When justice is not blind: The effects of expectancies on social interactions and judgments in

legal settings

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Abstract

Actors within the legal system are expected to be objective and without bias. Although biases have been documented in all sorts of legal decisions, scholars have neglected the role that social interactions may have on biasing legal outcomes, in part because they favor paradigms in which participants are passive recipients of information on which they base their decisions. In contrast, newer paradigms, which provide opportunities for participants to interact as they would in natural settings, allow for an examination of how the expectancies of legal actors influence their interactions in criminal justice settings, consequently influencing legal decisions. In one stream of research, attorneys' expectations about potential jurors' attitudes influenced the questions they asked during jury selection, their assessments of their attitudes after questioning, and consequently the verdicts that jurors rendered. In another stream of research, the expectancies of lineup administrators interacting with witnesses caused the administrators to emit suggestive behaviors that increased witness identifications of suspects, resulting in an increase in mistaken identifications when the suspect was innocent. In sum, social interactions in these legal settings introduced bias into legal decision making through the expectancies of others.

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Actors within the criminal justice system are expected to be objective and decide issues

without bias. Indeed, legal actors do, at least in part, rely on legally-relevant information when

making decisions. For example, the single best predictor of juror decisions are variations in the

strength of the evidence against the defendant (Visher, 1987). Attorneys use their discretion to

prevent potential jurors with the most extreme bias from serving on juries (Johnson & Haney,

1994). Eyewitnesses are more likely to make a positive identification of a culprit than of an

innocent suspect (Wells, Yang, & Smalarz, 2015).

Despite evidence that legal actors often make choices that should bolster our faith in their

competence to carry out their duties objectively, biases have been documented in all sorts of

legal decisions. Pretrial publicity influences jurors' verdicts (Steblay, Besirevic, Fulero, &

Jimenez-Lorente, 1999), even when they receive instructions to disregard it (Fein, McCloskey, &

Tomlinson, 1997). Prosecutors are more likely to dismiss Black than White jurors from jury

service (Sommers & Norton, 2007). Eyewitnesses are more likely to misidentify someone of

their own race than someone of another race (Meissner & Brigham, 2001; Platz & Hosch, 1988).

In each of these cases, the decision-makers (jurors, attorneys, or witnesses) passively received

information (pretrial publicity and evidence, a juror profile, a crime) and then made decisions

(rendered a verdict, challenged the suitability of a juror, identified someone from a lineup).

Perhaps because of a preference for the ease of low-impact paradigms in which

participants are passive recipients of information on which they base their decisions, scholars at

the intersection of social psychology and law have relatively neglected the possibility that social

interactions may bias legal outcomes. In particular, studies of jury decision making infrequently

include deliberations (Bornstein, 2017), the social setting in which jurors interactively discuss the trial evidence and the law. Similarly, studies of jury selection have only rarely examined the interaction between attorneys and potential jurors (also known as venirepersons) during voir dire (the procedure during which jury selection occurs; Kovera & Austin, 2016). Only recently have researchers explored the ways in which the interaction between a lineup administrator and a witness might influence witnesses' decisions (Kovera & Evelo, 2017). In contrast, newer paradigms, which provide opportunities for participants to interact with each other, allow for an examination of how the expectancies of legal actors influence their interactions in criminal justice settings, consequently influencing legal decisions. The reinsertion of the social context into the psychological examination of these legal situations has generated new insights into how expectancies bias consequential decisions in legal domains.

In the remainder of this chapter, I will review research on interpersonal expectancy effects, highlighting ways in which interpersonal expectancies likely play a role in legal decisions. I will then describe two programs of research in which I have examined how situating research paradigms within social interactions allows for a demonstration that interpersonal expectancies bias legal decision making. The first program of research examines how attorneys' expectations about potential jurors' attitudes influence the jury selection process. The second research program demonstrates how lineup administrators' expectancies influence eyewitness identification decisions. Finally, I will argue that to gain a more complete understanding of legal decision-making, researchers must identify the social situations in which these decisions are often made and consider the extent to which social interactions influence the decision-making process.

Interpersonal Expectancy Effects

The study of interpersonal expectancy effects is rooted in Orne's (1962) early recognition that people are not passive subjects in experiments but active participants. Active participants assume that all research has a purpose and attempt to discern the hypothesis. Orne coined the term *demand characteristic* to refer to any cue that communicates the hidden purpose of an experiment to participants. When participants believe that they have discerned the research hypothesis, they conform their behavior to that hypothesis in an effort to appear competent (Weber & Cook, 1972).

