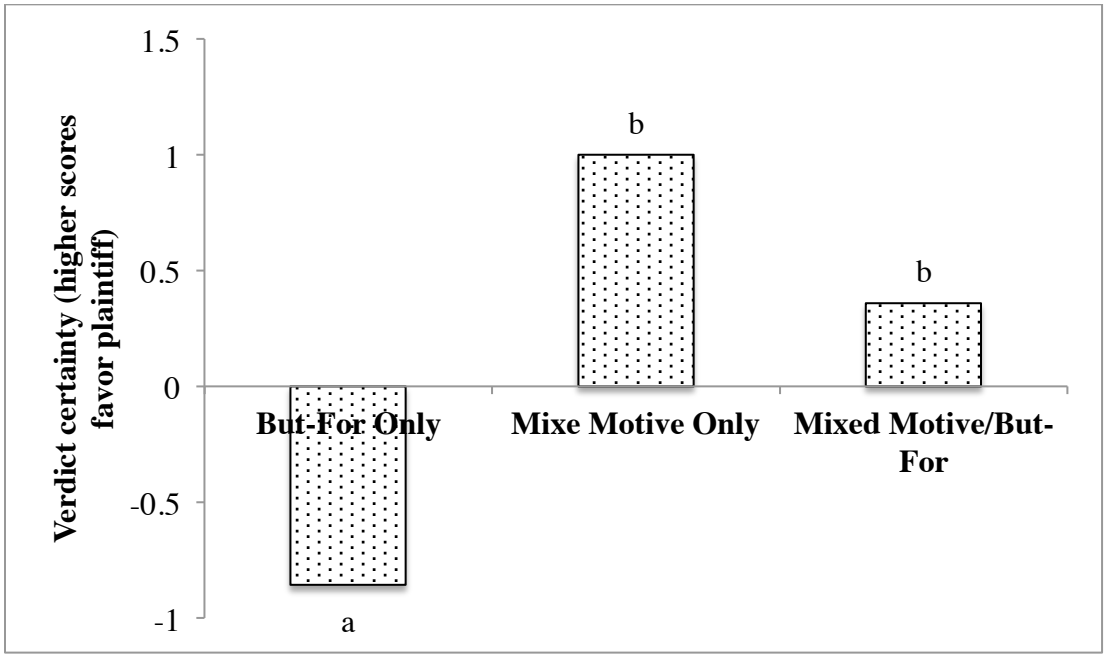
	Plaintiff		Defendant		Total	
	N	%	N	%	N	%
But-For only	13	31.7	28	68.3	41	100
Mixed Motive Only	15	40.5	22	59.5	37	100
Mixed Motive/But-For	25	59.5	17	40.5	42	100
Total	67	55.8	53	44.2	120	100

A second forced-entry binary logistic regression predicted discrimination verdict with the 3-level instruction, regulatory focus, and the added interaction of instruction by regulatory focus produced a non-significant model, $\chi^2(5) = 9.64$, p = .09, Nagelkerke R^2 = .10 and failed to show a significant interaction (β = -1.46, p = .12).

Predicting discrimination verdict certainty by instruction and regulatory focus. Rounding out Phase 3, a separate 3 (Instruction type) x 2 (Regulatory Focus) ANOVA on

discrimination verdict certainty yielded a significant main effect of instruction, F (2, 116) = 4.00, p = .02, partial η^2 = .06 (See Figure 3.4). LSD pairwise comparisons revealed that participants who received only mixed motive instructions were significantly more certain of a verdict for the plaintiff as compared to participants who only received but for instructions (p = .007) and were marginally less certain in their verdict for the plaintiff as compared to participants who received both instructions (p = .06). Participants who received only mixed motive instructions did not differ in their verdict certainty as compared to participants who received both instructions.

Figure 3.4: Discrimination Verdict Certainty by Three-Level Instruction



Phase 4: Moderation Analyses

For the following analyses, unless otherwise noted instruction refers to only but-for or mixed motive. The mixed motive/but-for condition will be specifically mentioned if it is being used in the analysis.

National Origin Motivation as a Moderator.

Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and motivation. A forced entry binary logistic regression predicting retaliation verdict from instruction, claim type, regulatory focus, and the plaintiff's national origin as a motivating factor resulted in a significant model, $\chi^2(4) = 15.921$, $p = .003$, Nagelkerke $R^2 = .129$, but only the motivating factor was a significant predictor of retaliation verdict, $\beta = -.226$ ($SE = .062$), $Wald = 13.182$, $p = .001$, while instruction ($\beta = -.187$, $p = .581$), claim type ($\beta = .106$, $p = .754$), and regulatory focus ($\beta = .192$, $p = .571$) were not significant. The same forced entry binary adding all interactions produced a significant model, $\chi^2(15) = 31.508$, $p = .008$, Nagelkerke $R^2 = .244$ (see Table 3.4 for all effects) with main effects of instruction, claim type, and national origin motivation. In line with the hypotheses, participants who received but-for instructions were more likely to find for the defendant, while those who received mixed motive instructions were more likely to find for the plaintiff. Participants who had to decide only a retaliation claim were more likely to find for the defendant, while those who had to determine both a discrimination and retaliation claim were more likely to find for the plaintiff. Finally, those who thought the plaintiff's national origin motivated the Medical Center's actions were more likely to find for the plaintiff as compared to those who thought his national origin was not a motivating factor. There were also two two-way interactions, one between claim type and national origin, as well as an interaction between claim type and instruction.

Table 3.4

Predicting Retaliation Verdicts as a Function of Instruction, Regulatory Focus, Claim Type, and Plaintiff National Origin

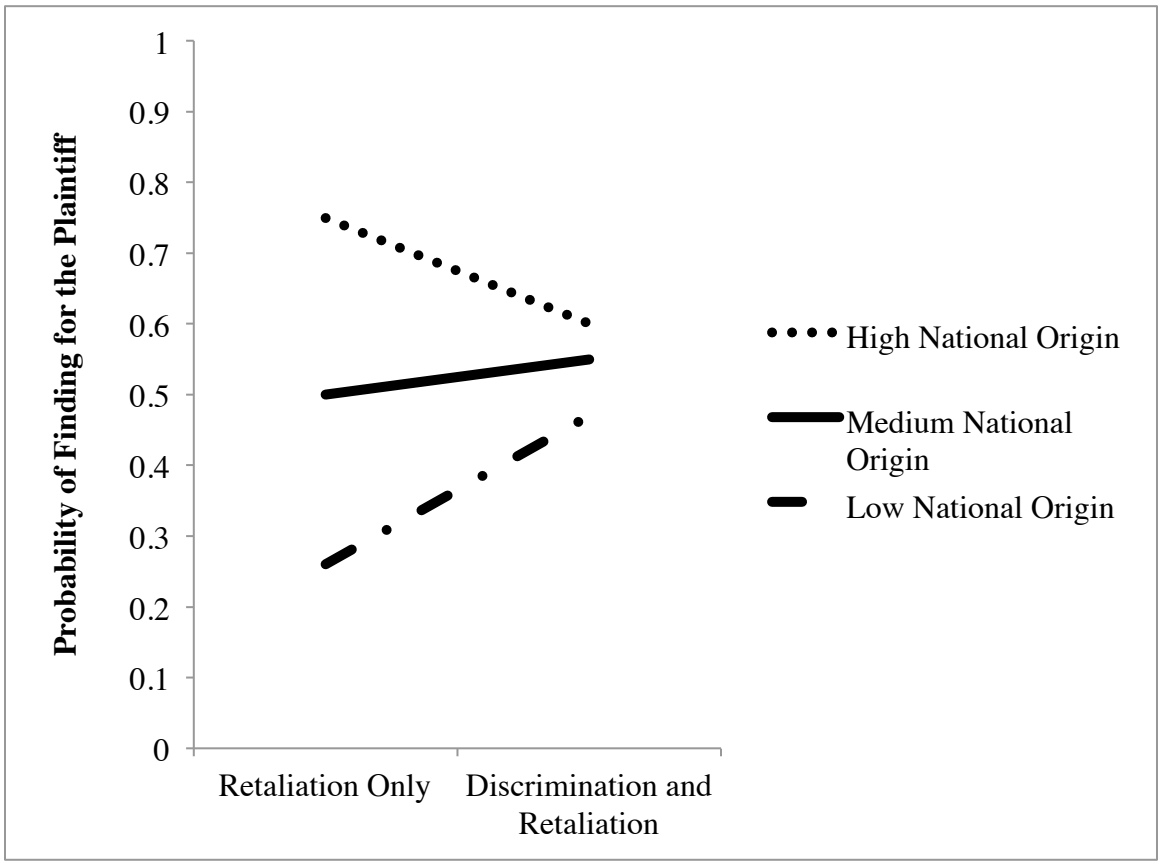
Factor	Beta	Standard Error	Wald	d.f.	Prob	Odds Ratio
Instruction	3.049	1.563	3.806	1	.051	.047
Claim	3.464	1.570	4.865	1	.027	.031
Regulatory Focus	1.104	1.691	.427	1	.514	.331
National Origin motivation	.631	.253	6.213	1	.013	.532
Instruction x National Origin	-.521	.307	2.877	1	.09	1.684
Claim x National Origin	-.703	.315	4.972	1	.026	2.02
Regulatory Focus x National Origin	-.123	.346	.127	1	.721	1.131
Instruction x Regulatory Focus	-2.980	2.144	1.932	1	.165	19.685
Instruction x Claim	-4.809	1.972	5.949	1	.015	122.555
Claim x Instruction x Regulatory Focus	4.606	2.713	2.882	1	.09	.010
Claim x Instruction x National Origin	.836	.403	4.312	1	.038	.433
Claim x Regulatory Focus x National Origin	.089	.450	.039	1	.843	.915
Instruction x Regulatory Focus x National Origin	.385	.430	.802	1	.370	.680
Instruction x Claim x Regulatory Focus x National Origin	-.394	.571	.477	1	.490	1.483
Constant	-3.006	1.345	4.997	1	.025	20.202

To examine the interaction between claim type and national origin, the data was split between claims and a forced entry binary logistic regression predicting retaliation verdict by instruction, regulatory focus, and national origin produced a significant model for retaliation only, $\chi^2(7) = 23.748$, $p = .001$, Nagelkerke $R^2 = .354$, but produced a non-significant model for the discrimination and retaliation condition, $\chi^2(7) = 7.353$, $p = .393$,

Nagelkerke R^2 = .119. Participants who only had to render a verdict for retaliation considered the use of the plaintiff's national origin, β = .631 (*SE* = .253), *Wald* = 6.213, *p* = .013.. Those participants who had to render a verdict for both a discrimination and retaliation claim did not show a difference in verdict when considering the plaintiff's national origin, β = .072 (SE = .188), Wald = .147, p = .701.

A moderation analysis, using Hayes' (2013) process moderation, more closely examined the moderation of national origin on the effect of claim type on retaliation verdict. Using the Johnson-Neyman technique, participants who strongly believe national origin was considered showed marginally significant moderation, *z* = 1-72, *p* =.08., LLCI -1.90, ULCI = .12 (rating = 6.92). Participants who were extremely high on their belief that national origin played a role (ratings starting at 8.25) did show significant differences (all *p*s < .05). Figure 3.5 shows the moderation pattern in that participants who received the retaliation only decision, are more influenced by the use of national origin as compared to those who made both a discrimination and retaliation claim. Specifically, those who were only asked to render a retaliation verdict were most likely to find for the plaintiff if they strongly believed the defendant took into consideration the plaintiff's national origin and were least likely to find for the plaintiff if they believed the defendant did not take into consideration the plaintiff's national origin.

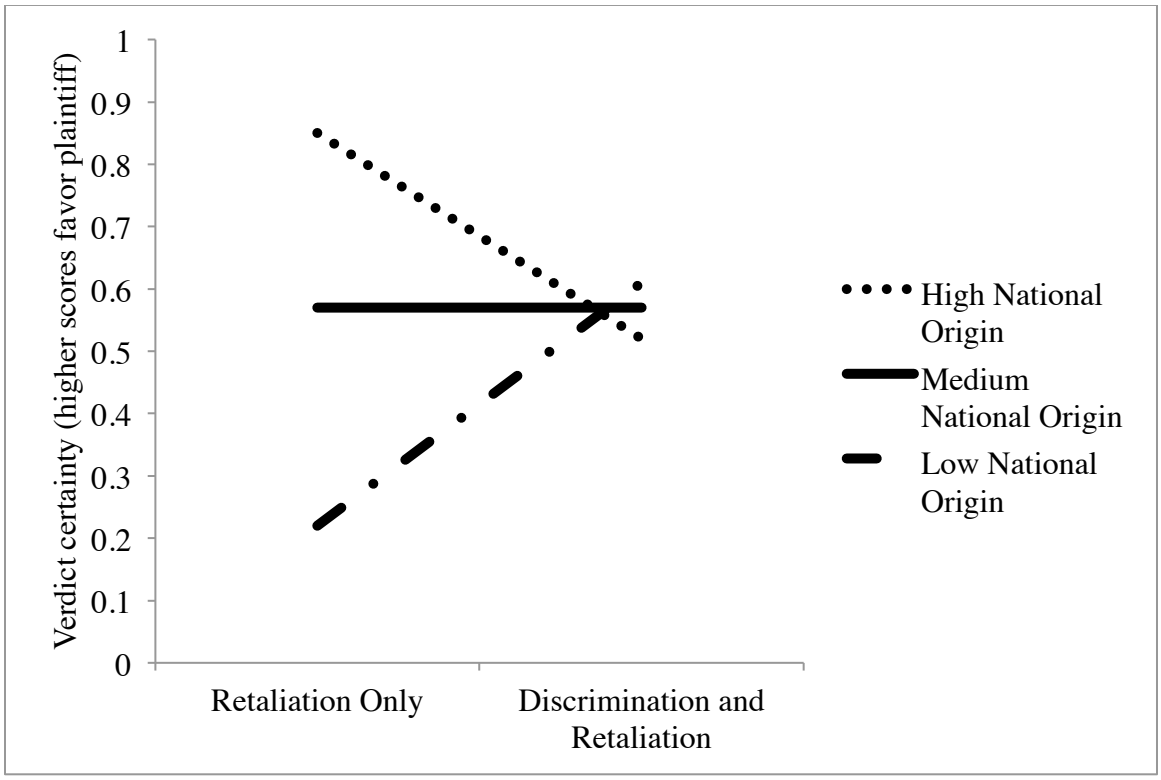
Figure 3.5: National origin motivation as a moderator for the effect of retaliation claim type on retaliation verdict.



Hayes (2013) process moderation was also conducted to examine the moderation of national origin on the interaction of claim type by instruction on retaliation verdict. For participants using but-for instructions, national origin moderated the effect of claim type on verdict at both low (z = 2.11, p = .03, LLCI = .12, UCLI = 3.16) and high (z = -2.26, p = .02, LLCI = -3.31, UCLI = -.24) levels of belief that national origin played a role in the defendant's decision. The pattern of results for this moderation is similar to the overall moderation of national origin on the effect of claim type on retaliation verdict. Specifically, participants in the retaliation only condition were more influenced by their belief that the defendant considered national origin than those in the discrimination and

retaliation condition (see Figure 3.6). National origin did not moderate the effects of claim type under mixed motive instructions, β = -.004 (*SE* = .168), *Wald* = .001, p = .981.

Figure 3.6: National origin motivation as a moderator for the effect of retaliation claim type on retaliation verdict for But-For Instructions.



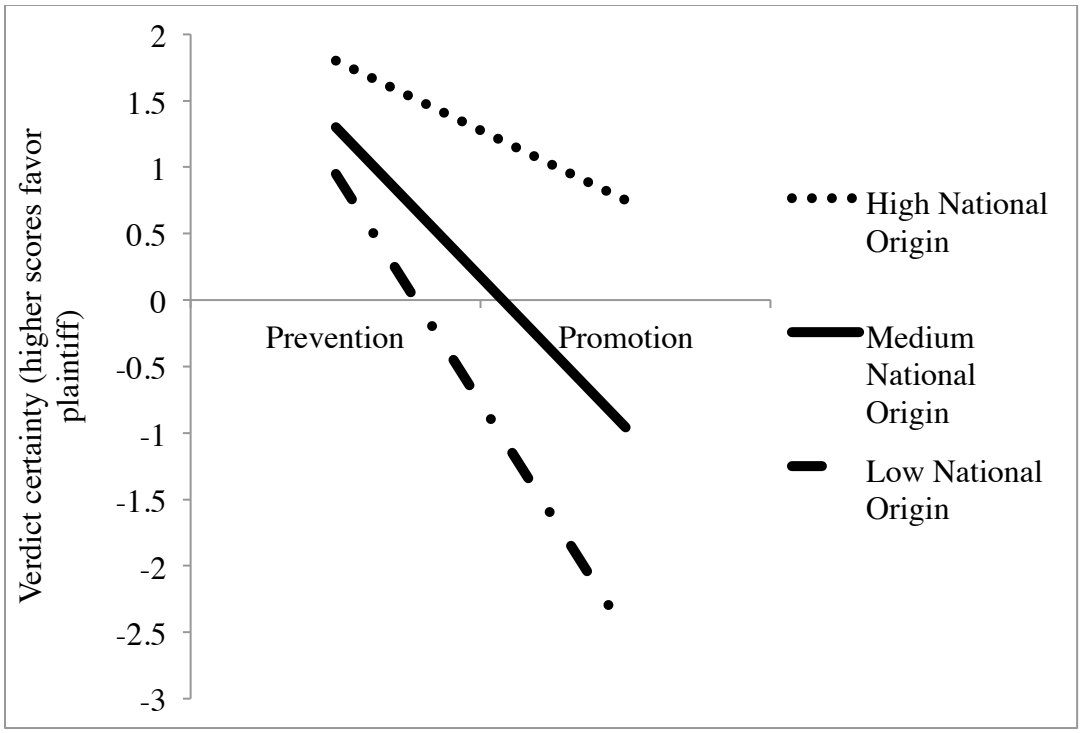
Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and motivation. Next, I conducted a forced entry binary logistic regression predicting retaliation verdict from the three-level instruction, regulatory focus, and the plaintiff's national origin as a motivating factor. The model was significant, $\chi^2(11) = 23.12$ p = .02, Nagelkerke R^2 = .18; however, there were no significant main effects or interactions (all ps > .08) and no need to conduct further moderation analyses.

Predicting retaliation verdict confidence by instruction, claim type, regulatory focus manipulation, and motivation. To test the potential moderating role of national origin on retaliation verdict certainty, an ANOVA predicting retaliation verdict confidence by instruction, claim type, regulatory focus, and national origin as a moderator was conducted. The only main effect in the model was for national origin, F (1, 147) = 33.647, p = .001, partial η^2 = .186. There were no two-way interactions, but a three-way interaction between instruction, claim type, and regulatory focus was significant, F (1, 147) = 9.110, p = .003, partial η^2 = .059. Splitting the file by instruction type, revealed a two-way interaction between claim and regulatory focus under but-for instructions, F(1, 75) = 9.978, p = .002, partial η^2 = .117, but not under mixed motive instructions, F(1, 71) = 1.527, p = .221, partial η^2 = .021. Hayes (2013) process moderation for but-for instructions found that when participants decided only a retaliation claim, national origin did not moderate the effect of regulatory focus on retaliation verdict certainty, β = -.255 (SE = .274), t = -.930, p = .359, LLCI = -.812, ULCI = .302.

For participants using but-for instructions and deciding both a discrimination and retaliation claim, national origin did moderate the effect of regulatory focus on retaliation verdict certainty. The Johnson-Neyman Technique of significance did find that for participants who had low, t (1, 37) = -2.86, p = .01, LLCI = -5.54, ULCI = -.95) and moderate beliefs, t (1, 37)= -2.73, p = .01, LLCI = -3.79, ULCI = -.56) that the defendant considered national origin, there was significant moderation (see Figure 7). Specifically, participants in the promotion condition who believed strongly that national origin influenced the employer's decision, were more certain in a plaintiff's verdict than those who believed that national origin played less of a role (i.e., low or medium national origin

beliefs). However prevention participants who were trying to avoid errors of commission did not show effects for national origin discrimination beliefs.

Figure 3.7: National origin motivation as a moderator for the effect of regulatory focus on retaliation verdict certainty for but-for instructions and discrimination/retaliation claims.

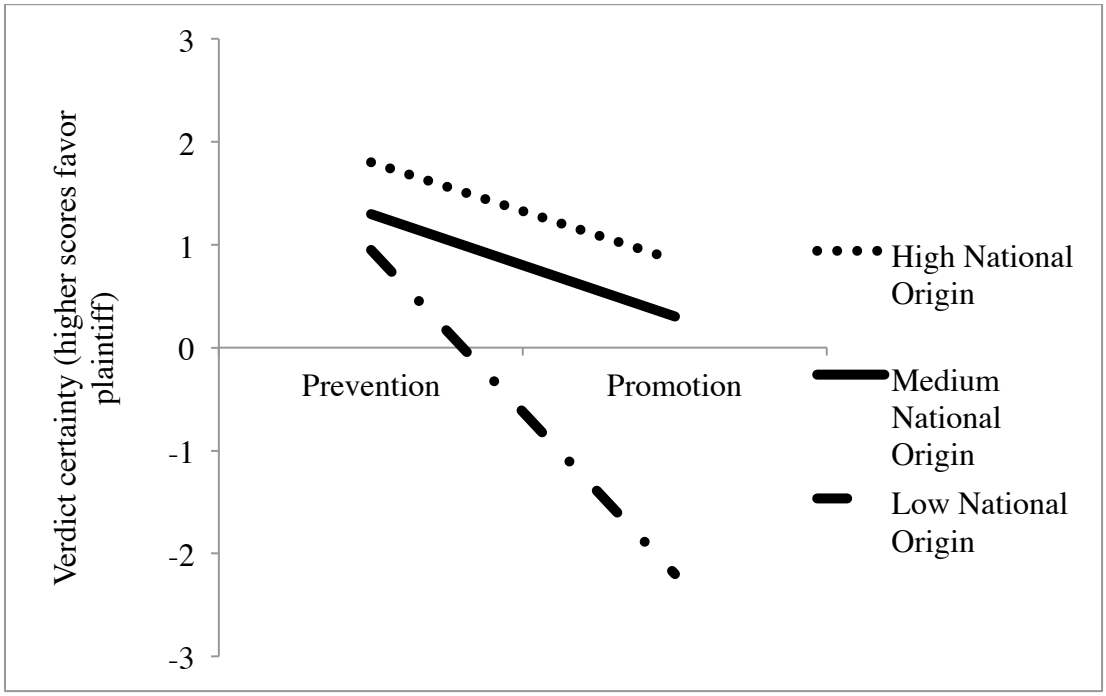


An ANOVA predicting retaliation verdict certainty by instruction, regulatory focus, claim type, and rehiring policy motivation as a covariate produced no significant main effects or interactions, all *F*s < 3.32 and all *p*s > .08.

Predicting retaliation verdict confidence by three-level instruction, regulatory focus manipulation, and motivation. A one-way ANOVA predicting verdict certainty be the three-level instruction, regulatory focus, and national origin motivation as a covariate resulted in a significant main effect of national origin, F (1, 153) = 29.46, p = .001, partial η^2 = .16, and regulatory focus, F (1, 153) = 4.37, p = .04, partial η^2 = .03, and a

significant interaction between instruction and regulatory focus, F (2, 153) = 3.57, p = .03, partial η^2 = .04. I split the file first by regulatory focus and conducted moderation analyses of national origin on the effect of instruction on retaliation verdict certainty. No moderation was found for either prevention or promotion focused participants, all ps > .14. However, when splitting the file by instruction type Hayes' (2013) process moderation showed that for participants using but-for instructions, national origin moderated the effect of regulatory focus at both low, t (1, 76)= -2.86, p = .01, LLCI = -5.54, ULCI = -.95, and moderate, t (1, 76)= = -2.72, p = .01, LLCI = -3.78, ULCI = -.-.56, levels of national origin motivation (See Figure 3.8). National origin did not influence participants who were in the prevention focused condition, but participants in the promotion condition were more certain in their verdict for the defendant if they believed the defendant did not consider the plaintiff's national origin. Analyses produced no moderation effects of national origin on the relationship between regulatory focus and retaliation verdict certainty for participants using only mixed motive instructions, all ps > .46, and for participants using the combined instructions, all ps > .21.

Figure 3.8: National Origin as a moderator for regulatory focus on retaliation verdict certainty under but-for instructions.



An ANOVA predicting retaliation verdict certainty by three-level instruction, regulatory focus, claim type, and rehiring policy motivation as a covariate produced no significant main effects or interactions, all *F*s < 3.01 and all *p*s > .09.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and motivation. A forced entry binary logistic regression predicting discrimination verdict from instruction, regulatory focus, and the plaintiff's national origin as a motivating factor was produced a significant model, $\chi^2(3) = 19.019$ $p = .001$, Nagelkerke $R^2 = .297$, but only national origin emerged as a significant predictor of discrimination verdict, $\beta = -.411$ ($SE = .111$), $Wald = 13.567$, $p = .001$, while instruction ($\beta = -1.159$, $p = .408$) and regulatory focus ($\beta = 1.498$, $p = .228$) were not significant. The same forced entry binary adding all interactions produced a significant model, $\chi^2(6) = 22.342$, $p =$

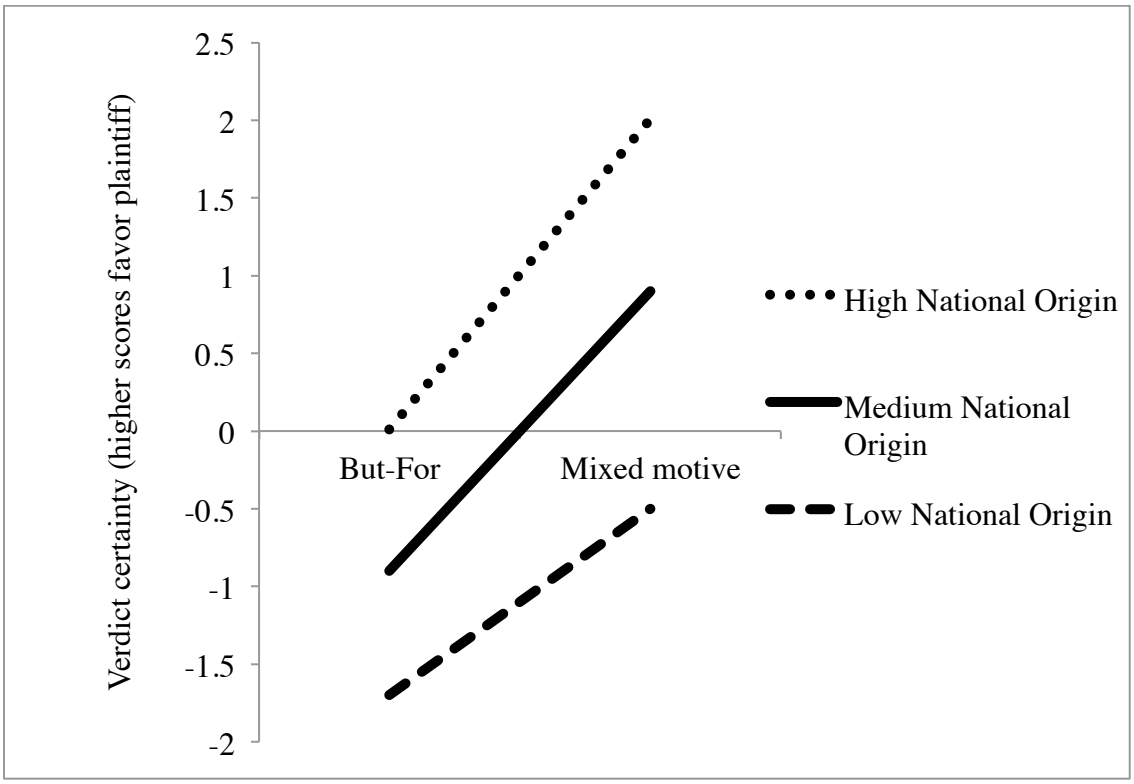
.001, Nagelkerke R^2 = .342, but no main effects or interactions were significant, all *p*s > .099.

Predicting discrimination verdict by three-level instruction, regulatory focus manipulation, and motivation. A forced-entry binary logistic regression predicting discrimination verdict with the three-level instruction, regulatory focus, and national origin produced a significant model, $\chi^2(11) = 36.69$, $p = .001$, Nagelkerke $R^2 = .35$. There was only a significant main effect of instruction (*Wald* = 7.50, $p = .02$), with a marginally significant difference when comparing the but-for only condition to the two instruction condition, $\beta = -2.51$ (*SE* = .1.35), *Wald* = 3.45, $p = .06$, and a significant difference between the mixed motive only condition and the two instruction condition, $\beta = -2.18$ (*SE* = 1.27), *Wald* = 2.92, $p = .02$. Specifically, participants were marginally more like to find for the defendant if they only used but-for instructions, and were significantly more likely to find for the defendant if they only used mixed motive instructions as compared to using mixed motive for discrimination and but-for for retaliation. There were no other main effects or interactions, all *p*s >.09.

Predicting discrimination verdict certainty by instruction, regulatory focus manipulation, and motivation. To test the potential moderating role of national origin on discrimination verdict certainty, an ANOVA predicting discrimination verdict confidence by instruction, regulatory focus, and national origin as a moderator was conducted. Only main effects of national origin, $F(1, 74) = 13.232$, $p = .001$, partial $\eta^2 = .152$, and instruction, $F(1, 74) = 6.959$, $p = .010$, partial $\eta^2 = .086$, emerged. Hayes' (2013) process moderation, using the Johnson-Neyman technique, revealed that national origin moderated the effect of instruction on discrimination verdict certainty at both moderate, *t*

(1, 75)= 2.670, *p* =.010, LLCI = .416, ULCI = 2.864, and high, *t* (1, 75) = 2.414, *p* =.018, LLCI = .378, ULCI = 3.946 levels (see Figure 3.9). Specifically, participants either moderate or high in their belief that national origin motivated the defendant's action were more likely to be certain in their verdict for the plaintiff under mixed motive as compared to but-for instructions. Under low belief that national origin was a motivating factor, there was no difference in certainty of verdict based on instruction.

Figure 3.9: National origin motivation as a moderator for the effect of instruction on discrimination verdict certainty.



Next, to test the potential moderating role of discrimination complaint on discrimination verdict certainty, an ANOVA predicting discrimination verdict confidence by instruction, regulatory focus, and discrimination complaint as a moderator was conducted. There was a main effect of discrimination complaint, *F* (1, 79) = 12.61, *p* =

.001, partial η^2 = .15, a significant two-way interaction between instruction and regulatory focus, F (1, 79) = 5.84, p = .02, partial η^2 = .08, and a significant three-way interaction between instruction, regulatory focus, and discrimination complaint, F (1, 79) = 7.13, p = .01, partial η^2 = .09. The data file was split on regulatory focus and separate process analyses, following Hayes' (2013) procedure, were conducted. For prevention focused participants, moderate, t (1, 35) = 2.02, p = .05, LLCI = -.91, ULCI = 3.56, and high, t (1, 35) = 2.80, p = .01, LLCI = .99, ULCI = 6.19 levels of discrimination complaint motivation (See Figure 3.10). Prevention focused participants who were either moderate or high in their belief that the discrimination complaint motivated the defendant were more likely to be certain the defendant is liable under mixed motive instructions than but-for instructions. Similarly, for promotion focused participants, those low, t (1, 36) = 2.93, p = .01, LLCI = 1.06, ULCI = 5.82, and moderate, t (1, 36) = 2.33, p = .03, LLCI = .25, ULCI = 3.54, in discrimination complaint motivation were more certain the defendant was liable under mixed motive than but-for instructions (See Figure 3.11).

Figure 3.10: Discrimination complaint motivation as a moderator for the effect of instruction on discrimination verdict certainty for prevention focused participants.

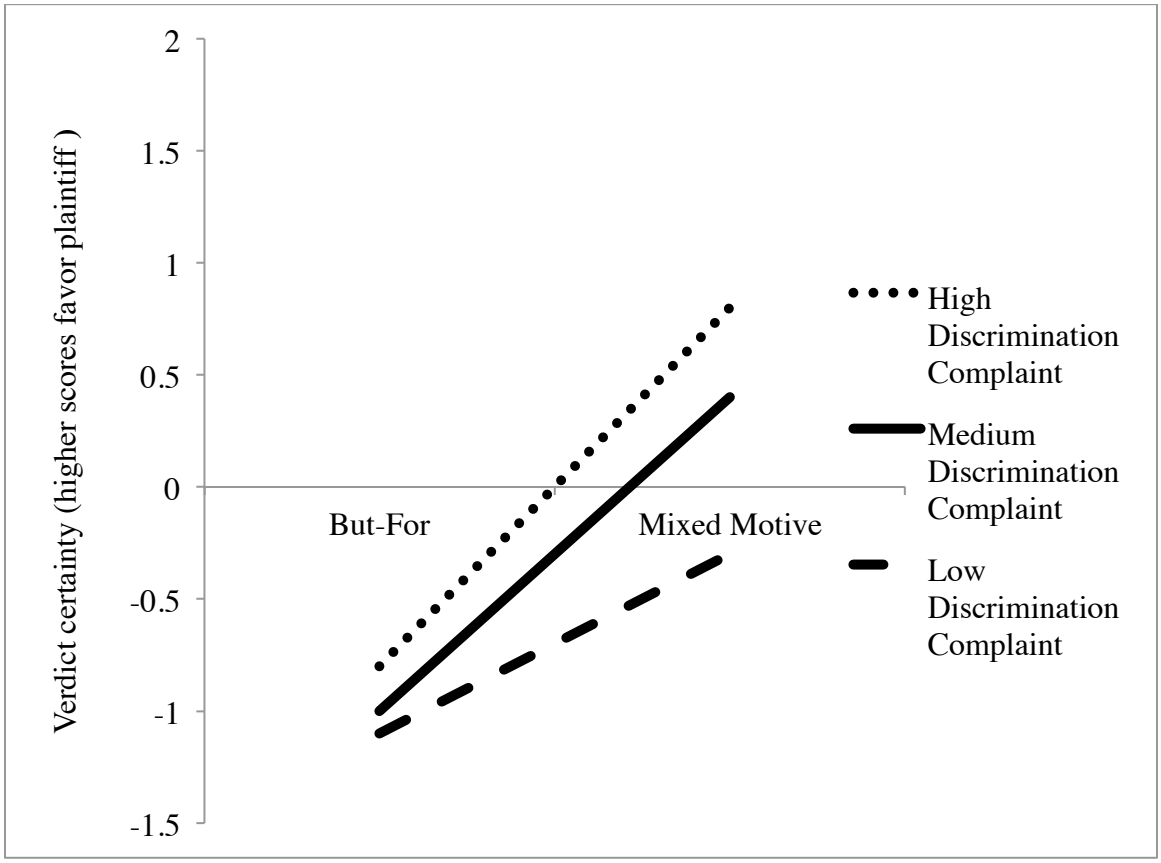
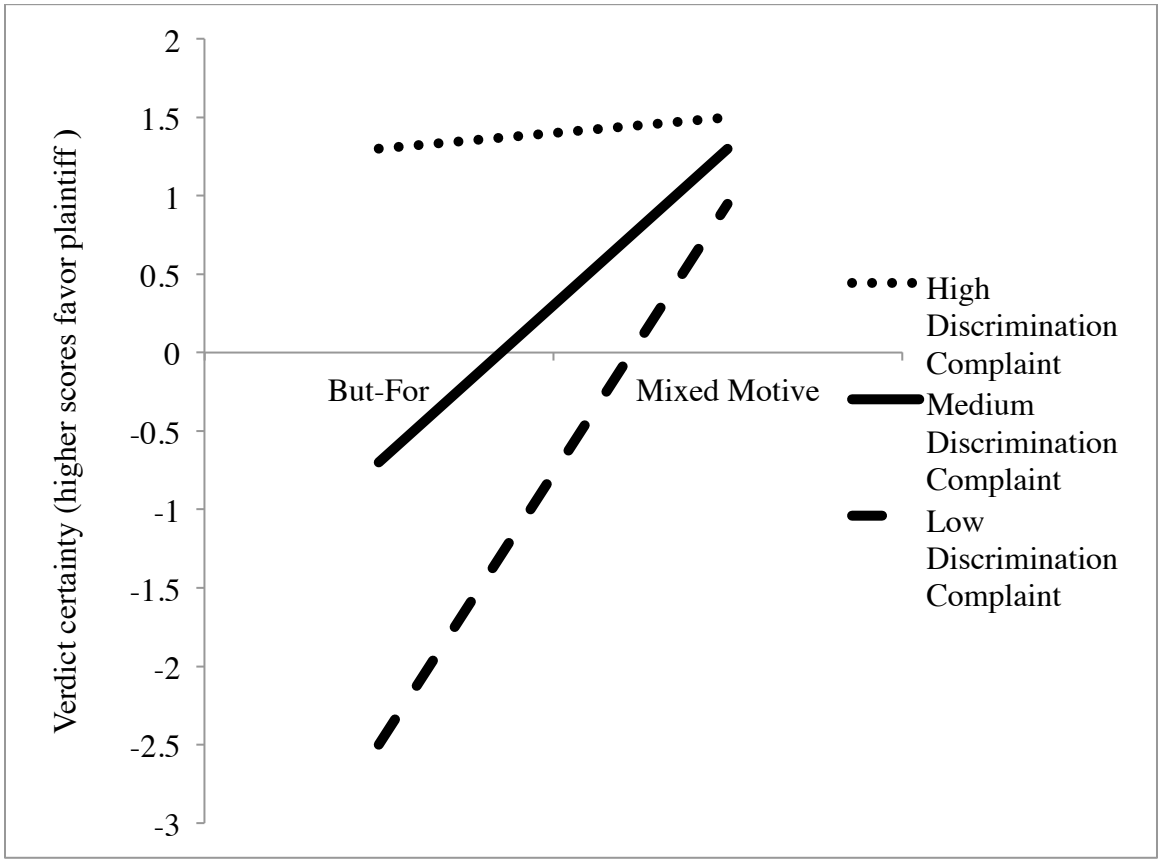


Figure 3.11: Discrimination complaint motivation as a moderator for the effect of instruction on discrimination verdict certainty for prevention focused participants.



