

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 level, 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

Shauna M. Bowes et al., *Cognitive Biases, Heuristics, and Logical Fallacies in Clinical Practice: A Brief Guide for Practicing Clinicians and Supervisors*, PROF. PSYCHOL. RES. PRAC. (forthcoming). The authors describe several biases that impact decision-making. As examples, people tend to: (a) be overly influenced by initial information and fail to update opinions when necessary; (b) seek confirming evidence and fail to seek disconfirming evidence; (c) allow salient but irrelevant information to dilute less salient but more relevant information; and (d) use moods to inform opinions.

Jacqueline G. Lee & Rebecca L. Richardson, *Race, Ethnicity, and Trial Avoidance: A Multilevel Analysis*. 31 CRIM. JUS. POL'Y REV. 422 (2020). The authors analyzed nearly 60,000 criminal case dispositions from 40 urban counties. Compared to Whites, Blacks were half as likely to plead guilty rather than go to trial. Compared to those represented by private attorneys, defendants represented by public defenders were about one-third more likely to have cases dismissed.

Enide Maegherman et al., *Test of the Analysis of Competing Hypotheses in Legal Decision-Making*, APPL. COG. PSYCHOL. (forthcoming). Nearly 200 law students were split into groups and offered brief trainings: one on confirmation bias, the other on a technique designed to overcome bias. Both groups read a criminal case vignette, rated likelihood of suspect guilt, and were invited to ask questions about the mock case. De-biasing training had no effect on the quality of questions asked. Both groups initially viewed the suspect as guilty; asked more questions that targeted exonerating than incriminating information; and, after asking questions, were less likely to be convinced of the defendant's guilt.

Jury Selection & Decision-Making

Laura Cutroni & Joel Anderson, *Lady Injustice: The Moderating Effect of Ambivalent Sexism in a Mock Case of Intimate Partner Homicide*, CRIM. JUS. BEH. (forthcoming). Over 200 jury-eligible adults reviewed simulated court transcripts involving a male or female defendant accused of killing a physically abusive spouse. Among other findings, female jurors with hostile, sexist attitudes toward women were inclined to render unfavorable outcomes toward female defendants.

Kelli L. Dickerson et al., *Do Laypersons Conflate Poverty and Neglect?* L. HUM. BEH. (forthcoming). Adults reviewed vignettes about a single mother depicted as

impoverished or neglectful, and were asked if a report should be made to child protective services. Neglect situations were correctly identified by most participants; however, many participants misidentified poverty, especially homelessness, as reportable neglect irrespective of mother's race.

Brandon L. Garrett et al., *Mock Jurors' Evaluation of Firearm Examiner Testimony*. L. HUM. BEH. (forthcoming). In several studies, the authors examined whether an expert's certainty affected mock jurors' assessments of the expert's accuracy or a defendant's guilt. More cautious wording (e.g., "cannot exclude") was associated with lower estimates of expert accuracy and fewer guilty verdicts. Cross-examination had no meaningful impact on credibility ratings or verdicts.

Taylor M. Jones et al., *Child Victim Empathy Mediates the Influence of Jurors' Sexual Abuse Experiences on Child Sexual Abuse Case Judgments: Meta-Analysis*. PSYCHOL. PUB. POL'Y L. (forthcoming). The authors analyzed a set of mock trial studies involving nearly 2500 subjects. Subjects who reported a history of having been, or of knowing someone who had been, sexually assaulted: (a) obtained relatively high scores on measures of empathy for child sexual abuse victims, and (b) were more likely than other subjects to rate child victims as credible. Subjects with a personal history of child sexual abuse were more likely than those without such a history to side with the prosecution.

Bonnel A. Klentz et al., *The CSI Effect and the Impact on DNA Evidence on Mock Jurors and Jury Deliberations*, 26 PSYCHOL. CRIM. L. 552 (2020). Nearly 200 college students reported their frequency of viewing crime dramas, read a crime vignette, offered initial impressions of the defendant's guilt, then engaged in mock deliberations. Findings provided mixed support for "the CSI effect" – a reduced willingness to convict based on a perceived absence of evidence possibly due to unrealistic expectations. Notably, the evidence in support of a CSI effect was attenuated by deliberations.

Tiffany N. Troung et al., *Does Psychopathy Influence Juror Decision-Making in Capital Murder Trials? "The Devil is in the (Methodological) Details."* CRIM. JUS. BEH. (forthcoming). A sample of death-qualified, jury-eligible undergraduates were presented a murder case vignette and instructed to recommend punishment. Irrespective of expert opinion on the offender's mental state, subjects rated the offender as highly psychopathic.

Subjects were as likely to recommend death sentences for psychopaths as for schizophrenics.

Negotiation, Persuasion, Influence

Hillie Aldering et al., *Constituency Norms Facilitate Unethical Negotiation Behavior Through Moral Disengagement*, 29 GRP. DEC. NEG. 969 (2020). In 4 experiments, subjects demonstrated greater willingness to engage in unethical conduct during negotiations (e.g., make false promises, offer false information) when they represented constituents rather than negotiated for themselves. When constituents expressed relaxed ethical standards, subjects were even more likely to justify transgressions, morally disengage from their behavior, and use unethical negotiation tactics.

