

Defendant Remorse, Need for Affect, and Juror Sentencing Decisions

Emily P. Corwin, BA, Robert J. Cramer, PhD, Desiree A. Griffin, PhD, and Stanley L. Brodsky, PhD

Defendant remorse is generally accepted as a mitigating factor in capital murder sentencing in the legal system. The current study addressed whether verbal and nonverbal expressions of defendant remorse are perceived as remorseful by mock jurors. Moreover, this study investigated the associations of defendant behaviors and mock juror need for affect on sentencing decisions. Participants watched a video of a defendant depicting either high or low levels of verbal and nonverbal remorseful behavior. Results indicated that nonverbal behaviors were more important than verbal cues for perception of remorse. Incongruent verbal and nonverbal behavior, as well as mock juror willingness to approach emotional situations (i.e., high need for affect (NFA)) resulted in more lenient sentences for defendants. Implications for the remorse construct, for witness preparation, and for jury selection are discussed.

J Am Acad Psychiatry Law 40:41–9, 2012

There are countless tales of the presence or absence of remorse affecting convictions or sentencing decisions. One recent report (June 2010) from a Virginia courthouse states that a remorseful attorney was given only 20 months in prison, when he ordinarily would have gotten more than two years.¹ Even more recently (September 2010), a judge in Utah declared that he only wanted the defendant to apologize. If he had, the judge might have handed down a lighter sentence.² Despite the importance of remorse in sentencing, there are minimal empirical data on the nature of remorse and the mechanisms by which it is linked to sentencing.³ In the current study, we sought to contribute to filling this gap by examining defendant verbal and nonverbal remorse and their effects on the sentencing decisions of mock jurors. If both verbal and nonverbal expressions of remorse

must be present, then it may be counterproductive for a defendant to apologize for the sole purpose of increasing the chances of lenient sentencing when genuine feelings of remorse are not seen in their nonverbal behavior. A secondary goal was to investigate emotion-related characteristics of mock jurors as underlying mechanisms explaining sentencing decisions. For a starting point, we now review the conceptualization of remorse.

Remorse Defined

Remorse may be defined as moral or emotional distress resulting from past transgressions. It is considered by some to be a form of self-punishment.⁴ Individuals feeling and expressing genuine remorse are believed to be enduring emotional pain, usually because of their own behavior. There are many assumptions associated with remorse. It is thought to be automatically activated and to be unwanted and unpleasant. When someone experiences feelings of remorse, it is usually said that the person is suffering from or struggling with those feelings.⁵

Showing remorse is different from giving an apology in that the two behaviors are communicated in contrasting ways. Remorse usually is shown through

Ms. Corwin is a Graduate Research Assistant, Louisiana State University, Baton Rouge, LA. Dr. Cramer is Assistant Professor of Clinical Psychology, Sam Houston State University, Houston TX. Dr. Griffin is a Psychology Associate, Southern Virginia Mental Health Institute, Danville, VA. Dr. Brodsky is Professor of Psychology, University of Alabama, Tuscaloosa, AL. Address correspondence to: Emily P. Corwin, BA, Department of Psychology, Louisiana State University, 236 Audubon Hall, Baton Rouge, LA 70803. E-mail: emilyfpatty@gmail.com.

Disclosures of financial or other potential conflicts of interest: None.

behavior, whereas apologies typically are spoken. Lazare⁶ has defined the goals of apology giving as the following: restoring dignity and power, regaining trust, feeling cared for, extending empathy and understanding, and letting go. Weisman⁷ stated that an apology is often the spoken form of the remorse felt by an individual. He also stated that when dealing with apologies, it is necessary to focus on the words spoken, and when dealing with remorse, it is necessary to pay attention to gestures, facial expressions, and feelings.⁵

Nonverbal and Verbal Cues of Remorse

The manner in which people interpret cues of remorse may influence sentencing outcomes. Robinson *et al.*⁷ found that when trial transcripts were embedded with remorseful cues and side notes, participants rated the defendant to be more remorseful. The transcripts were either embedded with references to remorseful behaviors, including crying, frowning, and an unsteady voice, or nonremorseful cues, including persistent eye contact and a relaxed demeanor. The authors concluded that the written descriptions of nonverbal signs of remorse reliably predicted perceived remorse.⁷ Some of these indicators of remorse included pulling down the corners of the mouth, looking at the floor or not making eye contact, and resting the head in hands or covering the face. (The paradox in this study is that written, verbal reports of nonverbal behavior were accepted as nonverbal behavior.) Other nonverbal cues of remorse used in this study were a sad demeanor, slouching, and a red face. The most obvious sign of remorse was crying, and this nonverbal cue was found to be significant as well.