Predicting discrimination verdict certainty by three-level instruction, regulatory focus manipulation, and motivation. An ANOVA predicting discrimination verdict certainty by the three-level instruction, regulatory focus, and national origin motivation as a covariate was produced only a main effect of national origin, F (1, 110) = 13.22, p = .001, partial η^2 = .11. Specifically, those who thought national origin motivated the decision were more likely to be certain in a verdict for the plaintiff. All other main effects and interactions were not significant, all Fs < .84 and all ps > .44.

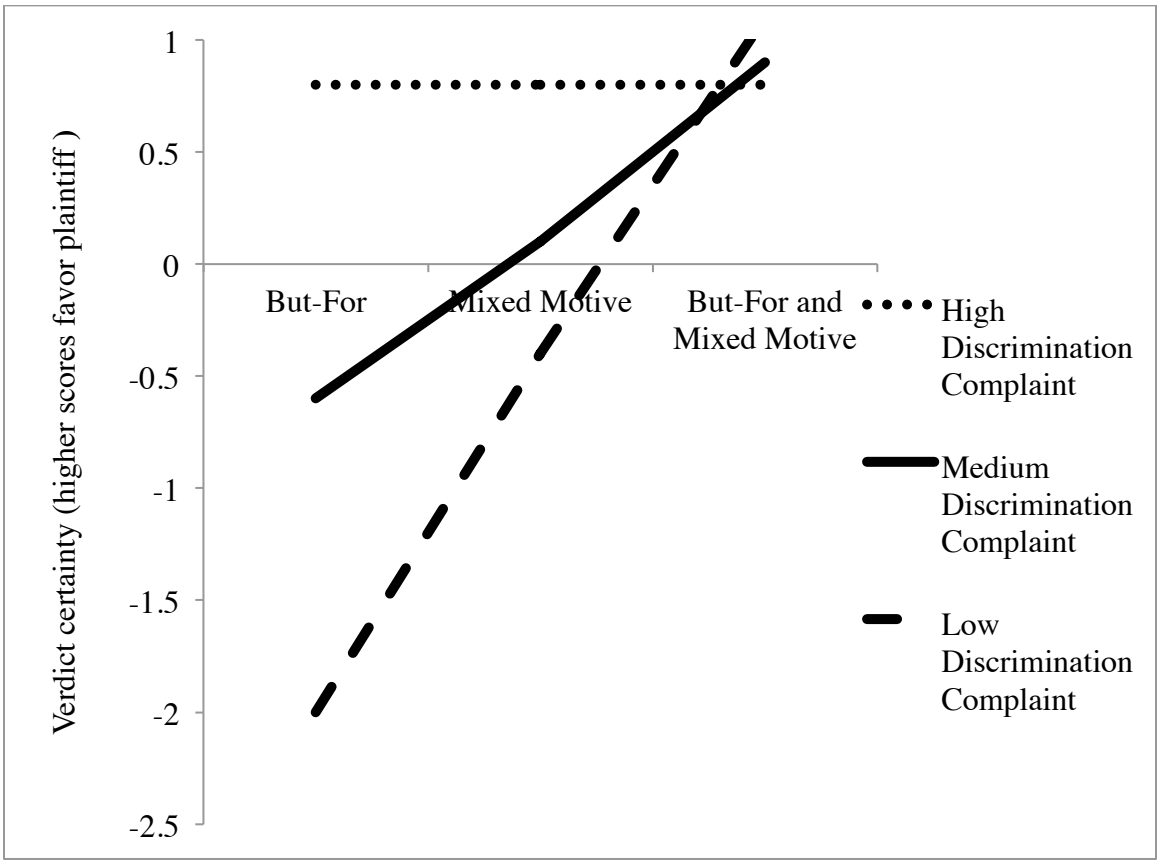
An ANOVA predicting discrimination verdict certainty by instruction, regulatory focus, claim type, and discrimination complaint motivation as a covariate produced a

significant main effect of instruction, F (1, 110) = 6.41, p = .002, partial η^2 = .10. The main effect of instruction found that participants using but-for instructions were more certain the defendant was liable than participants in the two-instruction condition (p = .01). Mixed motive only instructions were not significantly different from the other two (ps > .08). There were two significant two-way interactions, the first between instruction and regulatory focus, F (1, 110) = 3.46, p = .03, partial η^2 = .06, and also between instruction and the discrimination complaint, F (1, 110) = 7.38, p = .001, partial η^2 = .12. Finally, there was a significant three-way interaction between instruction, regulatory focus, and the discrimination complaint, F (1, 110) = 3.56, p = .03, partial η^2 = .06.

To better understand the three-way interaction between instruction, regulatory focus manipulation, and discrimination complaint motivation, the data was split based on regulatory focus manipulation. Using Hayes' (2013) process moderation, separate moderation analyses were conducted for prevention and promotion conditions. For participants in the prevention focused condition, both low, t (1, 56) = 2.70, p = .01, LLCI = .48, UCLI = 3.27, and moderate levels, t (1, 56) = 1.96, p = .05, LLCI = -.02, UCLI = 1.89, of discrimination complaint motivation moderated the relationship between instruction and discrimination verdict certainty (see Figure 3.12). Specifically, for participants who were either low or moderate in their belief the discrimination complaint motivated the defendant, they were more certain the defendant was not liable under but-for instructions and most certain the defendant was liable if they used the mixed motive instructions for the discrimination complaint and but-for instructions for the retaliation complaint. Interestingly, those who were high in the belief the discrimination complaint played a role showed no differences based on instruction. This mirrors participant

misunderstanding for retaliation claims, as the discrimination complaint should not matter for the discrimination claim.

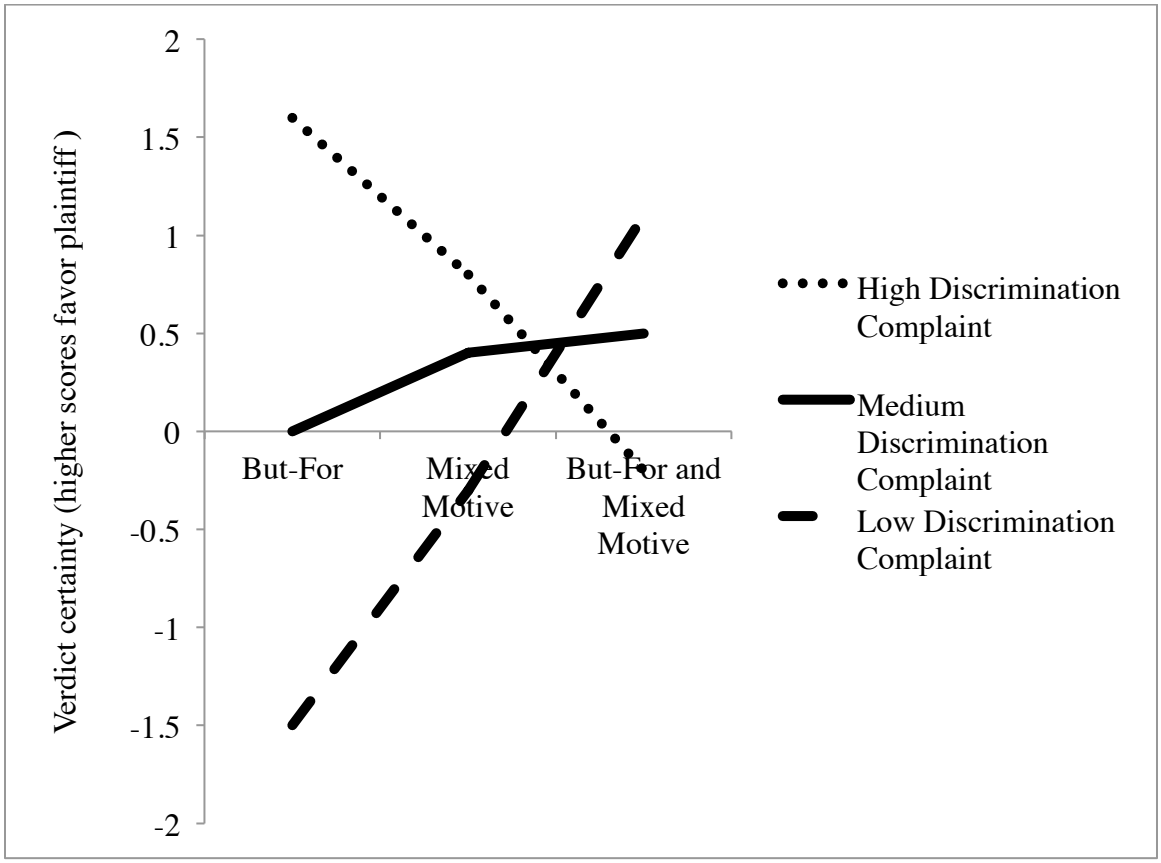
Figure 3.12: Discrimination Complaint as a Moderator for Instruction on Discrimination Verdict Certainty for Prevention Focused Jurors.



Moderation analyses for promotion focused participants also showed significant moderation for participants who had low levels of belief the discrimination complaint influenced the defendant's actions, , t (1, 58) = 2.46, p = .02, LLCI = .29, UCLI = 2.86, and the Johnson-Neyman results showed significant moderation at the highest levels of belief the discrimination complaint mattered, t (1, 58) = -2.00, p = .05, LLCI = -3.02, ULCI = .00. For participants low in discrimination complaint motivation, they were more certain the defendant was not liable under but-for instructions and most certain the

defendant was liable under the two-instruction condition. For participants high in discrimination complaint motivation, they were more certain the defendant was liable under but-for instructions and least certain under the two-instruction condition (See Figure 3.13).

Figure 3.13: Discrimination Complaint as a Moderator for Instruction on Discrimination Verdict Certainty for Promotion Focused Jurors.



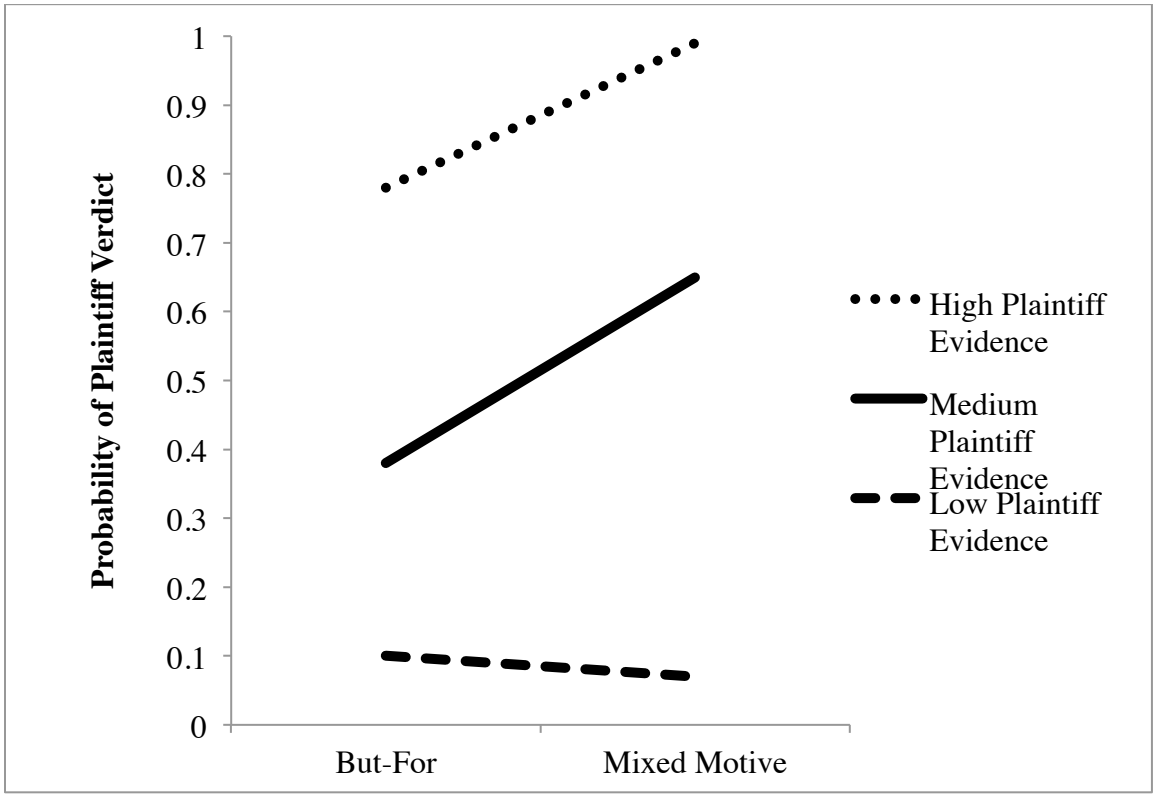
Strength of Evidence as Moderator.

Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and strength of evidence. A forced entry binary logistic regression predicting retaliation verdict by instruction, claim type, and regulatory focus with plaintiff and defendant evidence as moderators produced a significant model, $\chi^2(24)$

=134.74 p = .001, Nagelkerke R^2 = .771. The only main effect was for plaintiff evidence, β = 1.342 (SE = .671), $Wald$ = 3.997, p = .046. There was a two-way interaction between instruction and regulatory focus, β = -19.928 (SE = 10.046), $Wald$ = 3.935, p = .047. Finally, there were two three-way interactions: the first between instruction, regulatory focus, and plaintiff evidence, β = 2.163 (SE = .1.126), $Wald$ = 3.688, p = .055; and the second between instruction, regulatory focus, and defendant evidence, β = 2.142 (SE = .106), $Wald$ = 4.034, p = .045.

First I examined the three-way interaction between instruction, regulatory focus, and plaintiff evidence on verdict. When looking at participants in the prevention condition, Hayes' (2013) process moderation, using the Johnson-Neyman technique, revealed that plaintiff evidence did not moderate the effect of instruction on retaliation verdict at any level of the moderator (all ps > .45). However, for participants in the promotion focused conditions, high plaintiff evidence moderate the relationship between instruction and retaliation verdict, z = 2.08, p = .04, LLCI = .20, UCLI = 6.41. Specifically, participants were significantly more likely to find for the plaintiff under mixed-motive instruction, as opposed to but-for instructions, if they also believed the plaintiff's evidence was strong (See Figure 3.14). Moderation was not significant at the low (p = .43) or moderate (p = .12) levels of plaintiff evidence.

Figure 3.14: Plaintiff Evidence as a Moderator for Instruction on Retaliation Verdict for Promotion Focused Jurors.



Next, Hayes' (2013) process moderation analyses were conducted to examine the three-way interaction between instruction, regulatory focus, and defendant evidence. Process analyses for neither promotion focused or prevention focused participants revealed significant moderation (*p*s > .06 and *p*s > .35, respectively). Though promotion focused individuals had a marginal moderation at $p = .06$, no values were significant under the Johnson-Neyman technique and the confidence intervals crossed zero, suggesting that moderation does not actually exist. Next, I split the data was then by instruction type to examine potential moderation of the relationship between regulatory focus and retaliation verdict, but no moderation was found for either but-for (all *p*s > .09) or mixed motive instructions (all *p*s > .12).

Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and strength of evidence. A forced entry binary logistic regression predicting retaliation verdict by three-level instruction, regulatory focus, and strength of evidence produced a significant model, $\chi^2(11) = 102.91$, $p = .001$, Nagelkerke $R^2 = .63$. There was only a main effect of plaintiff evidence, $\beta = .80$ ($SE = .33$), $Wald = 5.88$, $p = .01$, all other main effects and interactions were not significant, all ps > .21.

Predicting retaliation verdict certainty by instruction, claim type, regulatory focus manipulation, and strength of evidence. Since only plaintiff evidence predicted retaliation verdict certainty in Phase 1, defendant evidence will not be considered a moderator in the following analyses. A one-way ANOVA with instruction, regulatory focus, claim type, and plaintiff evidence as a covariate was conducted. There was only a main effects of plaintiff evidence, $F(1, 141) = 120.18$, $p = .001$, partial $\eta^2 = .46$, with stronger plaintiff evidence predicting a pro-plaintiff verdict. There were not significant interactions, all ps > .14 and thus no moderation analyses were conducted.

Predicting retaliation verdict certainty by three-level instruction, regulatory focus manipulation, and strength of evidence. A one-way ANOVA predicting retaliation verdict certainty by three-level instruction, regulatory focus, and plaintiff evidence showed only a main effect for plaintiff evidence, $F(1, 148) = 114.10$, $p = .001$, partial $\eta^2 = .43$, in that participants who thought the plaintiff's evidence was stronger were more likely to be certain in a verdict for the plaintiff. There were no other main effects or interactions, all Fs < 1.4 and all ps > .24.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and plaintiff evidence. In Phase 1, only plaintiff evidence predicted discrimination

verdict certainty, and so the following analyses only include plaintiff evidence as a moderator. A forced entry binary logistic regression predicting discrimination verdict based on instruction, regulatory focus, and plaintiff evidence produced a significant model, $\chi^2(7) = 57.07$, $p = .001$, Nagelkerke $R^2 = .71$. However there was only a significant main effect of plaintiff evidence, $\beta = 1.06$ ($SE = .47$), $Wald = 5.20$, $p = .02$ such that stronger plaintiff evidence predicted greater likelihood of a plaintiff verdict. No other main effects or interactions were significant, all *p*s >.46.

Predicting discrimination verdict by three-level instruction, regulatory focus manipulation, and plaintiff evidence. A forced entry binary logistic regression predicting discrimination verdict based on three-level instruction, regulatory focus, and plaintiff evidence as the moderator produced a significant model, $\chi^2(11) = 102.06$, $p = .001$, Nagelkerke $R^2 = .77$. Again, there was only a main effect of plaintiff evidence, $\beta = .68$ ($SE = .33$), $Wald = 4.13$, $p = .04$, but no other main effects or interactions, all *p*s > .27.

Predicting discrimination verdict certainty by instruction, regulatory focus manipulation, and plaintiff evidence. A one-way ANOVA was conducted to predict discrimination verdict certainty with instruction, regulatory focus, and strength of evidence as covariates. There was only a main effect for plaintiff evidence, $F(1, 71) = 36.96$, $p = .001$, partial $\eta^2 = .34$, in which those who viewed the plaintiff's evidence as stronger were more certain in their verdict for the plaintiff. No other main effects or interactions were significant (all *F*s < 1.89, all *p*s > .17). No moderation analyses were conducted based on these results.

Predicting discrimination verdict certainty by three-level instruction, regulatory focus manipulation, and plaintiff evidence. A one-way ANOVA predicting

discrimination verdict certainty by three-level instruction, regulatory focus, and strength of evidence showed only a main effect for plaintiff evidence, F (1, 103) = 18.39, p = .001, partial η^2 = .15, in that those who believed the plaintiff's evidence was strong were more certain in their verdict for the plaintiff. There were no other main effects or interactions, all Fs < .32 and all ps > .18.

Previous employment decisions as a moderator.

Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and previous employment decisions. I conducted a forced entry binary logistic regression predicting retaliation verdict from instruction, claim type, regulatory focus manipulation, and whether participants had ever made previous employment decisions. The overall model was not significant, , $\chi^2(15)$ =7.14 p = .95, Nagelkerke R^2 = .06 and there were no main effects or interactions. No further analyses were necessary.

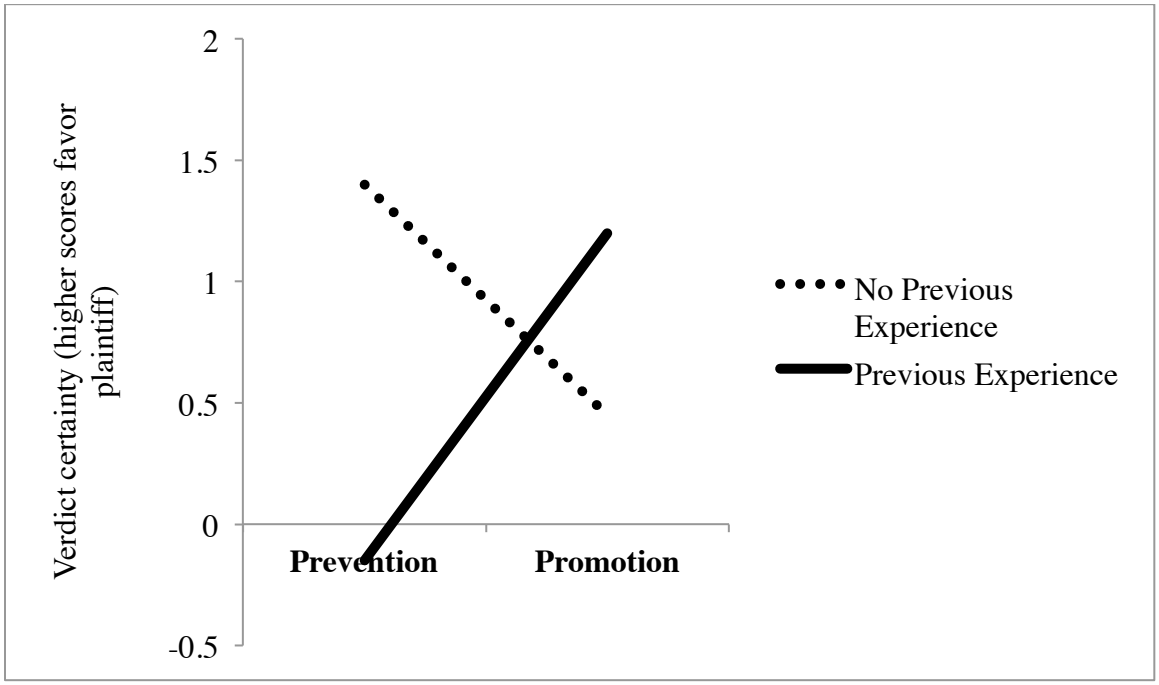
Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and previous employment decisions. I conducted a forced entry binary logistic regression predicting retaliation verdict from the three-level instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions. The overall model was not significant, , $\chi^2(7)$ =5.13, p = .64, Nagelkerke R^2 = .04. No main effects or interactions were significant, all ps > .34.

Predicting retaliation verdict certainty by instruction, claim type, regulatory focus manipulation, and employment decision. A one-way ANOVA examined the role of instruction, claim type, regulatory focus, and previous employment decisions (as a covariate) on retaliation verdict certainty. There was a main effect of regulatory focus, F (1, 140) = 4.65, p = .03, partial η^2 = .03, in which participants in the prevention focused

condition were significantly more certain of their verdict for the plaintiff as compared to promotion focused individuals. There were two significant two-way interactions, the first between regulatory focus and previous employment decisions, F (1, 140) = 4.96, p = .03, partial η^2 = .03, and the second between instruction and claim type, F (1, 140) = 4.65, p = .03, partial η^2 = .03. There was also a marginally significant three-way interaction between instruction, claim type, and previous employment decisions, F (1, 140) = 3.57, p = .06, partial η^2 = .02.

First, moderation analyses were done on the two-way interaction between regulatory focus and previous employment decisions. Using Hayes' (2013) process moderation, the interaction of regulatory focus and previous employment experience was significant, t (1, 152)= -2.25, p = .03, LLCI = -3.97, UCLI = -.26, suggesting significant moderation. Figure 15 shows that this moderation is strongest for participants in the prevention focused condition, as compared to the promotion focused condition. For participants in the prevention focused condition, if they had no previous experience making employment decisions (such as firing or hiring) they were more certain in finding for the plaintiff, while those who had previous experience were slightly certain in finding for the defendant. All participants in the promotion focused condition were certain in finding for the plaintiff, but those with previous experience were more certain in their verdict than those with no previous experience. This could suggest that when put into prevention focus, those who know what goes into these decisions may not want to risk overlooking a legitimate factor that might have led to the alleged retaliation.

Figure 3.15: Previous Employment Experience as a Moderator for Regulatory Focus on Retaliation Verdict Certainty



Next, moderation analyses assessed the potential moderation of previous employment experience on the effect of instruction by claim type on retaliation verdict certainty. Separate process moderation was done on both participants were decided only a retaliation claim and those who decided a discrimination and a retaliation claim focused participants separately, but no significant moderation was found (*p*s > .10 and *p*s > .25, respectively). The data was then split by instruction type to examine potential moderation of the relationship between claim type and retaliation verdict certainty, but no moderation was found for either but-for (all *p*s > .49) or mixed motive instructions (all *p*s > .13).

Predicting retaliation verdict certainty by three-level instruction, regulatory focus manipulation, and previous employment decisions. A one-way ANOVA with three-level instruction, regulatory focus, and previous employment decisions, as a covariate, on retaliation verdict certainty failed to produce main effects of instruction,

regulatory focus, or previous employment decisions (all *F*s < .72 and all *p*s > .40). Nor were there any significant interactions between any of the variables, all *F*s < .2.65 and all *p*s > .07. Moderation analyses were not necessary.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and previous employment decisions. Next, I conducted a forced entry binary logistic regression predicting discrimination verdict from instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions. The overall model was not significant, $\chi^2(7) = 4.67$ $p = .70$, Nagelkerke $R^2 = .08$ and there were no main effects or interactions. I conducted no further analyses on the potential moderating effects of previous employment decisions.

Predicting discrimination verdict by three-level instruction. regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting discrimination verdict from the three-level instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions produced a non-significant overall model, $\chi^2(7) = 11.77$ $p = .11$, Nagelkerke $R^2 = .12$ and there were no main effects or interactions, all *p*s > .14. No further analyses moderation analyses with these variables were necessary.

Predicting discrimination verdict certainty by instruction, regulatory focus manipulation, and employment decision. A one-way ANOVA on discrimination verdict certainty with instruction, regulatory focus, and previous employment decisions as a serving as independent variables resulted in only a significant main effect of instruction, $F(1, 71) = 4.20$, $p = 04$, partial $\eta^2 = .06$. In line with previous effect, participants who used but-for instructions were more certain in their verdicts for the defendant, while

participants who used mixed motive instructions were more certain in their verdicts for the plaintiff. No other main effects or interactions were significant (all *p*s > .16).

Predicting discrimination verdict certainty by three-level instruction, regulatory focus manipulation, and previous employment decisions. A one-way ANOVA predicting discrimination verdict certainty with three-level instruction, regulatory focus, and previous employment decisions as a covariate resulted in no significant main effects or interactions, all *F*s < 2.56 and all *p*s > .08. No moderation analyses were conducted.

Study 1 Discussion

The results of study sought to examine several hypotheses that were mostly supported. Hypothesis 1 predicted that participants using but-for instructions would be more likely to find for the defendant, as compared to the plaintiff. Although logistic regressions of the full dichotomized verdict resulted in no effects for retaliation verdict or discrimination in the full model analyses, verdict certainty analyses of variance showed that participants using but-for instructions were more likely to be certain in their verdict for the defendant while those using mixed motive were more certain in their verdict for the plaintiff. Moderation analyses further found that under but-for instructions, but not mixed motive, belief that the plaintiffs national origin motivated the defendant significantly predicted retaliation verdicts for participants when they made only a retaliation decision as compared to those who made both a discrimination and retaliation decision. National origin also moderated the relationship between regulatory focus and claim type, but only under but-for instructions. This is in line with previous research (Wiener & Farnum, 2013; Farnum & Wiener, 2015) who have found that extralegal psychological factors are more influential under but-for instructions.

Hypothesis 1a predicted that when participants used mixed motive instructions for a discrimination claim and but-for instructions for a retaliation claim, that the but-for instructions would potentially bleed over and lead to more pro-defendant verdicts. Although there was no evidence for this phenomenon, participants who used two different instruction types were less certain in their retaliation verdict as compared to participants who only used one type of instruction. Participants were less certain of finding for the plaintiff, such that the pattern of certainty for plaintiff verdict was more in line with mixed motive instructions than but-for charges. This suggests that perhaps mixed motive instructions from the discrimination claim may bleed over into the retaliation claim. Additionally, participants who determined a discrimination claim were more likely to find for the plaintiff in the two-instruction condition than those in the pure the but-for only condition. This suggests that but-for instructions do not bleed over into discrimination claims.

Unfortunately, I was unable to test Hypothesis 2 and Hypothesis 3, concerning chronic regulatory focus and regulatory fit because the chronic regulatory focus measure that was unreliable and unable to differentiate participants in either promotion or prevention focused conditions. Hypothesis 4 predicted that regulatory focus, as manipulated in the study, would be the most influential under but-for instructions. This hypothesis was partially supported. Specifically, for retaliation verdict certainty regulatory focus predicted verdict certainty under but-for instructions but not under mixed motive. On the other hand, when looking at all three levels of instruction for retaliation verdict certainty, prevention focused individuals did not show any difference in their use of instructions, but participants in the promotion focused condition were more

certain in their verdict in favor of the defendant under but-for instructions as compared to mixed motive instructions. There was no difference, however, between those who used both instructions and those who only used one type of instruction.

An interesting and pervasive finding from the first study is that whether or not the defendant considered the plaintiff's national origin in reaching the employment decision drove the participants verdicts. . This information should from the basis of the discrimination judgment, but not the retaliation claim. Regardless, national origin motivation influenced participant verdict and verdict certainty for retaliation claims. Additionally, participants used the discrimination complaint as a moderating factor in their discrimination verdict certainty decisions. The discrimination complaint should not legally be influencing discrimination verdicts decisions. There was also some evidence that if participants had previous experience making hiring or firing decisions that this could influence how they determined their verdicts. Specifically, participants who were in the prevention focused condition were more certain in their verdict for the defendant if they had previous experience, whereas promotion focused participants were more certain in their verdict for the plaintiff if they had previous experience. Perhaps, the assessment of risk occurs differently depending on regulatory focus. Those with prevention focus, having made these decisions before, understand that there are many factors that go into firing someone. As such, they may be less willing to risk finding retaliation when it may not exist.

Study 2 next assesses the role of regulatory focus, instruction, and claim type in a case where the plaintiff did not receive a promotion, instead of being fired.

Chapter 4: Study 2

Study 2: Regulatory Focus and Jury Decision Making in Retaliation Cases involving failure to promote an employee

The second study utilized the same design and analyses as the first but the trial transcript described a case in which the employee did not receive a promotion. Thus, the design of study 2 was a 2 (Regulatory frame: promotion v. prevention) x 2 (Claim type: Retaliation v. Discrimination/Retaliation) x 2 (Instruction: mixed motive v. but-for) + 1 (Mixed Motive and But-for instructions for a Discrimination/Retaliation claim) between participants design with chronic prevention and promotion as continuous variables. The discrimination judgment and the retaliation judgment was the same as in study 1 except that the charges were 1) that the hospital failed to promote the plaintiff because of his national origin and 2) the hospital failed to promote the plaintiff because of his discrimination complaint. The fact pattern was a modification of *University of Texas Southwestern Medical Center v. Nassar,* similar to study 1 except that the plaintiff complained that he deserved a promotion that the hospital denied him (See Appendix I). The chronic regulatory focus measure was the same as in study 1 as was the regulatory focus framing manipulation. Appendices J, K, L, and M are the jury instructions, manipulation checks, motivation factors measures, and verdict decisions for study 2 (See Table 4.1 for means and standard deviations of all measures).

Table 4.1: Descriptive Statistics for Study 2 Measures

	N	*M*	*SD*
Motivating Factors			
National Origin	198	4.97	3.12
Rehiring Policy	197	5.09	3.10
Adversarial Relationship	198	6.32	2.98
Discrimination Complaint	198	5.83	3.33
Letter to University	198	6.74	3.00
Retaliation Verdict	198		
Plaintiff Verdict	107 (54%)		
Defendant Verdict	91 (46%)		
Retaliation Verdict Certainty	198	.90	2.91
Retaliation Plaintiff Evidence	198	5.57	2.27
Retaliation Defendant Evidence	197	4.57	2.49
Retaliation Burden of Proof	197	71.49	25.03
Discrimination Verdict	120		
Plaintiff Verdict	61 (51.7%)		
Defendant Verdict	57 (48.3%)		
Discrimination Verdict Certainty	119	.13	3.32
Discrimination Plaintiff Evidence	120	4.82	2.49
Discrimination Defendant Evidence	120	5.41	2.31
Discrimination Burden of Proof	120	69.60	.70

Though failure to promote and firing an employee are both adverse actions under Title VII, I hypothesized that retaliation that occurs as a failure to promote will be viewed as less legitimate than retaliation as discharge. That is, participants may not show as strong regulatory fit effects and instruction effects because they do not believe the employer retaliated when not promoting the complainant. This is consistent with other

research examining employee retaliatory acts of omission (e.g. failing to look for an important missing file), which participants perceived as more acceptable than acts of commission (e.g. hiding an important file) (Charness & Levine, 2010). Specifically, Charness and Levine presented participants with one of five scenarios that described a negative action by a manager (e.g., a manager who has sexually harassed your friend needs help finding a missing file) and then described the employee's actions. These actions were be one of five responses that varied in either being an act of commission (employee hides the file) or omission (the employee does not tell the manager where the file is) and then whether the influence of the action was far-reaching (it took weeks to find or replace the file) or resolved quickly (it took hours to find or replace the file). Participants then rated the acceptability of the employee's behavior. Charness and Levine (2010) found that participants viewed an act of omission as more acceptable than an act of commission, but the influence of the action (far reaching or resolved quickly) was not rated as significantly different. I anticipate similar results when comparing study 1 and study 2.