When experimenters have expectations for how research participants will behave, they can emit subtle cues that communicate their hypotheses to participants even though they are unaware of doing so (for a research summary, see Rosenthal, 2002). When teachers were told that certain students soon would blossom as students, those students performed better over the course of the year even though the students had been chosen at random (Rosenthal & Jacobson, 1968). When graduate students were given the expectation that some of their rats were bright and others were dull, the bright rats made fewer errors learning a T-maze than did dull rats, even though the two sets of rats were genetically identical (Rosenthal & Fode, 1963b). When experimenters were led to believe that facial stimuli expressed either success or failure (when the stimuli were, in fact, neutral), participants the emotion of the faces to be consistent with the experimenters' expectations (Rosenthal & Fode, 1963a). In essence, interpersonal expectancy effects occur when one person's expectations affect another person's (or rat's) behavior (Trusz & Bable, 2016).

Interpersonal expectancies influence a target's behavior by first influencing the behavior of the person holding the expectation (Rosenthal, 2002; Trusz & Bąbel, 2016). Holding an expectation of another changes the behavior of the expectation holder toward the target of the

expectation. The changes in expectation holders' behavior cause targets to confirm the expectations through their behavior, a process known as behavioral confirmation. Mediating behaviors can take many forms (Harris & Rosenthal, 1985) and likely depend upon the context in which the behavioral confirmation occurs. In behavioral and medical studies, researchers routinely use double-blind procedures to control for expectancy effects. With double-blind methods, neither the researchers who interact with participants nor the participants themselves know to which condition of the experiment the participant has been assigned (Rosenthal & Rosnow, 1984; Shadish, Cook, & Campbell, 2002; Weber & Cook, 1972), removing the possibility that interpersonal expectancies can initiate the behavioral confirmation process.

The typical research designs used to study jury decision making, jury selection, and eyewitness identifications preclude the investigation of interpersonal expectancy effects in legal decision making. Yet the effects of interpersonal expectancies occur in many different contexts and legal contexts should be no different. Indeed, there have been sporadic attempts to explore behavioral confirmation processes in legal settings. For example, judges' beliefs about a defendant's guilt influence the way they read pattern jury instructions, resulting in jurors rendering verdicts that confirm judges' beliefs (Halverson, Hallahan, Hart, & Rosenthal, 1997; Hart, 1995). Despite demonstrating the effects of interpersonal expectancies in a jury decision making context, these investigations did not fundamentally change our understanding of legal decision making or the operation of legal procedures.

In contrast, two programs of research examining the role of interpersonal expectancies in legal contexts necessitate a re-evaluation of whether two legal procedures operate as intended. The first program of research examined the extent to which attorneys' interpersonal expectancies about venirepersons' attitudes and beliefs interfere with voir dire's goal of uncovering bias and

instead bias jurors' verdicts. The second research program investigated whether lineup administrators' expectations about which lineup member witnesses will identify influence witnesses' identification decisions. In the sections that follow, I will describe the typical paradigms used to study jury decision making, jury selection, and eyewitness identification and how novel paradigms that allowed for social interaction among research participants were needed to demonstrate the role of interpersonal expectancies in legal decision making.

The Role of Interpersonal Expectancies in Jury Selection and Decision Making

Most scholars studying jury selection have focused their attention on identifying venireperson characteristics (e.g., demographics, traits, and attitudes) that predict verdict preferences (Kovera & Cutler, 2013). In the typical study, participants report on a characteristic of interest, read a written summary of trial evidence or watch a video recorded trial simulation, and render a verdict. Researchers then examine correlations between jurors' characteristics and their verdicts. Similarly, studies of jury decision making typically involve exposing participants to a trial simulation that manipulates some aspect of the evidence or trial procedure and measuring their verdicts (Kovera & Levett, 2015). There are some exceptions to this characterization of the literature, with a few studies examining the effects of different types of voir dire questioning (Crocker & Kovera, 2010; Dexter, Cutler, & Penrod, 1992; Jones, 1987; Middendorf & Luginbuhl, 1995) and some studies allowing jurors to deliberate before rendering final verdicts (for an analysis of the prevalence of deliberations in jury simulation studies, see Bornstein, 2017). Other than a few outliers, most studies of jury selection and its relationship to jury decision making have tackled a relatively simple question: do juror characteristics predict verdicts?