Verbal statements of remorse can be given by a transgressor to the person harmed in various ways. Verbal expressions of remorse include statements such as “excuse me,” “I’m so clumsy,” “I feel terrible,” or simply “I’m sorry.” Verbal expressions also can include offers to help and requests for forgiveness.⁸ In a legal context, a defendant can explain his or her actions in court and apologize, typically at the time of sentencing. Likewise, an expert witness can give an opinion on the defendant’s level of remorse.⁹

It is likely that verbal and nonverbal expressions of remorse affect observers in different ways. Past research suggests that nonverbal cues are more important in impression formation and communicating emotion than are verbal cues.^{10,11} However, Hall

and Mast¹² identified situations in which verbal cues are used more to infer thoughts and feelings in observation of natural conversation. They suggested that people first look to words, and then rely on nonverbal cues when the words are unhelpful or when there is an obvious incongruity between the two.

Remorse in a Legal Context

The research literature generally supports the notion that remorsefulness reduces the severity of sentences for convicted offenders.^{3,13,14} The defendant’s acceptance of responsibility for a crime plays a role in remorse.¹⁵ The Federal Courts follow a remorse paradigm in which acceptance of responsibility is recognized as an indication of remorse.¹⁴ Accepting responsibility for a transgression has been shown in many cases to be important in the perception of remorse.^{5,9,16} Remorse is seen as mitigating because it is often understood as the first step in the rehabilitation of a criminal. Remorse signifies that the criminal feels the pain and reality of what has been done and is not likely to commit the crime again, to avoid having these feelings.^{5,7,9} The commitment not to recidivate is a compelling argument to assign a lesser sentence to a criminal. Because remorse is related to the commitment not to recidivate, it is another example of how it is likely to reduce the length of sentences in the decisions of mock jurors.^{5,9}

In contrast Heise and Thomas¹⁷ asserted that a remorseful criminal will be judged as harshly as any other criminal, because remorse will not soften the perception of a criminal. Slovenko⁴ saw apologies and remorse quite differently from Heise and Thomas.¹⁷ He concluded that defendants who apologize are seen as more human, which goes against preconceived notions of how criminals should behave. This humanizing of criminals could, in effect, make sentencing decisions more lenient. Further, Robinson and colleagues⁷ theorized that criminals seem more at fault when they express no signs of remorse.

Need for Affect

The need for affect (NFA) is a personality trait defined by Maio and Esses as “the motivation to approach or avoid emotion-inducing situations” (Ref. 18, p 583). Individuals differ in the tendency to approach or avoid emotional situations. After devel-

oping a scale to measure NFA, they found that those high in the approach component of NFA were more likely to become emotionally involved in public events. In addition, they found that individuals high in this measure were more likely to express extreme opinions and to watch movies that elicited extreme emotions. People with a high need to avoid emotional situations did not engage in these activities.

Given that sentencing decisions can be an emotion-invoking experience, NFA may play a role in influencing sentencing. Maio and Esses¹⁸ suggested that the approach component may be related to positive affect or emotions, whereas the avoidance component may be related to negative affect or emotions. Therefore, those high in the need to approach emotional situations may be more inclined to choose the positive outcome, life over death in a capital trial situation and fewer years in other sentencing. Because negative affect correlates with the avoidance component, the opposite could be true. It may be speculated that people who avoid emotional situations assign the more negative outcome. Thus, the components of NFA may have direct effects on sentencing outcomes.