Participants. Participants were 212 community members recruited via Mechanical Turk that were at least 18 years of age or older and were U.S. citizens.. Eleven participants were dropped from the dataset for falling outside the standard deviation of response time for the survey and 3 participants were dropped for incomplete data. The final 198 participants who were kept for analyses were 54% women, had a mean age of 34.38, and 80.3% of them were employed at least part-time. The ethnic breakdown of the participants was representative of the Mturk community with 79.7% European American, 8.6% African American, 4.6% Asian American, 3.6% Hispanic,

1.5% Native American, 1% Latino/a, and 1% Middle Eastern. Participants were fairly educated with 56.1% holding at least a college degree, 30.8% having completed some college, and 12.6% holding a high school diploma. Lastly, 46.5% of participants indicated that they had been in a position to make hiring or firing decisions in their jobs.

Results

As with Study 1, the results of Study 2 appear in four phases. Phase 1 displays preliminary analysis of the experimental task to determine which factors predict verdict and verdict certainty using only simple main effects. Phase 2 presents the full model analyses, absent the +1 condition of mixed motive instructions for discrimination and but-for instructions for retaliation, of the experimental task to test the influence of significant predictors while taking into consideration the 2 (Regulatory frame: promotion v. prevention) x 2 (Claim type: Retaliation v. Discrimination/Retaliation) x 2 (Instruction: mixed motive v. but-for) factorial design. Phase 3 presents the full model analyses including the third level of instruction to test the influence of manipulations on the dependent variables using the 2 (Regulatory frame: promotion v. prevention) x 3 (Instruction: mixed motive v. but-for v. mixed motive/but-for) factorial design. Finally, phase 4 will examine the proposed moderators that emerge as viable during phase 1of the analyses.

Phase 1: Preliminary Analyses of Verdict and Verdict Certainty

Manipulation checks. As in study 1, I created a causal knowledge index in which participants who correctly identified the instruction type in the manipulation check were coded as 1 and those who incorrectly identified the instruction type were coded as 0. A binary logistic regression predicting accurate understanding of the instruction by the

instruction manipulation (which included the condition in which participants had both instructions) revealed that for retaliation claims, instruction did predict accuracy $\chi^2(2) = 6.81$, $p < .03$, Nagelkerke $R^2 = .05$. Categorical contrasts revealed that participants who received but-for instructions were significantly more accurate in their knowledge of instructions as compared to those who received mixed motive instructions, $\beta = -.97$ ($SE = .38$), $Wald = 6.44$, $p < .01$. LLCI = .18, ULCI = .80, but were not different from those who received both but-for and mixed motive instructions, $\beta = -.59$, $p < .20$, LLCI = .22, ULCI = 1.38. Participants who received either only mixed motive instructions or both instructions were not significantly different on retaliation instruction accuracy, $\beta = -38$, $p < .36$, LLCI = .30, ULCI = 1.56. Table 4.2 shows the breakdown for accuracy by instructional condition for retaliation claims. A binary logistic regression predicting accurate understanding of instruction by the instruction manipulation for discrimination claims was not significant, $\chi^2(2) = 3.07$, $p < .22$, Nagelkerke $R^2 = .04$.

Table 4.2: Instruction by Instruction Accuracy

	Retaliation Claim Instruction Accuracy					
	Inaccurate		Accurate		Total	
	N	%	N	%	N	%
But-For	13	16.9	64	83.1	77	100
Mixed Motive	28	35	52	65	80	100
Mixed Motive/But-For	11	26.8	30	73.2	41	100
Total	52	26.3	145	73.7	198	100

A binary logistic regression predicting retaliation verdict by accuracy knowledge of the retaliation instruction was significant, $\chi^2(1) = 6.90$, $p < .01$, Nagelkerke $R^2 = .05$, and indicated that those who were accurate about the instructions were more likely to find for the plaintiff, $\beta = .86$ ($SE = .33$), $Wald = 6.72$, $p < .01$, LLCI = 1.23, ULCI = 4.51. Table 4.3 displays the retaliation verdict breakdown by accuracy. A binary logistic regression predicting discrimination verdict by instruction accuracy was not significant, $\chi^2(1) = .00$, $p < .99$, Nagelkerke $R^2 = .00$.

Table 4.3: Retaliation verdict by instruction accuracy

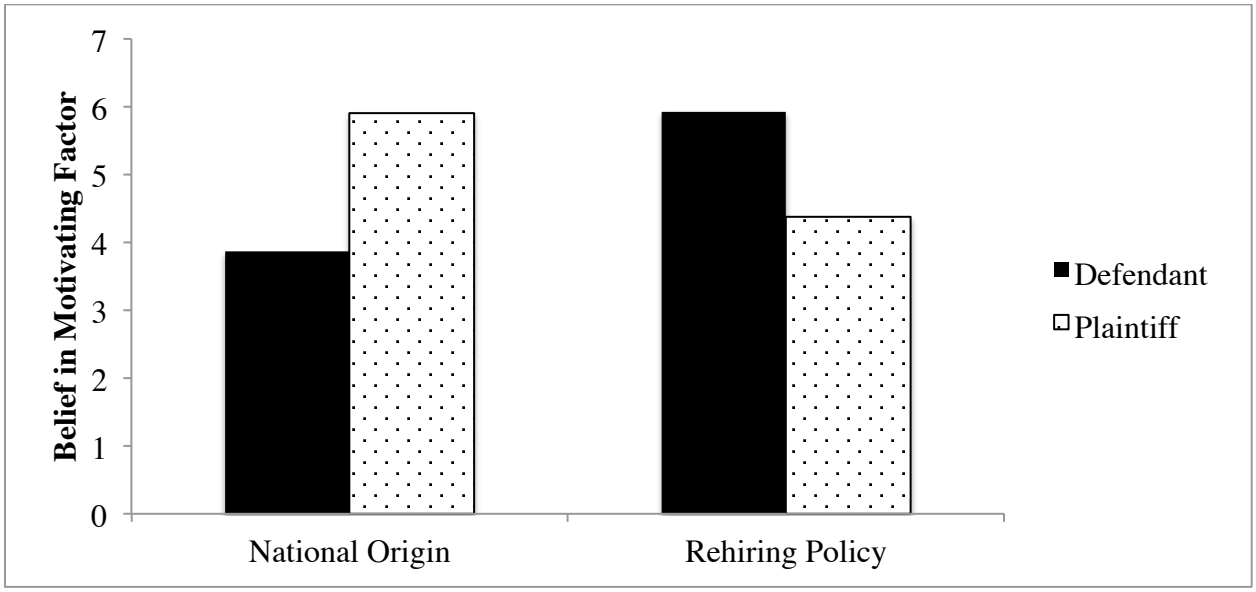
Retaliation Verdict by Instruction Accuracy						
	Defendant		Plaintiff		Total	
	N	%	N	%	N	%
Inaccurate	32	61.5	20	38.5	52	100
Accurate	59	40.4	87	59.6	146	100
Total	91	46	107	54	198	100

To assess the influence of instruction accuracy on retaliation verdict certainty, a one-way ANOVA predicting retaliation verdict certainty revealed a non-significant effect of instruction accuracy, $F(1, 196) = 04$, $p = .84$, partial $\eta^2 = .00$. A one-way ANOVA predicting discrimination verdict certainty by instruction accuracy also revealed no significant effect of instruction accuracy on certainty, $F(1, 116) = .83$, $p = .36$, partial $\eta^2 = .007$.

Motivational Analyses. A preliminary forced binary logistic regression predicting retaliation verdict by the five motivating factors (plaintiff national origin, rehiring policy, relationship with supervisors, discrimination complaint, and the letter to the university) tested whether these factors from the case predicted retaliation verdict. The overall model was significant, $\chi^2(5) = 32.84$, $p < .001$, Nagelkerke $R^2 = .20$. Two of the motivating factors were significant predictors, plaintiff's national origin, $\beta = .23$ ($SE = .06$), *Wald* =

17.26, $p < .001$, LLCI = 1.13, ULCI = 1.41, and the rehiring policy, $\beta = -.17$ ($SE = .05$), *Wald* = 9.94, $p < .002$, LLCI = .76, ULCI = 94. Specifically, participants who believed national origin played a role in the defendant's actions were more likely to find for the plaintiff, while participants who believed the rehiring policy influenced the defendant's actions were more likely to find for the defendant. As with Study 1, national origin is not a legally relevant motivating factor for a retaliation claim (See Figure 4.1). The rehiring policy is also problematic, as the rehiring policy is a legitimate reason for the defendant's actions. None of the other motivating factors were significant, all *p*s > .51.

Figure 4.1: Motivating Factors and Retaliation Verdict



A forced binary logistic regression predicting discrimination verdict by the motivating factors also produced a significant model, $\chi^2(5) = 24.43$, $p < .001$, Nagelkerke $R^2 = .25$, but only plaintiff's national origin was a significant predictor of verdict, $\beta = .28$ ($SE = .07$), *Wald* = 13.67, $p < .001$, LLCI = 1.42, ULCI = 1.53. Participants who thought the defendant took into consideration the plaintiff's national origin were more likely to find for the plaintiff, as compared to the defendant. This is legally appropriate for the

discrimination complaint and is in the right direction. All other motivating factors were not significant, all *p*s > .29.

Next, to determine the influence of motivating factors on retaliation verdict certainty, a multiple regression predicting certainty by the motivating factors produced a significant model, $R^2 = .12$, F (5, 196) = 5.27, $p = .001$. The plaintiff's national origin, $\beta = .15$ ($SE = .07$), $t = 2.33$, $p = .02$, LLCI = .02 ULCI = .29, and the rehiring policy, $\beta = -.18$ ($SE = .06$), $t = -2.81$, $p = .01$, LLCI = -.31 ULCI = 0.05 were the only significant predictors. Specifically, participants who believed the plaintiff's national origin was a strong motivating factor were more likely to find the defendant liable, while those who thought the rehiring policy was a motivating factor were more likely to find the defendant not liable. A multiple regression predicting discrimination verdict certainty by the motivating factors produced a significant model, $R^2 = .18$, F (5, 118) = 5.10, $p = .001$, and found that the plaintiff's national origin, $\beta = .31$ ($SE = .10$), $t = 3.23$, $p = .01$, LLCI = .12 ULCI = .51, and the plaintiff's discrimination complaint were significant predictors, $\beta = .22$ ($SE = .10$), $t = 2.22$, $p = .03$, LLCI = .02 ULCI = .41.

Strength of Evidence Analyses. To understand how participants weighed the evidence of the plaintiff and defendant in deciding a verdict, I conducted a forced entry binary logistic predicting retaliation verdict with strength of plaintiff and defendant evidence and found the model was significant, $\chi^2(2) = 150.64$, $p < .001$, Nagelkerke $R^2 = .71$, with both plaintiff evidence, $\beta = 1.11$ ($SE = .16$), $Wald = 47.52$, $p < .001$, LLCI = 2.21, ULCI = 4.16, and defendant evidence, $\beta = -.44$ ($SE = .13$), $Wald = 11.64$, $p = .001$, LLCI = .50, ULCI = .83, as significant predictors. Participants who viewed the plaintiff's

evidence as strong were more likely to find for the plaintiff, while those who viewed the defendant's evidence as strong were more likely to find for the defendant.

Next, a forced entry binary logistic regression predicting discrimination verdict by plaintiff and defendant evidence also produced a significant model, $\chi^2(2) = 105.82$, $p <$ .001, Nagelkerke $R^2 = .79$. For discrimination verdicts both plaintiff evidence, $\beta = 1.41$ ($SE = .29$), $Wald = 24.40$, $p < .001$, LLCI = 3.35, ULCI =7.21, and defendant evidence, β = -.46 ($SE = .22$), $Wald = 4.32$, $p = .04$, LLCI = .41, ULCI =97, emerged as a significant predictors. Again, participants who believed the plaintiff's evidence was strong were more likely to find for the plaintiff, while those that viewed the defendant's evidence as strong were more likely to find for the defendant.

To examine the influence of strength of evidence on verdict certainty, separate multiple regressions predicting retaliation verdict certainty and discrimination verdict certainty by plaintiff and defendant evidence were conducted. For retaliation verdict certainty, the model was significant, $R^2 = .38$, F (2, 196) = 59.28, $p < .001$, but only plaintiff evidence was a significant predictor, $\beta = .75$ ($SE = .08$), $t = 9.13$, $p = .001$, LLCI = .59 ULCI = .92, while defendant evidence was not significant, $\beta = -.05$, $p = .41$. For discrimination verdict certainty the model was significant, $R^2 = .44$, F (2, 118) = 46.18, p < .001, and plaintiff evidence was significant, $\beta = .80$ ($SE = .11$), $t = 7.07$, $p = .001$, LLCI = .58 ULCI = 1.02, but defendant evidence was not significant, β =-.15, $p = .23$. For both retaliation and discrimination verdict certainty, participants who viewed the plaintiff's evidence as strong were more likely to be certain in their verdict for the plaintiff as opposed to the defendant.

Trait regulatory focus analyses. Again, I was unable to analyze chronic regulatory focus due to a failure in the regulatory focus measure to differentiate between promotion and prevention focused individuals. Specifically, the reaction times did not correlate with the ratings of the traits, even when transforming the data to be a normal distribution. More concerning, individuals who rated themselves high in ideal/promotion traits also significantly rated themselves high in ought/prevention traits (Pearson $r = .63$, $p < .001$). This suggests that the measure was not sensitive enough to parse out participants' trait regulatory focus.

Phase 2: Full Experimental Model Analyses

In the analyses of the full model, participants from the different instruction condition (discrimination complaint with mixed motive instruction and retaliation complaint with but-for instruction) are not included. These participants will be analyzed in separate analyses in phase 3.

Predicting retaliation verdict by instruction, regulatory focus, and claim type. A forced binary logistic regression predicting retaliation verdict (0 = plaintiff, 1 = defendant) by instruction (0 = but-for, 1 = mixed motive), regulatory focus manipulation (0 = prevention, 1 = promotion), and claim type (0 = retaliation only, 1 = discrimination and retaliation) produced a non-significant model, $\chi^2(3) = 3.92$, $p = .27$, Nagelkerke $R^2 = .03$. None of the manipulated variables predicted retaliation verdict, all *p*s > .13. Testing for interactions between the variables, a second forced entry binary logistic regression with the three manipulated variables and their interactions predicting retaliation verdict failed to produce a significant model, $\chi^2(7) = 6.81$, $p = .45$, Nagelkerke $R^2 = .06$, with none of the variables or interactions predicting retaliation verdict, all *p*s > .15.

Predicting retaliation verdict certainty by Instruction, Regulatory Focus, and Claim Type. A one-way ANOVA predicting retaliation verdict certainty by instruction, regulatory focus manipulation, and claim type revealed a main effect of instruction, $F(1, 149) = 4.68$, $p = .03$, partial $\eta^2 = .03$, with participants in the mixed motive condition more certain of their verdict for the plaintiff ($M = 1.54$, $SD = .32$) than participants in the but-for condition ($M = .56$, $SD = .32$). No other main effects or interactions were significant (all Fs < 1.45, all ps > .23),

Predicting discrimination verdict by instruction, regulatory focus, and claim type. A forced entry binary logistic regression with instruction and regulatory focus manipulation predicting discrimination verdict produced a significant model, $\chi^2(2) = 8.98$, $p = .01$, Nagelkerke $R^2 = .14$ with instruction as a significant predictor, $\beta = 1.13$ ($SE = .49$), $Wald = 5.41$, $p = .02$, LLCI = 1.19, ULCI =8.02. Specifically, participants using the mixed motive instructions were more likely to find for the plaintiff than participants using the but-for instructions (See Table 4.4). There was also a marginally significant effect of regulatory focus, $\beta = -.92$ ($SE = .49$), $Wald = 3.67$, $p = .056$, LLCI = .15, ULCI =1.02, with prevention focused jurors more likely to find for the plaintiff and promotion focused jurors more likely to find for the defendant (See Table 4.5).

Table 4.4: Discrimination Verdict by Instruction

	Discrimination Verdict by Instruction					
	Defendant		Plaintiff		Total	
	N	%	N	%	N	%
But-For	24	63.2	14	36.8	38	100
Mixed Motive	15	37.5	25	62.5	40	100
Total	39	50	39	50	78	100

Table 4.5: Retaliation verdict by regulatory focus manipulation

	Discrimination Verdict by Instruction					
	Defendant		Plaintiff		Total	
	N	%	N	%	N	%
Prevention	15	39.5	23	60.5	38	100
Promotion	24	60	16	40	40	100
Total	39	50	39	50	78	100

A second forced entry binary logistic regress predicting discrimination verdict by instruction, regulatory focus manipulation, and instruction X regulatory focus manipulation produced a significant model, $\chi^2(3) = 8.98$, $p = .03$, Nagelkerke $R^2 = .14$, with no significant main effects or interactions, all *p*s > .10.

Predicting discrimination verdict certainty by instruction and regulatory focus. A one-way ANOVA predicting discrimination verdict certainty by instruction and regulatory focus manipulation found a marginal main effect of instruction, $F(1, 74) = 3.55$, $p = .06$, partial $\eta^2 = .05$, but no two-way interaction between regulatory focus and instruction, $F(1, 74) = .47$, $p = .50$, partial $\eta^2 = .01$. The main effect of instruction shows that participants who received but-for instructions were significantly more certain ($M = -.53$, $SD = .55$) that the defendant was not liable, whereas participants who received mixed motive instructions were significantly more certain ($M = .92$, $SD = .54$) that the defendant was liable.

Phase 3: Experimental Model Analyses with +1 Instruction Condition

The following analyses examine the full model effects on the dependent variables, taking into consideration the third level of instruction: mixed motive for discrimination claims and but-for for retaliation claims. In these analyses, claim type will not be used, as all participants who received the third level of instruction decided both claims. As such, all analyses in this phase only examine participants who made both a discrimination and retaliation claim.

Predicting retaliation verdict by instruction, regulatory focus, and claim type. A forced entry binary logistic regression predicting retaliation verdict with instruction (coded with the mixed motive/but-for condition as the comparison) and regulatory focus

resulted in a non-significant model, $\chi^2(3) = 1.18$, $p = .76$, Nagelkerke $R^2 = .01$ without main effects of instruction or regulatory focus, all *p*s > .47.

A second forced-entry binary logistic regression predicting retaliation verdict with instruction, regulatory focus, and the interaction of instruction x regulatory focus produced a non-significant model, $\chi^2(5) = 4.15$, $p = .53$, Nagelkerke $R^2 = .04$. There were no significant main effects and the interaction was not significant either, all *p*s > .14.

Predicting retaliation verdict certainty by Instruction and Regulatory Focus. A one-way ANOVA predicting retaliation verdict certainty by instruction and regulatory focus failed to find any main effects nor an interaction between instruction and regulatory focus , all *F*s < .73 and all *p*s > .48,

Predicting discrimination verdict by instruction and regulatory focus. A forced entry binary logistic regression predicting discrimination verdict with all three levels of instruction (coded with but-for only as the comparison) and regulatory focus resulted in a non- significant model, $\chi^2(3) = 6.48$, $p = .09$, Nagelkerke $R^2 = .07$. However, there was a marginally significant main effect of instruction, *Wald* = 5.40, $p = .067$. Analyses revealed that there is a significant difference in discrimination verdicts when participants used only but-for instructions compared to those who used only mixed motive instructions, $\beta = 1.07$ (*SE* = .47), *Wald* = 5.14, $p = .02$, LLCI = 1.15, ULCI = 7.34 (See Table 4.6 for percentages). Participants who used only but-for instructions for both claims were more likely to find for the defendant on the discrimination charge as opposed to those who used only mixed motive instructions. The differences between those who used both instructions as compared to those who used only but-for ($\beta = .31$, $p = .49$) and those who used only mixed motive instructions ($\beta = -.76$, $p = .10$) were not significant.

Table 4.6: Discrimination Verdict by Three Level Instruction Condition

	Defendant		Plaintiff		Total	
	N	%	N	%	N	%
But-For only	24	63.2	14	36.8	38	100
Mixed Motive Only	15	37.5	25	62.5	40	100
Mixed Motive/But-For	18	45	22	55	40	100
Total	57	48.3	61	51.7	118	100

A second forced-entry binary logistic regression predicted discrimination verdict with the instruction, regulatory focus, and the interaction of instruction by regulatory focus produced a non-significant model, $\chi^2(5) = 10.10$, $p = .07$, Nagelkerke $R^2 = .11$. There were no significant main effects or interactions, all *p*s >.10.

Predicting discrimination verdict certainty by instruction and regulatory focus. I conducted a separate ANOVA to predict discrimination verdict certainty by the instruction and regulatory focus. There were no significant main effects and the interaction between instruction and regulatory focus was also not significant, all *F*s < 1.92 and all *p*s > .15.

Phase 4: Moderation Analyses

For the following analyses, unless otherwise noted instruction refers to only but-for or mixed motive instructions. The mixed motive/but-for condition will be specifically mentioned if it is being used in the analysis.

Instruction Accuracy as a Moderator

Predicting retaliation verdict by instruction, claim type, regulatory focus, and instruction accuracy. A forced entry binary logistic regression predicting retaliation verdict by instruction, claim type, regulatory focus, and instruction accuracy produced a significant model, $\chi^2(4) = 16.64$, $p = .002$, Nagelkerke $R^2 = .13$. There was a significant main effect of instruction, $\beta = .80$ ($SE = .36$), $Wald = 5.09$, $p = .02$. LLCI = 1.11, ULCI = 4.50, in which participants who used mixed motive instructions, as compared to but-for instructions, were more likely to find for the plaintiff. There was also a main effect of accuracy, $\beta = 1.44$ ($SE = .42$), $Wald = 11.62$, $p = .001$, LLCI = 1.84, ULCI = 9.65, where participants who were more accurate in their knowledge of the instructions were more likely to find in favor of the plaintiff. . No other mains effects were significant, all ps > .33. A second binary logistic regression predicting retaliation verdict by instruction, claim type, regulatory focus, accuracy, and adding all interactions produced a significant model, $\chi^2(14) = 25.57$, $p = .03$, Nagelkerke $R^2 = .20$, but there were no significant main effects or interactions, all ps > .11. Since accuracy did not interact with any of the manipulated variables, moderation analyses were not necessary.

National Origin and Rehiring Policy Motivation as a Moderator. Based on analyses from Phase 1, only national origin and the rehiring policy will be considered potential moderators. Specifically, potential moderators for predicting retaliation verdict

are national origin and rehiring policy, while only national origin is a potential moderator for discrimination verdicts. Since neither motivation factor predicted verdict certainty, moderation analyses do not include those factors.

Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and national origin motivation. A forced entry binary logistic regression predicting retaliation verdict by instruction, claim type, regulatory focus, and national origin produced a significant model, $\chi^2(4) = 18.17$, $p = .001$, Nagelkerke $R^2 = .15$. Only national origin motivation emerged as a significant predictor, $\beta = .22$ ($SE = .06$), $Wald = 12.94$, $p = .001$, LLCI = .1.10, ULCI = 1.39, all other effects had p values of .07 or greater. A second forced entry binary logistic regression predicting retaliation with the same model plus all interactions resulted in a significant model, $\chi^2(15) = 25.61$, $p = .04$, Nagelkerke $R^2 = .20$, but there were no significant main effects or interactions, all *p*s > .09.

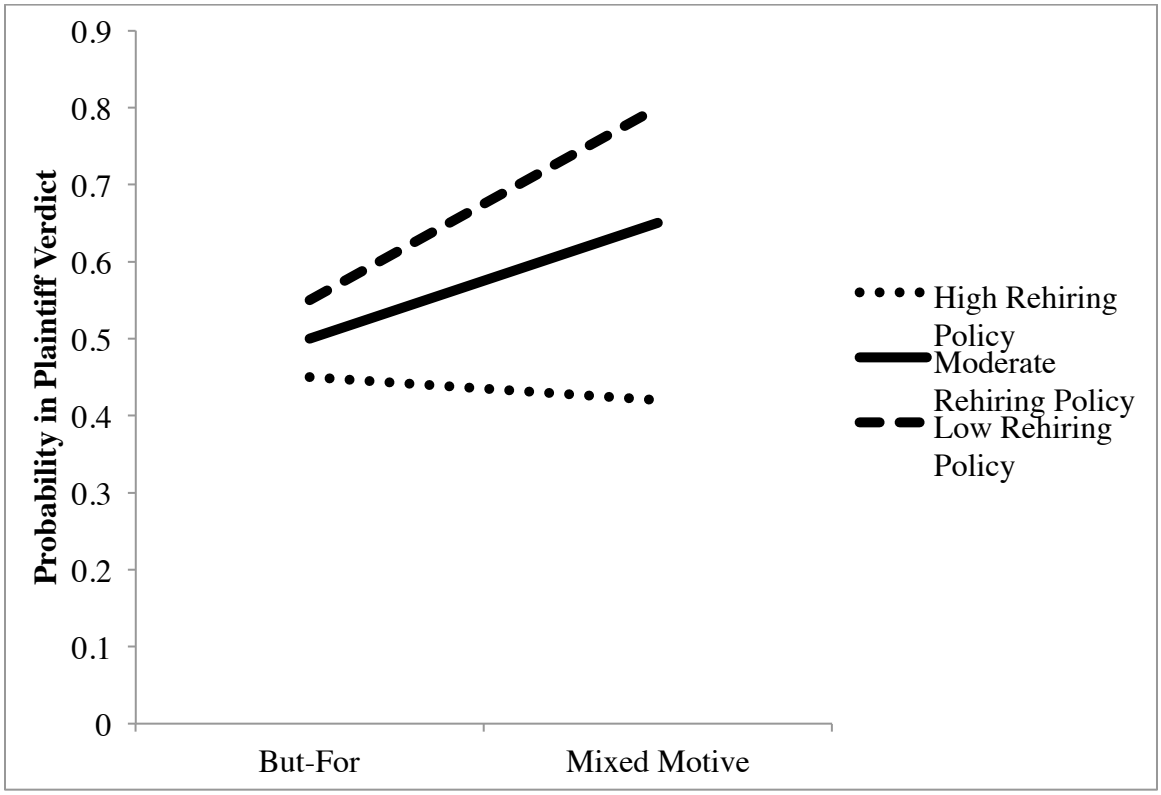
Predicting retaliation verdict by instruction, regulatory focus manipulation, and rehiring policy motivation. Next, a forced entry binary logistic regression predicting retaliation verdict from instruction, regulatory focus, claim type and the rehiring policy as a motivating factor also generated a significant model, $\chi^2(4) = 13.95$ $p = .01$, Nagelkerke $R^2 = .11$, with a main effect of the rehiring policy, $\beta = -.18$ ($SE = .06$), $Wald = 9.31$, $p = .002$, LLCI = .74, ULCI = .94. No other effects were significant, all *p*s > .11.

A second forced entry binary logistic regression predicted retaliation verdict by instruction, regulatory focus, claim type, rehiring policy as a employer motivation, and added all the interactions. The model was significant, $\chi^2(15) = 29.32$ $p = .01$, Nagelkerke $R^2 = .23$, and there were a significant effects for instruction, $\beta = 4.70$ ($SE = 2.05$), *Wald*

= 5.23, p = .02, LLCI = 1.95, ULCI = 6156.99, a two-way interaction between instruction and rehiring policy, β = -.87, (SE = .35), $Wald$ = 6.06, p = .01, LLCI = .21, ULCI = .84, and a marginally significant three-way interaction between instruction, claim type, and rehiring policy, β =.88 (SE = .45), $Wald$ = 3.82, p = .05, LLCI = 1.00, ULCI = 5.86. With regard to the main effect of instruction, participants who used mixed motive instruction were significantly more likely to find for the plaintiff, while participants using but-for instruction were more likely to find for the defendant.

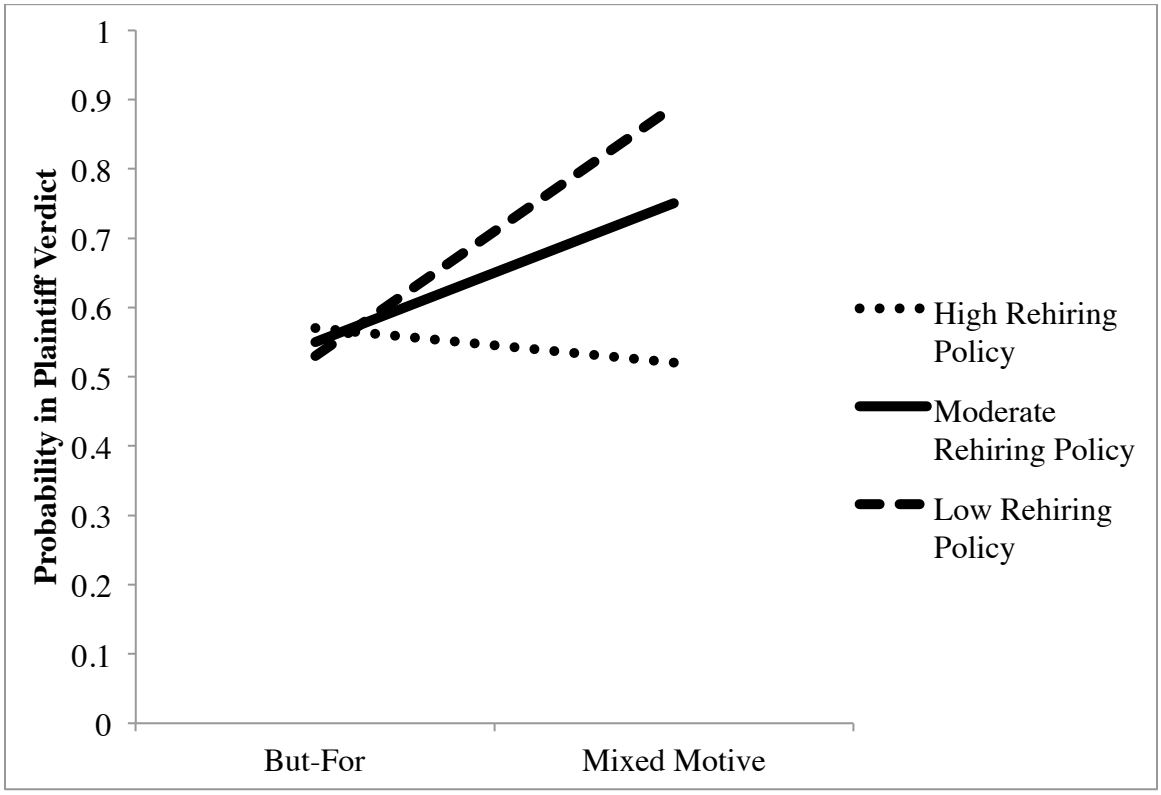
To examine the interaction between instruction and rehiring policy, I used Hayes' (2013) process moderation to find instruction effects under low levels of belief in the rehiring policy on retaliation verdict, z = 2.35, p = .02, LLCI = .21, ULCI = 2.27. Moderate (z = 1.71, p = .09, LLCI = -.09, ULCI = 1.27) but no instruction effects at high levels (z = -.12, p = .91, LLCI = -.98, ULCI = .87) of belief in the use of the rehiring (See Figure 4.2). Specifically, mixed motive participants, as compared to but-for participants, were most likely to find in favor of the plaintiff when they believed the defendant did not take into consideration the rehiring policy. On the other hand, belief in the employer's use of hiring policy had no impact under but-for instructions. Thus, respondents using mixed motive causality instructions held the company accountable when the respondents' believed the company made employment decisions that did not take their own hiring policy into consideration.

Figure 4.2: Rehiring Policy as a Moderator for Instruction on Retaliation Verdict.



To examine the three-way interaction between claim type, instruction, and rehiring policy, I performed separate Hayes (2013) process moderation analyses under each claim type. For participants who only had to determine a retaliation claim, low levels of rehiring policy motivation moderated the relationship between instruction and retaliation verdict, $z = 2.29$, $p = .02$, LLCI = .27, ULCI = 3.50. Again, as seen in Figure 4.3, beliefs that the company failed to use its rehiring policy led to increases a plaintiff verdict when respondents used mixed motive instructions compared to when they used but-for instructions. Analyses with participants deciding both a discrimination and retaliation claim did not find significant moderation effects for rehiring policy on the relationship between instruction and retaliation verdict, all *p*s > .36.

Figure 4.3: Rehiring Policy as Moderator for Instruction on Retaliation Verdict for Retaliation Claims



Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and national origin motivation. A forced entry binary logistic regression predicting retaliation verdict from the three-level instruction, regulatory focus, and the plaintiff's national origin as a motivating factor resulted in a significant model, $\chi^2(4)$ =23.97 p = .001, Nagelkerke R^2 = .24, but with only national origin motivation as a significant effect, β = .32 (SE = .07), $Wald$ = 18.50, p < .001, LLCI = 1.19, ULCI = 1.59. A second forced entry binary logistic regression predicting retaliation verdict with the same model plus all interactions also produced a significant model, $\chi^2(11)$ = 32.77 p = .001, Nagelkerke R^2 = .32. There were, however no significant main effects or interactions (all ps > .08). Moderation analyses were unnecessary.

Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and rehiring policy motivation. Next, a forced entry binary logistic regression predicting retaliation verdict from the three-level instruction, regulatory focus, and the rehiring policy as a motivating factor was not significant overall, $\chi^2(4) = 8.12$ $p = .09$, Nagelkerke $R^2 = .09$. Only instruction was marginally significant, *Wald* = 5.67 , $p < .06$, with but-for instructions leading to more pro-defendant verdicts than mixed motive instructions, $\beta = 1.09$ ($SE = .47$), *Wald* = 5.29, $p < .02$, LLCI = 1.18, ULCI = 7.57. There was no difference when comparing participants who used both instructions to those who only used but-for ($\beta = .81$, $p = .08$) and those who only relied on mixed motive instructions ($\beta = .28$, $p = .55$). Regulatory focus ($\beta = -.40$, $p = .30$) and the rehiring policy ($\beta = .-.08$, $p = .20$) were not significant. A second forced entry binary logistic regression adding all the interactions to the first model produced a non-significant model, $\chi^2(11) = 23.53$, $p = .01$, Nagelkerke $R^2 = .24$. No main effects or interactions were significant, all *p*s > .11. I conducted no moderation analyses.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and national origin motivation. A forced entry binary logistic regression predicting discrimination verdict from instruction, regulatory focus, and the plaintiff's national origin as a motivating factor produced an overall significant model, $\chi^2(3) = 17.97$ $p < .001$, Nagelkerke $R^2 = .27$, with both national origin, $\beta = .27$ ($SE = .10$), *Wald* = 7.73, $p = .01$, and instruction, $\beta = 1.35$ ($SE = .53$), *Wald* = 13.567, $p = .001$ emerging as predictors of discrimination verdict, $\beta = -.411$ ($SE = .111$), *Wald* = 6.44, $p = .01$, while regulatory focus ($\beta = -.77$, $p = .14$) was not significant. As already described in Phase 1 and Phase 2, participants who believed national origin played a role were more likely to

find for the plaintiff than the defendant, and participants using mixed motive instructions, as opposed to but-for instructions, were more likely to find for the plaintiff. A second forced entry binary logistic regression adding all the interactions to the first model also produced a significant model, $\chi^2(7) = 19.44$, $p = .01$, Nagelkerke $R^2 = .29$, but no main effects or interactions emerged, all *p*s > .14.