In the past decade, perhaps because of an overreliance on a single paradigm—a paradigm

that neglects the social interaction between attorney and venireperson that lies at the heart of voir dire, there have been few significant advances in our understanding of the interrelationship of voir dire, jury selection, and jury decision making. Although psychology and law pioneer Larry Wrightsman (1987) noted years ago that the voir dire process may serve as a source of juror bias, this notion has received little empirical attention. It is true that a few studies have addressed the issue of whether exposure to the voir dire process influences the expression of juror bias in verdicts (Greathouse, Sothmann, Levett, & Kovera, 2011; Haney, 1984; Vitriol & Kovera, 2018). However, these studies treated participants as passive recipients of the voir dire process, manipulating the content of a video recorded voir dire simulation that participants watched, rather than active participants in the trial process.

In our laboratory, we have turned our attention to investigating how interpersonal expectancies influence the interaction between attorneys and venirepersons during voir dire, subsequently influencing jurors' verdicts. Specifically, we have studied whether attorneys' expectations for venirepersons' attitudes influence the questions that they ask venirepersons during voir dire, the responses that they receive from venirepersons, their evaluations of what those responses mean, and the verdicts rendered by jurors. In essence, in a series of five studies we investigated whether attorneys' expectations cause them to engage in biased hypothesis testing, which results in jurors behaviorally confirming their expectations. Three of these studies employed high impact methods designed to simulate the social interactions that occur in voir dire between attorneys and venirepersons.

Biased Hypothesis-Testing in Voir Dire

During voir dire, attorneys generate hypotheses about which prospective jurors may be more favorable to their side, ask questions designed to elicit indications of bias from those

venirepersons they deem unfavorable, and then attempt to remove those who appear least favorable to their case. They can remove venirepersons in one of two ways. Attorneys may challenge venirepersons for cause, arguing that they have demonstrated bias that makes them unfit to serve as a juror. Theoretically, the number of challenges for caused is limited only by the ability of an attorney to convince a judge that a venireperson is irremediably biased. The second method for removing a venireperson is a peremptory challenge. Peremptory challenges are limited in number, the exact number varying by jurisdiction, trial type (criminal vs. civil), and other trial factors like charge severity. In most cases, attorneys need not specify why they are removing a particular juror using a peremptory challenge, unless there are charges that the basis is race or gender, which are legally prohibited bases for challenging a venireperson (*Batson v. Kentucky,* 1986; *J.E.B. v. Alabama*, 1994).

Attorneys are tasked with exercising their challenges in a way that maximizes the likelihood that the venirepersons who are eventually seated on the jury will be favorably disposed to the arguments that they present. To successfully complete this task, attorneys generate hypotheses about the relationship between jurors' characteristics and their verdict preferences. Once they have generated their hypotheses, they formulate questions that will allow them to gather information from the venirepersons that tests these hypotheses. Once venirepersons have responded to the questions, attorneys infer whether the responses support their hypotheses and decide whether to challenge particular jurors. These stages of the information gathering process in voir dire correspond well with social psychologists' proposed stages in testing hypotheses: hypothesis generation, information gathering, and inference (Trope & Lieberman, 1996).

Attorneys' interpersonal expectancies about venirepersons may influence their jury

selection decisions. If these expectancies are inaccurate, it could lead to an ineffective use of

peremptory challenges. Indeed, only a small number of demographic and personality

characteristics influence attorneys' evaluations of which venirepersons would be favorable to

their side and their beliefs about which characteristics predict venireperson favorability are often

in error (Olczak, Kaplan, & Penrod, 1991). Presumably attorneys can gather information during

voir dire that will help them recognize whether their initial hypotheses about venirepersons are

supported. For example, attorneys could gather information that enables them to fairly test their

expectancies are valid if they posed diagnostic questions to venirepersons designed to provide

differential support for their hypotheses and alternative hypotheses (Skov & Sherman, 1986).

However, people tend to ask questions at the information gathering stage that are biased toward

confirming their hypothesis rather than questions that are designed to test the accuracy of their

hypothesis (Snyder & Swann, 1978).