Method

Design

This project was modeled after Adams and Brodsky.⁹ (Their design was similar, but instead of having a defendant give an apology himself, an expert witness was recorded attesting to the defendant's level of remorse, either high or low.) We used a between-subjects 2×2 factorial design. The levels of each of the independent variables were the defendant's verbal behavior (remorseful versus nonremorseful) and defendant nonverbal behavior (remorseful versus nonremorseful). When defendant verbal and nonverbal behavior were remorseful, remorse was hypothesized to be present. However, when defendant verbal and nonverbal behavior were nonremorseful, the defendant was hypothesized to demonstrate a near absence of remorse. The dependent variables were sentencing recommendations in capital trials of life in prison without parole or the death penalty, as well as the perceived remorse of the defendant. A capital case was selected because only in such cases are jurors requested and allowed to make a sentencing recommendation. Thus, the use of capital sentencing increased the external validity of the research.

Participants

Participants were 206 Introductory Psychology students from a large, public southeastern university. For the overall sample, there were more female ($n = 137$, 66.5%) than male ($n = 67$, 32.8%) participants. Of those enrolled, 176 (85%) identified themselves as white, 19 (9%) as African American, 4 (2%) as Latin American, and 4 (2%) as other. The distribution was generally representative of the population from which the sample was taken. The minimum age of participants was 18 and the maximum was 23; the mean age was 18.68 (SD 0.85).

The University of Alabama Institutional Review Board granted approval for the research.

Data from participants who would not consider the death penalty (i.e., not death-qualified) were excluded from the analyses ($n = 20$). This reflects the standard set in *Wainwright v. Witt*, which requires all jury members to be death qualified or willing to assign the death penalty.¹⁹ Two people failed to answer the questions concerning death qualification and were excluded from analyses. Therefore, data from the remaining 184 participants were included in this study. The number of participants in each group was comparable.

Stimuli

Four courtroom simulation videos were created reflecting the four conditions of the independent variable. The videos were about five minutes long. The defendant had been convicted of capital murder and was awaiting sentencing. He had been in need of money and had robbed a store, killing an attendant during the robbery. In each video, the defendant gave verbal testimony consisting of an apology with remorse either present or absent. The transcripts for these statements were adapted from an actual trial in which the defendant apologized before the jury decided his sentence.²⁰ During one statement, the defendant apologized for the loss of life and the pain he had caused other people (remorseful verbal condition) and, during another, he showed shallow remorse by apologizing once to his own family and expressing regret over missed opportunities in his own life (nonremorseful verbal condition). The defendant was shown listening to the judge's instructions to the jury and demonstrating nonverbal behaviors of remorse (crying, looking down, hanging his head, and tensing his arms) or displaying a lack of remorse (keeping eye contact, expressing boredom

by looking around, passing notes to his lawyer, and smiling). The defendant was played by a 29-year-old Caucasian male actor. He wore a black suit and was clean shaven. Taping took place in a mock court room.

Measures

Demographic Questionnaire

A demographic information sheet was used to gather data about the participants' age, gender, college major, and race. Participants were asked about political orientation and opinions on the death penalty. If the participant indicated a strong opposition to the death penalty (indicating 1 or 2 on a 10-point scale), another question was posed to ascertain whether the participant would, in any case, ever consider assigning a sentence of the death penalty.

Sentencing Questionnaire

Created by Adams and Brodsky,⁹ the sentencing questionnaire consists of 10 Likert-type questions designed to assess jurors' decision-making processes during the sentencing phase of a capital trial.⁹ The questionnaire required the participant to choose a sentence of life in prison without parole or the death penalty.

Need for Affect Scale

The NFA scale was developed by Maio and Esses¹⁸ to measure an individual's desire or ability to approach or avoid emotional situations. It is composed of 26 items. Thirteen of these measure the need to approach emotions, and 13 measure the need to avoid them. A total score is tabulated by subtracting the avoidance score from the approach score. There is good internal consistency for the approach ($\alpha = .83$) and avoidance ($\alpha = .84$) scores.¹⁷ Cronbach's α values obtained in the present study for the approach (.85) and avoidance (.84) subscales were at equally acceptable levels. NFA subscales were used to examine how approach to emotion influenced sentencing decisions.

