

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

Noah Painter-Davis & Jeffrey T. Ulmer, *Discretion and Disparity under Sentencing Guidelines Revisited: The Interrelationship between Structured Sentencing Alternatives and Guideline Decision-Making*, 57 *J. RES. CRIM. DELINQ'Y* 263 (2020). The authors analyzed five years of sentencing data from Pennsylvania. Roughly 95% of cases were resolved by guilty pleas. About 20% of eligible offenders received downward departures (DDs), and 2% of all cases received upward departures (UDs). Minorities were as likely as Whites to receive DDs. Although minorities were more likely than Whites to receive UD, the authors did not control for several variables that could have explained the apparent sentencing disparity.

Victoria A. Terranova et al., *An Examination Across Role in the Initial Pretrial Release Decision*, 47 *CRIM. JUST. BEH.* 927 (2020). Nearly 400 court officials responded to a survey; they were asked to rate the value of pretrial risk assessment on a scale from 1 (*not helpful at all*) to 10 (*extremely helpful*). Of all judges in the sample, about three-quarters offered ratings of 6 or higher, and half offered ratings of 8 or higher.

Cristina G. Wilson et al., *Evidence of Vulnerability to Decision Bias in Expert Field Scientists*, 34 *APPL. COG. PSYCHOL.* 1217 (2020). A small sample of field scientists read several vignettes, then made decisions involving unpredictable outcomes where they received no clear, immediate feedback. Scientists were susceptible to common decision-making biases. Overall, susceptibility to bias was not influenced by their years of experience.

Jury Selection & Decision-Making

Christoph Engel et al., *Coherence-Based Reasoning and Order Effects in Legal Judgments*, 26 *PSYCHOL. PUB. POL'Y L.* 333 (2020). In two studies, undergraduates serving as mock jurors were influenced more strongly by evidence presented last than at other stages. Additionally, they overvalued evidence that supported their “verdicts” and undervalued evidence that conflicted with their verdicts, particularly when they judged the defendant to be guilty.

Kelsey S. Henderson & Lora M. Levett, *The Effects of Variations in Confession Evidence and Need for Cognition on Jurors' Decisions*, 26 *PSYCHOL. PUB. POL'Y L.* 245 (2020). In two experiments, participants read a trial summary in which a defendant's confession was either consistent or inconsistent with case facts, and in which evidence was either withheld or disclosed during interro-

gation. Overall, when evaluating confession evidence and rendering “verdicts,” participants considered the consistency of confessions and case facts, but they did not fully consider whether or not those facts had been disclosed or withheld during interrogation.

Robert J. Norris & Kevin J. Mullinix, *Framing Innocence: An Experimental Test of the Effects of Wrongful Convictions on Public Opinion*, 16 J. EXP. CRIM. 311 (2020). The authors surveyed large samples of residents across the US. Racial minorities and liberals supported capital punishment less strongly than did Whites and conservatives. Capital punishment support was reduced when numerical information about wrongful convictions was provided, and when a brief, realistic and sympathy-inducing story about wrongful conviction was included.

Suzanne St. George et al., “Did You Ever Fight Back?” Jurors’ Questions to Children Testifying in Criminal Trials About Alleged Sexual Abuse, 47 CRIM. JUST. BEH. 1032 (2020). The authors analyzed questions that jurors had submitted following the testimony of 134 children who alleged they had been sexually abused. Jurors’ likelihood of submitting questions increased as alleged victim age and alleged incident count increased. Questions involved five themes: (1) *Specific dynamics and mechanics* (e.g., body parts, duration, resistance); (2) *Context* (e.g., antecedents, location); (3) *Reaction* (e.g., condition following abuse, efforts to avoid defendant); (4) *Disclosure* (e.g., when, where and to whom the child reported abuse); and (5) *Background information* (e.g., sexual knowledge and experience, sleeping arrangements, drug use).

Ashmyra Voogt et al., *The Impact of Extralegal Factors on Perceived Credibility of Child Victims of Sexual Assault*, 26 PSYCHOL. CRIM. L. 823 (2020). In this experiment, over 200 laypeople read transcripts of child sexual abuse interviews. Laypeople viewed younger children as slightly more credible than older children. Greater victim credibility was associated with stronger perceptions of defendant guilt.

Negotiation, Persuasion, Influence

William Hart et al., “You Are What You Read:” Is Selective Exposure a Way People Tell Us Who They Are? 111 BRIT. J. PSYCHOL. 417 (2020). In a series of experiments, participants sought information that supported their views; avoided information that

contradicted their views; and conceptualized information gathering as a vehicle for authentically and proudly expressing their personal attitudes and beliefs to others.

Kelsey S. Henderson & Reveka V. Shteynberg, *Plea Decision-Making: The Influence of Attorney Expertise, Trustworthiness, and Recommendation*, 26 PSYCHOL. CRIM. L. 527 (2020). In a pilot study of a larger experiment, a small sample of community members indicated attorneys’ expertise rests most on (a) familiarity with the law, (b) understanding of legal options and consequences, and (c) awareness of case facts. They indicated trustworthiness is most indicated by attorneys: (d) doing what they say they will, (e) being honest about possible outcomes, and (f) seemingly telling the truth. In a larger sample, participants reported they are most likely to accept a plea offer to get a good and fair deal, to avoid punishment, and if they are guilty.