During the inference stage, attorneys evaluate whether the information they have received

from venirepersons supports their hypotheses. Three different types of bias—based on the

questions that they have asked and the answers that they received—may affect attorneys'

inferences (Hodgins, & Zuckerman, 1993). Hypothesis bias occurs when attorneys infer that

their hypothesis is more likely to be true because the hypothesis (as opposed to its alternative) is

more readily available in memory. Question bias occurs when attorneys infer that venirepersons

hold attitudes that are consistent with the question asked. For example, attorneys may be more

likely to infer that venirepersons endorse a presumption of innocence if they ask venirepersons

"Do you believe that a defendant is innocent until proven guilty?" Finally, answer bias occurs

when attorneys' inferences are overly influenced by the responses they receive to their questions,

overconfirming their hypotheses when they receive confirmatory responses and

overdisconfirming when they receive disconfirmatory responses. Thus, whether attorneys are

successful at detecting bias during voir dire is likely restricted by the hypotheses that the

attorneys wish to test, the questions that they ask to test these hypotheses, the responses that

venirepersons provide, and by the inferences made by attorneys from the information they

obtain.

Our laboratory has conducted two studies to test whether attorneys' expectancies about

venirepersons are likely to result in biased hypothesis testing that affects the jury selection

process. In the first of these studies (Experiment 1; Otis, Greathouse, Kennard, & Kovera, 2014),

practicing prosecuting and defense attorneys read the profile of a hypothetical venireperson in a

death penalty case. We varied the description of the venireperson to manipulate the attorneys'

expectations about whether the venireperson supported or opposed the death penalty. After

reading the venireperson's profile, attorneys wrote two voir dire questions designed to test one of

two hypotheses: the venireperson supports the death penalty or the venireperson opposes the

death penalty. In addition, attorneys estimated the percentage of people who would support the

death penalty if they answered yes to the voir dire question, estimated the percentage of people

who would oppose the death penalty if they answered yes to the voir dire question, opined

whether the venirepersons supported or opposed the death penalty if they answered yes and if

they answered no to the question, and also provided an estimate of the likelihood that the

venirepersons supported the death penalty if they answered yes and if they answered no to the

written questions. Using Bayesian analyses, we compared attorneys' answers with the responses

they should have generated if they made normatively correct inferences.

In this first study, attorneys did not generate hypothesis-consistent questions; rather, attorneys posed more diagnostic questions when the jurors' attitudes about the death penalty appeared inconsistent with the hypothesis they were asked to test. However, there was evidence of bias in the inferences that attorneys made based on their questions and the anticipated responses to those questions. First, the questions that attorneys asked influenced their inferences about the attitudes held by the hypothetical venireperson. For instance, if they asked a question that was testing the hypothesis that the venireperson supported the death penalty, they would subsequently overestimate the probability that the venireperson supported the death penalty. Second, venirepersons' answers to the questions biased attorneys' inferences. For example, attorneys were more likely to overestimate that a venireperson supported the death penalty if the venireperson responded yes to a question testing whether the person supported the death penalty and no to a question testing the alternative hypothesis (that the person opposed the death penalty).

Attorneys might be aware of the low base rate of death penalty opposition in the general population, and if so, this knowledge could have influenced the inferences attorneys made about the venireperson's attitudes. Indeed, when attorneys read the death penalty opponent juror profile, attorneys tended to overestimate the probability that the venireperson was pro-death penalty. To replicate our findings for a different attitude, we conducted a second study by asking 50 lawyers and 132 law students to test the hypothesis that a prospective juror is a legal authoritarian, a civil libertarian, or to determine whether the prospective juror is either a legal authoritarian or civil libertarian (i.e., the double hypothesis). In addition, we manipulated the base rate that the venireperson was a legal authoritarian (80% likelihood, 50% likelihood, or 20%

likelihood). We followed the same procedure discussed in the first experiment (Experiment 2, Otis et al., 2014).

In this study, attorneys formulated hypothesis-confirming questions (consistent with previous research on biased hypothesis testing; Hodgins & Zuckerman, 1993), and the inferences that they made about the venireperson's attitudes were again biased in predictable ways. The hypothesis that attorneys were asked to test biased their inferences, with attorneys who tested the legal authoritarian hypothesis overestimating that the venireperson was a legal authoritarian. As in the first study, the actual question that the attorneys asked biased their inferences, with attorneys overestimating that the venireperson held attitudes consistent with the hypothesis they tested with their question. Attorneys again overestimated the value of a yes response that tested the hypothesis and undervalued no responses that tested the opposing hypothesis. Thus, it appears that attorneys may engage in biased hypothesis testing during voir dire and that their strategies for testing hypotheses about venirepersons may bias the conclusions they draw about the favorability of retaining a particular venireperson during jury selection.

