

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.

Contents

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Judicial & Individual Decision-Making	1
Jury Selection & Decision-Making	1
Negotiation, Persuasion, Influence	2
Credibility	2
Interview & Interrogation	2
Professional Well-Being & Effectiveness	3
Other Psycho-Legal Topics	3
Public Attention & Announcements	4

Judicial & Individual Decision-Making

Melissa R. Johnson & Jodi L. Viljoen, *What Are Judges' Views of Risk Assessments, and How Do Tools Affect Adolescent Dispositions?* 27 PSYCHOL. PUB. POL'Y L. 112 (2021). In this study of nearly 200 juvenile and family court judges, risk assessment tools were commonly viewed as a helpful aid to decision-making; however, concerns remained over their validity and potential for bias. Compared to a low-risk juvenile, a high-risk juvenile was more strongly perceived as someone who deserved punishment and would become a lifelong criminal. Although judges less strongly believed a high-risk juvenile could be rehabilitated, they more strongly anticipated they would refer him to a treatment program.

Anthony D. Perillo et al., *Evaluating Selection for Sexually Violent Predator (SVP) Commitment: A Comparison of Those Committed, Not Committed, and Nearly Committed*, 27 PSYCHOL. PUB. POL'Y L. 98 (2021). The authors analyzed dispositions of about 3,200 sex offender civil commitment cases in New Jersey. Only a minority of sex offenders were civilly committed following expiration of their criminal sentences. Mental health professionals' opinions and judges' decisions usually aligned. Compared to sex offenders whom judges did not commit, civilly committed sex offenders were more likely to have: (a) extensive sexual and nonsexual offense histories, often with an earlier age at onset; (b) victims who were males or strangers; (c) index offenses in which threats or weapons were used; (d) diagnoses of pedophilia or another paraphilia; and (e) higher scores on risk assessment tools.

Scott M. Mourtgos & Ian T. Adams, *The Effect of Prosecutorial Actions on Deterrence: A County-Level Analysis*, 31 CRIM J. POL'Y REV. 479 (2020). The authors studied the effect of prosecutorial decision-making on major crimes reported to police across Florida between 2009-2013. Declining to file charges was associated with a slight increase in aggregate crime levels. By contrast, swift adjudication was associated with a slight reduction in aggregate crime levels. Punishment severity did not impact crime levels.

Jury Selection & Decision-Making

Mark J. Brandt et al., *Subjective Status and Perceived Legitimacy across Countries*, 50 EUR. J. SOC. PSYCHOL. 921 (2020). The authors surveyed nearly 13,000 people from 30 countries. As survey respondents' self-rated social

status decreased, so did their trust in government and confidence in societal institutions (e.g., police, courts).

William E. Crozier et al., *Taking the Bait: Interrogation Questions about Hypothetical Evidence May Inflate Perceptions of Guilt*, 26 PSYCHOL. CRIM. L. 902 (2020). A “bait question” is an interrogation tactic in which an interviewer asks about hypothetical evidence that does not exist. In three experiments, bait questions had little to no impact on participants’ perceptions of defendants’ guilt.

Edward C. Tomlinson et al., *Revisiting the Trustworthiness-Trust Relationship: Exploring the Differential Predictors of Cognition- and Affect-Based Trust*, 41 J. ORG. BEH. 535 (2020). In two samples, participants’ ratings of others’ overall dependability and trustworthiness hinged on their perceptions of others’ competence, as well as the consistency of others’ words and actions. Participants rated others’ levels of care and concern mostly on their apparent benevolence and, to a lesser extent, shared values.

Negotiation, Persuasion, Influence

Jennifer M. Bartlett & Tina M. Zottoli, *The Paradox of Conviction Probability: Mock Defendants Want Better Deals as Risk of Conviction Increases*, 45 L. HUM. BEH. 39 (2021). In three experiments involving large samples, more than 85% of mock defendants expressed a willingness to plead guilty regardless of their conviction probability or potential sentence length.

Nick Peterson, *Do Detainees Plead Guilty Faster? A Survival Analysis of Pretrial Detention and the Timing of Guilty Pleas*, 31 CRIM. JUST. POL’Y REV. 1015 (2020). The author studied speed of guilty pleas in over 100,000 cases across 25 states. Defendants’ speed of pleading guilty quickened when they were detained until adjudication or charged with property, drug, or public order offenses. Speed of pleading guilty slowed when defendants were male, prosecutors had increased caseloads, counties had large Black populations, and jails were small in capacity.