Predicting discrimination verdict by three-level instruction, regulatory focus manipulation, and national origin motivation. A forced-entry binary logistic regression predicting discrimination verdict with the three-level instruction, regulatory focus, and rehiring policy significant overall, $\chi^2(4) = 25.60$, $p = .001$, Nagelkerke $R^2 = .26$, with effects for national origin, $\beta = .32$ ($SE = .08$), $Wald = 17.77$, $p < .001$, LLCI = 1.19, ULCI = 1.61, and instruction, $Wald = 7.15$, $p = .03$. When comparing instruction types, participants who received but-for instructions were marginally more likely to find for the defendant as compared to participants who used mixed motive causality for discrimination claims and but-for for retaliation claims, $\beta = -1.02$ ($SE = .53$), $Wald = 3.72$, $p = .05$, LLCI = .13, ULCI = 1.02. There was no difference in verdict between participants who only used mixed motive instructions and participants who used both instructions ($\beta = .36$, $p = .48$). Regulatory focus was not significant ($\beta = -.21$, $p = .62$). A second forced entry binary logistic regression adding the interactions to the first model was significant, $\chi^2(11) = 31.60$, $p = .001$, Nagelkerke $R^2 = .31$, but only national origin was emerged as an effect, $\beta = .47$ ($SE = .21$), $Wald = 5.23$, $p = .02$, LLCI = 1.07, ULCI = 2.41. All other main effects and interactions were not significant, all *p*s > .40.

Strength of Evidence as a Moderator.

Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and strength of evidence. A forced entry binary logistic regression predicting retaliation verdict by instruction, claim type, and regulatory focus with plaintiff and defendant evidence as moderators produced a significant model, $\chi^2(5)$ =140.09 p = .001, Nagelkerke R^2 = .79. There were main effects of regulatory focus, β = 1.41 (SE = .66), $Wald$ = 4.51, p = .03, LLCI = 1.11, ULCI = 15.05, and plaintiff evidence, β = 1.66 (SE = .32), $Wald$ = 27.61, p < .001, LLCI = 2.83,ULCI = 9.77. Specifically, participants who were promotion focused were more likely to find for the plaintiff, as compared to prevention focus, and participants who believed the plaintiff's evidence was stronger were more likely to find for the plaintiff as opposed to the defendant. All other effects were not significant, all ps > .08. A second forced entry binary logistic regression adding all interactions to the first model was significant, $\chi^2(23)$ =159.69 p = .001, Nagelkerke R^2 = .85, but with no main effects or interactions, all ps > .09. No moderation analyses were conducted.

Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and strength of evidence. A forced entry binary logistic regression predicting retaliation verdict by three-level instruction, regulatory focus, and strength of evidence was significant overall, $\chi^2(5)$ = 81.19, p = .001, Nagelkerke R^2 = .66. There were main effects of plaintiff evidence, β = 1.00 (SE = .19), $Wald$ = 26.87, p < .001, LLCI = 1.86, ULCI = 3.96, and defendant evidence, β = -.43 (SE = .15), $Wald$ = 8.42, p = .004, LLCI = .49, ULCI = .87. Instruction and regulatory focus were not significant, ps > .24. A second forced entry binary logistic adding all interactions to the main effects was also significant overall, $\chi^2(17)$ = 100.10, p = .001, Nagelkerke R^2 = .76. There was still

only main effects of plaintiff evidence β = .86 (*SE* = .45), *Wald* = 3.70, *p* = .05, LLCI = .98, ULCI = 5.73, and defendant evidence, β = -.86 (*SE* = .39), *Wald* = 4.79, *p* = .03, LLCI = .00, ULCI = .20. Instruction, regulatory focus, and all interactions were not significant, all *p*s > .09.

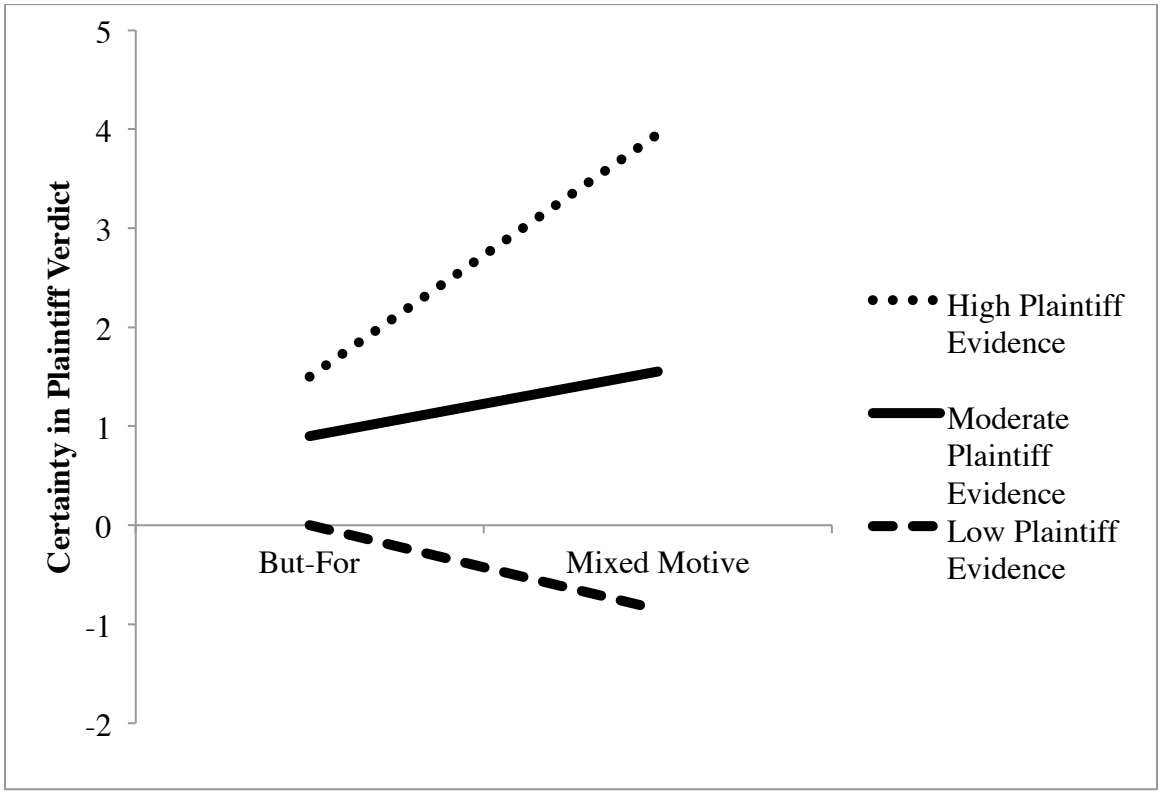
Predicting retaliation verdict certainty by instruction, claim type, regulatory focus manipulation, and strength of plaintiff evidence. Since only plaintiff evidence predicted retaliation verdict certainty in Phase 1, I did not include defendant evidence as a potential moderator in the following analyses. An ANOVA with instruction, regulatory focus, claim type, and plaintiff evidence as a covariate resulted in a main effect of regulatory focus, F (1, 141) = 5.06, p = .03, partial η^2 = .03, in which promotion focused participants were more certain of their verdict for the plaintiff than prevention focused individuals. There was also a main effect of plaintiff evidence, F (1, 141) = 94.77, p = .001, partial η^2 = .40. There were no significant two-way interactions or three way interactions, all *F*s < 3.38 and all *p*s > .08. The four way interaction between instruction, regulatory focus, claim type, and plaintiff evidence was significant, F (1, 141) = 4.16, p = .04, partial η^2 = .03.

To better understand the four way interaction, I split the data first split by claim type and performed separate ANOVAs, predicting retaliation verdict certainty by instruction, regulatory focus, and plaintiff evidence separately for retaliation only and discrimination and retaliation conditions. For participants only making a retaliation decision, there was a significant three-way interaction between instruction, regulatory focus, and plaintiff evidence, F (1, 70) = 5.80, p = .02, partial η^2 = .08. This interaction was not present for

participants who decided both discrimination and retaliation claims, $F(1, 70) = .35$ and $p = .55$.

Using only participants who decided a retaliation claim, I next split the data according to the regulatory focus condition. There was only a significant interaction between instruction and plaintiff evidence for prevention focused participants, $F(1, 36) = 5.16$, $p = .03$, partial $\eta^2 = .12$, and not for promotion focused participants, $F(1, 36) = 1.19$ and $p = .28$. Figure 15 shows that respondents do not weigh plaintiff evidence as much under but-for instructions as under mixed motive instructions. Hayes (2013) process moderation for participants in the retaliation only condition who were also in the prevention focused condition showed significant instruction effects for those who believed the plaintiff evidence was strong, $t(1, 36) = 2.39$, $p = .02$, LLCI = .36, ULCI = 4.41, but not under low, $t(1, 36) = -.83$, $p = .41$, and moderate, $t(1, 36) = 1.12$, $p = .27$, belief levels. For participants who believed the plaintiff's evidence was strong, they were more likely to find for the plaintiff under mixed motive instructions as compared to but-for instructions (See Figure 4.4).

Figure 4.4: Plaintiff Evidence as a Moderator of Instruction on Retaliation Verdict Certainty for Participants in Retaliation Only and Prevention Conditions.



Predicting retaliation verdict certainty by three-level instruction, regulatory focus manipulation, and strength of evidence. An ANOVA predicting retaliation verdict certainty by three-level instruction, regulatory focus, and plaintiff evidence showed only a main effect for plaintiff evidence, F (1, 113) = 70.79, $p < .001$, partial $\eta^2 = .38$. Instruction and regulatory focus were not significant, Fs < .82 and ps > .44. A second ANOVA adding all interactions again resulted in only one significant effect, for plaintiff evidence, F (1, 108) = 70.85, $p < .001$, partial $\eta^2 = .40$. All all other main effects and interactions were not significant, all Fs < 2.97 and all ps > .09.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting

discrimination verdict from instruction, regulatory focus manipulation, and strength of evidence produced a significant model, , $\chi^2(4) = 76.07$, $p = .001$, Nagelkerke $R^2 = .85$ with main effects for plaintiff evidence, $\beta = 1.60$ ($SE = .43$), *Wald* = 14.02, $p < .001$, LLCI = 2.14, ULCI = 11.44, and a marginally significant effect of defendant evidence, $\beta = -.61$ ($SE = .32$), *Wald* = 3.64, $p = .06$, LLCI = .29, ULCI = 1.02. No other effects were significant, all *p*s > .10. A second forced entry binary logistic regression adding all interactions to the main effect model was also significant overall, $\chi^2(11) = 86.57$, $p = .001$, Nagelkerke $R^2 = .89$, but without significant main effects or interactions, all *p*s > .07. No further analyses were needed.

Predicting discrimination verdict by three-level instruction. regulatory focus manipulation, and strength of evidence. A forced entry binary logistic regression predicting discrimination verdict from the three-level instruction, regulatory focus manipulation, and strength of evidence was significant overall, $\chi^2(5) = 108.61$ $p = .001$, Nagelkerke $R^2 = .80$. There were main effects of plaintiff evidence, $\beta = 1.44$ ($SE = .29$), *Wald* = 24.25, $p < .001$, LLCI = 2.37, ULCI = 7.44, and defendant evidence, $\beta = -.46$ ($SE = .23$), *Wald* = 4.08, $p = .04$, LLCI = .40, ULCI = 1.00. Instruction and regulatory focus were not significant, ps > .23. A second binary logistic adding all interactions to the first model produced a significant model, $\chi^2(17) = 127.17$, $p = .001$, Nagelkerke $R^2 = .88$, but there were no main effects or interactions, all *p*s > .80.

Previous employment decisions as a moderator.

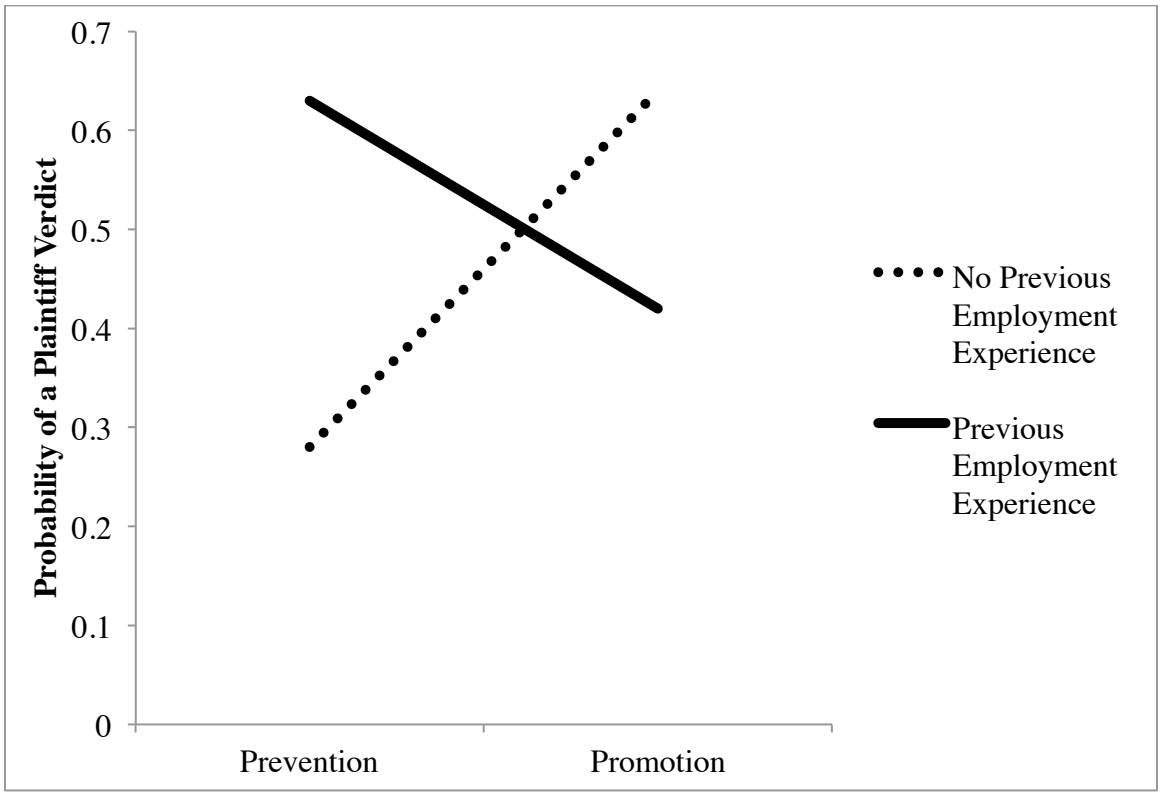
Predicting retaliation verdict by instruction, claim type, regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting retaliation verdict from instruction, claim type, regulatory focus

manipulation, and whether participants had ever made previous employment decisions failed to produce a significant overall model, $\chi^2(4) = 4.76$, $p = .31$, Nagelkerke $R^2 = .04$ and there were no main effects, all *p*s > .12. The same model adding all interactions again failed to produce a significant model, $\chi^2(15) = 17.62$, $p = .28$, Nagelkerke $R^2 = .14$. There was, however, a significant main effect of claim type, $\beta = -4.89$ (*SE* = 2.32), *Wald* = 4.45, $p = 03$, LLCI = .00, ULCI = .71, in which participants only deciding a retaliation claim were more likely to find for the plaintiff as compared to participants deciding both a discrimination and retaliation claim. There was also a significant two-way interaction between claim type and regulatory focus, $\beta = 8.14$ (*SE* = 3.27), *Wald* = 6.19, $p = .01$, LLCI = 5.63, ULCI = 2092942.13, a significant two-way interaction between claim type and previous employment decision, $\beta = 2.79$ (*SE* = 1.42), *Wald* = 3.86, $p = .049$, LLCI = 1.01, ULCI = 264.59, and a significant three-way interaction between claim type, regulatory focus, and previous employment decisions, $\beta = -4.79$ (*SE* = 1.98), *Wald* = 585, $p = .02$, LLCI = .00, ULCI = .40. All other main effects and interactions were not significant, all *p*s > 12.

To better explore the significant three-way interaction between regulatory focus, claim type, and previous employment decisions, which subsumes the significant two-way effects, I divided the sample based on claim type. For participants only deciding a retaliation claim, moderation analyses found that the effect of regulatory focus on retaliation verdict was not significant for either participants with no previous experience, $z = -.36$, $p = .72$, LLCI = -1.68, ULCI = 1.16, or participants with previous experience, $z = .93$, $p = .35$, LLCI = -.64, ULCI = 1.81. However, when looking at participants who had to decide both a discrimination and retaliation claim, there was a regulatory focus

effect on retaliation verdict for participants who had no experience, $z = 1.92$, $p = .05$, LLCI = -.03, ULCI = 2.84, but not for participants who had experience, $z = -1.45$, $p = .14$, LLCI = -2.06, ULCI = .31. Specifically, as seen in Figure 16, prevention focused participants with no previous employment decision experience were more likely to find for the plaintiff as compared to promotion focused participants with no previous experience. Additionally, for prevention focused individuals, the difference between participants with and without previous experience is significant $\beta = 2.79$ ($SE = 1.42$), $Wald = 3.86$, $p = .049$, LLCI = 1.01, ULCI = 264.59, suggesting that prevention focused participants with a background in employment decisions were less willing to risk finding for the defendant than those without previous experience. Since this is for a retaliation verdict, it is possible that those with previous experience were more aware of the differences between the claims and may even have had experience in knowing how employers can misuse illegal factors in employment decisions. Promotion focused jurors do not show a difference in experience, $\beta = -1.99$, $p = .14$.

Figure 4.5: Previous Employment Decision Experience as a Moderator for Regulatory Focus Predicting Retaliation Verdict for Discrimination and Retaliation Condition.



Predicting retaliation verdict by three-level instruction, regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting retaliation verdict from the three-level instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions failed to produce a significant overall model, $\chi^2(4) = 2.20$, $p = .70$, Nagelkerke $R^2 = .02$ or any predictor effects, all *p*s > .31. A second forced entry binary logistic regression adding all the interactions to the main effect model was also not significant, $\chi^2(11)$

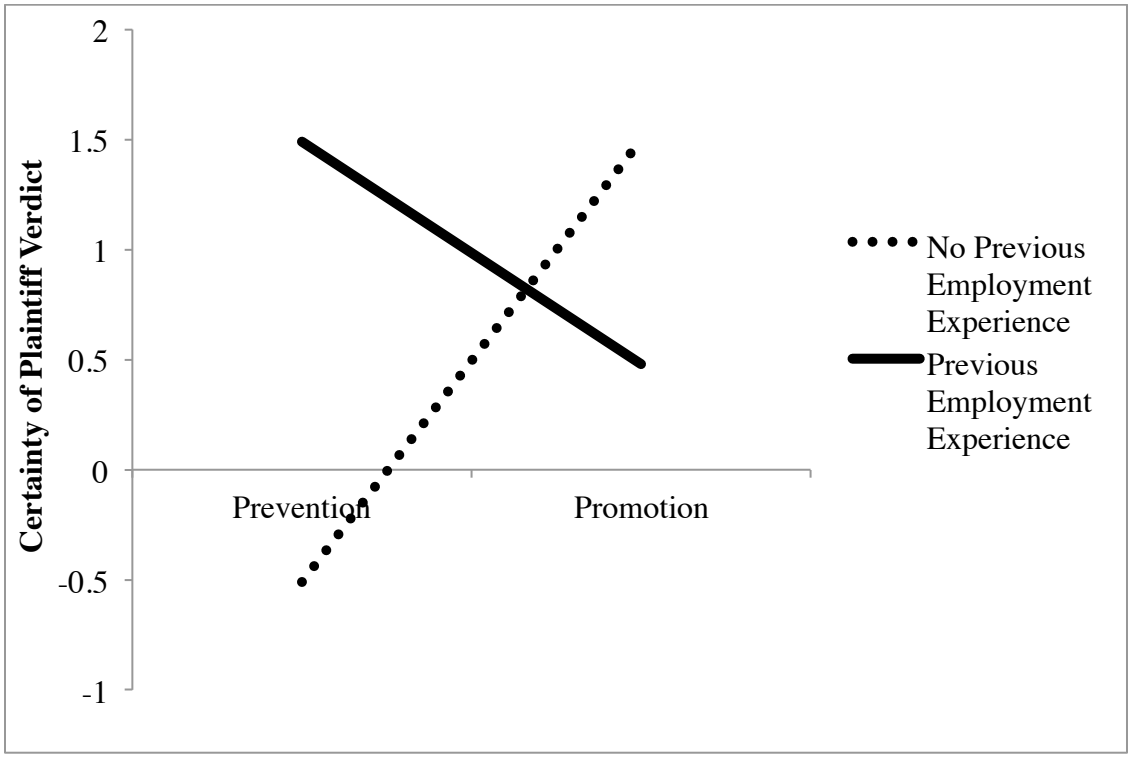
=12.29, p = .34, Nagelkerke R^2 = .13, and there were no significant main effects or interactions, all ps > .08.

Predicting retaliation verdict certainty by instruction, claim type, regulatory focus manipulation, and employment decision. An ~~one-way~~ ANOVA examined the role of instruction, claim type, regulatory focus, and previous employment decisions (as a covariate) on retaliation verdict certainty yielding only a n effect of instruction, F (1, 148) = 4.80, p = .03, partial η^2 = .03, but no other main effects or interactions significant, all Fs < .1.37 and all ps > .24. The same ANOVA model adding all the interactions resulted in no significant main effects, all Fs < 2.80 and all ps > .10, but there was a significant two-way interaction between claim and regulatory focus, F (1, 141) = 9.37, p = .003, partial η^2 = .06, and a significant three-way interaction between claim, regulatory focus, and previous employment decision experience, F (1, 141) = 10.27, p = .002, partial η^2 = .07. No other interactions were significant, all Fs < 2.71 and all ps > .10

After splitting the data on claim type, I performed moderation analyses on the two-way interaction between regulatory focus and previous employment decision experience to find regulatory focus effects for respondents with no previous experience deciding only on the retaliation claim, t (1, 74) = -1.13, p = .26, LLCI = -2.61, ULCI = .72, but not for those with previous experience, t (1, 74) = 1.53, p = .13, LLCI = -.35, ULCI = 2.73. For participants who had to decide both a discrimination and retaliation claim and had no previous experience regulatory focus produced a marginal effect, t (1, 75) = 1.96, p = .05, LLCI = -.03, ULCI = 4.23, while the effect was not significant for those with previous employment experience, t (1, 75) = -1.23 , p = .22, LLCI = -2.88, ULCI = .69.

As seen in Figure 4.6, the pattern of the moderation is the same as it was for retaliation verdict, in that those with no previous employment decision experience are more certain in their verdict for the defendant under prevention focus than those in promotion focus. For prevention focused participants, the difference between those with and without experience is significant, F (2, 70) = 9.23, p = .003, partial η^2 = .12. That is, for prevention focused jurors, those who have previous employment decision experience are more certain in finding for the plaintiff, while those without previous experience are more certain in finding for the defendant, but only when they have to decide two claims, as opposed to one. Promotion focused jurors did not significantly differ based on previous experience, F (1, 71) = 1.96, p = .17, partial η^2 = .03.

Figure 4.6: Previous Employment Decision Experience as a Moderator for Regulatory Focus Predicting Retaliation Verdict Certainty for Discrimination and Retaliation Condition.



Predicting retaliation verdict certainty by three-level instruction, regulatory focus manipulation, and previous employment decisions. An ~~one-way~~ ANOVA testing the role of instruction, claim type, regulatory focus, and previous employment decisions (as a covariate) on retaliation verdict certainty failed to produce any significant effects, all *F*s < .62 and all *p*s > .54. A second ANOVA using the same model but adding all the interactions, again produced no significant main effects or interactions, all *F*s < 2.91 and all *p*s > .09.

Predicting discrimination verdict certainty by instruction, regulatory focus manipulation, and employment decision. An ANOVA on discrimination verdict certainty with instruction and regulatory focus serving as factors and experience with previous employment decisions as a covariate resulted in only a marginally significant effect of instruction, F (1, 73) = 3.57, p = .06, partial η^2 = .05. No other main effects were significant (all *F*s < .50 and all *ps* > .48). A second ANOVA adding the interactions between the main effects produced no significant effects, all *F*s < .2.70 and all *ps* > .10.

Predicting discrimination verdict by instruction, regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting discrimination verdict from instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions produced a significant model , $\chi^2(3) = 10.54$ p = .01, Nagelkerke R^2 = .17. There was a main effect of instruction, β = 1.09 (*SE* = .49), *Wald* = 4.93, p = .03, LLCI = 1.14, ULCI = 7.78, but regulatory focus and previous employment decisions were not significant, *p*s > .07. A second forced entry binary logistic regression using the same model adding the interactions was significant, ,

$\chi^2(7) = 14.51$, $p = .04$, Nagelkerke $R^2 = .23$, but no significant main effects or interactions resulted, all *p*s > .21.

Predicting discrimination verdict by three-level instruction. regulatory focus manipulation, and previous employment decisions. A forced entry binary logistic regression predicting discrimination verdict from the three-level instruction, regulatory focus manipulation, and whether participants had ever made previous employment decisions produced an overall significant model, $\chi^2(4) = 9.84$ $p = .04$, Nagelkerke $R^2 = .12$ but without significant predictor effects, all *p*s > .07. A second binary logistic regression adding all the interactions produced a non-significant model, $\chi^2(11) = 17.83$, $p = .09$, Nagelkerke $R^2 = .19$, without any significant main effects or interactions, all *p*s > .07.

Predicting discrimination verdict certainty by three-level instruction, regulatory focus manipulation, and previous employment decisions. An ANOVA predicting discrimination verdict certainty with three-level instruction, regulatory focus, and previous employment decisions as a covariate failed to find any significant effects, all *F*s < 1.88 and all *p*s > .16. A second one-way ANOVA adding the interactions from the first model also failed to produce significant main effects or interactions, all *F*s < 2.37 and all *p*s > .10.

Study 2 Discussion

Study 2 sought to examine the same hypotheses as Study 1 with the addition of Hypothesis 1b, which states there will be weaker instruction effects due to the fact that the retaliatory event was a denial of promotion as compared to the firing in the first study. The hypotheses were partially supported.

Results supported Hypothesis 1, participants using but-for instruction reached more pro-defendant verdicts than participants using mixed motive instructions, for retaliation verdict certainty, discrimination verdict, and discrimination verdict certainty but not for retaliation verdict. That is, participants using but-for instruction, as compared to mixed motive were more likely to find for the defendant for the discrimination claim and were also more certain of a verdict for the defendant for retaliation verdict certainty and discrimination verdict certainty.

Moderation analyses exploring these results showed that type of causality instruction moderated the effect of the defendant's use of the rehiring policy to make employment decisions on retaliation verdict. Participants using but-for instructions showed no effect of whether they believed the defendant was motivated by the rehiring policy, while participants using mixed motive instructions were influenced by the rehiring policy motivation. Specifically, if participants strongly believed the defendant relied on its rehiring policy (a legitimate reason for its actions) then they were more likely to find for the defendant, whereas if they did not believe the defendant used the rehiring policy they were more likely to find for the plaintiff. This is in-line with how participants should have used the instructions, namely, if they believe the defendant used a legitimate reason under but-for instructions, then they should find for the defendant. Under mixed motive instructions the law allows participants to find for the plaintiff even if there is a legitimate reason that used as well as an illegitimate reason. This same moderation shaped participants judgments when they determined only a retaliation claim, as compared to those determining both discrimination and retaliation claims. The moderation effects showed the same pattern such that rehiring policy did not influence

decisions under but-for instructions but did influence decisions under mixed motive instructions. Additionally, perceived strength of plaintiff evidence moderated the relationship between instruction and retaliation verdict certainty. Participants using mixed motive instructions were more certain of their verdicts for the plaintiff if they believed the plaintiff had strong evidence, as opposed to weak evidence. There was no difference in retaliation verdict certainty for participants using but-for instructions regardless of the strength of the plaintiff's evidence.

Hypothesis 1a predicted that participants using mixed motive instructions for a discrimination claim and but-for instructions for a retaliation claim would more closely follow the but-for instructions for both claims. None of the results of the full model analyses from Phase 1 or Phase 2 supported this hypothesis. There was only one significant effect involving the three-level instruction on discrimination verdict in which participants using only but-for instructions rendered verdicts for the defendant significantly more than participants using mixed motive instructions. There was, however, no difference between the two-instruction condition as compared to either the but-for only or mixed motive only instruction conditions.

Unfortunately Hypothesis 2 and Hypothesis 3, concerning chronic regulatory focus and regulatory fit, were untested because the chronic regulatory focus measure, again (as in Study 1) could not differentiate participants as either prevention or promotion focused. I take this failure up in greater detail in the general discussion.

Hypothesis 4, participants using but-for instructions would show the strongest effects of the regulatory focus manipulation, failed to gain support as there were no interactions between regulatory focus and instruction. However, there were some effects

of manipulated regulatory focus that are in line with that theory. There was a main effect of regulatory focus on discrimination verdicts such that prevention focused participants were more likely to find for the plaintiff than promotion focused jurors. Moderation analyses also found that previous employment decision experience moderated the relationship of regulatory focus on retaliation verdict for participants who had to decide both a discrimination and retaliation claim. For participants who had no previous experience making such decisions (including firing or promoting employees), they were more likely to find for the defendant when they were prevention focused, while participants who were promotion focused were more likely to find for the plaintiff when they had no experience. Prevention focused participants additionally showed significant effects for between previous employment decision experience so that if they had previous experience they were more likely to find for the plaintiff than if they did not have that experience. This suggests that prevention focused individuals who understand the decision making process are less willing to risk a defendant verdict against retaliation, perhaps because they have experienced other employers bringing illegal factors into employment decisions. The same pattern of moderation occurred under retaliation verdict certainty, such that no previous experience led to more pro-defendant certainty under prevention and more pro-plaintiff certainty under mixed motive instructions but only in the two-claim condition.

Study 3 will expand this research to examine the role that legal standard and regulatory focus influence employment decisions of firing and promoting.

Chapter 5: Study 3

Study 3: Regulatory Focus, Causality and Employment Decisions

The third study moves out of the courtroom and examines the interactive influence of type of legal causality and the role of regulatory focus on employer decisions to promote or fire an employee. No research has examined when and why employer retaliation occurs. Regulatory focus offers a clear motivational theory of why employers choose to retaliate despite being aware that this action is illegal. The correct decision outcome in this study is to promote the best employee or to fire the worst one. The question of interest is, "What happens when the most qualified employee brings a claim of discrimination against the company?"

Measures and Materials.

Chronic Regulatory Focus. Participants first completed the same measure of regulatory focus as in studies 1 and 2. Ideal rating $M = 2.56$, $SD = .69$; Ought rating $M = 2.95$, $SD = .68$; Ideal reaction time $M = 82.15$, $SD = 51.10$; Ought reaction time $M = 84.00$, $SD = 52.71$ (Appendix A).

Employment Decision Frame. Participants learned that their company wanted to either dismiss or promote someone and that their role was to review the resumes and recommend whom to dismiss/promote. The promotion framed decision informed participants that it was their job to promote (fire) the best (worst) employee in a way that satisfies them because it means they completed their job and achieved the best possible outcome for the hospital that employs them. The prevention framed decision informed the participants that it was their job to avoid the dissatisfaction that comes from knowing

they improperly completed their job and promoted (fired) the wrong employee leading to a subpar outcome for the hospital that employs them (Appendix N).

Resumes. Participants read one of two sets (control v. discrimination complaint) of three resumes and accompanying background information on the candidates. For those in the control condition, none of the candidates complained of discrimination, while for those in the experimental condition, one of the candidate resumes always contained a note explaining that he had recently filed a claim against a supervisor alleging discrimination based on national origin. A Latin square design was used to ensure that the complainer appeared in each position within the packet an equal number of times. Additionally, the complainant displayed stronger work evaluations and appeared to be an excellent employee (Appendix O).

Causal Model manipulation. After reading the resumes, participants received a policy guide from the University Medical Center concerning employment decisions. The policy guide explained how the hospital makes promotion decisions and how it makes dismissal decisions. With regard to employment decisions, the policy guide conveyed the current law prohibiting retaliation. It varied whether or not the current law defined causality in retaliation using a but-for model (*prohibiting retaliation only if the discrimination complaint is the determinative factor for an adverse action*) or mixed motive framework (*prohibiting retaliation even if the decision maker considers the discrimination complaint along with other legitimate reasons in making a decision*). The policy page informed the participants that all employment decisions should take into consideration the Human Resource Department policies. The policy guide also discussed

affirmative action initiatives, workforce reductions, and promotion decisions (See Appendix P).

Decision Condition and Measure. Participants picked one of the three employees they would recommend for promotion or one of the three for dismissal depending upon the decision condition. Participants also rated their confidence in their decision on an 9-point scale ranging from 1 (*not at all certain*) to 9 (*very certain*). Additionally, participants ranked the three applicants in the order in which they would have promoted/dismissed each one. Finally, participants also completed measures assessing which factors they took into consideration when making their decision. These included: application qualifications (M = 9.02, SD = 2.45), applicant education (M = 2.76, SD = 2.76), unfavorable qualities of the applicant (e.g. the complaint v. other applicants showing up late) (M = 10.22, SD = 2.15) , and favorable qualities of the applicant (M = 9.89, SD = 1.99) (Appendix Q).

Causality Manipulation Check. Two questions assessed whether participants understood the EEOC/Title VII guidelines concerning retaliation in the workplace based on type of causality. These questions were: 1) "Retaliation occurs only if the discrimination complaint was the determinative factor in an adverse decision."….(true, false, note specified) (but for) and 2) "Retaliation occurs even if the discrimination complaint played only a role in the adverse decision along with other legitimate factors…" (true, false, not specified). (mixed motive) (Appendix R).

Demographics. Demographic questions were the same as those in Study 1 and Study 2 (Appendix H).

Research Design and Procedure. Study 3 is a 2 (Framing manipulation: promotion v. prevention) x 2 (Resumes: control v. complained of discrimination) x 2 (Employment decision: promote v. fire) x 2 (Retaliation Causality: but-for v. mixed motive) between subjects design with chronic prevention and promotion as continuous variables. Participants were 316 community members recruited from Mechanical Turk. All measures were programed in Qualtrics.

In line with studies 1 and 2, the program directed the Mechanical Turk participants to the survey and informed them that they needed to complete the study within 3 days of accepting the invitation and that they needed to complete the work in one sitting. Participants read and agreed to the informed consent and then completed the chronic regulatory focus measure. Next they reviewed the employment decision task with the three resumes. After reading the resumes, participants read the employment decision guidelines and then rated what factors they took into consideration when deciding who to promote and who to let go. Participants then recommended which employee to promote (let go). Next, they completed the manipulation checks and demographic questionnaire. Finally, participants read a debriefing statement, a thank you statement for donating their time, and received $1 for completing the survey.

Participants. As with studies 1 and 2, only participants who were 18 or older and a U.S. citizen were able to see the survey on Mechanical Turk. Seventeen of the 332 community member participants showed response times that were 2 or more standard deviations above or below the mean response time. I dropped these participants, as well as another who provided no employment decision (the primary dependent variable), and one more who had not completed the regulatory focus measure. Of the final 316

participants, 54.3% were women, the mean age of the sample was 35.38, and 77.9% were employed at least part-time. The ethnic breakdown of the participants was representative of the Mturk community with 81% European American, 6.6% African American, 4.4% Asian American, 3.5% Hispanic, 1.9% Native American, 1.3% Latino/a, 1.6% Other, and .3% Middle Eastern. Fifty seven percent of participants had at least a college degree, 33.2% had some college, 9.2% had a high school diploma, and .6% had less than a high school diploma. Lastly, 52.2% of participants indicated that they had been in an employment position in which they made hiring or firing decisions.

