

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	3
Professional Well-Being & Effectiveness	3
Other Psycho-Legal Topics	3
Public Attention & Announcements	4

Judicial & Individual Decision-Making

Laurent Begue, et al., *The Role of Alcohol Intoxication on Sentencing by Judges and Laypersons: Findings from a Binational Experiment in Germany and France*, INT'L CRIM. JUST. REV. (forthcoming). More than 1,000 judges and nearly 2,000 laypersons read a vignette involving an alleged assault and were asked to recommend a sentence for the offender. Compared to their counterparts, judges and older male participants recommended the harshest sentences. Offender intoxication did not impact sentence severity.

Itiel Dror, et al., *Cognitive Bias in Forensic Pathology Decisions*, 66 J. FOR. SCI. 1751 (2021). In an experiment, over 100 forensic pathologists read a vignette, then determined manner of death. Deaths of Black children were disproportionately labeled "homicide," whereas deaths of White children were disproportionately labeled "accident." The authors found a similar trend in a state's archival death certificate data.

Masahiro Suzuki & Xiaoyu Yuan, *How Does Restorative Justice Work? A Qualitative Metasynthesis*, 48 CRIM. J. BEH. 1347 (2021). Based on a systematic review of over 25 studies, the authors concluded that restorative justice approaches are effective because they enable offenders and victims to communicate with one another, see the other's common humanity, and work together toward healing.

Alexander Testa & Jacqueline G. Lee, *Trends in Sentencing of Federal Drug Offenders: Findings from U.S. District Courts 2002-2017*, 51 J. DRUG ISS. 84 (2021). The authors analyzed 15 years of sentencing outcomes of over 300,000 convicted federal drug offenders. Overall, (a) incarceration rates and sentence lengths declined, (b) proportions of methamphetamine and opioid cases increased, and (c) proportions of marijuana and cocaine cases decreased. Whereas incarceration rates declined most for White offenders, sentence lengths declined most for Black offenders.

Jury Selection & Decision-Making

Robert J. Garcia, et al., *Normative and Informational Influence in Group Decision Making: Effects of Majority Opinion and Anonymity on Voting Behavior and Belief Change*, GRP. DYN. THRY RES. PRAC. (forthcoming). The authors studied mock juror decision-making in a sample of undergraduates. Whether deliberations were conducted aloud (publicly) or in writing (privately),

participants were inclined to change their vote when faced with a contradicting majority. Perceived strength of evidence partially influenced vote-switching behavior.

Jaihyun Park & Neal R. Feigenson, *Picturing Pain and Suffering: Effects of Demonstrative Evidence, Instructions, and Plaintiff Credibility on Mock Jurors' Damage Awards*, 35 APPL. COG. PSYCHOL. 730 (2021). In a series of 3 studies involving undergraduates, mock jurors awarded more in damages when expert testimony included demonstrative photo simulations than when it did not include such evidence.

Christine L. Ruva, et al., *What Drives a Jury's Deliberation? The Influence of Pretrial Publicity and Jury Composition on Deliberation Slant and Content*, PSYCHOL. PUB. POL'Y L. (forthcoming). More than 300 undergraduates read news stories with negative pretrial publicity (PP). One week later, they viewed a video of the trial and were asked to render "verdicts" before and after deliberating. Jurors discussed PP, which biased their initial assessments and subsequent deliberations.

Negotiation, Persuasion, Influence

Piotr Bystranowski, et al., *Anchoring Effect in Legal Decision-Making: A Meta-Analysis*, 45 L. HUM. BEH. 1 (2021). In this systematic analysis of nearly 40 studies and 9,000 participants, decisionmakers in contexts involving sentencing, compensation, and other numerical legal judgments were shown to be influenced by anchors, which are salient but potentially arbitrary and irrelevant number values presented to them.

Daniel J. Neller, et al., *Situational Predictors of Negotiation and Violence in Hostage and Barricade Incidents*, 48 CRIM. JUST. BEH. 1770 (2021). By statistically analyzing about 7,000 cases reported to the FBI, the authors constructed tools that accurately estimate the probability of a crisis incident involving violence after onset and resolving by negotiation or surrender.

Henry Otgaar, et al., *The Link Between Suggestibility, Compliance, and False Confessions: A Review Using Experimental and Field Studies*, 35 APPL. COG. PSYCHOL. 445 (2021). The authors systematically analyzed 11 prior studies in which suspects or detainees claimed to have falsely confessed. Overall, findings suggest false confessors are more suggestible or compliant than their counterparts.