Sundeep Sharma et al., *The Effects of Emotional Expressions in Negotiation: A Meta-Analysis and Future Directions for Research*, 33 HUM. PERF. 331 (2020). The authors analyzed 64 studies that had investigated the impact of emotional expression in negotiation. In general, negotiators’ expressions of negative emotion

were moderately associated with increases in concession-making by their counterparts. Yet they also were strongly associated with negative impressions: Counterparts expressed decreased willingness to trust and work in the future with such negotiators.

Alexander Testa & Brian D. Johnson, *Paying the Trial Tax: Race, Guilty Pleas, and Disparity in Prosecution*, 31 CRIM. J. POL’Y REV. 500 (2020). The authors analyzed case dispositions involving nearly 25,000 offenders sentenced in Maryland between 2012-2015. Likelihood of pleading guilty decreased among defendants who were aged 25 years or older, members of a minority racial or ethnic group, represented by a private attorney, or charged with a serious offense. Odds and average length of imprisonment were lower for defendants convicted by guilty plea than for those convicted at trial.

Credibility

Meredith Allison et al., *Alibi Believability: Corroborative Evidence and Contextual Factors*, 38 BEH. SCI. L. 337 (2020). About 700 participants read a crime scenario, then rated believability of alibi statements. Strong corroborating physical evidence increased believability of alibis. Neither number of corroborators nor type of crime impacted believability of alibis.

Thomas J. Nyman et al., *The Effects of Distance and Age on the Accuracy of Estimating Perpetrator Gender, Age, Height, and Weight by Eyewitnesses*, 27 PSYCHOL. CRIM. L. 231 (2021). Over 1,500 participants viewed people at varying distances for 20 seconds, then judged identifying features. Irrespective of distance, judgments of gender were usually accurate, and estimates of weight were often inaccurate. As distances increased, accuracy of estimates for height and age also decreased.

Teresa Schneider et al., *Feeling Guilty: Little Effect on False Confession Rate*, 27 PSYCHOL. CRIM. L. 265 (2021). In two experiments with student samples, over half of participants falsely admitted to committing prohibited acts. Feelings of guilt had no impact on the rate of false statements.

Interview & Interrogation

Laure Brimbal et al., *Evaluating the Benefits of a Rapport-Based Approach to Investigative Interviews: A Training Study with Law Enforcement Investigators*, 45

L. HUM. BEH. 55 (2021). Over 60 experienced investigators interviewed “suspects” of a mock domestic terrorist attack. Use of rapport-based questioning was associated with increased ratings of perceived rapport by suspects, which in turn was associated with increased willingness to cooperate and disclose evidence.

Christopher E. Kelley et al., *Just a Normal Conversation: Investigative Interviews in a County Jail*, CRIM. JUST. BEH. (forthcoming). The authors analyzed 50 recorded jail detainee interviews conducted by investigative personnel. A combination of open-ended questions, affirmations and summaries was associated with an increase in detainee cooperation and disclosure. Accusatorial questioning styles (confrontation, evidence presentation, emotion provocation) were associated with a reduction in detainee engagement and forthcomingness.

Martine B. Powell & Sonja P. Brubacher, *The Origin, Experimental Basis, and Application of the Standard Interview Method: An Information-Gathering Framework*, 55 AUSTR. PSYCHOL. 645 (2020). The authors describe a scientifically-informed framework for conducting interviews across multiple contexts. Broadly, it contains the following components: (1) Greet and explain ground rules (e.g., “If you don’t know the answer, just say ‘I don’t know’”); (2) Establish rapport; (3) Practice recall unrelated to the topic of concern; (4) Introduce the topic of concern; (5) Elicit a narrative mainly by asking open-ended questions; (6) Ask specific follow-up questions about the event; and (7) Close by asking if interviewees have anything else to add, thanking them for talking, addressing safety-related issues, and moving to positive topics. The framework contains exemplar dialogue for each interview phase.

Patrick Risan et al., *Trauma Narratives: Recommendations for Investigative Interviewing*, 27 PSYCHIA. PSYCHOL. L. 678 (2020). In this theoretical paper, the authors offer several recommendations for interviewing potentially traumatized adult witnesses, which include but are not limited to the following: (a) Refrain from coercion or undue pressure, (b) Take a nonjudgmental stance, and (c) Maintain flexibility.