Results

The results of Study 3 will appear in 3 phases. Phase 1 includes preliminary analyses of the experimental task testing overall differences in decisions about and rankings of candidates based on main effects of non-manipulated variables. Phase 2 displays results of the full model analyses on the dependent variables using the 2 (Framing manipulation: promotion v. prevention) x 2 (Resumes: control v. complained of discrimination) x 2 (Employment decision: promote v. fire) x 2 (Retaliation causality: but-for v. mixed motive) between subjects design. Finally, Phase 3 tests for moderation or mediation based on viable moderators and mediators from Phase 1 analyses.

Dependent variables. The three dependent variables for study 3 are the decision, the certainty of their decision, and how they ranked the target resume for the decision. A dichotomous decision variable was created in which dismissal or failure to promote the target resume was 0 and not dismissing or promotion of the target resume was 1. This factor differentiates between a retaliatory action and a non-retaliatory action. One hundred and seventy participants (53.8%) chose the retaliatory action while 146 (46.2%)

of participants chose the non-retaliatory action. The second dependent variable ranges from -8 (very certain in dismissing/not promoting) to 8 (very certain of not dismissing/promoting) with a middle value of 0 (uncertain of decision) (M = .35, SD = 5.40). Finally, the third dependent variable, the rank of the target resume, simply looks at whether the target resume was ranked most likely for the decision (1; N = 107), second most likely (2; N = 119), or least likely (3; N = 90) in terms of a favorable decision . I transformed this variable so that a target rated last for being dismissed and a target rated first for being promoted are both scored 1 because they are both the most favorable outcome. Similarly a target that rated first for being dismissed and a target last for being promoted are both 3 because they are both the least favorable outcome. Middle rankings were scored 2.

Phase 1: Preliminary Analyses of Decision and Rank of Candidates

Manipulation checks. As with studies 1 and 2, an index of accuracy in understanding the instructions was created and coded as 1 for correctly answering the manipulation checks and 0 for incorrectly answering the manipulation checks. Accuracy was slightly lower in this study with only 66.5% of participants correctly answering the manipulation check. A forced entry binary logistic regression predicting accuracy from instruction condition produced a significant model, $\chi^2(1) = 6.49$, $p = .01$, Nagelkerke R^2 = .03 with instruction significantly predicting accuracy, $\beta = -.61$ ($SE = .24$), $Wald = 6.39$, $p = .01$, LLCI = .34, ULCI = .87. Specifically, participants who received the but-for instructions in the policy manual were more accurate in their understanding of the instructions than those who received mixed motive instructions (See Table 5.1).

Table 5.1: Instruction Accuracy by Instruction Condition

	Inaccurate		Accurate		Total	
	N	%	N	%	N	%
But-for	42	26.8	115	73.2	157	100
Mixed Motive	64	40.3	95	59.7	159	100
Total	106	33.5	210	66.5	316	100

A force entry binary logistic regression testing the influence of accuracy on the decision dependent variable was not significant, $\chi^2(1) = 2.07$, $p = .15$, Nagelkerke $R^2 = .01$ and accuracy was not a significant predictor of decision, $\beta = .34$ ($SE = .24$), $Wald = 2.07$, $p = .15$, LLCI = .88, ULCI = 2.25. A one-way ANOVA showed that accuracy did not predict decision certainty, $F(1, 314) = 3.21$, $p = .08$, partial $\eta^2 = .01$. Lastly, a one-way ANOVA showed that accuracy did not predict participants ranking of the resumes, $F(1, 314) = .90$, $p = .34$, partial $\eta^2 = .003$.

Motivational analyses. A forced entry binary logistic regression assessed which motivational factors (application qualifications, application education, favorable qualities of applicant, and unfavorable qualities of application) were influential in decision making, The model was marginally significant, $\chi^2(4) = 9.37$, $p = .052$, Nagelkerke $R^2 = .04$, with only one significant factor, the participants who were not motivated by the applicants qualifications, $\beta = -.21$ ($SE = .08$), $Wald = 7.72$, $p = .01$, LLCI = .70, ULCI = .9 were less likely to dismiss or not promote the target resume. The applicant's education,

β = .09, p = .17, favorable qualities, β = .02, p = .74, and unfavorable qualities, β = .04, p = .50, did not significantly influence decisions.

A one-way ANOVA tested the influence of motivating factors on decision certainty. Only the applicant's qualifications predicted certainty, $F(1, 270) = 2.13$, p = .02, partial η^2 = .08, in that participants who were more motivated by the applicant's qualifications were more certain in an unfavorable decision towards the target resume (either more certain in firing or more certain in not promoting). No other motivating factors were significant, all Fs < .82 and all ps > .62. A second one-way ANOVA testing applicant rank found that none of the motivating factors significantly predicted rank, all Fs < 1.36 and all ps > .20.

Trait regulatory focus analyses. Trait regulatory focus again failed to produce analyzable data due to a failure of the regulatory focus measure to differentiate between promotion and prevention focused individuals. Specifically, the reaction times did not correlate with the ratings of the traits, even after several transformations to correct for deviations for normality. As in the previous studies, individuals who rated themselves high in ideal/promotion traits also significantly rated themselves high in ought/prevention traits (Pearson r = .32, p = .001). This suggests that the measure was not sensitive enough to parse out participants' trait regulatory focus.

Phase 2: Full Model Analyses.

Predicting decision by instruction, regulatory focus, complaint type, and decision type. A forced entry binary logistic regression predicting decision to not dismiss (promote) the target candidate by instruction (0 = but-for, 1 = mixed motive), decision type (0 = dismiss, 1 = promote), regulatory focus (0= prevention, 1 = promotion), and

complaint (0 = no complaint, 1 = complaint) produced an overall significant model, $\chi^2(4) = 43.48$, $p < .001$, Nagelkerke $R^2 = .17$, with only the decision condition significantly predicting the final decision, $\beta = -1.53$ ($SE = .24$), $Wald = 39.54$, $p < .001$, LLCI = .13, ULCI = .35. Participants in the dismissal condition were less likely to make an unfavorable decision towards the target resume as compared to participants in the promotion condition. Specifically, participants in the dismissal condition were less likely to dismiss the target resume, while participants in the promotion condition were more likely to not promote the target resume (See Table 5.2). Instruction, $\beta = .18$, $p = .45$, regulatory focus, $\beta = .10$, $p = .68$, and complaint condition, $\beta = -.02$, $p = .93$, did not significantly influence decisions.

Table 5.2: Decision Condition by Decision

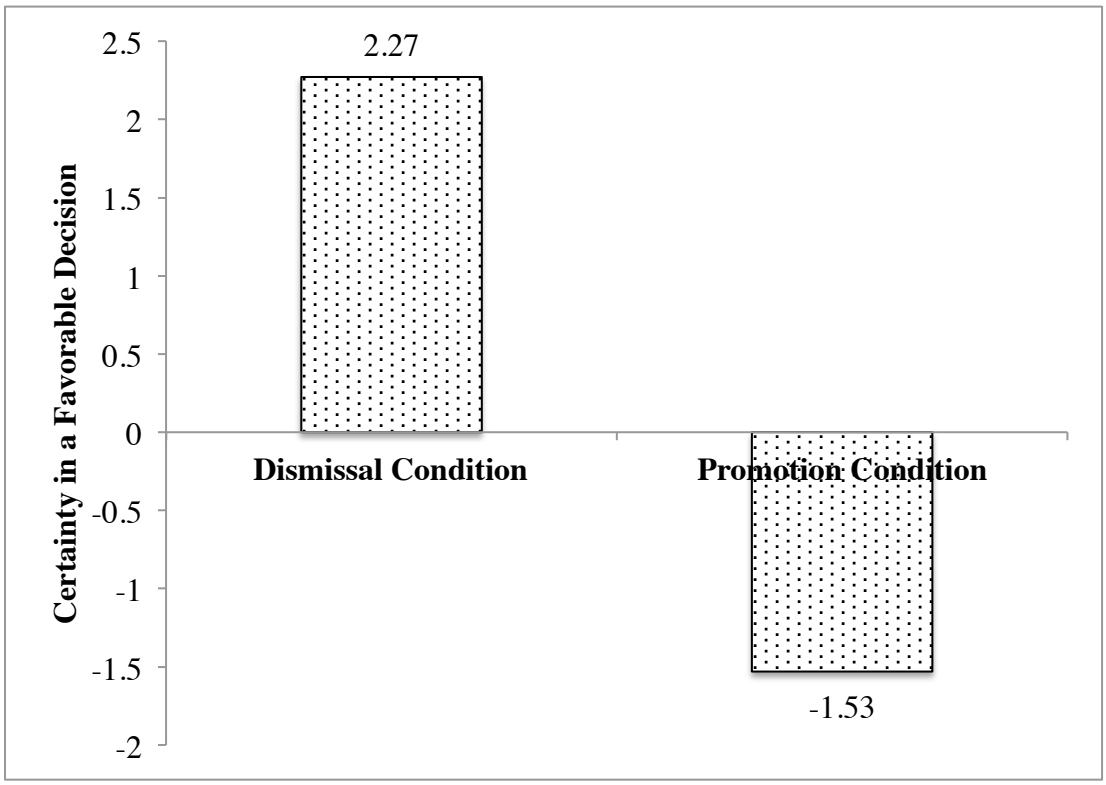
	Dismiss Target/Not Promote Target		Not Dismiss Target/Promote Target		Total	
	N	%	N	%	N	%
Dismissal Condition	43	27.7	112	72.3	155	100
Promotion Condition	103	64	58	36	161	100
Total	146	46.2	170	53.8	316	100

A second forced entry binary logistic regression adding all the interactions between the four manipulated variables to the first model was not significant, $\chi^2(14) =$

49.81, p = .001, Nagelkerke R^2 = .19, again with only decision condition predicting employment decision, β = -2.10 (SE = .72), $Wald$ = 8.51, p = .004, LLCI = .03, ULCI = .50. No other main effects or interactions were significant, all ps > .07.

Predicting decision certainty by instruction, decision condition, regulatory focus, and complaint condition. An ANOVA predicting decision certainty by instruction, decision condition, regulatory focus, and complaint condition found that only decision condition significantly predicted the employment decision, $F(1, 300) = 43.53$, $p < .001$, partial $\eta^2 = .13$. Participants who made a dismissal decision were more certain of their favorable decision to not dismiss the target while participants in the promotion condition were more certain of their unfavorable decision to not promote the target (See Figure 5.1). No other main effects or interactions were significant, all Fs < 2.06 and all ps > .15.

Figure 5.1: Decision Condition on Decision Certainty



Predicting resume rank by instruction, decision condition, regulatory focus, and complaint condition. An ANOVA predicting rank of target by instruction, decision condition, regulatory focus, and complaint condition found no significant main effects or interactions, all *F*s < 2.09 and all *p*s > .15.

Phase 4: Moderation Analyses

Based on Phase 1 results, I tested employee qualifications and previous employment decision experience as a potential moderators for decision and decision certainty.

Predicting decision by instruction, decision condition, regulatory focus manipulation, complainant condition, and applicant qualification motivation. A forced entry binary logistic regression predicting decision from instruction, decision condition,

regulatory focus, complaint condition, and the applicant's qualifications as a motivating factor produced a significant model, $\chi^2(5) = 43.91$, $p < .001$, Nagelkerke $R^2 = .17$.with only decision condition as a significant predictor $\beta = -1.46$ ($SE = .25$), $Wald = 33.90$, $p = .001$, LLCI = .14, ULCI = .38. Instruction ($\beta = .17$, $p = .48$), regulatory focus ($\beta = .08$, $p = .74$), complaint condition ($\beta = -.02$, $p = .92$), and applicant qualification ($\beta = -.05$, $p = .30$) were not significant. A second forced entry binary added the interactions and resulted in a significant overall model, $\chi^2(26) = 58.18$, $p = .001$, Nagelkerke $R^2 = .22$. The main effect of decision dropped out ($\beta = -1.55$, $p = .51$) but there was a marginally significant effect of instruction, $\beta = -2.97$ ($SE = .1.59$), $Wald = 3.47$, $p = .06$, LLCI = .002, ULCI = 1.17. Specifically, participants using but-for instructions were more likely to make favorable decisions towards the target applicant as compared to participants using mixed motive instructions. No further moderation analyses were necessary.

Predicting decision certainty by instruction, decision condition, regulatory focus manipulation, complainant condition, and applicant qualification motivation. An ANOVA predicting decision certainty with instruction, decision condition, regulatory focus, complaint condition, and applicant qualifications as a covariate tested the potential moderating role of applicant qualifications on decision certainty yielded only a main effect of decision condition, $F(1, 298) = 36.50$, $p < .001$, partial $\eta^2 = .12$. Participants making a dismissal were more certain in their decision not to dismiss the target applicant as compared to those considering a promotion who were more certain in their decision not to promote the target applicant. All other main effects and interactions were not significant, all Fs <2.23 and all ps > .14.

A second ANOVA, that repeated this analysis adding in all the interactions of the main effects produced no significant main effects, two-way interactions, or three-way interactions, all *F*s <2.46 and all *p*s > .12. There was a significant four-way interaction between instruction, decision condition, regulatory focus, and complaint condition, $F(1, 283) = 6.21$, $p = .013$, partial $\eta^2 = .02$, and a significant five-way interaction between instruction, decision condition, regulatory focus, complaint condition, and applicant qualifications, $F(1, 283) = 5.01$, $p = .03$, partial $\eta^2 = .02$.

To further explore the significant five way interaction, I split the data file by instruction and conducted an ANOVA on decision certainty using decision condition, regulatory focus, complaint decision, and applicant qualifications as factors. For participants that received mixed motive instructions there were no significant effects, all *F*s < 3.15 and all *p*s > .08. Participants using but-for instructions showed a significant three-way interaction between regulatory focus, decision condition, and complaint condition, $F(1, 141) = 6.41$, $p = .012$, partial $\eta^2 = .04$, and a significant four-way interaction between regulatory focus, decision condition, complaint condition, and applicant qualification, $F(1, 141) = 5.56$, $p = .02$, partial $\eta^2 = .04$. Only participants who received but-for instructions were kept in analyses going forward.

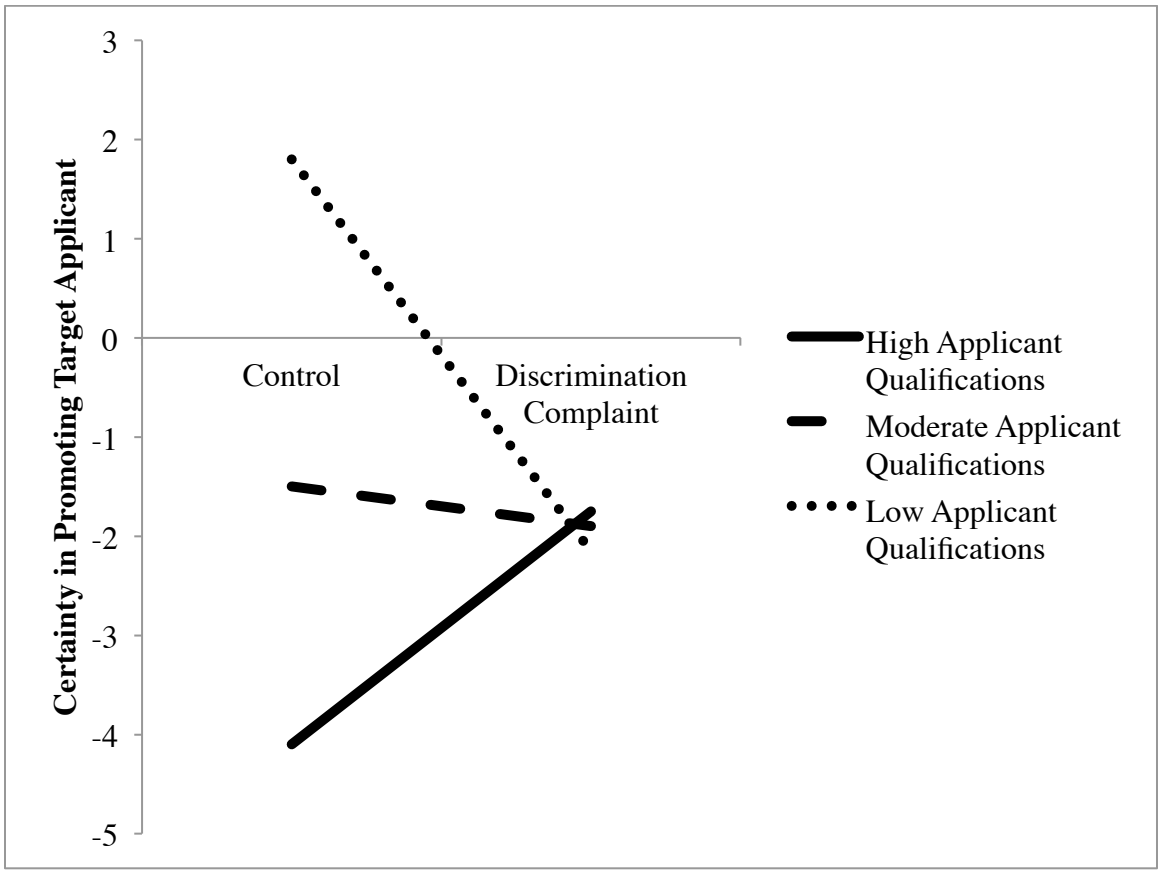
Next, an ANOVA predicting decision certainty by regulatory focus, complaint condition, and applicant qualifications with participants considering a dismissal decision resulted in no significant main effects or interactions, all *F*s < 2.44 and all *p*s > .12. However, for participants making a promotion decision this model produced had a significant two-way interaction of regulatory focus and complaint condition, $F(1, 73) = 3.98$, $p = .05$, partial $\eta^2 = .05$, and a marginally significant three-way interaction between

regulatory focus, complaint condition, and applicant qualifications, $F(1, 73) = 3.76$, $p = .056$, partial $\eta^2 = .05$. Only participants who received but-for instructions and made promotion decisions were kept in the analyses going forward.

I once again split the remaining data set, this time by regulatory focus and found no effects for promotion focused participants, all Fs < .55 and all ps > .46, but for prevention focused participants I found a significant main effect of complaint condition, $F(1, 37) = 4.52$, $p = .04$, partial $\eta^2 = .11$, and a significant two-way interaction for complaint condition by applicant qualifications, $F(1, 37) = 4.28$, $p = .046$, partial $\eta^2 = .10$.

Next I conducted moderation analyses using Hayes' process program (2013) with participants who received but-for instructions, considered a promotion decision, and who were prevention focused. Following the Johnson-Neyman Technique there was moderation was found at low levels of application qualification motivation, t (1, 37) = -2.11, $p = .04$, LLCI = -17.04, ULCI = -.33, but not at moderate, t (1, 37) = -.49, $p = .62$, LLCI = -3.83, ULCI = 2.32, or high levels of application qualification motivation, t (1,37) = .26, $p = .26$, LLCI = -1.94, ULCI = 6.84. Figure 5.2 shows that for participants in the control condition, applicant qualification did influence decision certainty in that those who were less motivated by applicant qualification were more certain in their decision to promote the target applicant than those in the complaint condition. It is interesting that all participants were certain of not promoting the target applicant in the discrimination complaint condition – an action that would be considered retaliation as the target applicant did complain about discrimination.

Figure 5.2: Applicant Qualification as a Moderator for Complaint Condition on Decision Certainty for Participants using But-For Instructions, Making a Promotion Decision, and Prevention focused.



Predicting decision by instruction, decision condition, regulatory focus manipulation, complainant condition, and previous employment decisions. a forced entry binary logistic regression predicting decision by instruction, decision condition, regulatory focus, complaint condition, and previous decisions assed potential moderating role of having made previous employment decisions about hiring and firing. The model was significant, $\chi^2(5) = 44.28$, $p = .001$, Nagelkerke $R^2 = .17$ but produced only a main effect of decision condition, $\beta = -1.52$ ($SE = .24$), $Wald = 38.52$, $p < .001$, LLCI = .14, ULCI = .35, and no other effects, all ps > .37. A second forced entry binary logistic

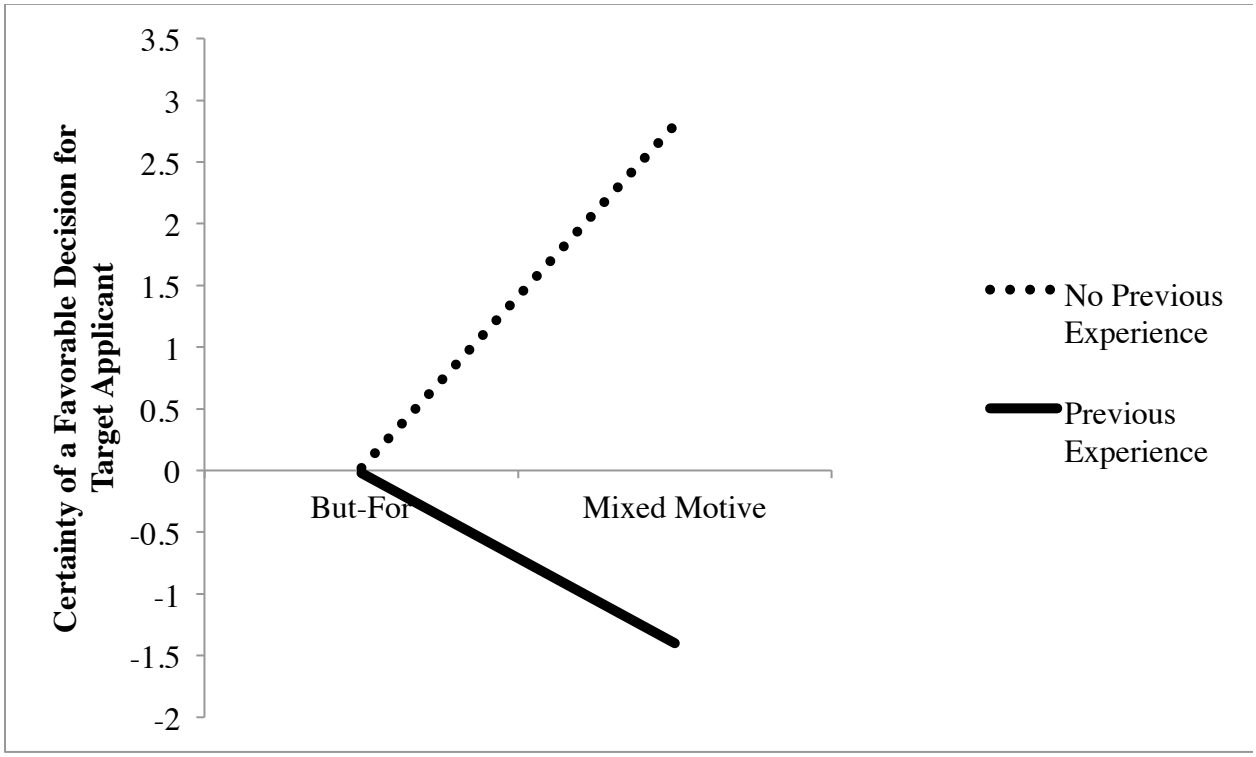
regression that added in all the interactions again produced a significant model, $\chi^2(31) = 73.02$, $p = .001$, Nagelkerke $R^2 = .28$, but one without any significant main effects or interactions, all *p*s > .22. No additional moderation analyses were necessary.

Predicting *decision certainty by instruction, decision condition, regulatory focus manipulation, complainant condition, and previous employment decisions.* A one-way ANOVA predicting decision certainty by instruction, decision condition, regulatory focus, complaint condition, and previous employment decisions as a covariate tested a main effects model and resulted in a main effect of decision condition, $F(1, 299) = 42.35$, $p = .001$, partial $\eta^2 = .12$, but no other main effects or interactions were significant, all *F*s < 1.99 and all *p*s > .16.

A second one-way ANOVA adding all interactions to the first model again produced a significant effect of decision condition, $F(1, 284) = 5.56$, $p = .02$, partial $\eta^2 = .02$, as well as a significant effect of regulatory focus, $F(1, 284) = 4.71$, $p = .03$, partial $\eta^2 = .02$. With regard to regulatory focus, promotion focused individuals were more certain in their favorable decisions towards the target applicant than prevention focused individuals. There were also two significant two-way interactions, the first between regulatory focus and previous employment decision experience, $F(1, 284) = 4.69$, $p = .03$, partial $\eta^2 = .02$, and the second between instruction and regulatory focus, $F(1, 284) = 5.78$, $p = .02$, partial $\eta^2 = .02$. There was also a marginally significant two-way interaction between decision condition and regulatory focus, $F(1, 284) = 3.54$, $p = .06$, partial $\eta^2 = .01$. Finally, there was a significant three way interaction between instruction, regulatory focus, and previous employment decision experience, $F(1, 284) = 3.91$, $p = .049$, partial $\eta^2 = .01$.

Since instruction type moderated the two-way interaction between regulatory focus and previous employment decision experience, I split the data into promotion and prevention focused participants and performed moderation analyses to interpret the three-way interaction. The effect of employment decision experience was not significant for prevention focused participants, t (1. 152.) = .21, p = .83, LLCI =-3.06, ULCI = 3.79 but it was for promotion focused participants, t (1, 156) = 2.38, p = .02, LLCI = .45, ULCI = 4.87, but not for those with previous experience, t (1, 156) = -1.08, p = .28, LLCI = -3.78, ULCI = 1.11 (See Figure 5.3).

Figure 5.3: Previous Employment Decision Experience as a Moderator for Instruction on Decision Certainty for Promotion Focused Condition.



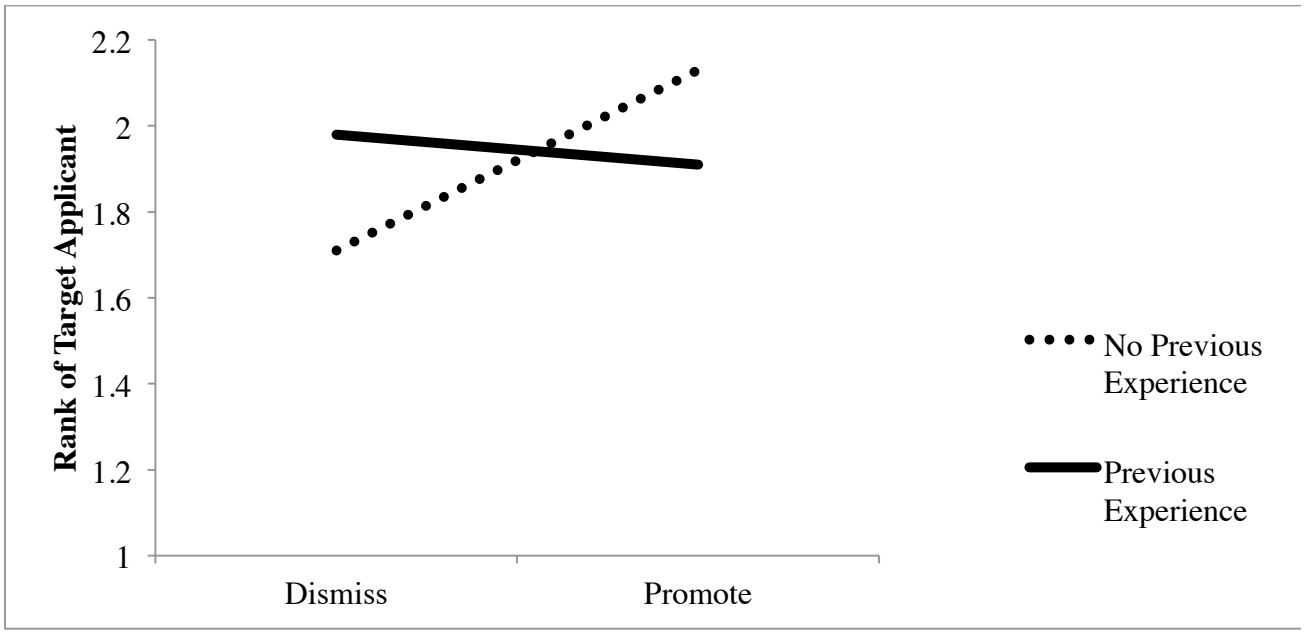
Predicting ***rank of target resume by instruction, decision condition, regulatory focus manipulation, complainant condition, and previous employment decisions.*** First an ANOVA predicting rank of target candidate by instruction, decision condition,

regulatory focus, complaint condition, and previous employment decisions as a covariate failed to produce any significant main effects or interactions, all *F*s < 1.99 and all *p*s > .16. A second ANOVA, repeating the first model but adding all the interactions produced a regulatory focus main effect, $F(1, 284) = 16.02$, $p = .001$, partial $\eta^2 = .05$, in which promotion focused participants ranked the target applicant more favorably ($M = 1.93$, $SD = .06$) than prevention focused participants ($M = 1.99$, $SD = .06$). There were no other main effects, all *F*s < 1.05 and all *p*s > .16. Significant two-way interactions emerged between decision condition and complaint decision, $F(1, 284) = 6.36$, $p = .01$, partial $\eta^2 = .02$, and between decision condition and regulatory focus, $F(1, 284) = 6.02$, $p = .02$, partial $\eta^2 = .02$. In addition two three way interactions with previous employment decisions emerged, specifically a decision condition x complaint decision x employment decision experience interaction, $F(1, 284) = 4.79$, $p = .03$, partial $\eta^2 = .02$, and an interaction between decision condition, regulatory focus, and previous employment decision experience, $F(1, 284) = 4.56$, $p = .03$, partial $\eta^2 = .02$.

Moderation analyses to interpret the three-way interaction between complaint condition, decision condition, and previous employment decision experience split the file on complaint condition. For participants with no previous employment decision experience in the control condition (none of the resumes mentioned a discrimination complaint) there was significant effect of decision condition on rank of target applicant , t (1, 150) = 2.23, $p = .03$, LLCI = 05, ULCI = .78, but not for those with previous experience, t (1, 150) = -.35, $p = .73$, LLCI = -.41, ULCI = .29. Participants with no previous employment decision experience ranked the target applicant more favorably in the promotion decision condition as compared to the dismissal decision condition (See

Figure 5.4). There was no moderation for participants in the complaint condition, *t* (1, 158) = 1.08, *p* = .28, LLCI = -.22, ULCI = .76.

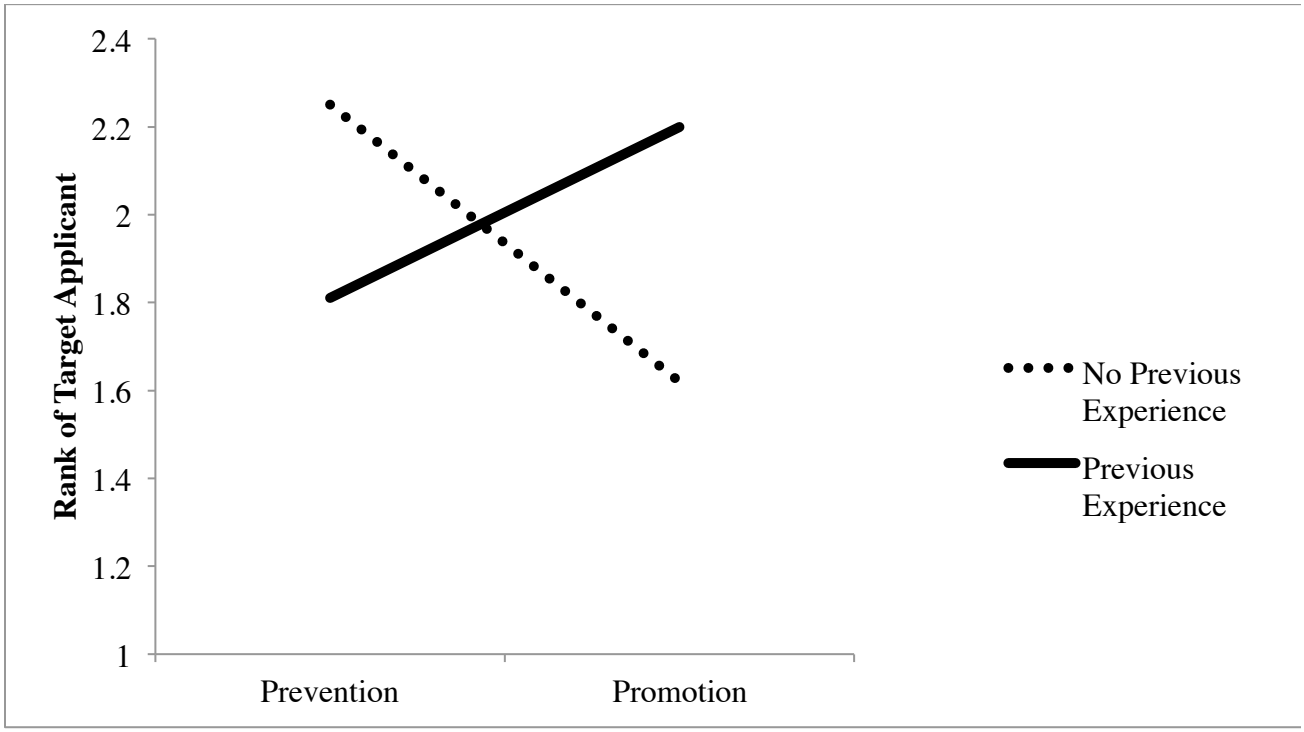
Figure 5.4: Previous Employment Decision Experience as a Moderator for Decision Condition on Applicant Rank for Control Participants.



I next conducted moderation analyses to examine the three-way interaction between decision condition, regulatory focus, and previous employment decision experience by splitting the sample into those who considered dismissing an employee and for those considering promoting an employee. For participants deciding whether to dismiss an employee, previous employment decision experience did not moderate the relationship between regulatory focus and applicant rank, *t* (1, 151) = 1.46, *p* = .14, LLCI = -.13, ULCI = .86. Participants making promotion decisions who had previous experience did show significant effects for regulatory focus, *t* (1, 157) = -3.71, *p* = .001, LLCI = -.99, ULCI = -.30, as did those without previous experience, *t* (1, 157) = 2.42, *p* = .02, LLCI = .07, ULCI = .73. Participants who have no previous experience in

employment decisions ranked the target applicant less favorably if they were prevention focused as compared to those who were promotion focused (See Figure 5.5). Participants with previous employment decision experience showed the opposite pattern, ranking the target applicant more favorably if they were in the prevention focused as compared to promotion focused condition.

Figure 5.5: Previous Employment Decision Experience as a Moderator for Regulatory Focus on Applicant Rank for Promotion Decision Condition.



Study 3 Discussion

Study 3 examined how instructions and regulatory focus would influence simulated employment decisions predicated on the different types of instruction conditions. Unfortunately, the data failed to support the hypotheses, which anticipated main effects and interactions between instruction, regulatory focus, the employment

decision (dismiss v. promote) and the presence of a discrimination complaint (control v. complaint) on the simulated decisions.

Hypothesis 1c posited that participants reacting to but-for instructions would be more likely to retaliate than participants responding to mixed motive instructions. There were no main effects of instruction on any of the dependent variables. The four-way interaction between instruction, decision condition, regulatory focus, and complaint moderated the one instruction effect that did emerge. Specifically, for prevention focused participants who used but-for instructions while determining a promotion decisions, if they were not motivated by applicant qualification they were more certain in making an unfavorable decision towards the target applicant if the applicant had complained as compared to if they had not complained. This suggests that even though the actual decision was not significant, the certainty of the decision bordered on retaliation.

