

Behavioral Science Briefs

for the

TRIAL ADVOCATE



A deep understanding of human behavior offers an edge to trial advocates. Yet the sheer volume of studies published each month in the behavioral sciences prevents most dedicated attorneys from remaining abreast of this rich literature base. In support of attorneys who seek to practice at the highest levels, two board-certified forensic psychologists regularly review the latest contents of hundreds of scholarly journals; analyze studies of greatest benefit to trial attorneys; and present key findings in a concise and simple format. The points-of-contact for this service, Dr. Daniel J. Neller and Dr. Maureen L. Reardon, can be reached by email at danieljneller@gmail.com and forensicpsych@reardonphd.com.

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Judicial & Individual Decision-Making

Brandon L. Garrett & John Monahan, *Judging Risk*, 108 CAL. L. REV. 101 (2020). The authors conducted several studies to understand how risk assessment influences judicial sentencing decisions in Virginia. In response to surveys, most judges embraced risk assessment at sentencing but perceived a lack of alternative sentencing options in their communities. Based on actual sentencing data, nearly half of offenders scoring in the lowest risk category received alternative sentences, most often supervised probation. The least frequently imposed alternative sentences included but were not limited to intensive supervision, drug court, and work release.

Bryan Holmes & Christopher D’Amato, *Judicial and Prosecutorial Decision-Making: Assessing the Effects of Race, Gender, and Age on Federal Downward Sentencing Departures, 2013-2016*. J. CRIME & JUST. (forthcoming). The authors studied variables associated with downward departures in more than 100,000 recent federal criminal cases. Nearly all cases were disposed of via plea, and nearly two-thirds were granted downward departures. Compared to their counterparts, the following groups had higher chances of being granted downward departures: females, Whites, college graduates, and defendants granted bail. By contrast, young Black males and offenders who used firearms or otherwise committed violent acts had lower chances of being granted downward departures.

Jennifer L. Maeng, et al., *Student Threat Assessment as an Alternative to Exclusionary Discipline*, J. SCHOOL VIOL. (forthcoming). The authors studied the disciplinary consequences of about 1,300 students who underwent threat assessments. Compared to students in schools that used other approaches, those in schools that used the Comprehensive Student Threat Assessment Guidelines were half as likely to be expelled or subjected to legal action.

Frank Zenker, *Generalization in Legal Argumentation*, 20 J. FOR. PSYCHOL. RES. & PRAC. 80 (2020). The authors presented vignettes to nearly 700 professional and lay judges in Sweden. Professional judges (but not lay judges) generally rated arguments as more persuasive when arguments were generalized (e.g., “Intoxicated people are unreliable witnesses”) rather than specific (e.g., “The witness had drunk 5 glasses of wine”). In a follow-on study, the authors found that law students expressed a similar preference for using generalized over

specific arguments, whereas social science students showed no such preference.

Jury Selection & Decision-Making

Whitney DeCamp & Elise DeCamp, *It's Still about Race: Peremptory Challenge Use on Black Prospective Jurors*, 57 J. RES. CRIME & DELIN'Y 3 (2020). The authors analyzed the use of peremptory challenges in nearly 100 criminal trials in Mississippi. After the authors removed from the dataset all venire members who had been struck for cause, they used a statistical technique to match the remaining 2,500 venire members on all variables except race. Compared to Whites, Black venire members were nearly 5 times as likely to be struck by the prosecution; the reverse pattern was found for the defense. These findings held irrespective of defendant race.

Rebecca L. Fix, et al., *Simulated Judicial Decision-Making for African and European American Adolescents with Illegal Sexual Behavior: The Impact of Medical Data and Victim Race/Ethnicity*, BEH. SCI. & L. (forthcoming). The authors presented juvenile sex offense case vignettes to nearly 1,000 US undergraduates to study relationships between gender, race, medical evidence, and case outcomes. The presence of potentially corroborative medical evidence was the strongest predictor of multiple outcomes, including support for delinquency adjudication. Support for delinquency adjudication was not impacted by defendant or victim race; however, when defendants were Black and victims were White girls, support increased for juvenile transfer and stringent sex offender registration and notification requirements.

Ross Kleinstuber, et al., *"Ideal Victims" in Capital Penalty Hearings: An Assessment of Victim Impact Evidence and Sentencing Outcomes*, 43 J. CRIME & JUST. 109 (2020). The authors studied 28 capital penalty hearings held in Delaware from 2001-2011, when juries in that jurisdiction merely advised judges on capital sentencing. As the number of jurors who voted in favor of a death sentence increased, so did the likelihood that judges would ultimately sentence defendants to death. Victim impact statements did not influence jury recommendations or judicial decisions regarding death sentences. Judges, but not juries, were more likely to choose a death sentence when several features matched a prototype: a stranger murdered a relatively weaker, middle-class, white female as she carried out a respectable activity in a legitimate location.