Behavioral Confirmation during Voir Dire

Many studies on dyadic interactions demonstrate that when one participant (the perceiver) is given an expectation about another participant (the target), the target of the expectation tends to behave in a manner consistent with the perceiver's expectation – a process called behavioral confirmation (e.g., Snyder, Tanke, & Berscheid, 1977; Stukas & Snyder, 2002). Similarly, attorneys' expectations about venirepersons may alter attorneys' behavior toward venirepersons during voir dire, consequently affecting venirepersons' responses to attorneys' questions and ultimately influencing the verdicts that they would render if they are seated on a jury. However, the motivational goals of the attorney may influence the conditions

under which behavioral confirmation occurs. For example, behavioral confirmation is more

common when perceivers are told to gather information about the target that would help them

form a stable, reliable impression of that person than when the perceiver is instructed to have a

smooth interaction with the target (Snyder & Haugen, 1993). In voir dire, behavioral

confirmation may be more prevalent when attorneys use voir dire as an information gathering

process in which the attorneys' goal is to form a stable, reliable impression of the juror.

Alternatively, if attorneys' goals during voir dire are to ingratiate themselves with jurors,

behavioral confirmation may be less likely to occur. In addition, the motivational goals of

targets may influence the conditions under which behavioral confirmation occurs (Snyder &

Haugen, 1993). Thus, venirepeople who are motivated to please the court with their responses

may be more likely to behaviorally conform to an attorney's expectation than those jurors who

are motivated to be excused from the panel.

To test whether behavioral confirmation occurs during jury selection, we asked advanced

law students to prepare voir dire questions to ask a community member during a mock voir dire

(Kovera, Greathouse, Otis, Kennard, & Chorn, 2019). To participate, jury eligible community

members needed to be death-qualified; thus, all community members participate in a screening

process in which they answered Witt qualification questions and completed the Death Penalty

Attitudes Questionnaire (DPA; O'Neil, Patry, & Penrod, 2004). We manipulated the mock

attorneys' expectations about the venirepersons' favorability toward the prosecution or the

defense by providing the attorney with information about the venirepersons' criminal justice

attitudes. In reality, we randomly assigned attorneys to receive information that the venireperson

with whom they would be interacting held either pro-prosecution or pro-defense attitudes,

regardless of their true attitudes. In addition, we manipulated the motivation of the attorneys

(i.e., either ingratiate self or gather accurate information) and the motivations of the venireperson (i.e., get on or off the jury). Attorneys then provided perceptions of the venireperson's desirability for their capital case and community members completed the DPA again.

Generally, attorneys asked questions that provided general information about the venireperson rather than questions that tested directly hypotheses about the venireperson's death penalty attitudes. However, when attorneys did ask questions to test hypotheses about death penalty support/opposition, they tended to ask hypothesis-confirming questions: Those given pro-prosecution expectations asked more questions to test a pro-prosecution hypothesis, and those given pro-defense expectations asked more questions to test a pro-defense hypothesis. Further, we found support for behavioral confirmation in the voir dire process. Attorneys' pre-voir dire expectations accounted for a significant amount of the variance in attorneys' ratings of the venireperson's attitudes post-voir dire, even after controlling for post-voir dire death penalty attitudes and independent coders' ratings of jurors' pro-prosecution behavior. Note that this effect of pre-voir dire expectations survived the opportunity for attorneys to gather information during a one-on-one voir dire. Finally, attorney's expectations about the venireperson's attitudes changed venirepersons' self-reported attitudes toward the death penalty, demonstrating that voir dire questioning may actually influence the attitudes that jurors hold.

In a second study, we examined whether behavioral confirmation processes interfered with the efficacy of traditional voir dire (Kovera, Kennard, Otis, Chorn, & Zimmerman, 2019). We used snowball sampling to recruit 40 practicing criminal attorneys from the New York City area (20 Assistant District Attorneys, 20 public defenders) who had conducted an average of 13 jury selections to conduct voir dires of eligible community members. In this study, we again manipulated the attorneys' expectation of the attitudes (pro-prosecution or pro-defense) held by

each of 12 community members; the expectation associated with each community member was randomly assigned. Based on this manipulated expectation and general demographic information that was collected from the community member, attorneys generated hypotheses about individual venirepersons, formulated questions to test their hypotheses, and then conducted a mock voir dire with the 12 community members. We instructed attorneys to conduct the voir dire with the goal of selecting a jury of six. Following the voir dire, attorneys then indicated which six community members they would most want to serve on the jury; community members read a summary of a death penalty case and rendered a verdict.