Hypothesis 3 stated that promotion focused participants would be more likely to retaliate than prevention focused jurors because of the tendency chronically promotion focus to facilitate the acceptance of risk in order to achieve a goal. The results did not support this hypothesis. Moderation analyses did show that promotion focused participants who had previous employment decision experience were more certain in making unfavorable decisions for the target applicant, but this never occurred solely for the target applicant who had complained of discrimination. Therefore, no retaliation was observed.

Hypothesis 3a, based on work by Charness and Levine (2010), anticipated finding more retaliation when participants made promotion decisions as compared to when they made dismissal decisions. There was a main effect of decision condition on decision

making and decision certainty such that participants who made promotion decisions were more likely to not promote the target applicant and more certain in that decision as were promotion focused participants making a dismissal decision. This effect is in the right direction but it was independent of complaint condition and therefore was not an instance of retaliation. It only suggests that people are more willing to make negative decisions in promotion decisions.

Additionally a moderation analyses did find that for participants in the promotion focused condition contemplating a promotion decision, ranked the target applicant more favorably provided they had no previous experience with employment decisions. However, when participants had previous experience they ranked the target applicant more favorably if they were in the *prevention* focused condition.

Finally, Hypothesis 4 stated that regulatory focus would be most influential under but-for instructions. This was partially supported by the moderation analyses that found that applicant qualifications moderated certainty in promoting the target applicant for prevention focused jurors using but-for instructions.

Chapter 6: General Discussion

Review of Hypotheses

The results of this research, primarily studies 1 and 2, support some but not all of the hypothesized legal decisions.

Hypothesis 1 through 1c. In line with previous research (Wiener & Farnum, 2013; Farnum & Wiener, in press; Wiener & Farnum, in press) the first hypothesis was that participants would be more likely to find in favor for the defendant under but-for instructions as compared to mixed motive instructions. The results partially replicated this effect. For discrimination claims, both Study 1 and Study 2 found the instruction disparity in that participants using but-for instructions were more likely to find for the defendant while participants using mixed motive instructions were more likely to find for the plaintiff. Further, participants were also more certain of their verdict for the defendant under but-for instructions and more certain of a plaintiff verdict under mixed motive. There were, however, no main effects of instruction for retaliation verdicts or retaliation verdict certainty. One explanation is that participants did not fully understand the retaliation claim and thus they may have simply relied on their own intuitions instead of reacting to the instructions and evidence. The fact that participants in both Study 1 and Study 2 believed national origin was the most important motivating factor in determining how the hospital reached its employment decision, lends support to the idea that participants were uncertain how to evaluate a retaliation claim. Specifically, the law does not directly support national origin of the plaintiff as a determining factor for a retaliation claim, instead the question of the causal connection of the plaintiff's discrimination complaint to the employment decision is the direct causal event under consideration. In

neither study did the participants rate the plaintiff's complaint as an important factor in determining their retaliation verdict. Additionally, in Study 1 and Study 2 accuracy of understanding of instructions was significantly lower for the retaliation claims as compared to the discrimination claims. Most importantly, the accuracy of instructions significantly predicted retaliation verdict in that those who understood the instructions were more pro-plaintiff than those who did not. Furthermore, accuracy did not predict discrimination verdicts. It is possible that participants' confusion about what retaliation as evidenced in Study 1 and Study 2 may have influenced their understanding of the task in Study 3.

Hypothesis 1a suggested that participants with the charge of applying two types of instructions (mixed motive instructions for the discrimination claim and but-for instructions for the retaliation claim) would show a "bleeding over" effect of the but-for instructions. That is, they would be more pro-defendant for the discrimination claim as compared to those participants who used only mixed-motive instructions. I found no support for this possibility. The alternative hypothesis was that through comparison, participants might be more sensitive to the differences and adhere more strongly to the details of the instructions. This was also not supported. Instead, there was support for the mixed motive instructions bleeding over into the use of the but-for instructions. Specifically, in Study 1 participants applying both types of instructions were more certain of a pro-plaintiff verdict as compared to participants using but-for instructions for both retaliation and discrimination claims, though they did not differ from participants using only mixed motive instructions. This suggests that participants who used both instructions relied on the mixed motive instructions for both claims instead of

differentiating between the instructions. One explanation of these Study 1 results, is that mixed motive approaches, those instantiating multiple sufficient causal schemas (Kelley, 1967; Wiener & Keller, 2011) are the default mode of casual judgment so that once invoked it becomes the dominant mode of decision making.

Unfortunately this effect was not replicated in Study 2, though that is in line with Hypothesis 1b. Specifically, Hypothesis 1b posited that in a case in which the employer denied the plaintiff a promotion (Study 2) there would be weaker instruction effects than when the employer fired the plaintiff (Study 1). While there were no main effects for instruction in Study 2 there were moderation effects involving instruction for retaliation verdict and verdict certainty in analyses of Study 2 data. The data partially supported Hypothesis 1b.

Finally, Hypothesis 1c predicted that but-for causality would lead to more retaliation than mixed motive causality in simulated employment decisions (Study 3). Unfortunately there were no main effects of causality on any of the dependent variables. Two moderation analyses lend some support to the hypothesis but only in highly qualified situations. First, there was a 5-way interaction between instruction, decision condition, regulatory focus, complaint condition, and applicant qualifications as a motivating factor. Moderation was found for prevention focused participants using but-for instructions to determine a promotion. Specifically, if there was no complaint of discrimination, then participants using but-for instructions were influenced by applicant qualification in that they were more certain in a favorable decision (not dismissing or promoting) than if they did not consider applicant qualification. For participants who had a discrimination complaint in the resumes, applicant qualification did not moderate the

relationship. Interestingly, Figure 19, which displays the moderation, reveals that for the discrimination complaint decision all participants were more certain of making an unfavorable decision – which would be retaliation. Second, a three-way interaction between instruction, regulatory focus, and previous employment decision experience found that for promotion focused jurors, those who had no previous experience were more certain of a favorable/non-retaliatory decision under mixed motive than but-for instructions. Though there were no direct retaliation effects, these two moderation analyses suggests that retaliation may be more likely under but-for instructions.

In hindsight, it is possible that the reason Hypothesis 1c did not pan out was the ecological validity of the task, which explicitly reminded mock employers of the law immediately before they made a potentially illegal retaliation decision. It is likely that employers are not reminded of the law immediately before making an employment decision. Research on race salience suggests that people made aware of race in a trial are more likely to actively work hard to not appear racist (Sommers & Ellsworth, 2000; Sommers & Ellswroth, 2003; Cohn, Bucolo, Pride, & Sommers, 2009). Participants may have been actively working to avoid retaliating against the target when the resume contained discrimination complaint. This is particularly interesting given that interactions with complaint condition occurred only in the control condition. The control condition participants were not concerned with retaliation and were freer to make decisions as they saw fit, whereas their counterparts in the complaint condition did not show any of the interaction affects. On the other hand, there were instruction effects for jurors, who knew that it was their job to examine the law at hand and to make their decisions accordingly. Thus, the mock jurors showed stronger instruction effects.

If saliency of the law is leading to less retaliation, it could offer an intervention for employment settings. Specifically it could be mandatory to review the law before making any employment decisions. If employers are forced to review discrimination and retaliation laws prior to making any employment decisions, they may be less likely to make illegal employment decisions. Future research should test this possibility by manipulating the salience of the law to participants.

Hypotheses 2 and 2a. Unfortunately, due to a failed measure of regulatory focus, hypothesis 2, concerning chronic regulatory focus, could not be analyzed. When looking at manipulated regulatory focus, there were some interesting interactions of regulatory focus and instruction. Specifically, in Study 1, participants who were in the prevention focus condition (as compared to those in the promotion condition) and had no previous experience making employment decisions were more certain of finding for the plaintiff. However, under prevention focus, if participants had previous experience making employment decisions they were actually less certain of finding for the plaintiff for retaliation. It is possible that participants with previous experience understand what goes in to making employment decisions and therefore viewed finding for the plaintiff a high risk that they wanted to avoid.

In Study 2, this pattern reversed such that previous employment decisions moderated the effect of regulatory focus for participants who made both discrimination and retaliation claim judgments. That is, when rendering a retaliation verdict after a discrimination verdict, participants who were in the prevention focused condition and had no previous employment decision were more likely to find for the defendant as compared to those who had experience and those in the promotion focused condition. It is possible

that after having already made a discrimination verdict decision that prevention focused participants' assessment of the risk dropped.

Hypothesis 2a concerned how regulatory fit (the match between chronic regulatory focus and manipulated regulatory focus) would lead to different results. Because of the failure of the chronic regulatory focus manipulation, I was not able to test this hypothesis. Nonetheless, under Hypothesis 2a, promotion focused jurors should have overvalued the plaintiff's evidence in coming to a pro-plaintiff decision, while prevention focused participants should have undervalued the defendant's evidence in reaching a pro-plaintiff decision (in line with Wiener & Farnum, 2013). In Study 1, plaintiff evidence moderated the relationship of instruction on retaliation verdict for promotion focused participants. Promotion focused participants, but not prevention focused participants, who believed the plaintiff's evidence was strong were more likely to find for the plaintiff under mixed motive as compared to but-for instructions. Study 2 produced a significant four-way interaction between instruction, regulatory focus, claim type, and plaintiff evidence. Moderation analyses found that for prevention focused jurors deciding only a retaliation claim, those who believed the plaintiff had strong evidence were more certain of finding for the plaintiff under mixed motive but not but-for instructions. Thus, Study 1 supported Hypothesis 2a but Study 2 did not.

Hypothesis 3 through 3b. Hypotheses 3 through 3b concerned the simulated employment decisions in Study 2. Under Hypothesis 3, participants high in prevention focus were expected to be less likely to retaliate than participants high in promotion focus. Once again I was unable to test the effects of chronic regulatory focus but there was a main effect of regulatory focus as manipulated on decision certainty in which

promotion focused participants were more certain of a favorable decision toward the target candidate than prevention focused participants. Previous employment decision experience moderated the relationship between regulatory focus and decision certainty. Participants who had no previous employment decision experience were more certain of a favorable decision if they were promotion focused than if they were prevention focused. Additionally, for promotion focused participants, those with no experience were more certain of a favorable decision than those with previous employment decision making experience. There was also a three-way interaction between decision condition, regulatory focus, and previous employment decision experience. Moderation analyses found that in the dismissal decision condition regulatory focus had no impact, but in the promotion decision condition it was significant. For participants with no previous experience, prevention focused participants ranked the target resume less favorably than did promotion focused participants, while those with previous experience ranked the resume more favorable under prevention than promotion focus. It is important to note that no actual retaliation occurred, as complaint condition did not interact with regulatory focus.

Hypothesis 3a posited that retaliation was more likely to occur when participants were making a promotion decision as compared to a dismissal decision. This was in line with Charness and Levine's (2010) finding that people see acts of commission, such as dismissing someone, more as retaliation than the view acts of omission, such as not promoting someone. Consistent with this earlier research, I found a main effect of decision condition (dismiss v. promote) for both the overall decision and decision certainty. Participants in the promotion decision condition were more likely to make an

unfavorable decision and were more certain of their unfavorable decision as compared to participants in the dismissal condition. Even though retaliation did not occur, participants were still significantly more willing to deny promotion to the target applicant than they were to dismiss the target applicant. That is, they were more willing to commit an act of omission than an act of commission, in line with Charness and Levine (2010). This finding is somewhat consistent with research by Gino and Margolis (2011) who found that promotion focused individuals are more likely to act unethically than prevention focused individuals. It would be fully consistent if the effect had been found for the retaliation condition as well. Perhaps if retaliation concerns were less salient there would have been an interaction between decision and complaint condition.

Finally, Hypothesis 3b expected promotion focused participants to overvalue the good work qualities of the applicant who did not complain and for prevention focused participants to undervalue the negative aspects of the complainant. Unfortunately, neither good nor bad work qualities predicted decision, decision certainty, or resume rank. In fact, the only motivating factor that did predict effects on the dependent variables was applicant qualification. The moderation analysis that examined the five-way interaction between instruction, decision condition, regulatory focus, complaint condition, and application qualification found that applicant qualification mattered only if the participants were prevention focused using but-for instructions and making a promotion decision. Specifically, if participants believed that the applicant's qualifications were low, they were more certain of a favorable decision in the control condition but more certain of an unfavorable decision in the complaint condition. This suggests that

prevention focused participants using but-for instructions were more likely to retaliate when believing the applicant's qualifications were low.

Implications for Psychology

The findings of the current studies show some encouraging findings that may help to explain how jurors and employers make discrimination and retaliation decisions. The current studies specifically examined the role of regulatory focus on decision making, which bares directly on how people make causal judgments. Kelly (1967) argued that most people tend to use "multiple sufficient schemata" when making causal decisions. This means that people take into considerations a multitude of factors when making a decision, not just one factor. Mixed motive causality allows decision makers, both jurors and employers, to use multiple sufficient schemata. They may still find for the plaintiff even if there are both illegitimate (such as a discrimination complaint) and legitimate reasons for the defendant's actions (such as an employee who is late often or not a team player). However, the law under but-for causality instructions, requires a direct causality judgment instead of reliance on a sufficient schema. Though there can be both legitimate and illegitimate factors at play under but-for instructions, the illegitimate factor must be the determinative, or most influential factor; whereas under mixed motive instructions it need only play a contributing role. There is some evidence in the current studies that limiting the use of multiple schema by applying but-for instructions encourages participants to use regulatory focus in their decision making when determining verdict decisions in a retaliation case. There is little evidence that regulatory focus is influential in employer decisions of retaliation based on legal causality.

When considering just the role of regulatory focus, independent of legal instruction, the current studies revealed some interesting decision making findings. It appears that regulatory focus can influence decisions differently depending on a person's previous experience. One of the most consistent findings in the current research was that previous employment decision making experience moderated the influence of regulatory focus. Participants who had made employment decisions before showed a different pattern than those who had never been faced with these decisions. Namely, prevention focused participants, as compared to promotion focused participants, were more likely to find for the plaintiff, more certain of finding for the plaintiff, and more likely to make a favorable employment decision if they had no previous experience of making employment decisions. When they had previous experience, the results were flipped. This suggests the possibility that what is considered a "risk" under regulatory focus may hinge upon previous experience with the task at hand. Specifically for those with previous experience they may believe the greater risk is keeping an employee who is not considered best for the company, whereas those with no previous experience might consider risk to be illegally retaliating against an employee. If this is assessment of risk is correct, then the current research is in line with research on policy decisions and regulatory focus. Botzen, de Boer, and Terpstra (2013) found that prevention focused individuals were the most influenced by risk-framed communications and were in turn more likely to buy flood insurance than promotion focused individuals. Additional research to further explore the definition of risk in employment decisions is needed to better understand how it shapes decisions under regulatory focus.

Regulatory focus is likely not the only social cognitive model at play in jury or employer retaliation decisions. For example, previous work relying on stereotype content model (Farnum & Wiener, in press; Wiener & Farnum, in press) has shown that global stereotypes concerning social groups is influential in verdict decisions under but-for but not mixed motive instructions. Prospect theory, in particular the framing of gains and losses, may also explain how jurors and employers use causal instructions (Belton, Thomson, and Dhami 2014; Boettcher 2004; Mishra and Fiddick, 2012; Wiest, Raymond, & Clawson, 2012). Employers who view dismissing an employee who has complained as a gain to the working environment may be more willing to retaliate than an employer who views this as a risk to the reputation of the company. In addition, the theory of planned behavior (Ajzen & Madden, 1985; Ajzen 1991) would be particularly interesting in examine the path that leads employers to retaliate against an employee. The theory of planned behavior hypothesizes that intentions are the result of attitudes, subjective norms, and perception of behavioral control. Studies examining the manipulation of each of these areas would be interesting. For example, researchers might manipulate the subjective norms of a company as participants make employment decisions. One might instantiate the subjective norm in a cohesive and positive workplace through inspirational posters and anti-discrimination signs that make it clear the company is interested in a healthy environment. Conversely, and uncaring with authoritative environment might instead feature signs about use of equipment and suggesting that the company does seek employee feedback on relationship issues. I anticipate that retaliation would be more likely under the less positive environment as mediated through participant's ratings of attitudes and perceptions of behavioral control.

Implications for Law

Previous research found that but-for instructions led to more pro-defendant verdicts and that mixed motive instructions lead to more pro-plaintiff instructions, regardless of case strength (Wiener & Farnum, 2013; Farnum & Wiener, under review; Wiener & Farnum, under review). The current research sought to determine if this would replicate with retaliation claims in the context of the recent Supreme Court ruling required but for causality for Title VII retaliation claims (*Nasssar,* 2013). The current studies supported this in part but found less influence of instructions on retaliation verdicts than hypothesized. This could be because retaliation is different than discrimination claims, in line with Sherwyn, Heise, and Eigen (2014), who found that employees fared better in retaliation claims than discrimination decisions. The current studies did not necessarily find this. There is an argument that retaliation is different but it appears that it may hinge on the understanding of what retaliation means to jurors. If jurors are more educated on the definition of retaliation it might lead them to use and react to differences in causality instructions more than they did in the current studies. This is also a serious consideration as the Supreme Court, in their *Nassar* (2013) decision, pointed out that jurors should have no issue differentiating discrimination evidence from retaliation evidence and should understand how to make their decision. Yet, Studies 1 and 2 found that participants relied on the whether or not the defendant considered the plaintiff's national origin, but not whether the defendant considered the plaintiff's discrimination complaint. It appears that jurors may not be as capable of differentiating the evidence for a discrimination complaint from a retaliation complaint as the Court assumed and that may help explain why jurors found the retaliation complaint

more confusing. This may explain why participants who considered both claims and using different instructions were more likely to follow the mixed motive instructions. Perhaps those instructions that embrace the use of multiple causal schema felt more comfortable to use when considering the retaliation, which the participants found difficult to understand.

These results point to the need for more research to help explain how jurors understand and process retaliation claims in the context of different types of causal instructions and the influence of different types of causality models on employer decision making. There is some empirical evidence that these instructions can impact consequences in a case, and also some evidence that jurors are not as capable of considering a retaliation claim especially when coupled with a discrimination claim. These facts should be central to discussion going forward on how to treat retaliation claims as well as whether to continue using different instructions for claims that could be brought in the same case. Empirical analysis has an important role to play in determining how to consider defining claims for jurors and the role of causal instructions on liability judgments.

Limitations and Future Research

The current studies replicated, in part previous research on the influence of causal instructions in civil litigation expanding the topic to include Title VII retaliation claims. Regulatory focus theory served as the social cognitive model to help explain decision making of jurors and employers. Finally, the current studies expanded research on causal instructions into the workplace to explore how the law influences employer decision making. One strength of the current research was the use of a national sample of jury-

eligible participants as opposed to a student sample (Bornstein, 1999; Wiener, Krauss, & Lieberman, 2011). Another strength was the use of legally accurate instructions.

Nonetheless, as is the case with all studies, the current research is not without its own limitations. First, future research should utilize a more realistic trial paradigm. For Studies 1 and 2 this would involve using a reenacted trial including direct and cross-examinations, more in-depth descriptions of the jury instructions, and jury deliberations. The use of the full-trial experience might increase instruction effects by highlighting the differences in the instructions. It is also possible instruction effects might disappear within the rich context of a reenacted trial. Furthermore, regulatory focus may be less influential in deliberating jurors. Finally, deliberation could lead to greater differences between a plaintiff who was fired and one who was not promoted by encouraging the discussion of the plaintiff's experience of personal harm.

Furthermore, research on employer decisions should also utilize a more realistic, in-lab paradigm that introduces real consequences and motivation to this simulated judgment paradigm. A lab setting where the participants feel like they have true control over others and where they must engage with the impact of discrimination may lead to more retaliation. Also, a more subtle and less salient manipulation of causal legal language might lead to more effects of instruction on retaliation. This is important as retaliation does exist in the workplace and creating a realistic environment with more power to induce retaliation would better allow researchers to understand why employers might engage in that behavior. And of course, this project was unable to test the effects of chronic regulatory focus and regulatory fit because of the failure of the chronic regulatory measure (Shah & Higgins, 1997). Future research should add additional methods to

assess chronic regulatory focus, trait measures of regulatory focus such as the Lockwood Regulatory Focus Scale (Lockwood, Jordan, & Kunda, 2002) or the Composite Regulatory Focus Scale (Haws, Dholakia, & Bearden, 2010).

Conclusion

The current research provides some evidence of the influence of both causal legal instruction as well as regulatory focus on decisions concerning Title VII retaliation. Mock jurors fell more in line with previous research (Wiener & Farnum, 2013; Farnum & Wiener, in press; Wiener & Farnum, in press) for discrimination claims, in that but-for instructions were more likely to lead to more pro-defendant decisions than mixed motive instructions, but the same main effects did not emerge for retaliation claims. An unexpected but pervasive finding of the research suggests that jurors, despite receiving legally correct instructions, appear to not understand what evidence can and cannot be used when making a decision concerning retaliation. Unfortunately, the results from the employer study (Study 3) did not find any differences in willingness to retaliate based on instruction or regulatory focus. This is likely due to salience of the law and should be examined in future research. Overall the current studies lend some support to the role of regulatory focus and causal instructions, but also presents a number of exciting future directions to better understand how people think about and act in retaliation cases. Further research will better help to inform future policies and laws concerning retaliation in the workplace.

References

Aaker, J. L., & Lee, A. Y. (2006). Understanding regulatory fit. *Journal of Marketing Research,43*, 15-19. doi: 10.1509/jmkr.43.1.15

Adelman, L., Miller, S. L., Henderson, D., & Schoelles, M.(2003). Using Brunswikian theory and a longitudinal design to study how hierarchical teams adapt to increasing levels of time pressure. *Acta Psychologica, 112*, 181-206. Retrieved from http://www.sciencedirect.com/science/article/pii/S0001691802000823

Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634.

Ajzen, I. (1991). The theory of planned behavior. *Organizational Behavior and Human Decision Processes, 50*, 179-211. Doi: 10.1016/0749-5978(91)90020-T

Ajzen, I., & Madden, T. J. (1985). Prediction of goal-directed behavior: Attitudes, intentions, and perceived behavioral control. *Journal of Experimental Social Psychology, 22*, 453-474. doi: 10.1016/0022-1031(86)90045-4

Apanovitch, A. M., McCarthy, D., & Salovey, P. (2003). Using message framing to motivate HIV testing among low-income, ethnic minority women. *Health Psychology, 22*, 60-67. doi: 10.1037/0278-6133.22.1.60

Armitage, C. J., & Conner, M. (2001). Efficacy of the Theory of Planned Behavior: A meta-analtyic review. *British Journal of Social Psychology, 40*, 471-499. doi: 10.1348/014466601164939

Avnet, T., & Higgins, E. T. (2003). Locomotion, assessment, and regulatory fit: Value transfer from “how” to “what.” *Journal of Experimental Social Psychology, 39*, 525-530. doi: 10.1016/S0022-1031(03)00027-1

Avnet, T., & Higgins, E. T. (2006). How regulatory fit affects value in consumer choices and opinions. *Journal of Marketing Research, 43*, 1-10. doi: 10.1509,jmkr.43.1.1

Barberis, N. (2013). The psychology of tail events: Progress and changes. *The American Economic Review, 103*, 611-616. doi: 10.1257/aer.103.3.611

Baron, J. (1992). The effect of normative beliefs on anticipated emotions. *Journal of Personality and Social Psychology, 63*, 320-330. doi: 10.1037/0022-3514.63.2.320

Baumeister, R. F., Vohs, K. D., DeWall, C. N., & Zhang, L. (2007). How emotion shapes behavior: Feedback, anticipation, and reflection, rather than direct causation. *Personality and Social Psychology Review, 11*, 167-203. doi: 10.1177/1088868307301033

Beersma, B., Homan, A. C., van Kleef, G. A., & de Dreu, , C. K. W. (2013). Outcome interdependence shapes the effects of prevention focus on team processes and performance. *Organizational Behavior and Human Decision Processes, 121,* 194-203. Retrieved from http://www.sciencedirect.com/science/article/pii/S0749597813000344

Belton, I. K., Thomson, M., and Dhami, M. K. (2014). Lawyer and nonlawyer susceptibility to framing effects in out-of-court civil litigation settlement. *Journal of Empirical Legal Studies, 11*, 578-600. doi: 10.1111/jells.12050.

Block, R. A., & Harper, D. R. (1991). Overconfidence in estimation: Testing the anchoring-and-adjustment hypothesis. *Organizational and Human Decision Processes, 49*, 188-207. doi: 10.1016/0749-5978(91)90048-X

Bodenhausen, G. V., Sheppard, L. A., & Kramer, G. P. (1994). Negative affect and social judgment: The differential impact of anger and sadness. *European Journal of Social Psychology, 24*, 45-62. doi: 10.1002/ejsp.2420240104

Boettcher, W. A. (2004). The prospects for prospect theory: An empirical evaluation of international applications of framing and loss aversion. *Political Psychology, 25*, 331-362. doi: 10.1111/j.1467-9221.2004.00375.x

Boldero, J. M., & Higgins, E. T. (2011) Regulatory focus and political decision making: When people favor reform over the status quo. *Political Psychology, 32* 399-418. doi: 10.1111/j.1467-9221.2010.00814.x

Bornstein, B. H. (1999). The ecological validity of jury simulations: Is the jury still out? *Law and Human Behavior, 23*, 75-91. doi:10.1023/A:1022326807441

Botzen, W. J. W., de Boer, J., & Terpstra, T. (2013). Framing of risk and preferences for annual and multi-year flood insurance. *Journal of Economic Psychology, 39*, 357-375. doi: 10.1016/j.joep.2013.05.007

Brebels, L., de Cremer, D., & Sedikides, C. (2008). Retaliation as a response to procedural unfairness: A self-regulatory approach. *Journal of Personality and Social Psychology, 95*, 1511-1525. doi: 10.1037/a0012821

Brown, T. M., & Miller, C. E. (2000). Communication networks in task-performing groups: Effects of task complexity, time pressure, and interpersonal dominance. *Small Group Research,31*, 131-157. doi: 10.1177/104649640003100201

Buchan, H. F. (2005). Ethical decision making in the public accounting profession: An extension of Ajzen's theory of planned behavior. *Journal of Business Ethics, 61*, 165-181. doi: 10.1007/s10551-005-0277-2.

Burlington Northern & Santa Fe Railway Co. v. White, 126 S. Ct. 2405 (2006)

Burtscher, M. J., & Meyer, B. (2014). Promoting good decisions: How regulatory focus affects group information processing and decision-making. *Group Processes & Intergroup Relations, 17*, 663-681. doi: 10.1177/1368430214522138

Camacho, C.J., Higgins, E.T., & Luger, L. (2003). Moral value transfer from regulatory fit: What feels right is right and what feels wrong is wrong. *Journal of Personality and Social Psychology, 84*, 498-510. doi: 10.1037/0022-3514.84.3.498

Campbell, J. E., Chao, B., Robertson, C. T., & Yokum, D. V. (in press). Countering the plaintiff's anchor: Jury simulations to evaluate damages arguments. *Iowa Law Review*.

Carpenter, T. D., & Reimers, J. L. (2006). Unethical and fraudulent financial reporting: Applying the theory of planned behavior. *Journal of Business Ethics, 60*, 115-129. doi:10.1007/s10551-004-7370-9

Caruso, E. M., Gilbert, D. T., & Wilson, T. D. (2008). A wrinkle in time: Asymmetric valuation of past and future events. *Psychological Science, 19*, 796-801. doi: 10.1111/j.1467-9280.2008.02159.x

Cesario, J., Corker, K. S., and Jelinek, S. (2013). A self-regulatory framework for message framing. *Journal of Experimental Social Psychology, 49*, 238-249. doi: 10.1016/j.jesp.2012.10.014

Cesario, J., Grant, H., and Higgins, E. T. (2004). Regulatory fit and persuasion: Transfer from "feeling right." *Journal of Personality and Social Psychology, 86*, 388-404. doi: 10.1037/0022-3514.86.3.388

Cesario, J., Higgins, E. T., & Scholer, A. A. (2008). Regulatory fit and persuasion: basic principles and remaining questions. *Social and Personality Psychology Compass*, 2, 444-463. doi: 10.1111/j.1751-9004.2007.00055.x

Charness, G., & Levin, D. I. (2010). When is employee retaliation acceptable at work? Evidence from quasi-experiments. *Industrial Relations, A Journal of Economy and Society, 49*, 499-523. doi: 10.1111/j.1468-232X.2010.00614.x

Chung, S., & Han, I. (2013). Factors influencing information distortion in online deliberations: The effects of informational characterics and regulatory focus. *Computers in Human Behavior, 29*, 2188-2196. doi: 10.1016/j.chb.2013.04.036

Clark County School District v. Breeden, 532 U.S. 268 (2001)

Cohn, E. S., Bucolo, D., Pride, M., & Sommers, S. R. (2009). Reducing white juror bias: The role of race salience and racial attitudes. *Journal of Applied Social Psychology, 39*, 1953-1973. doi: 10.1111/j.1559-1816.2009.00511.x

Cordano, M., & Frieze, H. (2000). Pollution reduction preferences of U.S. environmental managers: Applying Ajzen's theory of planned behavior. *Academy of Management Journal, 43*, 627-641. doi: 10.2307/1556358

Cortina, L. M., & Magley, V. J. (2007). Raising voice, risking retaliation: Events following interpersonal mistreatment in the workplace. *Journal of Occupational Health Psychology, 8*, 247-265. doi: 10.1037/1076-8998.8.4.247

Crawford v. Metropolitan Government of Nashville & Davidson County, 211 Fed Appx. 373 (2009).

Crowe, E., & Higgins, E.T. (1997). Regulatory focus and strategic inclinations: Promotion and prevention in decision-making. *Organizational Behavior and Human Decision Processes, 69*, 117-132. doi: 10.1006/obhd.1996.2675.

Darby, B. W., & Jeffers, D. (1988). The effects of defendant and juror attractiveness on simulated courtroom trial decisions. *Social Behavior and Personality: An International Journal, 16*, 39-50. doi: 10.2224/sbp.1988.16.1.39

De Dreu, C. K. W., Nijstad, B. A., & van Knippenberg, D. (2008). Motivated information processing in group judgment and decision making. *Personality and Social Psychology Review, 12*, 22-49. doi: 10.1177/1088868307304092

Detweiler, J. B., Bedell, B. T., Salovey, P., Pronin, E., & Rothman, A. J. (1999). Message framing and sunscreen use: Gain-framed messages motivate beach-goers. *Health Psychology, 18*, 189-196. doi: 10.1037/0278-6133.18.2.189

Equal Employment Opportunity Commission (2015). *Retaliation-Based Charges FY 1997-FY 2014*.

E.E.O.C. v. Warfield-Rohr Casket Co., Inc., 364 F.3d 160 (2004)

Einhorn, R. M., & Hogarth, H. J. (1981). Order effects in belief updating: The belief-adjustment model. *Cognitive Psychology, 24*, 1-55. doi: 10.1016/0010-0285(92)90002-J

Ellemers, N., Scheepers, D., & Popa, A. M. (2010). Something to gain or soething to lose? Affirmative action and regulator focus emotions. *Group Processes & Intergroup Relations, 13*, 201-213. doi: 10.1177/1368430209343296

Elliott, M. A., Armitage, C. J., & Baughan, C. J. (2003). Drivers' compliance with speed limits: An application of the theory of planned behavior. *Journal of Applied Psychology, 88,* 964-972. doi: 10.1037/0021-9010.88.5.964

Epley, N., & Gilovich, T. (2002). Putting adjustment back in the anchoring and adjustment heuristic. In T. Gilovich, D. Griffin, & D. Kahneman (Eds) *Heuristics and Biases: The Psychology of Intuitive Judgment* (p. 139-149). New York: Cambridge University press.

Epley, N., Keysar, B., van Boven, L., Gilovich, T. (2004). Perspective Taking as Egocentric Anchoring and Adjustment. *Journal of Personality and Social Psychology, 87*, 327-339. doi: 10.1037/0022-3514.87.3.327

Faddegon, K., Scheepers, D., & Ellemers, N. (2008). If we have the will, there will be a way: regulatory focus as a group identity. *European Journal of Social Psychology, 38*, 880-895. doi: 10.1002/ejsp.483

Faddegon, K., Ellemers, N., & Scheepers, D. (2009). Eager to be the best, or vigilant not to be the worse: The emergence of regulatory focus in disjunctive and conjunctive tasks. *Group Processes & Intergroup Relations, 12*, 653-671. doi: 10.1177/1368430209339922

Farnum, K. S., & Wiener, R. L. (in preparation). Age discrimination: Instruction type and stereotype content model.

Florack, A., & Hartman, J. (2007). Regulatory focus and investment decisions in small groups. *Journal of Experimental Social Psychology, 43*, 626-632. doi: 10.1016/j.jesp.2006.05.005

Freitas, A. L., Liberman, N., & Higgins, E. T. (2002). Regulatory fit and resisting temptation during goal pursuit. *Journal of Experimental Social Psychology, 38*, 291-298. doi: 10.1006/jesp.2001.1504

Förster, J., Higgins, E. T., & Idson, L. C. (1998). Approach and avoidance strength during goal attainment: Regulatory focus and the "goal looms larger" effect. *Journal of Personality and Social Psychology, 75*, 1115-1131. doi: 10.1037/0022-3514.75.5.1115

FörsterLee, R., FörsterLee, L., Horowitz, I. A., & King, E. (2006). The effects of defendant race, victim race, and juror gender on evidence processing in a murder trial. *Behavioral Sciences and Law, 24,* 179-198. doi: 10.1002/bsl.675

Friedman, R. S., & Förster, J. (2001). The effects of promotion and prevention cues on creativity. *Journal of Personality and Social Psychology, 81*, 1001-1013. doi: 10.1037/0022-3514.81.6.1001

Galinsky, A. D., Leonardelli, G. J., Okhuysen, G. A., & Mussweiler, T. (2005). Regulatory focus at the bargaining table: Promoting distributive and integrative success. *Personality and Social Psychology Bulletin, 31*, 1087-1098. doi: 10.1177/0146167205276429

Gilbert, D. T., Lieberman, M. D., Morewedge, C. K., & Wilson, T. D. (2004). The peculiar longevity of things not so bad. *Psychological Science, 15*, 14-19. doi: 10.1111/j.0963-7214.2004.01501003.x

Gallagher, K. M., & Updegraff, J. A. (2011). Perceived susceptibility to breast cancer moderates the effect of gain- and loss-framed messages on use of screening mammography. *Health Psychology, 30*, 145-152. doi: 10.1037/a0022264

Gallagher, K. M., & Updegraff, J. A. (2012). Health message framing effects on attitudes, intentions, and behavior: A meta-analytic review. *Annals of Behavioral Medicine, 43*, 101-116. doi: 10.1007/s12160-012-9446-6.