Corinna Oschatz & Caroline Marker, *Long-Term Persuasive Effects in Narrative Communication Research: A Meta-Analysis*, 70 J. COMM. 473 (2020). A *narrative* is a story with an identifiable beginning, middle and end that provides information about scene, characters, and conflict; raises unanswered questions or unresolved conflict; and provides resolution. A *non-narrative* message involves an expository and didactic style of communication that presents propositions in the form of reasons and evidence supporting a claim. In this analysis of 14 experiments, the authors found that, compared to non-narratives, narratives had a slightly greater persuasive impact on attitudes and intentions. That greater persuasive power persisted over time.

Dario N. Rodriguez & Melissa A. Berry, *Sensitizing Jurors to Eyewitness Evidence Using a Counterfactual Induction*, 34 APPL. COG. PSYCHOL. 768 (2020). Over 300 jury-eligible undergraduates read a trial transcript. Half read a “typical” closing argument from the defense, in which the attorney *asserted* specific factors might have contributed to an eyewitness’ unreliable memory and mistaken identification. The other half read a *counterfactual* version of the same closing argument, in which the attorney invited jurors *to imagine whether it was possible* that specific factors might have contributed to unreliable memory and mistaken identification by the eyewitness. Compared to subjects who read the typical argument, those who read the counterfactual version were: (a) more sensitive to the quality of eyewitness evidence, especially when it was low, and (b) less likely to view the defendant as guilty.

Credibility

William B. Fairley & William A. Huber, *On Being an Ethical Statistical Expert in a Legal Case*, AM. STAT. (forthcoming). The authors contend expert witnesses lack helpfulness and lose credibility when they, *inter alia*, are unduly influenced by a retaining party. They suggest several attorney behaviors may contribute to undue influence, such as (a) shopping only for experts with favorable opinions, (b) failing to sever compensation from performance, (c) directing the flow of information to the expert, and (d) making the expert a member of the trial team.

Linda M. Geven et al., *Memory-Based Deception Detection: Extending the Cognitive Signature of Lying from Instructed to Self-Initiated Cheating*, 12 TOPICS COG. SCI. 608 (2020). In this experiment, about 400 undergraduates completed a personality test and a trivia quiz. Some participants cheated on the quiz. A scale that measured honesty as an enduring trait failed to discriminate cheaters and non-cheaters.

Michelle L. Miller et al., “911 What’s Your Emergency?”: *Deception in 911 Homicide and Homicide Staged as Suicide Calls*, HOM. STUD. (forthcoming). The authors analyzed features of 9-1-1 calls in which callers reported either a suicide or homicide. Of 175 calls, deaths were later officially judged to be suicides in 100 cases, homicides-staged-as-suicides (HSS) in 18 cases, homicides committed by callers in 26 cases, and homicides committed by someone other than callers in 31 cases. Compared to actual suicides, callers in HSSs more frequently talked over dispatchers (61% vs 18%) and stalled when answering questions (28% vs 7%), and they less frequently provided information about the decedent location (96% vs 67%).

Cody Normitta Porter & Giacomo Salvaneli, *Eliciting Information and Cues to Deception Using a Model Statement: The Effect of Presentation Modality*, 17 J. INV. PSYCHOL. OFF. PROF. 101 (2020). At the onset of interviews, some interviewers convey the level of information they expect from interviewees by first offering a highly detailed statement on an unrelated topic. In an experiment involving over 150 university students and staff, the use of such *model statements* enhanced the amount of detail elicited from truthful interviews but not deceptive interviewees.

Interview & Interrogation

Gunn-Astrid Baugerud et al., *Forensic Interviews with Preschool Children: An Analysis of Extended Interviews in Norway (2015-2017)*, 34 APPL. COG. PSYCHOL. 654 (2020). The authors studied over 200 investigative interviews of allegedly abused children, all conducted by police officers with specialized training. Interviewers commonly used (a) brief summaries and non-suggestive utterances designed to facilitate communication (e.g., “I see...ok”); (b) directive questions (e.g., “What did he look like?”); and (c) yes-no questions. About 90% of children reported information related to the alleged abuse.

Mikaela Magnusson et al., *Forensic Interviewers’ Experiences of Interviewing Children of Different Ages*, 26 PSYCHOL. CRIM. L. 967 (2020). The authors surveyed nearly 90 child forensic interviewers. Almost all survey respondents indicated that building rapport early and using open-ended questions were highly important to effective interviewing. By contrast, about half rarely or never used drawings to facilitate interviews.

Meghana Srivatsav et al., *How Do the Questions Asked Affect Suspects’ Perceptions of the Interviewer’s Prior Knowledge?* 17 J. INVEST. PSYCHOL. OFF. PROFIL. 160 (2020). In this online experiment, about 400 participants read a crime vignette and were asked to assume the role of suspect. Overall, suspects’ perceptions of their interrogator’s knowledge about the crime were not impacted by interrogators’ probes into specific topics.