Remorse

A single Likert item was used to evaluate perceptions of remorse, where higher values reflected greater degrees of perceived remorse. Response options range from 1 (strongly disagree) to 5 (strongly agree that the defendant is remorseful). The item read "The defendant was remorseful." This item was adapted from the remorse questionnaire of Adams and Brodsky.⁹

Procedure

Participants read an information sheet that described their rights as participants, what would happen during the study, and the nature of informed consent. After consent, background information was read aloud to them on the guilt phase of the trial. This background information explained the terms mitigating and aggravating factors, and it also let participants know that their job was only to assign a sentence, as the defendant already had been found guilty by a jury. The participants then watched a video of the defendant during the mock trial. The segment of the trial featured the defendant giving a statement of apology and listening to the judge's instructions to the jury. The spoken apology was either high or low in remorse. The judge's instructions to the jury were always the same, but the defendant in the video demonstrated remorse or lack of remorse, depending on the experimental condition. Participants were randomly assigned to one of four conditions in which the video they watched included: a remorseful verbal apology and remorseful nonverbal behaviors, a remorseful verbal apology and nonremorseful nonverbal behaviors, a nonremorseful verbal apology and nonremorseful nonverbal behaviors, or a nonremorseful verbal apology and remorseful nonverbal behaviors. Following the videotape featuring the defendant's apology and behavior, participants completed the sentencing questionnaire, the NFA scale, and the overall rating of defendant remorse.

Hypothesis formulation was as follows (see Fig. 1 for details). There were three hypotheses about mock juror perceptions of defendant remorse:

H1a: Mock jurors viewing remorseful verbal behavior will rate the defendant as most remorseful, in comparison to those viewing nonremorseful verbal behavior.

H1b: Mock jurors viewing remorseful defendant nonverbal behavior will rate the defendant as most remorseful, in comparison to those viewing nonremorseful defendant nonverbal behavior.

H1c: Main effects in hypotheses 1a and 1b will be qualified by an interaction between defendant verbal and nonverbal behaviors, such that mock jurors viewing the combination of remorseful defendant verbal and nonverbal behaviors will rate the defendant as most remorseful compared with

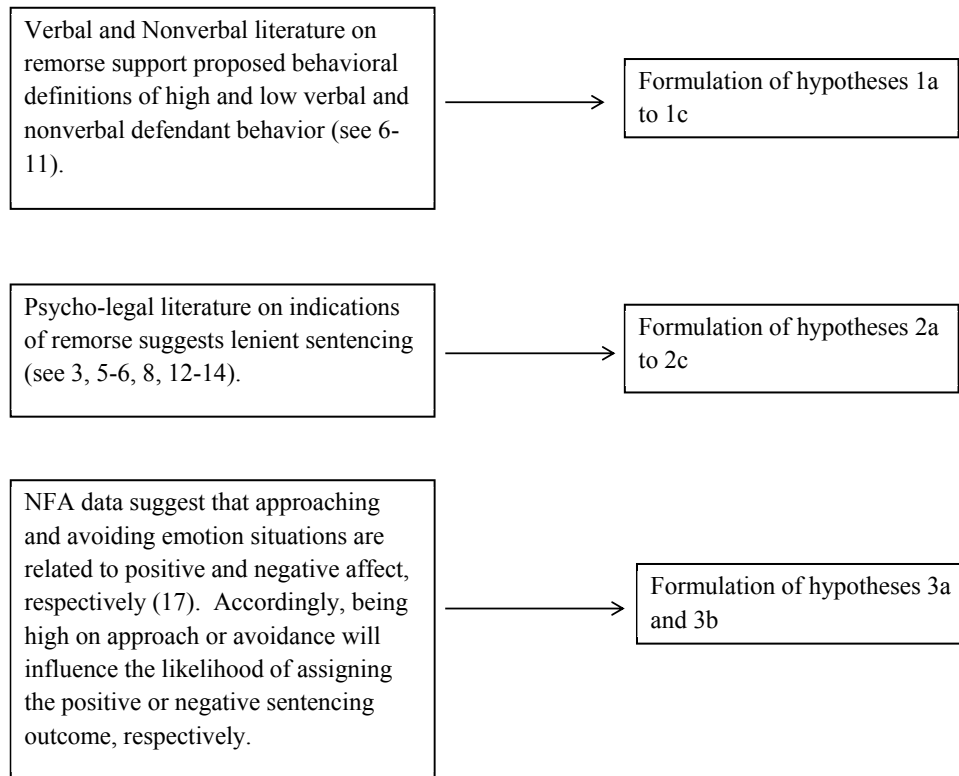


Figure 1. Literature summary for hypothesis formulation.

other combinations of witness remorse behaviors.