Gastil, J., Burkhalter, S., & Black, L. W. (2007). Do juries deliberate? A study of deliberation, individual difference, and group member satisfaction at a municipal courthouse. *Small Group Research, 38*, 337-359. doi: 10.1177/1046496407301967

Gilbert, D. T., Pinel, E. C., Wilson, T. D., Blumberg, S. J., & Wheatley, T. P. (1998). Immune neglect: A source of durability bias in affective forecasting. *Journal of Personality and Social Psychology, 75*, 617-638. doi: 10.1037/0022-3514.75.3.617

Gino, F., & Margolis, J. D. (2011). Bringing ethics into focus: How regulatory focus and risk preferences influence (Un)ethical behavior. *Organizational Behavior and Human Decision Processes, 115*, 145-156. doi: 10.1016/j.obhdp.2011.01.006

Greene, E. (1990). Media effects on jurors. *Law and Human Behavior, 14*, 439-450. doi: 10.1007/BF01044221

Greene, E., & Wade, R. (1988). Of private talk and public print: General pre-trial publicity and juror decision-making. *Applied Cognitive Psychology, 2*, 123-135. doi: 10.1002/acp.2350020204

Griggs v. Duke Power Co., 401 U.S. 424 (1971)

Gross v. FBL Financial Services Inc., 129 S.Ct. 2343 (2009).

Haddle v. Garrison, 525 U.S. 121 (1998)

Haws, K. L., Dholakia, U. M., & Bearden, W. O. (2010). An assessment of chronic regulatory focus measures. *Journal of Marketing Research, 47*, 967-982. Retrieved from http://journals.ama.org/doi/abs/10.1509/jmkr.47.5.967

Hayes, A. F. (2013). *Introduction to Mediation, Moderation and Process Analysis: A Regression-Based Approach*. New York City, NY: Guilford Press

Herbert, K. E., Urmie, J. M., Newland, B. A., & Farris, K. B. (2006). Prediction of pharmacist intention to provide Medicare medication therapy management services using the theory of planned behavior. *Research in Social and Administrative Pharmacy, 2*, 299-314. doi: 10.1016/j.sapharm.2006.02.008

Hertwig, R., Barron, G., Weber, E. U., & Erev, I. (2004). Decisions from experience and the effect of rare events in risky choice. *Psychological Science, 15*, 534-539. doi: 10.1111/j.0956-7976.2004.00715.x

Higgins, E. T. (1997). Beyond pleasure and pain. *American Psychologist, 52*, 1280-1300. doi:10.1037/003-066X.52.12.1280

Higgins, E.T. (1998). Promotion and prevention: Regulatory focus as a motivational principle. *Advances in Experimental Social Psychology, 30*, 1-46. doi: 10.1016/S0065-2601908)60381-0.

Higgins, E. T. (2000). Making a good decision: Value from fit. *American Psychologist, 55*, 1217-1230. doi: 10.1037/0003-066X.55.11.1217

Higgins, E. T. (2002). How self-regulation creates distinct values: The case of promotion and prevention decision making. *Journal of Consumer Psychology, 12*, 177-191. doi: 10.1207/S15327663JCP1203.01

Higgins, E. T., Friedman, R. S., Harlow, R. E., Idson, L. C., Ayduk, O. N., & Taylor, A. (2001). Achievement orientations from subjective histories of success: Promotion pride versus prevention pride. *European Journal of Social Psychology, 31*, 3-23. doi: 10.1002/ejsp.27

Higgins, E. T., Idson, L. C., Frietas, A. L., Spiegel, S., & Molden, D. C. (2003). Transfer of value from fit. *Journal of Personality and Social Psychology, 84*, 1140-1153. doi: 10.1037/0022-3514.84.6.1140.

Higgins, E.T., Shah, J., & Friedman, R. (1997). Emotional response to goal attainment: Strength of regulatory focus as moderator. *Journal of Personality and Social Psychology, 72*, 515-525. doi: 10.1037/0022-3514.72.3.515

Hillig v. Rumsfeld, 381 F.3d 1028 (2004)

Hillman, R. A. (2000). The limits of behavioral decision theory in legal analysis: The case of liquidated damages. *Cornell Law Review*, 85, 717-738. Retrieved from http://library2.lawschool.cornell.edu/hein/Hillman,%20Robert%2085%20Cornell%20L.%20Rev.%20717%202000.pdf

Hinsz, V. B., Tindale, R. S., & Vollrath, D. A. (1997). The emerging conceptualization of groups as information processors. *Psychological Bulletin, 12*, 43-64. doi: 10.1037/0033-2909.121.1.43

Hsu, M. H., Yen, C. H., Chiu, C. M., & Chang, C. M. (2006). A longitudinal investigation of continued online shopping behavior: An extension of the theory of planned behavior. *International Journal of Human-Computer Studies, 64*, 889-904. doi: 10.1016/j.ijhcs.2006.04.004

Igou, E. R. (2008). 'How long will I suffer?' versus 'how long will you suffer?' A self-other effect in affective forecasting. *Journal of Personality and Social Psychology, 95,* 899–917. doi:10.1037/a0011619

Jessup, R. K., Bishara, A. J., & Busemeyer, J. R. (2008). Feedback produces divergence from prospect theory in descriptive choice. *Psychological Science, 19*, 1015-1022. doi: 10.1111/j.1467-9280.2008.02193.x

Kadous, K. (2001). Improving jurors' evaluations of auditors in negligence cases. *Contemporary Accounting Research, 18*, 425-444. doi: 10.1506/GM8A-HNPH-LL3L-98FY

Kahneman, D., & Frederick, S. (2002). Representativeness revisted: Attribute substitution in intuitive judgment. In T. Gilovich, D. Griffin, & D. Kahneman (Eds.) *Heuristics and Biases: The Psychology of Intuitive Judgments*. (pp 49-81). New York: Cambridge University Press.

Kahneman, D., & Tversky, A. (1979) . Prospect theory: An analysis of decision under risk. *Econometrica, 47*, 263-292. Retrieved from http://www.econometricsociety.org/tocs.asp

Kahneman, D., & Tversky, A. (1984). Choices, values and frames. *American Psychologist, 39*, 341-350. doi: 10.1037/0003-006x.39.4.341

Kassin, S. M., & Garfield, D. A. (1991). Blood and guts: General and trial-specific effects of videotaped crime scenes on mock jurors. *Journal of Applied Social Psychology, 21*, 1459-1472. doi: 10.1111/j.1559-1816.1991.tb00481.x

Kelly, J. R., & Karau, S. J. (1993). Entrainment of creativity in small groups. *Small Group Research, 24*, 179-198. doi: 10.1177/1046496493242002

Kerr, N. L., & Tinsdale, R. S. (2004). Group performance and decision making. *Annual Review of Psychology, 55*, 623-655. doi: 10.1146/annurev.psych.55.090902.142009

Kerr, N. L., Niedermeier, K. E., & Kaplan, M. E. (1999). Bias in jurors vs. bias in juries: New evidence in the SDS perspective. *Organizational Behavior and Human Decision Processes, 80*, 70-86. doi: 10.1006/obhd.1999.2855

Kerwin, J., & Shaffer, D. R. (1994). Mock jurors versus mock juries: The role of deliberations in reactions of inadmissible testimony. *Personality and Social Psychology Bulletin, 20*, 153-162. doi: 10.1177/0146167294202002

Khan, U., Dhar, R., & Wertenbroch, K. (2004). A behavioral decision theoretic perspective on hedonic and utilitarian choice. In S. Ratneshwar & D. G. Mick (Eds.) *Inside Consumption: Frontiers of Research on Consumer Motives, Goals, and Desires* (pp. 144-165). New York: Routledge.

Kligyte, V., Connelly, S., Thiel, C., & Devenport, L. (2013). The influence of anger, fear, and emotion regulation on ethical decision making. *Human Performance, 26*, 297-326. doi: 10.1080/08959285.2013.814655

Köszegi, B., & Rabin, M. (2006). A model of reference-dependent preferences. *The Quarterly Journal of Economics, 121*, 1133-1165. doi: 10.1093/qje/121.4.1133

Köszegi, B., & Rabin, M. (2007). Reference-dependent risk attitudes. *American Economic Review, 97*, 1047-1073. doi: 10.1257/aer.97.4.1047

Köszegi, B., & Rabin, M. (2009). Reference-dependent consumption plans. *The American Economic Review, 99*, 909-936. doi: 10.1257/aer.99.3.909

Kruglanski, A. W., Pierro, A., Mannetti, L., & De Grada, E. (2002). Groups as epistemic providers: Need for closure and the unfolding of group-centrism. *Psychological Review, 113*, 84-100. doi: 10.1037/0033-295X.113.1.84

Latimer, A. E. Rench, T. A., Rivers, S. E., Katulak, N. A., Materese, S. A., Cadmus, L., Hicks, A., Hodorowski, J. K. & Salovey, P. (2008). Promoting participation in physical activity using framed messages: An application of prospect theory. *British Journal of Health Psychology, 13*, 659-681. doi: 10.1348/135910707X246186

Laughlin v. Metropolitan Washington Airports Authority, 149 F.3d 253 (1998)

Lazarus, R. S. (1991). Progress on a cognitive-motivational-relational theory of emotion. *American Psychologist, 46*, 819-834. doi: 10.1037/0003-066X.46.8.819

Ledbetter v. Goodyear, 550 U.S. 618 (2007)

Lee, J. L., & Aaker, A. Y. (2004). Understanding regulatory fit. *Journal of Marketing Research, 43*, 15-19. doi: 10.1509/jmkr.43.1.15

Lee, J. L., Aaker, A. Y., & Gardner, W. L. (2000). The pleasures and pains of distinct self-construals: The role of interdependence in regulatory focus. *Journal of Personality and Social Psychology, 78*, 1122-1134. doi: 10.1037/0022-3514.78.6.1122

Lerner, J. S., & Tiedens, L. Z. (2006). Portrait of the angry decision maker: how appraisal tendencies shape anger's influence on cognition. *Behavioral Decision Making, 19*, 115-137. doi: 10.1002/bdm.515

Lieberman, J. D. (2002). Head over the heart or heart over the head? Cognitive-experiential self- theory and extra-legal heuristics in juror decision-making.

Journal of Applied Social Psychology, 32, 2526–2553. doi: 10.1111/j.1559-1816.2002.tb02755.x

Liberman, N., Idson, L. C., Camacho, S. J., & Higgins, E. T. (1999). Promotion and prevention choices between stability and change. *Journal of Personality and Social Psychology, 77*, 1135-1145. doi: 10.1037/0022-3514.77.6.1135

Lin, S. (2014). Free to retaliate: A plaintiff must show retaliation is the only motivation for an employer's retaliatory action. *Loyola of Los Angeles Law Review, 47*, 481-504. Retrieved from http://heinonline.org/HOL/Page?handle=hein.journals/lla47&div=16&g_sent=1

Lockwood, P., Jordan, C. H. & Kunda, Z. (2002). Motivation by positive or negative role models: Regulatory focus determines who will best inspire us. *Journal of Personality and Social Psychology, 83*, 854-864, doi: 10.1037/0022-3514.83.4.854.

Loewenstein, G. (1996). Behavioral decision theory and business ethics: Skewed trade-offs between self and other. In D. M. Messick & A. N. Tenbrunsel (Eds.) *Codes of Conduct: Behavioral Research into Business Ethics* (pp. 214-227). New York: Russel Sage Foundation.

Loewenstein, G. F., & Prelec, D. (1993). Preferences for sequences of outcomes. *Psychological Review, 100*, 91-108. doi: 0.1037/0033-295X.100.1.91

Loewenstein, G., & Schkade, D. (1999). Wouldn't it be nice? Predicting future feelings. In D. Kahneman, E. Diener, & N. Schwarz (Eds.) *Well-being: Foundations of Hedonic Psychology* (pp. 85-105). New York: Russell Sage Foundation Publications.

Macy, J. T., Middlestadt, S. E., Seo, D. C., Kolbe, L. J., & Jay, S. J. (2012). Applying the theory of planned behavior to explore the relation between smoke-free air laws and quitting intentions. *Health Education & Beahvior, 39*, 27-34. doi: 10.1177/1090198111404702

Maki, R. H., Weigold, A., & Arellano, A. (2008). False memory for associated word lists in individuals and collaborating groups. *Memory & Cognition, 36*, 598-603. doi: 10.3758/MC.36.3.598

Marti, M. W., & Wissler, R. L. (2000). Be careful what you ask for: The effect of anchors on personal-injury damages awards. *Journal of Experimental Psychology: Applied, 6*, 91-103. doi: 10.1037/1076-898X.6.2.91

McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973)

McGuire, T. W., Kiesler, S., & Siegel, J. (1987). Group and computer-mediated discussion effects in risk decision making. *Journal of Personality and Social Psychology, 52*, 917-930. doi: 10.1037/0022-3514.52.5.917

Mishra, S., & Fiddick, L. (2012). Beyond gains and losses: The effect of need on risky choice in framed decisions. *Journal of Personality and Social Psychology, 102*, 1136-1147. doi: 10.1037/a0027855

Mitchell, M. S., & Ambrose, M. L. (2012). Employees' behavioral reactions to supervisor aggression: An examination of individual and situational factors. *Journal of Applied Psychology, 97*, 1148-1170. doi: 10.1037/a0029452

Moberly, R. (2011). The Supreme Court's anti-retaliation principle. *Case Western Law Review, 61*, 375- 452. Retrieved from

http://heinonline.org/HOL/Page?handle=hein.journals/cwrlrv61&div=17&g_sent=1

Mullen, B., & Cooper, C. (1994). The relationship between group cohesiveness and performance: An integration. *Psychological Bulletin, 115*, 210-227. doi: 10.1037/0033-2909.115.2.210

Naquin, L. B. (2013). Closing the floodgates: Defining a class of third-party plaintiffs for Title VII retaliation claims. *Louisiana Law Review, 73*, 669-701. Retrieved from http://lawreview.law.lsu.edu/

Ortony, A., Clore, G. L., & Collins, A. (1988). *The Cognitive Structure of Emotions*. NewYork: Cambridge University Press.

Parker, D., Manstead, A. S., Stradling, S. G., & Reason, J. T. (1992). Intention to commit driving violations: An application of the theory of planned behavior. *Journal of Applied Psychology, 77*, 94-101. doi: 10.1037/0021-9010.77.1.94

Pennington, G. L., & Roese, N. J. (2003). Regulatory focus and temporal distance. *Journal of Experimental Social Psychology, 39*, 563-576. doi: 10.1016/S0022-1031(03)00058-1

Polman, E. (2012). Effects of self–other decision making on regulatory focus and choice overload. *Journal of Personality and Social Psychology, 102*, 980-993. doi: 10.1037/a0026966.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

Rachid v. Jack in the Box, Inc., 376 F.3d 305 (2004)

Radin, T. J., & Werhane, P. H. (2003). Employment-at-will, employee rights, and future directions for employment. *Business Ethics Quarterly, 13*, 113-130. Retrieved from http://www.jstor.org/stable/3857655?seq=1#page_scan_tab_contents

Randall, D. M., & Gibson, A. M. (1991). Ethical decision making in the medical profession: An application of the theory of planned behavior. *Journal of Business Ethics, 10*, 111-122. doi: 10.1007/BF00383614

Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000)

Reysen, M. B. (2003). The effects of social pressure on group recall. *Memory & Cognition, 31*, 1163-1168. doi: 10.3758/BF03195799

Richardson, B. K., Wang, Z., & Hall, C. A. (2007). Blowing the whistle against Greek hazing: The theory of reasoned action as a framework for reporting intentions. *Communication Studies, 63*, 172-193. doi: 10.1080/10510974.2011.624396

Righetti, F., Finkenauer, C., & Rusbult, C. (2011). The benefits of interpersonal regulatory fit for individual goal pursuit. *Journal of Personality and Social Psychology, 101*, 720-736. doi: 10.1037/a0023592

Rivers, S. E., Salovey, P., Pizzaro, D. A., Pizzaro, J., & Schneider, T. R. (2005). Message framing and pap test utilization among women attending a community health clinic. *Journal of Health Psychology, 10*, 65-77. doi: 10.1177/1359105305048556

Robbenolt, J. K., & Studebaker, C. A. (1999). Anchoring in the courtroom: The effects of caps on punitive damages. *Law and Human Behavior, 23*, 353-373. doi: 10.1023/A:1022312716354

Robsinson v. Shell Oil Co., 519 U.S. 337 (1997)

Roese, N. J, Hur, T., & Pennington, G. L. (1999). Counterfactual thinking and regulatory focus: Implications for action versus inaction and sufficiency versus necessity. *Journal of Personality and Social Psychology, 77*, 1109-1120. doi: 10.1037/0022-3514.77.6.1109

Rose v. New York City Bd. of Educ., 257 F.3d 156 (2001).

Rothman, A. J., Martino, S. C., Bedell, B. T., Detweiler, J. B., & Salovey, P. (1999). The systematic influence of gain-and-loss-framed messages on interest in and use of different types of health behavior. *Personality and Social Psychology Bulletin, 25*, 1355-1369. doi: 10.1177/0146167299259003

Rothman, A. J., & Salovey, P. (1997). Shaping perceptions to motivate healthy behavior: The role of message framing. *Psychological Bulletin, 121*, 3-19. doi: 10.1037/0033-2909.121.1.3

Salerno, J. M., & Diamond, S. S. (2010). The promise of a cognitive perspective on jury deliberation. *Psychonomic Bulletin & Review, 17*, 174-179. doi: 10.3758/PBR.17.2.174

Salerno, J. M., & Peter-Hagene, L. C. (2013). The interactive effect of anger and disgust on moral outrage and judgments. *Psychological Science, 24*, 2069-2078. doi: 10.1177/0956797613486988

Santelli, A. G., Struthers, C. W., & Eaton, J. (2009). Fit to forgive: Exploring the interaction between regulatory focus, repentance, and forgiveness. *Journal of Personality and Social Psychology, 96*, 381-394. doi: 10.1037/a0012882

Sassenberg, K., & Hansen, N. (2007). The impact of regulatory focus on affective responses to social discrimination. *European Journal of Social Psychology, 37*, 421-444. doi: 10.1002/ejsp.358

Sassenberg, K., Landkammer, F., & Jacoby, J. (2014). The influence of regulatory focus and group vs. individual goals on the evaluation bias in the context of group decision making. *Journal of Experimental Social Psychology, 54*, 153-164. doi: 10.1016/j.jesp.2014.05.009

Scheepers, K., Ellemers, N., & Sassenberg, D. (2011). The attraction of social power: The influence of construing power as opportunity versus responsibility. *Journal of Experimental Social Psychology, 48*, 550-555. doi: 10.1016/j.jesp.2011.11.008

Scherer, K. R. (1999). Appraisal theory. In T. Dalgleish, & M. J. Power (Eds.), *Handbook of Cognition and Emotion* (pp.637–663). Chichester, England: John Wiley & Sons.

Scherer, K. R. (2001). Appraisal considered as process of multi-level sequential checking. In K. R. Scherer, A. Schorr, &T. Johnstone (Eds.), *Appraisal processes in emotion: Theory, methods, research* (pp. 92–120). New York: Oxford University Press.

Schneider, T. R., Salovey, P., Apanovitch, A. M., McCarthy, D., Zulio, J., & Rothman, A. J. (2001). The effects of message framing and ethnic targeting on mammography use among low-income women. *Health Psychology, 20*, 256-266. doi: 10.1037/0278-6133.20.4.256

Scholer, A. A., Zou, X., Fujita, K., Stroessner, S. J., & Higgins, E. T. (2010). When risk seeking becomes a motivational necessity. *Journal of Personality and Social Psychology, 99*, 215-231. doi: 10.1037/a0019715

Schwarz, N., & Clore, G. L. (1983). Mood, misattribution, and judgments of well-being: Informative and directive functions of affective states. *Journal of Personality and Social Psychology, 45*, 513-523. doi: 10.1037/0022-3514.45.3.513

Schwarz, N., & Clore, G. L. (2003). Mood as information: 20 years later. *Psychological Inquiry, 14*, 296-303. doi: 10.1080/1047840X.2003.9682896

Seiner, J. A. (2006). Disentangling disparate impact and disparate treatment: Adapting the Canadian approach. *Yale Law & Policy Review, 25*, 95-142. Retrieved from http://heinonline.org/HOL/Page?handle=hein.journals/yalpr25&div=7&g_sent=1&collection=journals

Shah, J. Y., Brazy, P. C., & Higgins, E. T. (2004). Promoting us or preventing them: Regulatory focus and manifestations of intergroup bias. *Personality and Social Psychology Bulletin, 30*, 433-446. doi: 10.1177/0146167203261888

Shah, J., Higgins, E. T., & Friedman, R. S. (1998). Performance incentives and means: How regulatory focus influences goal attainment. *Journal of Personality and Social Psychology, 74*, 285-293. doi: 10.1037/0022-3514.74.2.285

Sherwyn, D., Heise, M., & Eigen, Z. J. (2014). Experimental evidence that retaliation claims are unlike other employment discrimination claims. *Seton Hall Law Review, 44*, 455-504. Retrieved from http://heinonline.org/HOL/Page?handle=hein.journals/shlr44&div=16&g_sent=1&collection=journals

Simon, H. A. (1957). *Models of Man: Social and Rational*. Oxford, England: Wiley.

Slack v. Havens, 522 F.2d 1091 (1973)

Slovic, P., Fischoff, B., & Lichenstein, S. (1977). Behavioral decision theory. *Annual Review of Psychology, 28*, 1-39. doi: 10.1146/annurev.ps.28.020177.000245

Smith v. Columbus Metropolitan Housing Authority, 443 F. Supp 61 (1977)

Smith, C. A., & Ellsworth, P. C. (1985). Patterns of cognitive appraisal in emotion. *Journal of Personality and Social Psychology, 48*, 813-838. doi: 10.1037/0022-3514.48.4.813

Smith v. Xerox Co., 602 F. 3d 320 (2010).

Sommers, S. R., & Ellsworth, P. C. (2000). Race in the courtroom: Perceptions of guilt and dispositional attributions. *Personality and Social Psychology Bulletin, 26*, 1367-1379. doi: 10.1177/0146167200263005

Sommers, S. R., & Ellsworth, P. C. (2003). How much do we really know about race and juries – A review of social science theory and research. *Chicago-Kent Law Review, 78*, 997-1031. Retrieved from http://scholarship.kentlaw.iit.edu/cgi/viewcontent.cgi?article=3420&context=cklawreview

Steblay, N. M., Besirevic, J., Fulero, S. M., & Jimenez-Lorento, B. (1999). The effects of pre-trial publicity on juror verdicts: A meta-analytic review. *Law and Human Behavior, 23*, 219-235. doi: 10.1023/A:1022325019080

Steward, W. T., Schneider, T. R., Pizzaro, J., & Salovey, P. (2003). Need for cognition moderates responses to framed smoking-cessation messages. *Journal of Applied Social Psychology, 33*, 2439-2464. doi: 10.1111/j.1559-1816.2003.tb02775.x

St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

Teamsters v. United States, 431 U.S. 324 (1977)

Thompson v. North American Stainless, LP 131 S.Ct. 863 (2011).

Thorley, C., & Dewhurst, S. A. (2009). False and veridical collaborative recognition. *Memory, 17*, 17-25. doi: 10.1080/09658210802484817

Title VII of the Civil Rights Act of 1964 §§ 88-352

Tversky, A., & Kahneman, D. (1973). Availability: A heuristic for judging frequency and probability. *Cognitive Psychology, 5*, 207-232. doi: 10.1016/0010-0285(73)90033-9

Tversky, A., & Kahneman, D. (1983). Extensional versus intuitive reasoning: The conjunction fallacy in probability judgment. *Psychological Review, 90*, 293-315. doi: 10.1037/0033-295X.90.4.293

Tversky, A., & Kahneman, D. (1986). Rational choice and framing of decisions. *Journal of Business, 59*, S251-S278. Retrieved from http://www.jstor.org/discover/10.2307/2352759?sid=21106299708923&uid=2&uid=3739792&uid=4&uid=3739256

Tversky, A., & Kahneman, D. (1992). Advances in prospect theory: Cumulative representation of uncertainty. *Journal of Risk and Uncertainty, 5*, 297-323. doi: 10.1007/BF00122574

University of Texas Southwestern Medical Center v. Nasser, 133 S.Ct. 978 (2013).

Volpe, C. E., Cannon-Bowers, J. A., Salas, E., Spector, P. E. (1996). The impact of cross-training on team functioning: An empirical investigation. *Human Factors, 38*, 87-100. doi: 10.1518/001872096778940741

Walther, E., Bless, H., Strack, F., Rackstraw, P., Wagner, D., & Werth, L. (2002). Conformity effects in memory as a function of group size, dissenters, and uncertainty. *Applied Cognitive Psychology, 16*, 793-810. doi: 10.1002/acp.828

Wang, X., & McClung, S. R. (2010). Toward a detailed understanding of illegal digital downloading intentions: An extended theory of planned behavior approach. *New Media & Society, 13*, 663-677. doi: 10.1177/1461444810378225

Wansink, B., Kent, R. J., & Hoch, S. (1998). An anchoring and adjustment model of purchase quantity decisions. *Journal of Marketing Research, 35*, 71-81. Retrieved from http://www.jstor.org/discover/10.2307/3151931?sid=21106299801663&uid=4&uid=3739792&uid=2&uid=3739256

Wasieleski, D. M., & Hayibor, S. (2008). Breaking the rules: Examining the facilitation effects of moral intensity characteristics on the recognition of rule violations. *Journal of Business Ethics, 78*, 275-289. doi: 10.1007/s10551-007-9376-6

Watson v. Fort Worth Bank & Trust, 487 U.S. 977 (1988)

Weiner, B. (1986). An attributional theory of achievement motivation and emotion. *Psycholigical Review, 92*, 548-573. doi: 10.1037/0033-295X.92.4.548

Whyte, G. (1993). Escalating commitment in individual and group decision making: A prospect theory approach. *Organizational Behavior and Human Decision Processes, 54*, 430-455. doi: 10.1006/obhd.1993.1018

Wiener, R. L., & Farnum, K. S. (2013). The psychology of jury decision making in age discrimination claims. *Psychology, Public Policy, and Law, 19*, 395-409. doi: 10.1037/a0032826

Wiener, R. L., Gervais, S. J., Allen, J., & Marquez, A. (2013). Eye of the beholder: Effects of perspective and sexual objectification on harassment judgments. *Psychology, Public Policy, and Law, 19*, 206-221. doi: 10.1037/a0028497

Wiener, R. L., Krauss, D. A., & Lieberman, J. D. (2011). Mock jury research: Where do we go from here? *Behavioral Sciences & the Law, 29*, 467-479. doi: 10.1002/bsl.989

Wiest, S. L., Raymond, L., & Clawson, R. A. (2015). Framing, partisan predispositions, and public opinion on climate change. *Global Environmental Change, 31*, 187-198. doi: 10.1016/j.gloenvcha.2014.12.006

Wilson, T. D., & Gilbert, D. T. (2003). Affective forecasting. *Advances in Experimental Social Psychology, 35*, 345-411. doi: 10.1016/S0065-2601(03)01006-2

Womack v. Munson, 619 F. 2d 1292 (1980)

Woodson v. Scott Paper Co., 109 F. 3d 913 (1997)

Woltin, K. A., & Jonas, K. J. (2012). Thinking deadline: The impact of regulatory focus on deadline descriptions and deadline behavior. *European Journal of Social Psychology, 42*, 318-326. doi: 10.1002/ejsp.1860

Yechiam, E., Zahavi, G., & Arditi, E. (2014). Loss restlessness and gain calmness: Durable effects of losses and gains on choice switching. *Psychonomic Bulletin & Review*, doi: 10.3758/s13423-014-0749-4

Zaal, M. P., Laar, C. V., Stahl, T., Ellemers, N., & Derks, B. (2012). Social change as an important goal or likely outcome: How regulatory focus affects commitment to collective action. *British Journal of Social Psychology, 51*, 93-110. doi: 10.1111/j.2044-8309.2010.02006.x

Zeelenberg, M. (1999). Anticipated regret, expected feedback and behavioral decision making. *Journal of Behavioral Decision Making, 12*, 93-106. doi: 10.1002/(SICI)1099-0771(199906)12:2<93::AID-BDM311>3.0CO;2-S

Zeelenberg, M., & Pieters, R. (2004). Beyond valence in customer dissatisfaction: A review and new findings on behavioral responses to regret and disappointment in failed services. *Journal of Business Research, 57*, 445-455. doi: 10.1016/S0148-2963(02)00278-3

Zeelenberg, M., van Dijk, W. W., Manstead, A. S. R., & van der Pligt, J. (2000). On bad decisions and disconfirmed expectancies: The psychology of regret and disappointment. *Cognition & Emotion, 14*, 521-541. doi: 10.1080/026999300402781

Zhang, Zhang, S., Higgins, E. T., & Chen, G. (2011). Managing others like you were managed: How prevention focus motivates copying interpersonal norms. *Journal of Personality and Social Psychology, 100*, 647-663. doi: 10.1037/a0021750

Appendix A
Chronic Regulatory Focus Measure
Shah, Higgins, & Friedman (1998)

You are going to be asked to list traits or attributes that describe both your ideal and ought self. The traits or attributes that you provide must be different for the two selves. After each trait or attribute, you will also be asked to rate the extent to which you believe you possess this attribute.

Please list traits or attributes of your **Ideal Self**. Your ideal self is the type of person you ideally would like to be, the type of person you hope, wish, or aspire to be.
1.

To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

2.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

3.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

4.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

5.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

Please list traits or attributes of your **Ought Self**. Your ought self is the type of person you believe it is your duty, obligation, or responsibility to be.

1.

To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

2.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

3.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

4.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

5.
To what extent do you believe you actually possess this attribute?

1	2	3	4
Slightly			Extremely

Appendix B

Case Vignette – Fired (Study 1)

Based on *University of Texas Southwestern Medical Center v. Nassar* (2013)

The defendant, University Medical Center, is an academic institution that specializes in medical education for medical students, health professionals, and scientists. University Hospital affiliates itself with a number of healthcare facilities including Meadowood Memorial Hospital. The agreement between Meadowood Memorial Hospital and the University Medical Center permits medical students to gain real world experiences by working in the hospital. As part of its obligations under the agreement, Meadowood Memorial Hospital offers staff physician positions to the University's faculty members.

The plaintiff, Daren Ahmad, a medical doctor of Middle Eastern descent, specializes in internal medicine and infectious diseases. In 1995 the University hired Ahmad to work jointly on the University's faculty and as a staff physician as Meadowood Memorial Hospital. Dr. Ahmad left both positions in 1998 to seek additional medical education and then returned to both positions in 2001. In 2004, the University hired Dr. Anna Louis to be the Chief of Infectious Disease Medicine, and as such, became the plaintiff's ultimate (though not direct) superior. When Dr. Louis joined the faculty she met with each clinic doctor for 15 to 20 minutes, but spent an hour and a half with Dr. Ahmad discussing his resume in great detail.

Dr. Ahmad believed Dr. Louis, targeted him for more intense supervision due to his national origin. He claimed that she scrutinized his productivity more than any of the other doctors under her supervision. Although Dr. Kaisar, Dr. Ahmad's previous supervisor, stated that that Dr. Ahmad was a hard worker, Dr. Louis "took a long time to

be satisfied with his opinion of Dr. Ahmad." Ahmad alleges that Louis made several derogatory comments concerning Middle Easterners. In 2005, Dr. Louis opposed hiring another physician of Middle Eastern descent and remarked to a fellow colleague that "Middle Easterner's are lazy" and when that physician joined the staff Louis commented to the same colleague, they had "hired another one." On several occasions, the plaintiff, Dr. Ahmad, met with Dr. Jeffrey Fitzgerald, the chair of the University's Internal Medicine and Dr. Louis' supervisor, to complain about Dr. Louis' alleged harassment.

In 2006, Dr. Louis nominated Dr. Ahmad for a promotion, for which she wrote a letter of recommendation about his work that aided him in receiving the promotion. Despite this help, Dr. Ahmad continued to believe that Dr. Louis was biased against him due to his ethnic heritage. As a result, Dr. Ahmad negotiated his contract to continue working at Meadowood Memorial Hospital without remaining as a faculty member at the University under Dr. Louis' supervision. Dr. Ahmad sent a letter along with his resignation from his University teaching position to several faculty members, including Dr. Fitzgerald, in which he stated that he was resigning due to the harassment he received from Dr. Louis. The letter stated that Louis' harassment stemmed "from racial and cultural bias against Arabs and Muslims." After reading the letter, Dr. Fitzgerald expressed alarm at the accusations, which he believed publicly humiliated Dr. Louis. Dr. Fitzgerald also commented to a colleague that he felt it was "important that Dr. Louis be exonerated."

Meadowood Memorial Hospital had offered Dr. Ahmad a position as a staff physician as negotiated. However, upon learning about the offer, Dr. Fitzgerald protested to Meadowood, claiming that the offer was inconsistent with the partnership agreement

between the University and Meadowood Memorial Hospital. Specifically, Fitzgerald argued that all staff physicians at the hospital should also be faculty members at the University. Meadowood Memorial Hospital withdrew the contract from Dr. Ahmad, effectively firing him from this position. The University Medical Center formally discharged Dr. Ahmad.

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging two discrete violations of Title VII. The first was a status-based discrimination claim under §2000e-2(a) alleging that his constructive discharge from the University was due to the alleged racially motivated harassment he received from Dr. Louis. Dr. Ahmad's second claim was that Dr. Fitzgerald's efforts directing Meadowood Memorial Hospital fire him was in retaliation for complaining about Dr. Louis' harassment in violation of §2000e-3(a).

Just discrimination

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging a status-based discrimination claim under §2000e-2(a). The claim alleges that his constructive discharge from the University was due the alleged racially motivated harassment he received from Dr. Louis.

Just retaliation

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging that Dr. Fitzgerald's efforts directing the Hospital fire him were in retaliation for complaining about Dr. Louis' harassment in violation of §2000e-3(a) of Title VII.

Appendix C
Motivating Factors

Next, we would like you to answer some questions about why you think Dr. Ahmad was fired.

To what extent was each of the following a motivating factor in the University Medical Center's actions that ultimately led to the decision to firing of Dr. Ahmad? A "motivating factor" is a factor that played some part in University Medical Center's decision.

1. Dr. Ahmad's national origin.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

2. Meadowood Hospital's rehiring policy.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

3. Dr. Ahmad's adversarial relationship with his supervisors.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

4. Dr. Ahmad's discrimination complaint

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

5. Dr. Ahmad's letter to the University Medical Center's faculty.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

Appendix D

Judge's Instructions (Regulatory focus manipulation)

Promotion Focused
Judge's Instructions

As a juror in this case, it is your job to achieve the satisfaction that comes from knowing you completed your job and achieved the best possible outcome. You should base your decision on the facts of the case as they apply to the following instructions. Using the case facts appropriately to reach an outcome will promote the ideal of fairness in the justice system. I hope that you will serve eagerly as an enthusiastic juror to aid the justice system in reaching the optimal and just decision for the parties in the case.

Prevention Focused
Judge's Instructions

As a juror in this case, it your job to avoid the dissatisfaction that comes from knowing you improperly completed your job and contributed to a miscarriage of justice. You should base your decision on the facts of the case as they apply to the following instructions. Using the case facts appropriately to reach an outcome will prevent the loss of the ideal of fairness in the justice system. I hope that you will serve vigilantly as a careful juror to aid the justice system in avoiding an incorrect miscarriage of justice for the parties in the case.

Appendix E
Jury Instructions

Instructions

But-For Retaliation Instructions

To establish a claim of retaliation, the Plaintiff, Dr. Ahmad, must prove each of the following three basic elements by a preponderance of the evidence

Element 1: Plaintiff, Dr. Ahmad, complained about national origin discrimination; and
Element 2: Defendant, University Medical Center, took an action that a reasonable employee would have found materially adverse – namely discharging Dr. Ahmad; and
Element 3: The Plaintiff making a discrimination complaint was the determinative factor for the Defendant's action to fire him. "Determinative Factor" means that the Defendant would not have taken the challenged employment decision but for the Plaintiff's protected activity.