Brian Manata, *Investigating the Impact of Racial Diversity in Decision-Making Groups: The Moderating Role of Relationship Conflict*, NEGOT. & CONFL. MGMT. RES. (forthcoming). In a small sample of undergraduates, racial diversity was associated with increasingly accurate group decision-making, but only when conflict between group members remained low.

Amelia Mindthoff, et al., *Juror Perceptions of Intoxicated Suspects' Interrogation-Related Behaviors*, 47 CRIM. JUST. & BEH. 222 (2020). The authors surveyed 2 large samples of potential jurors to study perceptions of statements made by drunk suspects. The more impaired a suspect appeared during interrogation, the less likely potential jurors were to vote in favor of a guilty verdict.

Negotiation, Persuasion, Influence

Maria Laura Bettinsoli, et al., *The Distinct Contributions of Cause-Effect Order and Reasoning Type in Judgments of Causality*, J. COGNIT. PSYCHOL. (forthcoming). In 6 experiments, the authors studied the influence of the order in which words are presented on the subsequent causal judgments people make. Links between 2 connected elements were viewed as stronger when causes were listed before effects (e.g., smoking and lung cancer) rather than vice versa (e.g., lung cancer and smoking).

Helen Fraser, *Enhancing and Priming at a Voir Dire: Can We Be Sure the Judge Reached the Right Conclusion?*, AUS. J. FOR. SCI. (forthcoming). In these experiments, participants were split into groups and provided different versions of a transcript. Next, they listened to an audio recording that contained an indistinct statement. All audio recordings were identical. The transcript version that participants read before listening to the recordings influenced what they later reported "hearing" in the indistinct statement.

John Monahan, et al., *Risk Assessment in Sentencing and Plea Bargaining: The Roles of Prosecutors and Defense Attorneys*, BEH. SCI. & L. (forthcoming). The authors surveyed about 100 prosecuting and defense attorneys in Virginia about their consideration of risk assessment data during plea negotiations and at sentencing hearings. Most survey respondents stated recidivism risk should be considered at sentencing. Most endorsed invoking risk at least "sometimes" when advocating for sentence length. Nearly half invoked risk during plea negotiations.

Credibility

Ryousuke Iida, et al., *How Do We Judge Our Confidence? Differential Effects of Meta-Memory Feedback on Eyewitness Accuracy and Confidence*, *APPL. COGNIT. PSYCHOL.* (forthcoming). In 2 experiments, the authors studied the relationship between recall accuracy and confidence among Japanese undergraduates who viewed a video of a mock crime. Participants were falsely told they had previously scored high or low on a memory test. Compared to those who were told they had scored low, participants told they had scored high were more confident – but no more accurate – in their “testimony” about the mock crime.

Albert Lee, et al., *Fear Goliath or David? Inferring Competence from Demeanor across Cultures*, *PERS. & SOC. PSYCHOL. BULL.* (forthcoming). Across cultures, people often judge credibility on the basis of an individual’s competence and warmth. In several studies conducted by the authors, Americans generally viewed as competent those individuals and organizations that showed traditional signs of strength (e.g., assertiveness, competitiveness), whereas Chinese generally viewed as competent those individuals and organizations that showed no such signs.

Maria Cristina Russo, et al., *Asylum Seekers: Forensic Remarks Regarding 185 Cases*, *60 MED. SCI. & L.* **30**. (2020). The authors studied consistency of self-reported physical maltreatment and medical examination results of 185 people seeking asylum in Italy. Nearly all medical exams revealed dermatological findings consistent with self-reported physical maltreatment and torture (e.g., scarring, missing toenails, etc.).

Interview & Interrogation

Sydney L. Erickson, et al., *The Predictive Power of Intelligence: Miranda Abilities of Individuals with Intellectual Disability*, *L. & HUM. BEH.* (forthcoming). The authors studied understanding of *Miranda* rights in a small sample of people diagnosed with Intellectual Disability (ID). Compared to the general population, people with ID – especially those with low verbal abilities – knew less about their *Miranda* rights, learned less from standard warnings, and agreed more often to surrender rights.

Laura Fallon & Brent Snook, *Beyond Common Sense and Human Experience: Lay Perceptions of Witness Coercion*, *47 CRIM. JUST. & BEH.* **208** (2020). Prior research

with suspects indicates risk for false confessions increases when police use two subtle interrogation techniques: *minimization* (e.g., downplaying the severity of the act) and *maximization* (e.g., suggesting negative consequences for withholding information). From a sample of about 300 Canadians, the authors solicited views on the use of these two techniques in witness interviews. Study participants rated minimization as more effective than maximization for: gathering information from witnesses, helping witnesses feel in control, and fostering in witnesses positive feelings toward the interviewer. They also rated minimization as less coercive than maximization.

Ron E. Hassner, *What Do We Know about Interrogational Torture?*, *INT’L J. INTEL. & COUNTER.* (forthcoming). Based on his review of literature, the author contends firm judgments about the effectiveness of harsh interrogation methods cannot be made on the basis of available scientific evidence.