Again, our randomly assigned expectation of juror attitudes influenced attorneys' decisions. Prosecuting attorneys struck more venirepersons whom they expected to have pro-defense leanings and defense attorneys struck more venirepersons whom they expected to have pro-prosecution leanings. The effect of attitudinal expectation on strike decisions was observed even after attorneys had an opportunity to question venirepersons and occurred irrespective of a venireperson's pre-voir dire attitudes, which suggests that voir dire may not be an effective method of identifying juror biases. In addition, we again found evidence of behavioral confirmation in voir dire. Venirepersons rendered more guilty verdicts when the attorney's expectation of the juror was pro-prosecution than when the attorney expected the venireperson to be pro-defense.

Hypothesis testing, behavioral confirmation, and cognitive dissonance. When attorneys engage in biased hypothesis testing and elicit information from jurors that is consistent with their expectations about the venireperson (e.g., behavioral confirmation), then venirepersons may experience what social scientist Leon Festinger (1957) called cognitive dissonance. People desire consistency between attitudes and behavior; when they are in conflict, they may experience an

uncomfortable psychological state: dissonance. Further, once people commit to a

counterattitudinal behavior, they will likely express attitudes that are consistent with that

behavior to reduce the unpleasant feeling associated with the inconsistency. For example,

imagine that an attorney is trying to test the hypothesis that a venireperson is pro-prosecution and

supports the death penalty and asks the hypothesis-confirming question: "If someone commits

premeditated murder, do you think that person should be prosecuted to the full extent of the

law?" Many people would likely respond affirmatively to this question. However, this question

is not particularly diagnostic of whether a venireperson is in favor or opposed to the death

penalty. Furthermore, pro-defense juror might now experience some discomfort with their

response.   Do venirepersons who feel uncomfortable for responding in counterattitudinal ways

later attempt to relieve the discomfort by voting consistently with the attitude expressed during

voir dire?

Thus, in our final study of this series (Zimmerman, Otis, Kennard, Austin, & Kovera,

2019), we tested whether experienced dissonance mediated the effects of hypothesis-confirming

questions during voir dire on jurors' verdicts seen in earlier studies. Because people must feel

personal responsibility for their counterattitudinal behavior to feel cognitive dissonance (Cooper

& Fazio, 1984), we expected venirepersons to experience cognitive dissonance and to shift their

verdicts in the counterattitudinal direction only when venirepersons provided a more detailed

counterattitudinal expression rather than a simple "yes" or "no" response to a voir dire question.

To examine this issue, we tested two forms of attorney questioning methods – closed-ended and

open-ended questions. We expected greater evidence of experienced dissonance and behavioral

confirmation when attorneys posed open-ended questions because the open-ended format should

provide the venireperson with the opportunity to provide more detailed answers and to invest

more resources into developing the more detailed responses.

Confederates, posing as attorneys, asked either closed-ended or open-ended voir dire

questions testing a pro-prosecution hypothesis of jury eligible community members who were

generally opposed to the death penalty. Participants then completed a measure of experienced

dissonance (Elliott & Devine, 1994) and watched a trial that varied in evidence strength (strong,

ambiguous, or weak). We predicted that venirepersons would experience cognitive dissonance

as a result of their counterattitudinal expression and consequently would render a verdict

consistent with the hypothesis tested by the confederate attorney when the evidence strength was

ambiguous. That is, participants should not feel dissonance as a result of their voir dire behavior

if the evidence clearly supported a not guilty or guilty verdict and would return a verdict

consistent with the evidence. However, when the evidence is ambiguous, participants should

experience dissonance as a result of their voir dire behavior and would render a verdict

consistent with the hypothesis tested by the attorney. After the video, participants rendered a

verdict and again completed the cognitive dissonance scale.

We found evidence of behavioral confirmation that depended on attorney questioning

style and evidence strength. Specifically, for the trial with ambiguous evidence, when jurors

were asked open-ended voir dire questions testing a pro-prosecution hypothesis, jurors rendered

more guilty verdicts than when they were asked closed-ended questions. As predicted, the

effects of pro-prosecution hypothesis testing were not present when the trial had strong or weak

evidence against the defendant. In terms of dissonance reduction, jurors reported higher levels of

cognitive dissonance after voir dire than after rendering a verdict, but the attorneys' questioning

method or evidence strength did not influence the amount of participants' experienced

dissonance. Finally, jurors expressed more support for the death penalty and pro-prosecution attitudes post-trial than they did pre-trial, consistent with our earlier findings that exposure to voir dire questions testing the hypothesis that venirepersons hold a particular attitude results in attitude change in the direction of the hypothesis being tested.