Credibility

Irena Boskovic, et al., *Dull Versus Creative Liars – Who Deceives Better? Fantasy Proneness and Verifiability of Genuine and Fabricated Accounts*, 18 J. INV. PSYCHOL. OFF. PROFIL. 56 (2021). A small sample of psycho-legal experts judged the credibility of authentic and fabricated narratives authored by college students. Experts were better able to identify fabricated narratives when their authors were more fantasy-prone than when they were less fantasy-prone.

Erik Mac Giolla & Timothy J. Luke, *Does the Cognitive Approach to Lie Detection Improve the Accuracy of Human Observers?* 35 APPL. COG. PSYCHOL. 385 (2021). The *cognitive approach* to deception detection uses tactics that (a) make lying more cognitively demanding (e.g., having the interviewee perform a secondary task while providing a statement, asking the interviewee to maintain eye contact); (b) elicit rich details; and (c) require on-the-spot answers. In this analysis of 21 prior experiments, human observers using the cognitive approach correctly classified 66% of truth tellers and 54% of liars, yielding an overall accuracy rate of 60%. By comparison, human observers using other approaches correctly classified 67% of truth tellers and 31% of liars, yielding an overall accuracy rate of 50%.

Charles R. Honts, et al., *A Comprehensive Meta-Analysis of the Comparison Question Polygraph Test*, 35 APPL. COG. PSYCHOL. 411 (2021). In this systematic analysis of nearly 150 prior studies involving over 10,000 judgments, a widely used version of the polygraph was found to be highly accurate at discriminating truths from lies. Its accuracy was comparable in experimental and real-life studies.

Erwin J. A. T. Mattijssen, et al., *Firearm Examination: Examiner Judgment and Computer-Based Comparisons*, 66 J. FOR. SCI. 96 (2021). The authors studied the ability of nearly 75 firearm examiners to discern whether shell casings originated from the same or a different firearm. About 90% of their judgments were accurate, a rate comparable to the accuracy rate of a computer-based method of firearm comparison.

Kathy Pezdek, et al., *Elevated Stress Impairs the Accuracy of Eyewitness Memory but Not the Confidence-Accuracy Relationship*, 27 J. EXP. PSYCHOL. APPL. 158 (2021). Adults were presented with pictures of

male “suspects” alongside pictures intended to induce varying levels of negative arousal. Higher negative arousal was associated with reduced accuracy in facial recognition; the effect was nullified when subjects’ confidence levels were high.

Interview & Interrogation

Rachel E. Dianiska, et al., *Using Disclosure, Common Ground, and Verification to Build Rapport and Elicit Information*, 27 *PSYCHOL. PUB. POL’Y L.* 341 (2021). In 2 experiments involving undergraduates, subjects’ perception of rapport and willingness to disclose a past illegal act increased when interviewers shared personal information that conveyed common beliefs, interests or experiences.

Alison C. Holland, et al., *Facial Mimicry, Empathy, and Emotion Recognition: A Meta-Analysis of Correlations*, 35 *COG. EMO.* 150 (2021). This systematic analysis of over 25 prior studies showed that the ability to empathize is linked to the ability to mimic others’ facial expressions.

Seungjin Lee & Juyoung Kim, *Rapport Quality in Investigative Interviews: Effects on Open-Ended Questions and Free Recall Responses*, 22 *POL. PRAC. RES.* 996 (2021). The authors analyzed transcripts of over 100 investigative interviews of alleged victims of sexual abuse, all children or disabled people. As interviewers increased their proportions of open-ended questions, alleged victims increased their number of free recall responses, and researchers increased their ratings of rapport quality.

Timothy J. Luke, *A Meta-Analytic Review of Experimental Tests of the Interrogation Technique of Hanns Joachim Scharff*, 35 *APPL. COG. PSYCHOL.* 360 (2021). The author systematically analyzed 11 studies that had previously examined the effectiveness of 5 interrogation tactics – being friendly, refraining from pressing, acting as if all evidence is already known, embedding claims in casual discourse, and “ignoring” new information. The collection of tactics was moderately associated with the elicitation of new information.

Kelly McWilliams, et al., *Don’t Know Responding in Young Maltreated Children: The Effects of Wh-Questions Type and Enhanced Interview Instructions*, 45 *L. HUM. BEH.* 124 (2021). About 300 maltreated or

neglected 4- to 7-year-olds viewed videos, then were interviewed about them. Instructing children to say “I don’t know” when they lacked knowledge of a specific detail led to reductions in both accurate and inaccurate responses to questions.