Amy Bradfield Douglass et al., *Cowitness Identification Speed Affect Choices from Target-Absent Photospreads*, L. HUM. BEH. (forthcoming). Across 3 studies, subjects viewed mock crime videos and were instructed to identify the suspect from a photo line-up. None of the lineups actually contained the suspect. A research assistant posing as a "co-witness" also made a line-up decision. When co-witnesses quickly picked a suspect, research subjects were influenced to pick a suspect, leading to an increased rate of erroneous identifications.

Michael Greenstein & Nancy Franklin, *Anger Increases Susceptibility to Misinformation*. EXP. PSYCHOL. (forthcoming). Undergraduates were split into two groups. One group was subjected to an anger-provoking event, and the other was not. Next, all of them took a "test" that included misleading information. Compared to their counterparts, participants exposed to the anger-inducing event were more susceptible to believing false data.

Credibility

Nancy R. Downing et al., *Factors Associated with Law Enforcement Reporting in Patients Presenting for Medical Forensic Examinations*, J. INTERP'L VIOL. (forthcoming). The authors analyzed medical records of nearly 350 women who had been examined following allegations of sexual assault victimization. About half reported the event to law enforcement (LE). Odds of reporting to LE increased among those who: (a) were non-students, (b) had not consumed alcohol, (c) experienced penetration, (d) suffered injury, and (e) had medical exams within 2 calendar days of the alleged incident. The following variables were not associated

with LE reporting: knowing the assailant, having multiple alleged assailants, or victim or assailant race.

Charlotte A. Hudson et al., *Veracity is in the Eye of the Beholder: A Lens Model Examination of Consistency and Deception*, 34 APPL. COG. PSYCHOL. 996 (2020). The authors studied the ability of nearly 300 laypersons to make accurate judgments of the veracity of statements. Subjects performed no better than chance. The “cues” they stated they had relied upon were unrelated to actual veracity. Moreover, statistical analyses showed that the cues subjects stated they had relied upon were not the cues that they actually had relied upon.

Robin S. S. Kramer & Georgina Gous, *Eyewitness Descriptions without Memory: The (f)Utility of Describing Faces*, 34 APPL. COG. PSYCHOL. 605 (2020). In 3 experiments, people often failed to reliably describe images of faces while actively looking at them.

Rachel Lee Greenspan & Elizabeth F. Loftus, *Eyewitness Confidence Malleability: Misinformation as Post-Identification Feedback*, L. HUM. BEH. (forthcoming). In 2 studies, adults viewed simulated crime videos, made a line-up identification (ID), and immediately rated their level of confidence in the ID. One week later, some were told their ID was correct, others were told their ID was incorrect, and still others received no feedback on accuracy. The group that was provided feedback that their IDs were correct showed increased confidence that their IDs were correct. The same effect was observed for the group that received no feedback on accuracy.

Interview & Interrogation

Feni Kontogianni et al., *“Tell Me More About This...”: An Examination of the Efficacy of Follow-Up Open Questions Following an Initial Account*, 34 APPL. COG. PSYCHOL. 972 (2020). In 2 experiments, small samples of participants provided initial recall of mock crimes, then were asked open-ended follow-up questions. Follow-up questions prompted additional but less accurate information. Participants’ decline in accuracy was not matched by a decrease in confidence.

Timothy J. Luke & Fabiana Alceste, *The Mechanisms of Minimization: How Interrogation Tactics Suggest Lenient Sentencing Through Pragmatic Implication*, L. HUM. BEH. (forthcoming). In 6 studies, participants reviewed interrogation transcripts in which questions were based on evidence or in which a minimization tactic was used (e.g., downplayed offense severity, discussed

benefits of honesty, promised leniency). When interrogators downplayed offense severity, participants viewed suspects as less blameworthy and, as a result, expected leniency. Similarly, participants expected leniency when interrogators emphasized honesty. Expectations of leniency held in the absence of direct promises and despite warnings to the contrary.

Alena Nash et al., *Facing Away from the Interviewer: Evidence of Little Benefit to Eyewitnesses’ Memory Performance*, APPL. COG. PSYCHOL. (forthcoming). In 4 experiments, the authors studied whether accuracy of mock witnesses’ recall was impacted by eye gaze. Overall, accuracy of recall was similar whether witnesses gazed at interviewers, interviewers gazed at witnesses, or witnesses closed their eyes.

Jordan Nunan et al., *Source Handler Telephone Interactions with Covert Human Intelligence Sources: An Exploration of Question Types and Intelligence Yield*, APPL. COG. PSYCHOL. (forthcoming). The authors analyzed over 100 audio recordings of telephone interactions between police officers and criminal informants. Officers asked nearly 4 times more appropriate (e.g., open-ended, probing) than inappropriate (e.g., closed, forced-choice) questions. Appropriate questions elicited nearly 90% of the total information gathered.