The Role of Interpersonal Expectancies in Eyewitness Identification

For decades, researchers studying eyewitness identification accuracy have relied on a paradigm in which participants watch a re-enactment of a crime and then attempt to identify the perpetrator of that crime (Cutler & Kovera, 2010). The crime re-enactment may be a live event or recorded on video. The identification procedure might vary in terms of the instructions given to the witness, whether the witness views only the suspect or the suspect plus a set number of known innocent people, whether the lineup members are shown simultaneously or sequentially, and whether the suspect is the culprit or innocent. Until recently, the presentation of the identification procedure to witnesses has been highly controlled, sometimes presented in mass testing sessions by projecting a photo array on a screen or to individuals by experimenters following rigid protocols, drastically minimizing any interaction of the lineup administrator with witnesses. Increasingly, studies have been conducted online with a computer presenting a photoarray to participants, completely eliminating any chance that a lineup administrator interact with, let alone influence, a witness.

These conditions do not mimic the conditions of identification procedures conducted in the field. In real cases, identification procedures are rarely conducted using computer administration, with the exception of some field studies conducted by psychologists who intended to minimize administrator/witness contact (for example, Wells, Steblay, & Dysart, 2015). Instead, most lineups and photo arrays are administered by police officers who have the

opportunity to interact with witnesses during the administration. How does this knowledge

influence the expectations that the police officer holds about the witness? Perhaps the officer is

extremely confident that the suspect is the perpetrator and therefore expects (a) that the witness

will choose someone from the lineup and (b) that person will be the suspecte. How will those

expectations change the behavior of the administrator in comparison to the behavior of an

administrator who does not know who the suspect is or what other evidence has been gathered

against the suspect. What happens if when witnesses seem to focus on the suspect, administrators

tell them to look closely or to take their time but when they focus on fillers, administrators tell

them to make sure they look at all the photos. Or perhaps an administrator asks, in response to a

witness who says the perpetrator is either the person in the second or third photo, asks what looks

familiar about the person in the second photo, the person who happens to be the suspect. Maybe

the administrator leans forward or smiles if the witness appears to linger on the suspect's photo.

Is the witness more likely to identify the suspect as a result of these behaviors?

Thus, in the context of lineups, administrators' expectations (i.e., that the witness will

select the suspect) may cause witnesses to choose the suspect from the lineup. Before guidelines

recommending blind administration of lineups (Wells, Small, Penrod, Malpass, Fulero, &

Brimacombe, 1998), almost all administrators of identification procedures knew which lineup

member (or photo in a photo array) was suspected of committing the crime viewed by the

eyewitness. Even today, only half of U.S. states require—when feasible—that identification

procedures be double-blind, that is conducted by administrators and administered to witnesses

who are blind to which lineup member is the suspect (Kovera & Evelo, 2017). Single-blind

lineup administration is concerning because it is possible that the witness will not base their

identification decision on their memory alone—as legally intended—but on behavioral cues from

the administrator. In other words, administrators with knowledge of the suspect's identity may unconsciously and unintentionally contaminate the identification procedure.

Although several paradigms have been developed to test the extent to which the administrator's knowledge of the suspect's identity influences eyewitnesses' identification decisions, the paradigm that most faithfully models the full cycle of interpersonal expectancy effects and behavioral confirmation is the *double-blind paradigm* (Kovera & Evelo, 2017). In this paradigm, half of the participants are trained to serve as administrators; half of these administrators are told who the suspect is (single-blind administration) and half are not (double-blind administration). These participant administrators then conduct a photo array with participants who witnessed a crime (Evelo, Zimmerman, Rhead, Chorn, & Kovera, 2019; Greathouse & Kovera, 2009; Zimmerman, Chorn, Rhead, Evelo, & Kovera, 2017). These photo array administrations are video recorded surreptitiously, allowing for observers who are blind to condition to code the administrators' behaviors for cues that suggest which lineup member is the suspect. Thus, the paradigm allows for a test of whether knowing the suspect's identity changes administrators' behavior during the identification procedure and whether those behavioral changes subsequently influence the likelihood that witnesses will identify the suspect as opposed to a filler (i.e., a photo of a known innocent person).

In one of the first investigations using this paradigm (Greathouse & Kovera, 2009), we examined whether the effect of single-blind administration of photo arrays was greater when other conditions were present that promote witness guessing (i.e., witnesses are likely to make a choice from an identification procedure despite having a relatively weak memory trace for the perpetrator of the crime): simultaneous (as opposed to sequential) presentation of the photos and biased lineup instructions that imply that the culprit is present among the photos in the array.