There were five hypotheses about mock juror sentencing decisions:

H2a: Mock jurors viewing remorseful verbal behavior will be more likely to recommend life without parole, in comparison to those viewing nonremorseful verbal behavior.

H2b: Mock jurors viewing remorseful defendant nonverbal behavior will be more likely to recommend life without parole, in comparison to those viewing nonremorseful defendant nonverbal behavior.

H2c: The main effects in hypotheses 2a and 2b will be qualified by an interaction between defendant verbal and nonverbal behavior, such that mock jurors viewing the combination of remorseful defendant verbal and nonverbal behaviors will be the most likely to recommend life without parole compared with other combinations of witness remorse behaviors.

H3a: Mock jurors more willing to approach emotion-inducing situations will be more likely to assign life in prison without parole.

H3b: Mock jurors who tend to avoid emotion-inducing situations will be more likely to assign the death penalty.

Results

Hypotheses 1a through 1c

To evaluate whether defendant verbal behavior and defendant nonverbal behavior had an effect on perceived levels of remorse, a 2 (defendant verbal behavior: remorseful versus nonremorseful) \times 2 (defendant nonverbal behavior: remorseful versus nonremorseful) ANOVA was conducted on mock juror ratings of remorse. The overall model including main effects of both verbal and nonverbal defendant behavior and their respective interaction were significant, ($F(3,179) = 5.36; p < .001$). Hypothesis 1a and 1c were unsupported, but hypothesis 1b was supported. There was no main effect for the verbal defendant behavior, nor was the interaction between

Defendant Behavior and Sentencing Decisions

Table 1 ANOVA Results for Verbal and Nonverbal Behavior on Perceptions of Remorse

	<i>F</i> (<i>df</i>)	<i>p</i>	η^2
VB	2.24 (1, 179)	.14	.01
NVB	14.14 (1, 179)	<.001	.07
VB × NVB	0.001 (1, 179)	.96	<.001

Bold, significant predictor variable. VB, defendant verbal behavior; NVB, defendant nonverbal behavior.

defendant verbal and nonverbal behavior significant (Table 1). However, the results indicated a significant main effect for the nonverbal defendant behavior variable, such that mock jurors in the remorseful nonverbal condition (mean (*M*) = 4.00, *SD* = 1.00) rated the defendant as more remorseful than those in the nonremorseful nonverbal condition (*M* = 3.34, *SD* = 1.35). These results suggest that the mock juror pays more attention to nonverbal behavior when perceiving remorse.

Hypotheses 2a through 2c

This set of hypotheses posited significant main effects and an interaction of defendant verbal and nonverbal behavior when predicting sentencing recommendation (life without parole versus death penalty). Binary logistic regression was used to assess these hypotheses. The collection of independent variables significantly predicted sentencing recommendation, ($\chi^2(3) = 11.49$; $p < .01$). Table 2 summarizes this model. Both the main effect for defendant verbal behavior and its interaction with defendant nonverbal behavior predicted sentencing recommendation.

Follow-up cross-tabulations showed the following sentencing patterns for each independent variable. Of the mock jurors viewing defendant nonremorseful verbal behavior, 79.8 percent (71/89) assigned life without parole, whereas only 75.0 percent (69/92) of mock jurors viewing defendant remorseful verbal behavior assigned life without parole. Thus, defendant nonremorseful verbal behavior was mildly

Table 2 Binary Logistic Regression of Defendant Behaviors Predicting Sentencing Recommendation

IV	Beta	SE	Wald	<i>p</i>	OR	OR 95% CI
VB	1.57	0.62	6.58	.01	4.81	1.45–15.99
NVB	0.59	0.49	1.43	.23	1.80	0.68–4.71
VB × NVB	–2.33	0.79	8.71	.003	1.10	0.02–0.46

Bold, significant predictor variable. IV, independent variable; SE, standard error of beta; OR, odds ratio; VB, defendant verbal behavior; NVB, defendant nonverbal behavior.