Professional Well-Being & Effectiveness

Valerio Bacak et al., “*Fighting the Good Fight*”: *Why Do Public Defenders Remain on the Job?* 31 CRIM. JUST. POL’Y REV. 939 (2020). The authors interviewed nearly 100 public defenders. The most common reasons for remaining in public defense – each mentioned by at least 30% of the sample – involved earning government benefits, interacting with clients, pursuing personal values, and fighting social inequality.

Nina M. Junker et al., *Is Work Engagement Exhausting? The Longitudinal Relationship Between Work Engagement and Exhaustion Using Latent Growth Modeling*, APPL. PSYCHOL. (forthcoming). In two studies, each invol-

volving about 200 subjects, the authors tracked work engagement and burnout over 6- to 9-month follow-up periods. High levels of work engagement were related to lower levels of exhaustion in the short-term, but higher levels of exhaustion in the long-term.

Stephen Tang et al., *Ethical Misconduct by New Australian Lawyers: Prevalence and Prevention*, 27 INT'L J. LGL. PROF. 245 (2020). More than 30,000 lawyers registered to practice in the Australian state of Victoria between 2005-2015. Over that decade, the state's professional conduct oversight body received about 20,000 complaints of misconduct, most commonly related to overcharging (about 40%) or bad advice (about 10%). About 5% of all complaints resulted in disciplinary action.

Other Psycho-Legal Topics

Graham S. Danzer & Tobias D. Wasser, *A Literature Analysis of the Inventory of Legal Knowledge*, 48 J. AM. ACA. PSYCHIA. L. 1 (2020). The authors reviewed studies that had been conducted on a test designed to identify defendants who are feigning a lack of knowledge about legal proceedings. Overall, the studies supported the test's accuracy. The authors suggest more research is needed on the test's accuracy with defendants with intellectual disabilities.

Matt DeLisi et al., *Criminogenic and Desistance-Promoting Processes Behind Bars and Postrelease Supervision: New Evidence from Federal Offenders*, 66 CRIM. DELINQ'Y 309 (2020). The authors studied nearly 1000 federal offenders who were released on supervision after serving their term of confinement. Both extensiveness of criminal history and number of official counts of prison misconduct increased odds of having a warrant requested while on supervised release.

Maxwell L. Elliott et al., *What is the Test-Retest Reliability of Common Task-Functional MRI Measures? New Empirical Evidence and a Meta-Analysis*, 31 PSYCHOL. SCI. 792 (2020). Functional MRI (fMRI) measures changes in blood oxygenation levels associated with neural activity, possibly identifying brain regions that are implicated in specific thoughts, emotions and behaviors. *Reliability* measures the consistency of results over similar circumstances. In this analysis of 56 studies, the authors found fMRI reliability to be so low as to preclude meaningful inferences from individual fMRI results.

Reena Kapoor et al., *Hospital Treatment of Persons Found Not Guilty by Reason of Insanity*, 38 BEH. SCI. L. 426 (2020). The authors reviewed scientific research involving insanity acquittees that had been published over the past 15 years. Most studies addressed risk assessment and release decision-making. Few addressed the efficacy of treatment intended to facilitate successful transition to the community.

Daniel Jolley & Jenny L. Paterson, *Pylons Ablaze: Examining the Role of 5G COVID-19 Conspiracy Beliefs and Support for Violence*, 59 BRIT. J. SOC. PSYCHOL. 628 (2020). Reports indicate some individuals erroneously believe 5G technology somehow caused COVID-19. In an online survey of about 600 Brits, strength of belief in 5G COVID-19 conspiracy theories correlated moderately with angry feelings, which in turn correlated moderately with justification for violent behavior.

Qingong Li et al., *Susceptibility to Being Lured Away by a Stranger: A Real-World Field Test of Selective Trust in Early Childhood*, 31 PSYCHOL. SCI. 1488 (2020). In two experiments conducted in China, about half of 3- to 6-year-olds were willing to leave a playground with an adult stranger. Children were more likely to be lured away by a female than a male. Their likelihood of being lured away decreased as child age increased.

Arthur J. Lurigio & Monte D. Staton, *The Measurement and Prevalence of Violent Crime in the United States: Persons, Places, and Times*, 43 J. CRIM. JUST. 282 (2020). The authors describe trends in violent crime in the US. Since 1950, the homicide rate has hovered around 5/100,000 except from 1970-1995, when it was measured at about 9/100,000. Its period of growth was attributable primarily to gun-related murders. The homicide rate of Black males has consistently been 5- to 10-times higher than that of White males. Although males have consistently been at higher risk than females for being the victim of a violent crime, females have consistently been at higher risk than males for being the victim of sexual and intimate partner violence.

Public Attention & Announcements

In Formal Opinion 495, the ABA Standing Committee on Ethics and Professional Responsibility addressed permissibility of remote practice. The recently published opinion can be found [HERE](#).