Indeed, non-blind administrators were more likely to obtain a positive identification of the suspect from witnesses, irrespective of whether the suspect was the culprit or was innocent, than were blind administrators, especially under conditions that promoted choosing.

Consistent with theory on interpersonal expectancy effects, changes in the administrators' behaviors during the photo array administration were instrumental in producing these increases in identifications of the suspect. Non-blind administrators were more likely than blind administrators to behave in potentially biasing ways (e.g., tell the witness to take another look if they did not make an identification; Greathouse & Kovera, 2009). Given the camera angle in this study, we were unable to determine whether these behaviors were directed toward suspects or fillers. However, observers who were unaware of whether the administrator knew which lineup member was the suspect reported that non-blind administrators put more pressure on the witness to choose someone than did blind administrators (Greathouse & Kovera, 2009).

We have also studied whether witnesses with weaker memory traces are more likely to be susceptible to administrator influence than are witnesses with stronger memories (Zimmerman et al., 2017). Within the double-blind paradigm, we manipulated memory strength by varying the retention interval between witnessing the crime and making an identification attempt (Deffenbacher, Bornstein, McGorty, & Penrod, 2008): 30 min. vs. 1 week. We also manipulated simultaneous versus sequential presentation of the photos. Administrator knowledge interacted with retention interval and lineup presentation to influence mistaken identifications of innocent suspects; witnesses were more likely to mistakenly identify an innocent suspect from single-blind than double-blind lineups when witness retention intervals were long and photographs were presented simultaneously. Once again, we observed evidence of suggestiveness in the behavior of nonblind administrators. When administrators asked witnesses about a particular photo in the

array, non-blind administrators were more likely to ask about or point at the suspect's photo than were blind administrators, demonstrating the attempts of non-blind administrators to focus witness attention on the suspect rather than fillers.

An analysis of the pattern of identification decisions in these studies reveals that administrator influence is not operating by changing the rates at which witnesses make a positive identification of photo. Witnesses report that the culprit is not present in the photo array at equal rates, irrespective of whether the administrator is blind to which lineup member is the suspect. The increase in identifications of suspects from single-blind administrations is accompanied by a decrease in filler identifications (Kovera & Evelo, 2017). Essentially, witnesses who would have chosen a filler without influence from the administrator shift their picks to the suspect when the administrator knows who the suspect is.

Conclusion

In sum, studies of social interactions in two simulated legal settings, voir dire and the administration of eyewitness identification procedures, introduced bias into legal decision making through the expectancies of others. In voir dire, attorneys' expectations about the attitudes held by potential jurors changed jurors' self-reported attitudes toward the death penalty. These randomly-assigned expectations also influenced attorneys' perceptions of venirepersons' biases despite attorneys being allowed to gather information that could have disconfirmed their expectations. Indeed, the attorneys' expectancies influenced their perceptions of venirepersons' attitudes even after controlling for the change in venirepersons' attitudes that was a byproduct of the voir dire questioning and observers' ratings of the adversarial slant of the venirepersons' behavior (pro-prosecution versus pro-defense). In identification procedures, lineup administrators' expectations increased rates of the misidentification of innocent suspects. These

findings suggest that reforms—like double-blind lineup administration—are needed to reduce the influence of interpersonal expectancies on legal decisions.

In addition, these two programs of research serve as a reminder of the importance of studying the role of social interaction on decision making in the legal context. Other than the small fraction of jury simulation studies that include deliberations, very few studies at the intersection of social psychology and the law allow for social interaction among participants. It is difficult to find studies that include behavior either as a manipulation of an independent variable or as a dependent variable. This neglect of behavior in the design of experimental studies is not unique to the social psychological study of the law. A similar neglect is manifest in the larger discipline as well (Baumeister, Vohs, & Funder, 2007). With an increasing reliance on brief online investigations conducted with samples from Amazon's Mechanical Turk as the empirical evidence gathered to test social psychological hypotheses (Anderson, Allen, Plante, Quigley-McBride, Lovett, & Rokkum, in press), we are in danger of missing the influence of important variables that influence the phenomena we hope to understand. In contrast, intentional decisions to infuse behavior into our experiments and situate our investigations within social interactions might broaden our research questions beyond those that can be studied with convenient paradigms consisting of reading written trial summaries and circling numbers on a questionnaire.

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