Simon Oleszkiewicz & Steven J. Watson, *A Meta-Analytic Review of the Timing for Disclosing Evidence when Interviewing Suspects*, 35 *APPL. COG. PSYCHOL.* 342 (2021). In a systematic analysis of 16 prior studies, inconsistencies between statements and other evidence (a) were much more common among guilty than innocent suspects, and (b) increased in frequency when evidence was gradually introduced during the latter stages of interviews.

Professional Well-Being & Effectiveness

Sarah Elena Althammer, et al., *A Mindfulness Intervention Promoting Work-Life Balance: How Segmentation Preference Affects Changes in Detachment, Well-Being, and Work-Life Balance*, 94 *J. OCCU. ORG. PSYCHOL.* 282 (2021). In a sample of nearly 200 employees, participation in a brief online mindfulness training program led to improved abilities to detach from work, reductions in reported work-life conflict, and increases in reported work-life balance satisfaction.

Malissa A. Clark, et al., *Hidden Costs of Anticipated Workload for Individuals and Partners: Exploring the Role of Daily Fluctuations in Workaholism*, 26 *J. OCCU. HLTH PSYCHOL.* 393 (2021). In a small sample of educated, middle-class, urban employees, morning projections of a heavy and hectic workday were associated with increased internal pressures to work longer, afternoon fatigue, and spousal relationship tension.

Colin M. G. Foad, et al., *Perceptions of Values Over Time and Why They Matter*, 89 *J. PERS.* 689 (2021). In a series of studies, participants consistently indicated their life values had shifted over time. Past shifts in levels of openness were associated with lower life satisfaction.

Other Psycho-Legal Topics

Avdi S. Avdija & Arif Akgul, *Examining the Clearance Rates of Violent and Non-Violent Offences in the United States: A Trend Analysis, 2011-2018*, 65 *INT’L J. OFF. THER. COMP. CRIM.* 1224 (2021). This analysis of a large national

database shows that crime clearance rates decreased between 2011 and 2018. The average annual clearance rates during the timeframe were 37% for all types; 78% for crimes against society (e.g., drug offenses, pornography, etc); 49% for crimes against persons; and 18% for incidents involving property crimes.

Erin B. Comartin, et al., *Comparing Women’s and Men’s Sexual Offending Using a Statewide Incarcerated Sample: A Two-Study Design*, 36 J. INTER’L VIO. 3093 (2021). The authors analyzed differences between men and women incarcerated for sexual offenses. Compared to male sex offenders, female sex offenders were less likely to have a criminal history, and they were more likely to: (a) be White, (b) have child victims, (c) have repeatedly offended against the same victim, (d) have a co-offender, and (d) report having been physically abused by an intimate partner.

Amy Holtzworth-Munroe, et al., *Intimate Partner Violence (IPV) and Family Dispute Resolution: A Randomized Control Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation*. 27 PSYCHOL. PUB. POL’Y L. 45 (2021). In a small sample of cases involving family disputes, overall, participants perceived mediation more favorably (including safer) than traditional litigation.

Aaron J. Kivisto, et al., *Development and Validation of a Typology of Criminal Defendants Admitted for Inpatient Competency Restoration: A Latent Class Analysis*, 44 BEH. SCI. L. 449 (2021). The authors analyzed outcomes of nearly 500 adult male defendants admitted for trial competency restoration. Nearly 90% were restored to competence. Older adults with neurocognitive disorders were the only group with relatively low odds of restoration (66%).

Suzanne Overstreet, et al., *Can Victim, Offender, and Situational Characteristics Differentiate Between Lethal and Non-Lethal Incidents of Intimate Partner Violence Occurring Among Adults*, 25 HOM. STU. 220 (2021). The authors analyzed a large, national dataset to identify victim, offender, and situational variables that distinguish domestic homicides from domestic assaults. Although few meaningful statistical relationships emerged, offender use of a handgun was, by far, the variable that most strongly increased lethality likelihood.

Public Attention & Announcements

S. Alexander Haslam and colleagues offer a framework for leaders to effectively respond to COVID and other crises [HERE](#).

Keith J. Hayward and Matthijs M. Maas recently authored a primer on artificial intelligence and crime. It is published [HERE](#).

Michael R. MacIntyre recently reviewed circumstances under which substance use may serve as the basis for a mental state defense. It is published [HERE](#).

Legare recently published the hardcover edition of *Famous Legal Arguments: Showing the Art, Skill, Tact, Genius and Eloquence Displayed by Our Greatest Advocates in the More Celebrated Trials of Modern Times*, authored by Moses Field.

Wolters Kluwer recently published *Productizing Legal Work: Providing Legal Expertise at Scale*, authored by Gabriel H. Teninbaum.

The American Bar Association Midyear Meeting is scheduled for February 9-14, 2022. Register [HERE](#).