Zsofia A. Szojka et al., *Narrative Coherence in Multiple Forensic Interviews with Child Witnesses Alleging Physical and Sexual Abuse*, 34 APPL. COG. PSYCHOL. 943 (2020). The authors analyzed transcripts of police interviews of 28 alleged victims of child physical or sexual abuse. Most details were elicited via closed-ended questions. Nearly as many new details (and a greater number of new sensitive details) emerged in the follow-up interview as in the first interview. Number of details increased as child age increased.

Professional Well-Being & Effectiveness

Derek K. Chu et al., *Physical Distancing, Face Masks, and Eye Protection to Prevent Person-to-Person Transmission of SARS-CoV-2 and COVID-19: A Systematic Review and Meta-Analysis*, 395 LANCET 1973 (2020). The authors analyzed the effectiveness of protective measures on coronavirus transmission in 172 observational studies conducted in 16 countries across 6 continents. Maintenance of physical distance of 1 meter was associated with a fivefold reduction in transmission;

each additional meter further and significantly reduced risk. Likewise, use of face masks was associated with a fivefold reduction in transmission.

B.P.H. Hui et al., *Rewards of Kindness? A Meta-Analysis of the Link between Prosociality and Well-being*, PSYCHOL. BULL. (forthcoming). In an analysis of over 200 studies and nearly 200,000 adults, the authors found little to no relationship between prosociality and mental well-being in general.

Olaya Moldes & Lisbeth Ku, *Materialistic Cues Make Us Miserable: A Meta-Analysis of the Experimental Evidence for the Effects of Materialism on Individual and Societal Well-Being*, 37 PSYCHOL. MKTG. 1396 (2020). In an analysis of nearly 30 experiments, cues intended to induce a temporary focus on materialism (i.e., on money and acquisition) caused moderately reduced well-being. Materialistic cues even more strongly reduced the ability to establish and develop relationships with others.

Nader Salari et al., *Prevalence of Stress, Anxiety, Depression among the General Population during the COVID-19 Pandemic: A Systematic Review and Meta-Analysis*, 16 GLOBAL’N HEALTH 57 (2020). The authors analyzed 17 studies that had measured the prevalence of stress, anxiety and depression among the general population during the early stages of the COVID-19 pandemic. Based on data from over 60,000 people, roughly 1 in 3 individuals reported significant levels of stress, anxiety, depression, or possibly some combination thereof.

Other Psycho-Legal Topics

Sarah L. Carthy et al., *Counter-Narratives for the Prevention of Violent Radicalization: A Systematic Review of Targeted Interventions*, 16 CAMPB. SYST. REV. 1 (2020). The authors analyzed 19 studies that had examined the effect of counter-narratives on narratives that promote extremist violence. Counter-narratives had a small but inconsistent effect on reducing violence risk and violent outcomes.

Kathryn A. Cunningham, *Advances in Juvenile Adjudicative Competence: A 10-Year Update*, BEH. SCI. L. (forthcoming). In this literature review, the author describes recent key findings in juvenile competence research including: (a) the interactive effects of age, intellect, mental illness, and aspects of developmental immaturity on adjudicative competence; and (b) recent studies addressing standards for assessment,

remediation, and legal or systemic issues. She offers recommendations for practice and policy.

Tanaya Devi & Roland G. Fryer, Jr., *Policing the Police: The Impact of “Pattern-or-Practice” Investigations on Crime (Working Paper No. 27324)*, NAT’L B. ECON. RES. (forthcoming). Government agencies investigate police officers and departments following deadly force incidents. In this sophisticated study, the authors found that investigations sparked by “viral” incidents were associated with a sharp decrease in policing activities, followed by a sharp increase in homicide and total crime rates – resulting in nearly 900 additional homicides and 35,000 additional felonies over two years. By contrast, investigations conducted in the absence of viral incidents reduced crime rates but not policing activities.

Anthony D. Perillo et al., *Evaluating Selection for Sexually Violent Predator (SVP) Commitment: A Comparison of Those Committed, Not Committed, and Nearly Committed*, PSYCHOL. PUB. POL’Y L. (forthcoming). About half of jurisdictions allow for post-incarceration civil commitment of sexually violent predators (SVPs) based partly on sexual recidivism risk. In this study, the authors found commitment decisions in New Jersey were properly focused on known risk factors; notably, recidivism among “nearly committed” SVPs was low.

Gina M. Vincent & Jodi L. Viljoen, *Racist Algorithms or Systemic Problems? Risk Assessments and Racial Disparities*, CRIM. JUS. BEH. (forthcoming). Risk assessment instruments (RAIs) are racially biased only if their scores function differently for different racial groups. In their analysis of peer-reviewed studies published since 2000, the authors found no valid evidence that RAIs are racially biased.

Public Attention & Announcements

The National Association of Criminal Defense Lawyers recently released a report, *Risk Assessment Tools in the Criminal Legal System – Theory and Practice*.

Picador Paper recently published in paperback, *Conversations with RBG*, authored by Jeffrey Rosen.

Yale University Press recently published *American Contagions: Epidemics and the Law from Smallpox to COVID-19*, authored by John Fabian Witt.

Harvard University Press is offering a 30% discount for all website-wide purchases through December 31, 2020.