Table 3 Cross Tabulations of Assigning Life Without Parole by Remorse Behavior

	Low Verbal	High Verbal
Nonremorseful nonverbal	65.9% (27/41)	80.4% (37/46)
Remorseful nonverbal	91.7% (44/48)	69.6% (32/46)

Data are the percentage of the total group assigning a sentence of life without parole (number making the assignment/total group).

associated with lighter sentencing. However, the interaction between defendant verbal and nonverbal behavior was also significant and much more compelling. The percentages of those assigning life without parole are contained in Table 3. Overall, more lenient sentences were associated with inconsistent verbal and nonverbal remorseful behavior, whereas harsher sentences (i.e., the death penalty) were associated with congruency of verbal and nonverbal remorseful behavior.

Hypotheses 3a and 3b

Binary logistic regression was again used to assess NFA subscales (i.e., approach and avoidance) on sentencing recommendation. The collection of independent variables approached significance, ($\chi^2(2) = 5.05$; $p = .08$). Table 4 summarizes this model. The approach subscale emerged as a significant positive predictor of sentencing recommendations, whereas the avoidance subscale did not.

Discussion

The results of the present study begin to fill the need for understanding mock jurors' perceptions of defendant remorse. Mock jurors who viewed remorseful nonverbal behaviors rated the defendant as being the most remorseful. However, the interaction between verbal and nonverbal remorse did not influence mock juror perceptions of remorse. Our findings provide a better understanding of how jurors process and interpret a defendant's verbal and nonverbal behaviors. The tendency for observers to pay attention to nonverbal behaviors when rating remorse is consistent with the findings of Hall and

Table 4 Binary Logistic Regression of Need for Affect Subscales Predicting Sentencing Recommendation

IV	Beta	S.E.	Wald	<i>p</i>	OR	OR 95% CI
Approach	0.36	0.02	4.48	0.03	1.04	1.00–1.07
Avoidance	0.17	0.02	1.11	0.29	1.02	.98–1.05

Bold, significant predictor variable. IV, independent variable. SE, standard error of beta; OR, odds ratio.

Mast,¹² in the sense that nonverbal cues are more likely to be used to make judgments when verbal and nonverbal cues do not match.

There were no differences in sentencing outcome between high and low levels of nonverbal remorse. However, verbal cues of remorse were related to sentencing outcomes in that nonremorseful verbal behavior was linked to more lenient sentences. This seemingly counterintuitive finding was clarified by an interaction between defendant verbal and nonverbal cues of remorse. Sentencing was more favorable for defendants displaying incongruent verbal and nonverbal cues of remorse. Overall, these results may appear contrary to the fact that remorse often is highlighted as a straightforward mitigating factor in sentencing.^{3,14} One potential explanation for these findings is that mock jurors perceived congruent verbal and nonverbal behaviors as faking and therefore expected that the criminal would not be rehabilitated and would recidivate.^{5,9,16} Although seemingly counterintuitive, the context of sentencing may have influenced participants' perceptions, in that congruent verbal and nonverbal behaviors were judged as attempts at impression management as opposed to genuine remorse. In other words, mock jurors may have thought that the defendant's attempts were remarkably insincere.

Another potential explanation for our findings is that mock jurors did perceive sincere remorse in the congruent behavioral conditions, but they did not give the presence of remorse much weight in their evaluations of the defendant, leading to a higher frequency of death penalty sentences. Heise and Thomas¹⁷ asserted that people evaluate others' emotions and roles together to assess complete meaning. If this totality of judgment is the case, then the defendant in the high-remorse condition in totality was seen by mock jurors as being too bad for remorse to ameliorate the final judgment.

One final conjecture is that mock jurors viewing consistent verbal and nonverbal defendant behaviors saw and perceived sincere remorse. Because of the presence of remorse, mock jurors subsequently assumed that the defendant was guilty and aware of his guilt. This, in turn, may have resulted in assignment of the death penalty. This possibility draws on the remorse model described by Bornstein *et al.*¹⁶ concerning civil cases. The plaintiff in the civil case presented in that study was awarded more in damages when the defendant showed more remorse. Perhaps

the same trend concerning remorse and the resulting assumed guilt occurs in criminal cases. The mock jurors may have seen the remorse displayed by the defendant in the congruent conditions and assumed that he was not only guilty but deserved retribution. In a capital murder trial, the most retribution that can be made against a defendant is the death penalty.