Professional Well-Being & Effectiveness

Mark C. Bolino et al., *Working 9-to-5? A Review of Research on Nonstandard Work Schedules*, 42 J. ORG.

BEH. 188 (2021). In this review of 150 articles, the authors offer evidence of the benefits of nonstandard work schedules. Among the findings: Flextime improves productivity, job satisfaction, and mood, and it reduces absenteeism and turnover.

Jennifer Feitosa et al., *Measuring Team Trust: A Critical and Meta-Analytical Review*, 41 J. ORG. BEH. 479 (2020). In this analysis of over 100 studies involving nearly 8,000 teams, increases in team trust were associated with increases in team performance.

Line Ronning et al., *Vicarious Traumatization in Lawyers Working with Traumatised Asylum Seekers: A Pilot Study*, 27 PSYCHIA. PSYCHOL. L. 665 (2020). The authors surveyed 70 lawyers and law students who work with asylum-seekers. As respondents’ years of experience increased, scores on measures of stress and intrusive thoughts decreased. Increases in number of work hours were associated with increases in reported stress. In addition, increases in number of clients were associated with reductions in levels of trust in others.

Other Psycho-Legal Topics

Lana Bojanic et al., *The Typology of Parricide and the Role of Mental Illness: Data-Driven Approach*, 46 AGGR. BEH. 516 (2020). The authors analyzed all homicides that occurred in two countries from 1997-2014; offenders killed their parents in 4% of cases. Parricide offenders were mostly White, unmarried males. Over two-thirds lived with their parents. Two-thirds were diagnosed with mental disorder. Over half had been victims of child abuse. Over half had a history of substance misuse.

Richard B. Felson & Keith L. Hullenaar, *Adversary Effects and the Tactics of Violent Offenders*, 47 AGGR. BEH. 99 (2021). In this analysis of over 6 million assaults, robberies, and homicides reported between 2005-2014, offenders who attacked males were more likely than offenders who attacked females to: (a) kill their victims, (b) use weapons, (c) have male accomplices, and (d) have multiple accomplices.

April Miin Miin Chai et al., *“Drop the Body”: Body Disposal Patterns in Sexual Homicide*, INT’L J. OFF. THER. COMP. CRIM. (forthcoming). The authors analyzed body disposal patterns in 250 solved and 100 unsolved sexual homicide cases in Canada. Cases were more likely to be solved than remain unsolved when bodies left at

homicide sites (a) had foreign objects inserted into them, (b) contained semen recovered from them, or (c) were found in deserted locations. Bodies were commonly moved from homicide sites when victims were prostitutes.

Rhys Hester, *Risk Assessment Savvy: The Imperative of Appreciating Accuracy and Outcome*, 38 BEH. SCI. L. 246 (2020). From a sample of 10,000 felony-level offenders sentenced in Pennsylvania, the author constructed a simple tool designed to predict recidivism. A combination of four items – age, gender, presence of juvenile adjudication, and number of prior convictions – adequately distinguished recidivists from non-recidivists.

Lisa Stolzenberg et al., *The Usual Suspects: Prior Criminal Record and the Probability of Arrest*, 24 POL. Q'LY 31 (2021). In this analysis of about 750 crimes, suspects with a prior criminal record were nearly 30 times more likely than suspects without such records to be arrested by police. Although White suspects were 30% more likely to be arrested than Black suspects, this relationship was nullified once suspects' criminal records were taken into account.

Kyle J. Thomas et al., *Perceived Arrest Risk, Psychic Rewards, and Offense Specialization: A Partial Test of Rational Choice Theory*, 58 CRIM. 485 (2020). Over 1,000 juvenile offenders were repeatedly assessed over time. Perceived risk of arrest was unrelated to overall self-reported offending. Instead, self-reported offending was related to reduced impulse control, less future orientation, lower psychosocial maturity, younger age, male gender, and anticipated intrinsic rewards from offending. Minority status was associated with decreased likelihood of overall offending but increased likelihood of violent offense specialization.

Public Attention & Announcements

The ABA Criminal Justice Section is scheduled to host a Virtual Summer Camp Legal Skills Conference on June 9-11. Sessions will address skills relevant for depositions, negotiations, and remote hearings. Register [HERE](#).

The inaugural meeting of the American Academy of Forensic Psychology is scheduled for September 22-24 in New Orleans. Sessions will address, *inter alia*, reliability and objectivity of forensic examiners, effectiveness of expert witness testimony, and mitigation of sentences in the federal system. Register [HERE](#).