"Preponderance of the evidence" means that according to the evidence the statement is more likely true than not.

A "Materially Adverse" action is any action by the employer that is likely to discourage a reasonable worker in the Plaintiff's position from exercising his or her rights under Title VII.

To establish element #3, Dr. Ahmad must prove by a preponderance of the evidence 1) that his discrimination complaint was the determinate cause of University Medical Center's actions that ultimately led to its decision to fire Dr. Ahmad and 2) the University Medical Center would not have fired Dr. Ahmad if the administrators had not considered his discrimination complaint. You must find for University Medical Center if Dr. Ahmad failed to prove both of these facts by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the three basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the three basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Mixed Motive Retaliation Instructions

To establish a claim of retaliation, the Plaintiff, Dr. Ahmad, must prove each of the following three basic elements by a preponderance of the evidence:

Element 1: Plaintiff, Dr. Ahmad, complained about national origin discrimination; and
Element 2: Defendant, University Medical Center, took an action that a reasonable employee would have found materially adverse – namely discharging Dr. Ahmad; and
Element 3: The Plaintiff making a discrimination complaint was a motivating factor for the Defendant's action to fire him. A "motivating factor" is a factor that played some part in the defendant's decision.

"Preponderance of the evidence" means that according to the evidence the statement is more likely true than not.

A "Materially Adverse" action is any action by the employer that is likely to discourage a reasonable worker in the Plaintiff's position from exercising his or her rights under Title VII.

In showing that his discrimination complaint was a motivating factor for University Medical Center' actions (element #3), Dr. Ahmad is not required to prove that his discrimination complaint was the sole motivation or even the primary motivation for University Medical Center's actions. Dr. Ahmad need only prove that his discrimination complaint played a motivating part in University Medical Center's actions to fire him even though other factors allowable under the law may also have motivated University Medical Center. Your verdict must be in favor of University Medical Center if Dr. Ahmad failed to prove that his discrimination complaint was a motivating factor by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the three basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the three basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

But-For Discrimination Instructions

To establish a claim of discrimination based on national origin, the Plaintiff, Dr. Ahmad, must prove each of the following two basic elements by a preponderance of the evidence:

Element 1: The Defendant, University Medical Center's actions ultimately led to the firing Plaintiff, Dr. Ahmad; and
Element 2: The Plaintiff's national origin was the determinative factor for the Defendant's action. "Determinative Factor" means that the Defendant would not have taken the challenged employment decision but for the Plaintiff's protected activity.

"Preponderance of the evidence" means that according to the evidence the truth of a statement is more likely than not likely.

To establish element #3, Dr. Ahmad must prove by a preponderance of the evidence that 1) his national origin was the determinate cause of University Medical Center's decision to fire Dr. Ahmad and that 2) the University Medical Center would not have fired Dr. Ahmad if the University administrators had not considered his national origin. You must find for University Medical Center if Dr. Ahmad failed to prove both of these facts by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the two basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the two basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Mixed Motive Discrimination Jury Instructions

To establish a claim of discrimination based on national origin, the Plaintiff, Dr. Ahmad, must prove each of the following two basic elements by a preponderance of the evidence:

Element 1: The Defendant, University Medical Center's actions ultimately led to the firing Plaintiff, Dr. Ahmad; and
Element 2: The Plaintiff's national origin was a motivating factor for the Defendant's actions. A "motivating factor" is a factor that played some part in the defendant's decision.

In showing that his national origin was a motivating factor for University Medical Center's action (element #2), Dr. Ahmad is not required to prove that his national origin was the sole motivation or even the primary motivation for the University Medical Center's decision to fire Dr. Ahmad. Dr. Ahmad need only prove that his national origin played a motivating part in University Medical Center's action even though other factors allowable under the law may also have motivated University Medical Center to fire him. Your verdict must be in favor of University Medical Center if Dr. Ahmad failed to prove that his national origin was a motivating factor by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the two basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the two basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Appendix F
Verdict and Evidence Decisions
Wiener & Farnum (2013)

Verdict 1: With regard to the claim of discrimination I find in favor of:
Plaintiff, Dr. Ahmad
Defendant, University Medical Center

How certain are you of the verdict for discrimination?

-5	-4	-3	-2	-1	0	1	2	3	4	5
Completely certain the defendant is not liable					Uncertain whether the defendant is liable					Completely certain the defendant is liable

Verdict 2: With regard to the claim of retaliation I find in favor of:
Plaintiff, Dr. Ahmad
Defendant, University Medical Center

How certain are you of the verdict for retaliation?

-5	-4	-3	-2	-1	0	1	2	3	4	5
Completely certain the defendant is not liable					Uncertain whether the defendant is liable					Completely certain the defendant is liable

Next, we would like you evaluate the scenario that you just read on several additional rating scales. Select the number that best summarizes your opinion.

1. How convincing was plaintiff, Dr. Ahmad's evidence that University Medical Center violated Title VII's prohibition against discrimination when Dr. Ahmad was fired?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

2. How convincing was defendant University Medical Center's evidence that it did not violate Title VII's prohibition against discrimination when Dr. Ahmad was fired?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

3. How convincing was plaintiff, Dr. Ahmad's evidence that University Medical Center violated Title VII's prohibition against retaliation when Dr. Ahmad was fired?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

4. How convincing was defendant University Medical Center's evidence that it did not violate Title VII's prohibition against discrimination when Dr. Ahmad was fired?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

5. For this case, on a scale of 0% (not at all certain) to 100% (completely certain), how certain must you be of the evidence to find that defendant University Medical Center violated Title VII's prohibition against discrimination when Dr. Ahmad was fired?

a. 0% convinced	h. 35% convinced	o. 70% convinced
b. 5% convinced	i. 40% convinced	p. 75% convinced
c. 10% convinced	j. 45% convinced	q. 80% convinced
d. 15% convinced	k. 50% convinced	r. 85% convinced
e. 20% convinced	l. 55% convinced	s. 90% convinced
f. 25% convinced	m. 60% convinced	t. 95% convinced
g. 30% convinced	n. 65% convinced	u. 100% convinced

6. For this case, on a scale of 0% (not at all certain) to 100% (completely certain), how certain must you be of the evidence to find that defendant University Medical Center violated Title VII's prohibition against retaliation when Dr. Ahmad was fired?

a. 0% convinced	h. 35% convinced	o. 70% convinced
b. 5% convinced	i. 40% convinced	p. 75% convinced
c. 10% convinced	j. 45% convinced	q. 80% convinced
d. 15% convinced	k. 50% convinced	r. 85% convinced
e. 20% convinced	l. 55% convinced	s. 90% convinced
f. 25% convinced	m. 60% convinced	t. 95% convinced
g. 30% convinced	n. 65% convinced	u. 100% convinced

Appendix G

Manipulation Checks

Discrimination Only

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about national origin discrimination. We are interested in your understanding of the jury instructions that we supplied to you.

1. University Medical Center violated Title VII only if Dr. Ahmad's national origin was the determining factor in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's national origin in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

3. Have you heard of this case before you read it today?
    a. yes
    b. no

    3b. If yes, were you familiar with the facts of this case?
        a. yes
        b. no

Retaliation Only

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about retaliation. We are interested in your understanding of the jury instructions that we supplied to you.

1. University Medical Center violated Title VII only if Dr. Ahmad's discrimination complaint was the determining factor in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.

a. True
b. False
c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's discrimination complaint in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.

a. True
b. False
c. The instruction did not specify

3. Have you heard of this case before you read it today?

a. yes
b. no

3b. If yes, were you familiar with the facts of this case?

a. yes
b. no

Discrimination and Retaliation

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about national origin discrimination or retaliation. We are interested in your understanding of the jury instructions that we supplied to you.

DESCRIMINATION CHARGE:

1. University Medical Center violated Title VII only if Dr. Ahmad's national origin was the determining factor in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's national origin in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

RETALIATION CHARGE:

3. University Medical Center violated Title VII only if Dr. Ahmad's discrimination complaint was the determining factor in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

4. University Medical Center violated Title VII if they merely considered Dr. Ahmad's discrimination complaint in University Medical Center's actions that ultimately led to Dr. Ahmad being fired.
    a. True
    b. False
    c. The instruction did not specify

5. Have you heard of this case before you read it today?
    a. yes
    b. no

Appendix H

Demographics

(1) Please provide your age. _____

(2) Please provide your ethnic origin and/or race. (Check one)

___ European American ___ African American
___ Asian American ___ Latino/a
___ Hispanic ___ Native American
___ Middle Eastern ___ Other Please specify
_____

(3) Sex

_____ Male _____ Female

(4) What is your current marital status? Select one:

_____ Single _____ Married _____ Divorced _____ Widowed

(5) Which of the following best describes the area in which you are originally from?

____ Urban ____ Suburban
____ Small town ____ Rural

(6) What is your religious preference (if any)?

_____ Protestant _____ Muslim _____ Atheist

_____ Catholic _____ Hindu _____ Other

_____ Jewish _____ Agnostic

(7) Do you have a current driver's license? ____ Yes ____ No

(8) Are you currently registered to vote? ____ Yes ____ No

(9) Have you ever served on a jury ____ Yes ____ No

(10) Please provide what best describes your current employment.

____ Employed full-time _____ Unemployed
____ Employed part-time _____ Student

(11) What is your political affiliation? (check one)

____ Democrat ____ Republican ____ Green Party
____ Independent ____ Libertarian ____ Other

(12) Please provide your political orientation on ***social issues.***

___ Very conservative
___ Conservative
___ Moderate
___ Liberal
___ Very liberal

(13) Please provide your political orientation on ***economic issues.***

___ Very conservative
___ Conservative
___ Moderate
___ Liberal

___ Very liberal

(14) Please provide your highest level of education achieved.

____ Less than high school diploma
____ High school diploma/ G.E.D.
____ Some college
____ College graduate
____ Advanced degree (Master's degree, doctorate, etc.)

Appendix I

Case Vignette –Not Promoted (Study 2)

Based on *University of Texas Southwestern Medical Center v. Nassar* (2013)

The defendant, University Medical Center, is an academic institution that specializes in medical education for medical students, health professionals, and scientists. University Hospital affiliates itself with a number of healthcare facilities including Meadowood Memorial Hospital. The agreement between Meadowood Memorial Hospital and the University Medical Center permits medical students to gain real world experiences by working in the hospital. As part of its obligations under the agreement, Meadowood Memorial Hospital offers staff physician positions to the University's faculty members.

The plaintiff, Daren Ahmad, a medical doctor of Middle Eastern descent, specializes in internal medicine and infectious diseases. In 1995 the University hired Ahmad to work jointly on the University's faculty and as a staff physician as Meadowood Memorial Hospital. Dr. Ahmad left both positions in 1998 to seek additional medical education and then returned to both positions in 2001. In 2004, the University hired Dr. Anna Louis to be the Chief of Infectious Disease Medicine, and as such, became the plaintiff's ultimate (though not direct) superior. When Dr. Louis joined the faculty she met with each clinic doctor for 15 to 20 minutes, but spent an hour and a half with Dr. Ahmad discussing his resume in great detail.

Dr. Ahmad believed Dr. Louis, targeted him for more intense supervision due to his national origin. He claimed that she scrutinized his productivity more than any of the other doctors under her supervision. Although Dr. Kaisar, Dr. Ahmad's previous supervisor, stated that that Dr. Ahmad was a hard worker, Dr. Louis "took a long time to

be satisfied with his opinion of Dr. Ahmad." Ahmad alleges that Louis made several derogatory comments concerning Middle Easterners. In 2005, Dr. Louis opposed hiring another physician of Middle Eastern descent and remarked to a fellow colleague that "Middle Easterner's are lazy" and when that physician joined the staff Louis commented to the same colleague, they had "hired another one." On several occasions, the plaintiff, Dr. Ahmad, met with Dr. Jeffrey Fitzgerald, the chair of the University's Internal Medicine and Dr. Louis' supervisor, to complain about Dr. Louis' alleged harassment.

In 2006, Dr. Louis nominated Dr. Ahmad for a promotion, for which she wrote a letter of recommendation about his work that aided him in receiving the promotion. Despite this help, Dr. Ahmad continued to believe that Dr. Louis was biased against him due to his ethnic heritage. As a result, Dr. Ahmad applied for a promotion within Meadowood Memorial Hospital as head of Infectious Disease that would remove him as a faculty member for the University, and thus no longer be supervised by Dr. Louis. Upon favorably interviewing for the position at Meadowood Memorial Hospital, Dr. Ahmad sent a letter along with his resignation from his University teaching position to several faculty members, including Dr. Fitzgerald, in which he stated that he was resigning due to the harassment he received from Dr. Louis. The letter stated that Louis' harassment stemmed "from racial and cultural bias against Arabs and Muslims." After reading the letter, Dr. Fitzgerald expressed alarm at the accusations, which he believed publicly humiliated Dr. Louis. Dr. Fitzgerald also commented to a colleague that he felt it was "important that Dr. Louis be exonerated."

Meadowood Memorial Hospital had, during this time, privately stated their intention to offer Dr. Ahmad the promotion. On learning about the potential promotion,

Dr. Fitzgerald protested to Meadowood, claiming that the promotion was inconsistent with the partnership agreement between the University and Meadowood Memorial Hospital. Specifically, Fitzgerald argued that all staff physicians at the hospital should also be faculty members at the University. Meadowood Memorial Hospital offered the promotion to another applicant and the University Medical Center formally discharged Dr. Ahmad.

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging two discrete violations of Title VII. The first was a status-based discrimination claim under §2000e-2(a) alleging that his constructive discharge from the University was due to the alleged racially motivated harassment he received from Dr. Louis. Dr. Ahmad's second claim was that Dr. Fitzgerald's efforts directing Meadowood Memorial Hospital to not offer him the promotion was in retaliation for complaining about Dr. Louis' harassment in violation of §2000e-3(a).

Just discrimination

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging a status-based discrimination claim under §2000e-2(a). The claim alleges that his constructive discharge from the University was due the alleged racially motivated harassment he received from Dr. Louis.

Just retaliation

After exhausting administrative remedies, Dr. Ahmad filed a Title VII suit in the United States District Court alleging that Dr. Fitzgerald's efforts directing the Hospital to

not offer him the promotion was in retaliation for complaining about Dr. Louis' harassment in violation of §2000e-3(a) of Title VII.

Appendix J
Jury Instructions

But-For Retaliation Instructions

To establish a claim of retaliation, the Plaintiff, Dr. Ahmad, must prove each of the following three basic elements by a preponderance of the evidence

Element 1: Plaintiff, Dr. Ahmad, complained about national origin discrimination; and
Element 2: Defendant, University Medical Center, took an action that a reasonable employee would have found materially adverse – denial of a promotion; and
Element 3: The Plaintiff making a discrimination complaint was the determinative factor for the Defendant's action – denial of a promotion. "Determinative Factor" means that the Defendant would not have taken the challenged employment decision but for the Plaintiff's protected activity.

"Preponderance of the evidence" means that according to the evidence the statement is more likely true than not.

A "Materially Adverse" action is any action by the employer that is likely to discourage a reasonable worker in the Plaintiff's position from exercising his or her rights under Title VII.

To establish element #3, Dr. Ahmad must prove by a preponderance of the evidence 1) that his discrimination complaint was the determinate cause of University Medical Center's actions that ultimately led to its decision deny Dr. Ahmad his promotion and 2) the University Medical Center would have promoted Dr. Ahmad if the administrators had not considered his discrimination complaint. You must find for University Medical Center if Dr. Ahmad failed to prove both of these facts by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the three basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the three basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Mixed Motive Retaliation Instructions

To establish a claim of retaliation, the Plaintiff, Dr. Ahmad, must prove each of the following three basic elements by a preponderance of the evidence:

Element 1: Plaintiff, Dr. Ahmad, complained about national origin discrimination; and
Element 2: Defendant, University Medical Center, took an action that a reasonable employee would have found materially adverse – namely denying Dr. Ahmad his promotion; and
Element 3: The Plaintiff making a discrimination complaint was a motivating factor for the Defendant's action to deny him his promotion. A "motivating factor" is a factor that played some part in the defendant's decision.

"Preponderance of the evidence" means that according to the evidence the statement is more likely true than not.

A "Materially Adverse" action is any action by the employer that is likely to discourage a reasonable worker in the Plaintiff's position from exercising his or her rights under Title VII.

In showing that his discrimination complaint was a motivating factor for University Medical Center' actions (element #3), Dr. Ahmad is not required to prove that his discrimination complaint was the sole motivation or even the primary motivation for University Medical Center's actions. Dr. Ahmad need only prove that his discrimination complaint played a motivating part in University Medical Center's actions to deny him his promotion even though other factors allowable under the law may also have motivated University Medical Center. Your verdict must be in favor of University Medical Center if Dr. Ahmad failed to prove that his discrimination complaint was a motivating factor by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the three basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the three basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

But-For Discrimination Instructions

To establish a claim of discrimination based on national origin, the Plaintiff, Dr. Ahmad, must prove each of the following two basic elements by a preponderance of the evidence:

Element 1: The Defendant, University Medical Center's actions ultimately led to failing to promote Plaintiff, Dr. Ahmad; and
Element 2: The Plaintiff's national origin was the determinative factor for the Defendant's action not to promote him. "Determinative Factor" means that the Defendant would not have taken the challenged employment decision but for the Plaintiff's protected activity.

"Preponderance of the evidence" means that according to the evidence the truth of a statement is more likely than not likely.

To establish element #3, Dr. Ahmad must prove by a preponderance of the evidence that 1) his national origin was the determinate cause of University Medical Center's decision not to promote Dr. Ahmad and that 2) the University Medical Center would have promoted Dr. Ahmad if the University administrators had not considered his national origin. You must find for University Medical Center if Dr. Ahmad failed to prove both of these facts by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the two basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the two basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Mixed Motive Discrimination Jury Instructions

To establish a claim of discrimination based on national origin, the Plaintiff, Dr. Ahmad, must prove each of the following two basic elements by a preponderance of the evidence:

Element 1: The Defendant, University Medical Center's actions ultimately led to failing to promote Plaintiff, Dr. Ahmad; and
Element 2: The Plaintiff's national origin was a motivating factor for the Defendant's action not to promote him. A "motivating factor" is a factor that played some part in the defendant's decision.

In showing that his national origin was a motivating factor for University Medical Center's action (element #2), Dr. Ahmad is not required to prove that his national origin was the sole motivation or even the primary motivation for the University Medical Center's decision not to promote Dr. Ahmad. Dr. Ahmad need only prove that his national origin played a motivating part in University Medical Center's action even though other factors allowable under the law may also have motivated University Medical Center to deny him a promotion. Your verdict must be in favor of University Medical Center if Dr. Ahmad failed to prove that his national origin was a motivating factor by a preponderance of the evidence.

If you find that the Plaintiff, Dr. Ahmad, has proven each of the two basic elements by a preponderance of the evidence, then you must find for the Plaintiff and against the Defendant, University Medical Center, on this claim. If, on the other hand, you find that the Plaintiff has failed to prove any one or more of the two basic elements by a preponderance of the evidence, then you must find against him on this claim and in favor of the Defendant.

Appendix K

Manipulation Checks

Discrimination Only

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about national origin discrimination. We are interested in your understanding of the jury instructions that we supplied to you.

1. University Medical Center violated Title VII only if Dr. Ahmad's national origin was the determining factor in University Medical Center's decision to deny Dr. Ahmad his promotion.

a. True
b. False
c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's national origin in University Medical Center's decision to deny Dr. Ahmad his promotion.

a. True
b. False
c. The instruction did not specify

3. Have you heard of this case before you read it today?

a. yes
b. no

3b. If yes, were you familiar with the facts of this case?

a. yes
b. no

Retaliation Only

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about retaliation. We are interested in your understanding of the jury instructions that we supplied to you.

1. University Medical Center violated Title VII only if Dr. Ahmad's discrimination complaint was the determining factor in University Medical Center's decision to deny Dr. Ahmad a promotion.

a. True
b. False
c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's discrimination complaint in University Medical Center's decision to deny Dr. Ahmad a promotion.

.

a. True
b. False
c. The instruction did not specify

3. Have you heard of this case before you read it today?

a. yes
b. no

3b. If yes, were you familiar with the facts of this case?

a. yes
b. no

Discrimination and Retaliation

The following questions are about the jury instructions that you read earlier. Answer each question to the best of your ability based upon only those instructions. These questions are NOT opinion questions. We are not interested in your views about national origin discrimination or retaliation. We are interested in your understanding of the jury instructions that we supplied to you.

DISCRIMINATION CHARGE:

1. University Medical Center violated Title VII only if Dr. Ahmad's national origin was the determining factor in University Medical Center's decision to deny Dr. Ahmad his promotion .

a. True
b. False
c. The instruction did not specify

2. University Medical Center violated Title VII if they merely considered Dr. Ahmad's national origin in University Medical Center's decision to deny Dr. Ahmad his promotion.

a. True
b. False
c. The instruction did not specify

RETALIATION CHARGE:

3. University Medical Center violated Title VII only if Dr. Ahmad's discrimination complaint was the determining factor in University Medical Center's decision to deny Dr. Ahmad his promotion.

a. True
b. False
c. The instruction did not specify

4. University Medical Center violated Title VII if they merely considered Dr. Ahmad's discrimination complaint in University Medical Center's decision to deny Dr. Ahmad his promotion.

a. True
b. False
c. The instruction did not specify

5. Have you heard of this case before you read it today?

a. yes
b. no

5b. If yes, were you familiar with the facts of this case?

a. yes

b. no

Appendix L
Motivating Factors

Next, we would like you to answer some questions about why you think Dr. Ahmad was not promoted.

To what extent was each of the following a motivating factor in University Medical Center's actions that may have led Meadowood Memorial Hospital to not promote Dr. Ahmad? A "motivating factor" is a factor that played some part in University Medical Center's decision.

1. Dr. Ahmad's national origin.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

2. Hospital's rehiring policy.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

3. Dr. Ahmad's relationship with his supervisors.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

4. Dr. Ahmad's letter to the University Medical Center's faculty.

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

5. Dr. Ahmad's discrimination complaint

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

Appendix M
Verdict and Evidence Decisions
Wiener & Farnum (2013)

Verdict 1: With regard to the claim of discrimination in the denial of promotion I find in favor of:
Plaintiff, Dr. Ahmad
Defendant, University Medical Center

How certain are you of the verdict for discrimination?

-5	-4	-3	-2	-1	0	1	2	3	4	5
Completely certain the defendant is not liable					Uncertain whether the defendant is liable					Completely certain the defendant is liable

Verdict 2: With regard to the claim of retaliation in the denial of promotion I find in favor of:
Plaintiff, Dr. Ahmad
Defendant, University Medical Center

How certain are you of the verdict for retaliation?

-5	-4	-3	-2	-1	0	1	2	3	4	5
Completely certain the defendant is not liable					Uncertain whether the defendant is liable					Completely certain the defendant is liable

Next, we would like you evaluate the scenario that you just read on several additional rating scales. Select the number that best summarizes your opinion.

7. How convincing was plaintiff, Dr. Ahmad's evidence that University Medical Center violated Title VII's prohibition against national origin discrimination when Dr. Ahmad was denied promotion?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

8. How convincing was defendant University Medical Center's evidence that it did not violate Title VII's prohibition against national origin discrimination when Dr. Ahmad was denied promotion?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

9. How convincing was plaintiff, Dr. Ahmad's evidence that University Medical Center violated Title VII's prohibition against retaliation when Dr. Ahmad was denied promotion?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

10. How convincing was defendant University Medical Center's evidence that it did not violate Title VII's prohibition against retaliation when Dr. Ahmad was denied promotion?

1	2	3	4	5	6	7	8	9
Not At All Convincing				Somewhat Convincing				Very Convincing

11. For this case, on a scale of 0% (not at all certain) to 100% (completely certain), how certain must you be of the evidence to find that defendant University Medical Center violated Title VII's prohibition against national origin discrimination when Dr. Ahmad was denied promotion?

h. 0% convinced	h. 35% convinced	o. 70% convinced
i. 5% convinced	i. 40% convinced	p. 75% convinced
j. 10% convinced	j. 45% convinced	q. 80% convinced
k. 15% convinced	k. 50% convinced	r. 85% convinced
l. 20% convinced	l. 55% convinced	s. 90% convinced
m. 25% convinced	m. 60% convinced	t. 95% convinced
n. 30% convinced	n. 65% convinced	u. 100% convinced

12. For this case, on a scale of 0% (not at all certain) to 100% (completely certain), how certain must you be of the evidence to find that defendant University Medical Center violated Title VII's prohibition against retaliation when Dr. Ahmad was denied promotion?

h. 0% convinced	h. 35% convinced	o. 70% convinced
i. 5% convinced	i. 40% convinced	p. 75% convinced
j. 10% convinced	j. 45% convinced	q. 80% convinced

k. 15% convinced	k. 50% convinced	r. 85% convinced
l. 20% convinced	l. 55% convinced	s. 90% convinced
m. 25% convinced	m. 60% convinced	t. 95% convinced
n. 30% convinced	n. 65% convinced	u. 100% convinced

Appendix N
Resumes

Applicant 1: Daren Ahmad

Education

Fellowship	Duke University Medical Center, Infectious Disease
Residency	Wayne State University School of Medicine, Internal Medicine
M.D.	George Washington University School of Medicine
B.S.	Vanderbilt University, Biology

Current Appointments

Associate Professor, Department of Medicine (Infectious Disease)
Staff Physician, University Medical Center, Infectious Disease Division

Research Interests

- Hollow fiber culture system
- Mycobacterium tuberculosis
- Pharmacokinetics/pharmacodynamics of antitubercular therapy

Reference feedback

- Required multiple reminders to up-date client database.
- Skilled at acquiring and maintaining relationships with patients and students.
- He has difficulty making deadlines on projects and grant proposals
- He's creative in his development of patient-oriented research
- Often takes long breaks on a daily basis.
- Keeps himself informed on current trends in research and funding opportunities.

Applicant 2: Amir Nassar

Education

Fellowship	New York University School of Medicine, Infectious Disease
Residency	New York University School of Medicine, Internal Medicine
M.D.	University of Tennessee College of Medicine
B.S.	Stanford University, Human Biology

Current Appointments

Associate Professor, Department of Medicine (Infectious Disease)
Staff Physician, University Medical Center, Infectious Disease Division

Research Interests

- Clinical outcomes in musculoskeletal and diabetic foot infections
- Innovations in graduate medical education
- Prevention of surgical site infections

Reference feedback

- Shows he is trustworthy by keeping clients' personal information confidential.
- Was unresponsive to supervisor suggestions on how to improve administrative skills.
- Researched changes in patient pharmacy plan benefit information to stay current.
- Would not respond to student requests for information in a timely manner.
- Maintained a professional relationship with medical technicians, resulting in faster tests for his patients
- Would sometimes complain about student requests for coverage information.

Applicant 3: Omar Saab

Education

Fellowship	Dartmouth Hitchcock Medical Center, Infectious Disease
Residency	Ohio State University College of Medicine, Infectious Disease
M.D.	Northeast Ohio Medical University
B.S.	Massachusetts Institute of Technology, Chemistry

Current Appointments

Associate Professor, Department of Medicine (Infectious Disease)
Staff Physician, University Medical Center, Infectious Disease Division

Research Interests

- HIV and HPV co-infection
- LGBT Research with a Focus on Transgender Care
- STDs with a Focus on HPV and Anal Dysplasia

Reference feedback

- He has a good work ethic, often staying late to complete projects.
- Has a tendency to boast of his accomplishments to others when he believes his supervisor is not within earshot.
- Shows he is creative by designing brand new marketing campaigns.
- Requires considerable time locating proposals because he keeps a cluttered working environment.
- Shows confidence when proposing new research initiatives.
- Doesn't like to work with others on projects.

Experimental Condition
Feedback

- Recently filed a complaint of national origin discrimination against his unit supervisor.

Appendix O

Task Description and Regulatory Focus Manipulation

Firing
Promotion Focused

Job Description

You currently work for the University Medical Center as the division supervisor of Infectious Diseases. The Medical Center is an academic institution that specializes in medical education for medical students, health professionals, and scientists. All staff physicians and unit supervisors under your supervision are faculty members of the University and mentor medical students. The Medical Center needs to cut the number of staff physicians in your division and has asked that you dismiss one of the physicians. You are to review three resumes of current employees and choose which one should be let go. It is your job to achieve the satisfaction that comes from knowing you completed your job and achieved the best possible outcome for the Medical Center. You should serve eagerly as an enthusiastic manager to aid the hospital in reaching the optimal and best decision given the doctors that you are reviewing. You should base this decision on the resumes you have in front of you. Use the resumes appropriately to reach an outcome that will promote the ideal of fairness in the workplace.

Prevention Focused

Job Description

You currently work for the University Medical Center as the division supervisor of Infectious Diseases. The Medical Center is an academic institution that specializes in medical education for medical students, health professionals, and scientists. All staff physicians and unit supervisors under your supervision are faculty members of the University and mentor medical students. The Medical Center needs to cut the number of staff physicians in your division and has asked that you dismiss one of the physicians. You are to review three resumes of current employees and choose which one to let go. It is your job to avoid the dissatisfaction that comes from knowing you improperly completed your job and contributed to dismissing the wrong person. You should serve vigilantly as a careful manager to aid the hospital in avoiding the incorrect decision and a miscarriage of justice given the doctors that you are reviewing. You should base this decision on the resumes you have in front of you. Use the resumes appropriately to reach an outcome that will prevent the loss of the ideal of fairness in the workplace.

Promotion Decision
Promotion focused

Job Description

You currently work for the University Medical Center as the division supervisor of Infectious Diseases. The Medical Center is an academic institution that specializes in medical education for medical students, health professionals, and scientists. All staff physicians and unit supervisors under your supervision are faculty members of the University and mentor medical students. The Medical Center wants to add a second supervisor in the research unit and has asked that you promote one of the staff physicians. You are to review three resumes of current employees and choose which one should be promoted. It is your job to achieve the satisfaction that comes from knowing you completed your job and achieved the best possible outcome for the Medical Center. You should serve eagerly as an enthusiastic manager to aid the hospital in reaching the optimal and best decision given the doctors that you are reviewing. You should base this decision on the resumes you have in front of you. Use the resumes appropriately to reach an outcome that will promote the ideal of fairness in the workplace.

Prevention Focused

Job Description

You currently work for the University Medical Center as the division supervisor of Infectious Diseases. The Medical Center is an academic institution that specializes in medical education for medical students, health professionals, and scientists. All staff physicians and unit supervisors under your supervision are faculty members of the University and mentor medical students. The Medical Center wants to add a second supervisor in the research unit and has asked that you promote one of the staff physicians. You are to review three resumes of current employees and choose which one to promote. It is your job to avoid the dissatisfaction that comes from knowing you improperly completed your job and contributed to promoting the wrong person. You should serve vigilantly as a careful manager to aid the hospital in avoiding the incorrect decision and a miscarriage of justice given the doctors that you are reviewing. You should base this decision on the resumes you have in front of you. Use the resumes appropriately to reach an outcome that will prevent the loss of the ideal of fairness in the workplace.

Appendix P
HR Policy and Causal Manipulation

Number: HR 2.05
Policy Title: Employment Decisions

Purpose

Guidance in policy considerations in employment decisions.

Employment Decision Details

A. Recruitment processes should result in the most diverse and qualified applicant pool possible.
B. Selection practices should emphasize hiring the best-qualified individuals with due consideration for persons from underrepresented groups.
    a. Underrepresented groups include racial/ethnic minorities, women, sexual orientation, religious groups etc.
C. The Office of Human Resources must approve any reductions in work force.
    a. Decisions to make reductions in staff who are represented by labor unions must not violate collective bargaining agreements.
    b. Managers should approach reduction in workforce situations with sensitivity. They must balance organizational needs with human resource considerations such as affirmative action objectives, compliance with university policies, and applicable collective bargaining agreements.
D. Managers should give rewards and promotions for significant outstanding performance that they advances unit goals that they are tied to specific accomplishments.
    a. Managers should take care to communicate and distribute rewards and promotions so that employees do not view them as entitlements

But-For

Number: HR 2.05a
Policy Title: Legal Considerations in Employment Decisions

Purpose

Guidance in policy considerations in employment decisions.

Legal Considerations Details

A. Management practices should emphasize prevention of discrimination and harassment.
    a. Discrimination and harassment is prohibited by Title VII of the Civil Rights Act (race, color, religion, sex, or national origin), American with Disabilities Act, Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act.
    b. **All of these federal laws prohibit retaliating against someone who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice**.
    a. Under federal law, retaliation occurs only if the discrimination complaint is the determinative factor for an adverse action. **A determinative factor means that the adverse action would not have taken place *but for* the employee making a discrimination complaint.** It is not illegal for the organization to consider the impact of a disgruntled employee's complaint, but it is illegal for the decision maker to base the decision on the fact that an employee made a discrimination complaint. If the defendant made an adverse decision against an employee because the worker made a discrimination complaint against the employer, than that constitutes illegal retaliation.

Mixed Motive

Number: HR 2.05a
Policy Title: Legal Considerations in Employment Decisions

Purpose

Guidance in policy considerations in employment decisions.

B. Legal Considerations Details

C. Management practices should emphasize prevention of discrimination and harassment.
   a. Discrimination and harassment is prohibited by Title VII of the Civil Rights Act (race, color, religion, sex, or national origin), American with Disabilities Act, Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act.
   b. All of these federal laws prohibit retaliating against someone who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.
   c. Under federal law, retaliation occurs if a decision maker considers an employee's discrimination complaint when making an adverse decision against the employee even if the decision making also considers legitimate reasons along with the discrimination complaint. That means the discrimination complaint may not be a motivating factor in the adverse decision. A motivating factor is a factor that played some role in the decision. If the defendant relied on the information that an employee made a discrimination complaint to take an adverse action against the employee, than that constitutes illegal retaliation.

Appendix Q

Decision Measure

Please answer the following questions.

1. Which of the three applicants that you have reviewed would you promote (let go)?
    a. Daren Ahmad
    b. Amir Nassar
    c. Omar Saab

2. How confident are you in your promotion decision?

1	2	3	4	5	6	7	8	9
Not at all confident				Somewhat confident				Very confident

3. Please rank the applicants in the order in which you would promote (let them go) with 1 being most likely to promote (let go) and 3 being least likely to promote (let go).

4. To what extent did you consider application qualification in your decision?

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

5. To what extent did you consider applicant education in your decision?

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

6. To what extent did you consider the favorable qualities of the applicants in your decision?

0	1	2	3	4	5	6	7	8	9	10	11
Not at All		Very Little				Somewhat			Quite a bit		Extremely

7. To what extent did you consider the unfavorable qualities of the applicants in your decision?

0	1	2	3	4	5	6	7	8	9	10	11
Not		Very				Somewhat			Quite		Extremely

at All		Little							a bit		

Appendix R

Manipulation Checks

The following questions are about the policy that you read earlier. Answer each question to the best of your ability based upon only the policy guide. These questions are NOT opinion questions. We are not interested in your views about retaliation. We are interested in your correct understanding of the policy.

1. Retaliation occurs only if the discrimination complaint was the determinative factor in an adverse decision. That is, but for the making of the discrimination complaint the adverse action would not have occurred.

    a. True
    b. False
    c. The instruction did not specify

2. Retaliation occurs even if the discrimination complaint played only a role in the adverse decision along with other legitimate factors. That is the discrimination complaint was a motivating factor.

    a. True
    b. False
    c. The instruction did not specify