Alternatively, mock jurors may only look for a moderate level of remorse. Consistent with empirical literature on witness confidence that shows moderate levels of confidence to be ideal,²¹ mock jurors may view medium levels of remorse as most appropriate. Too little remorse can come across as unemotional and deserving of the death penalty. On the other hand, too much remorse may be perceived as over the top and insincere, also leading to the death penalty. Maybe just the right, small but present amount of remorse was enough for the mock jurors to recognize and acknowledge it, but not be turned off by it, and give the sentence of life in prison without parole.

The subcomponents of the NFA scale were included to assess the influence of individual differences on predicting sentencing decisions. Mock jurors' need to approach emotionally charged situations affected the way they sentenced the defendant. The more one was willing to approach emotional events, the more likely that person was to assign a sentence of life in prison without parole. One possible explanation for this finding is that approach to affect, in and of itself, leads people to consider the positive emotional outcome (life) as opposed to the negative (death). The mock jurors' need to avoid emotionally charged situations had no significant effect on subsequent sentencing decisions. Those who tend to avoid emotional situations may simply not consider the positive or negative affective outcomes of sentencing.

Implications

NFA, and specifically the approach subscale, proved to be an important predictor of the sentencing decisions of mock jurors. There are both theoretical and practical implications of this finding. There is little research on NFA. Our study showed how NFA is related to the sentencing decisions of mock jurors. This finding contributes to existing knowledge about the validity of the NFA scale. Likewise, the reliability of the scale is good; thus, NFA appears to be a construct that is measured consistently across situations and is highly applicable in a legal setting.

The results of this study concerning NFA could be applied to the jury selection process. A common goal of attorneys during jury selection is to use questions to strike jury pool members possessing characteristics contrary to their side of the case.²² Law pertaining to jury selection as a practice has explicitly banned striking potential jurors based on demographic characteristics.²² However, the practice of jury selection commonly uses attitudes and traits to remove potentially biased jury pool members appropriately and ethically.^{22,23} Although concerns about unethical practice are legitimate, fail-safes on the part of judges and opposing counsel are in place to ensure fair, ethical practices in a trial. Concerning present findings, the fact that approaching emotional situations leads to more favorable sentencing decisions in capital murder trials could be of value to defense attorneys. Within supplemental jury questionnaires, the approach subscale of the NFA scale could be posed to potential jury members as a way to identify those who are lower in approaching emotional situations.

There are theoretical and practical implications of our remorse findings. As a result of this study, we have a clearer understanding of verbal and nonverbal remorse and their effects on mock jurors' sentencing decisions. For example, behavioral cues associated with nonremorse include lack of eye contact and a disinterested demeanor. Verbal and nonverbal remorse are separate constructs in regard to how they are perceived by viewers and how they independently relate to sentencing decisions. Moreover, the congruency of verbal and nonverbal remorse may matter in witness preparation. The condition with the fewest death penalty assignments included nonremorseful verbal behaviors and remorseful nonverbal behaviors, indicating that perhaps the most effective way to avoid the death penalty is for capital defendants to appear to be remorseful and avoid making an apology.

Limitations and Future Directions

This study has several limitations. For instance, the sample was taken from a university population. University populations are generally of higher socioeconomic status than the general population and minorities are less represented on most college campuses. Also, because of the sample, there was a restricted age range. There were no participants over the age of 23, and juries often are made up of persons much older than this decidedly youthful age. Re-

morse may affect people of different ages differently, limiting the generalizability of these results. These sampling issues make generalizability difficult. Further, in jury decision-making research it is helpful to have a deliberation phase to increase external validity; the current study did not. Finally, a conceptual limitation of this study is that remorse is still in its early conceptual development in the literature. The present study was limited to the use of a single item measure of remorse, limiting full assessment of remorse and related ideas. Furthermore, it would have been useful and informative to have included data pertaining to whether remorse was important for these participants in coming to their final sentencing decisions. It is feasible, therefore, that results of the present study tap only one aspect of perceptions of the larger emotional fields of regret and remorse.

Further research should include collecting data from a community sample to increase external validity or with a jury pool sample to increase ecological validity. Repeating this study with the addition of a deliberation phase would make the situation more like an actual trial. NFA¹⁸ proved to be important in the results of the current study. Further incorporation of this scale could be useful in replicating and extending the findings related to NFA for future jury decision-making research. It also may be helpful to add the variable of need for cognition to a replication of the current study, because NFA and need for cognition have been related in the literature.²⁴ Future work may also seek to develop a psychometrically comprehensive measure of perceived remorse to replicate and extend current knowledge in the area.