Sunghwan Kim, et al., *Observing Rapport-Based Interpersonal Techniques to Gather Information from Victims*, *PSYCHOL. PUB. POL’Y & L.* (forthcoming). The authors analyzed 103 hours of recorded investigative interviews of 86 alleged sexual offense victims in South Korea. Interviewers who approached victims in an honest, empathic, and nonjudgmental way experienced improved interactions; this, in turn, was associated with the gathering of greater amounts of useful information. By contrast, interviewers who approached victims in a negative (e.g., judgmental, argumentative, unfriendly) manner decreased victim responding, which in turn was associated with reduced information yield.

Professional Well-Being & Effectiveness

Xiao Chen, et al., *An Enumerative Review and a Meta-Analysis of Primed Goal Effects on Organizational Behavior*, *APP. PSYCHOL.* (forthcoming). *Priming* is a technique whereby exposure to a stimulus – typically without awareness – influences ideas, feelings, attitudes, or behaviors. The authors examined 23 studies that had analyzed the effect of priming on goal attainment in the workplace. Results indicate workers improve their job performance when their goals are primed.

James N. Donald, et al., *Mindfulness and Its Association with Varied Types of Motivation: A Systematic Review*

and Meta-Analysis Using Self-Determination Theory, PERS. & SOC. PSYCHOL. BULL. (forthcoming). *Mindfulness* is the open and receptive awareness of the present moment, with respect to internal phenomena (e.g., emotions, needs) and external conditions (e.g., pressures). In this review of nearly 90 studies involving about 25,000 participants, mindfulness was shown to be associated with increased engagement in activities out of a sense of inherent interest.

Stefan Razinskas & Martin Hoegl, A Multilevel Review of Stressor Research in Teams, J. ORG. BEH. (forthcoming). Based on their systematic review of research findings, the authors propose a model for understanding how a range of stressors can impact job performance. They offer many “key takeaways” from the research, including but not limited to the following: team-based job rotations reduce time pressure and workload; moderate levels of time pressure enhance creativity of team members; during times of organizational change, dissemination of change-relevant information reduces ambiguity and overload; and family demands can foster teamwork when coworker and supervisor support are high.

Other Psycho-Legal Topics

David Detullio, et al., A Meta-Analysis of the Miller Forensic Assessment of Symptoms Test (M-FAST), 11 PSYCHOL. ASSESS. 1319 (2019). The M-FAST is a tool designed to assess feigned mental illness. In their analysis of over 20 studies involving more than 2,000 examinees, the authors found the M-FAST discriminates well between feigners and honest responders. But, as many as 20% of honest responders may be falsely identified as feigning at the standard cutoff score.

FEDERAL BUREAU OF INVESTIGATION, A STUDY OF LONE OFFENDER TERRORISM IN THE UNITED STATES, 1972-2015 (2019). The FBI studied 52 lone actors who committed terrorist acts in the US. All were men. Most were white, single, 18-44 years old, and unemployed with no children. Most had a history of arrests as an adult and either had or were suspected of having mental health problems. Most had previously stated violence was justifiable in the service of a cause. Nearly all had authored letters describing their grievances, ideologies, or intentions. Most had unsuccessfully attempted to procure explosives before using legally-obtained

firearms to carry out attacks. Most chose targets with minimal or no security measures.

Mark Levine, et al., Rethinking the Bystander Effect in Violence Reduction Training Programs, SOC. ISS. & POL'Y REV. (forthcoming). Based on their review of research findings, the authors contend violence reduction programs should (a) explain that the presence of multiple bystanders is associated with reduced risk to victims and bystanders, (b) train individuals to recognize when others are intervening and encourage them to support those efforts, (c) bolster norms of intervention among groups that share a common identity, and (d) deliver training in places where violent events occur rather than exclusively in classroom settings.

Gianni Pirelli & Patricia Zapf, An Attempted Meta-Analysis of the Competency Restoration Research: Important Findings for Future Directions. J. FOR. PSYCHOL. RES. & PRAC. (forthcoming). The authors reviewed more than 1,000 competency restoration studies that had been published over a 40-year period. A subset of those studies showed that 4 out of 5 defendants are ultimately restored to competency, usually within 5 to 6 months. Available studies lacked sufficient data to systematically determine the specific types of defendants or treatment programs most likely to achieve successful competency restoration outcomes.

Public Attention & Announcements

Random House recently published *Charged: The New Movement to Transform American Prosecution and End Mass Incarceration*.

RAND recently released *Real-Time Crime Centers in Chicago: Evaluation of the Chicago Police Department's Strategic Decision Support Centers*.

The American Psychology-Law Society annual conference is scheduled for March 4-7 in New Orleans. CLE credits are available for the first day.

The 46th American Bar Association National Conference on Professional Responsibility is scheduled for May 27-29 in New Orleans.

John E. Reid & Associates recently announced its 2020 interrogation training schedule. Notable opportunities include Santa Fe in April, Las Vegas in May, and Colorado Springs in June.