Acknowledgments

The authors thank Lisa Fletcher for her valuable assistance with the manuscript.

References

1. Neil M: Super-remorseful attorney gets less time for mortgage fraud. *ABA J*. Available at: http://www.abajournal.com/news/article/super-remorseful_attorney_gets_less_time_for_mortgage_fraud/. Accessed December 22, 2011
2. Morgan E: Judge chastises Bluffdale man for lack of remorse. *Desert News*. September 2010, p 1
3. Proeve MP, Smith DI, Niblow DM: Mitigation without definition: remorse in the criminal justice system. *Aust N Z J Criminol* 32:16–26, 1999
4. Slovenko R: Commentary: remorse. *J Psychol Law* 34:397–432, 2006
5. Weisman R: Showing remorse: reflections on the gap between expression and attribution in cases of wrongful conviction. *Can J Criminol Crim Just* 46:121–38, 2004

6. Lazare A: The apology dynamic. *AAOS Now* 33–5, 2010
7. Robinson DT, Smith-Lovin L, Tsoudis O: Heinous crime or unfortunate accident?—the effects of remorse on responses to mock criminal confessions. *Soc Forces* 73:175–90, 1994
8. Schlenker BR, Darby BW: The use of apologies in social predicaments. *Soc Psychol Q* 44:271–8, 1981
9. Adams DD, Brodsky SL: Cues to remorse: defendant nonverbal behaviors and expert witness testimony in capital sentencing 2007; Master's thesis (unpublished), University of Alabama, Tuscaloosa, AL, 2007
10. Bugental DE, Kaswan JW, Love LR: Perception of contradictory meanings conveyed by verbal and nonverbal channels. *J Pers Soc Psychol* 16:367–75, 1970
11. Mehrabian A, Wiener M: Decoding of inconsistent communications. *J Pers Soc Psychol* 6:109–14, 1967
12. Hall JA, Mast MS: Sources of accuracy in the emphatic accuracy paradigm. *Emotions* 7:438–46, 2007
13. Brooks JH, Reddon JR: The two-dimensional nature of remorse: an empirical inquiry into internal and external aspects. *J Offend Rehabil* 38:1–15, 2003
14. Eisenberg T, Garvey SP, Well MT: But was he sorry?—the role of remorse in capital sentencing. *Cornell L Rev* 83:1599–637, 1997
15. O'Hear MM: The Federal Sentencing Guidelines: ten years later: remorse, cooperation, and “acceptance of responsibility”—the structure, implementation, and reform of Section 3E1.1 of the Federal Sentencing Guidelines. *Nw U L Rev* 91:1507–73, 1997
16. Bornstein BH, Rung LM, Miller MK: The effects of defendant remorse on mock-juror decisions in a malpractice case. *Behav Sci Law* 20:393–409, 2002
17. Heise DR, Thomas L: Predicting impressions created by combinations of emotions and social identity. *Soc Psychol Q* 52:141–8, 1989
18. Maio GR, Esses VM: The need for affect: individual differences in the motivation to approach or avoid emotions. *J Pers* 69:583–615, 2001
19. Dillehay RC, Sandys MR: Life under *Wainwright v. Witt*: juror dispositions and death qualification. *Law Hum Behav* 20:147–65, 1996
20. CNN.com/Crime: Killer apologizes, asks jury to spare him. February 27, 2008. Available at: <http://www.cnn.com/2008/CRIME/02/25/cutts.trial/index.html#cnnSTCText>. Accessed April 24, 2008
21. Cramer RJ, Brodsky SL, DeCoster J: Expert witness confidence and juror personality: their impact on credibility and persuasion in the courtroom. *J Am Acad Psychiatry Law* 37:63–74, 2009
22. Liebermann JD, Sales BD. *Scientific Jury Selection*. Washington, DC: American Psychological Association, 2006
23. Cramer RJ, Adams DD, Brodsky SL: Jury selection in child sex abuse trials: a case analysis. *J Child Sex Abuse* 18:190–205, 2009
24. Haddock G, Maio GR, Arnold K, et al: Should persuasion be affective or cognitive?—the moderating effects of NFA and need for cognition. *Pers Soc Psychol Bull* 34:769–78, 2008