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## Beliefs and expectancies in legal decision making: an introduction to the Special Issue

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### Abstract

This introduction describes what the co-editors believe readers can expect in this Special Issue. After beliefs and expectancies are defined, examples of how these constructs influence human thought, feeling, and behavior in legal settings are considered. Brief synopses are provided for the Special Issue papers on beliefs and expectancies regarding alibis, children's testimony behavior, eyewitness testimony, confessions, sexual assault victims, judges' decisions in child protection cases, and attorneys' beliefs about jurors' perceptions of juvenile offender culpability. Areas for future research are identified, and readers are encouraged to discover new ways that beliefs and expectancies operate in the legal system.

### Keywords

Beliefs; expectancies; legal decision making; alibis; confessions; eyewitness; victim testimony; child protection; juvenile offender

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We are pleased to introduce this Special Issue of *Psychology, Crime, & Law* on beliefs and expectancies in legal decision making. The catalyst for this collaboration was a series of conference-situated musings between a social psychologist and cognitive psychologist about two pillars of human behavior: beliefs and expectancies. Beliefs and expectancies are at once both mundane and extraordinary. Mundane in the sense that they undergird all human behavior; something each and every one of us experiences each and every day. Yet they are equally, if not even more, extraordinary when we consider the far-reaching implications of how they directly link to our thoughts, feelings, and actions. These attributes make a closer examination of beliefs and expectancies worthwhile in any context, but particularly so within the high-stakes arena of the legal system. Whether the decision maker is a police officer assessing the truthfulness of an alibi, a juror evaluating the accuracy of an eyewitness identification, an attorney arguing a case involving a juvenile offender, or a judge deciding whether to terminate parental rights—these decisions matter and without doubt are influenced by beliefs and expectancies.

The purpose of this Introduction is to inform readers what we believe they should expect in the Special Issue. We begin by defining what we mean by beliefs and expectancies and then consider some of the ways these constructs influence our thoughts, feelings, and behavior in legal settings. Next, we provide brief synopses of the articles contained herein and conclude

by encouraging readers to investigate exciting new ways that beliefs and expectancies shape legal decision making.

## Beliefs and expectancies defined

It is only fitting that we begin by defining what we mean by beliefs and expectancies. Beliefs are bits of information or knowledge that are subjectively accepted as true and often involve links between an object/target and an attribute (Fishbein & Ajzen, 1975). We form beliefs primarily based on personal experience and communication with other people. One might believe, for example, that this year's Nebraska Cornhuskers are the greatest college football team ever or that the goldenrod is the prettiest flower on earth. Here we see particular objects (a football team and a flower) linked to specific attributes (athletic prowess and beauty). Note that although the attributes listed here are positive, they need not necessarily be (football teams can be bad and flowers can be ugly). Valence aside, the key for a belief is that the information or link is thought to be true—whether or not it factually *is* true—and, as such, serves as a springboard for expectancies.

Expectancies are beliefs about a future state of affairs (Olson, Roese, & Zanna, 1996). They entail subjective estimates of likelihood, ranging from a mere possibility to a virtual certainty (Roese & Sherman, 2007). The relative certainty and valence of expectancies can vary based on individual and situational factors. Returning to our previous example, one's belief about the athletic prowess of the Cornhuskers may lead a person to expect the team will likely win its football game this weekend, just as one's belief about the beauty of goldenrods may lead a person to expect that if he gives a goldenrod bouquet to his sweetheart, she probably will be delighted. Although these examples refer to explicit or conscious expectancies, implicit expectancies operate in our daily lives as well. For instance, I turn the key in my car ignition every day expecting the engine to start without explicitly thinking about this outcome. As simple as these examples might appear, we hope they make the following points clear: (1) not all beliefs are expectancies; (2) expectancies are predicated on beliefs ('My belief about X leads me to expect Y'); (3) expectancies are future-oriented; and (4) some expectancies are more factually accurate than others.

## Beliefs and expectancies in legal decision making

Much can and has been said about how beliefs and expectancies influence our everyday thoughts, feelings, and actions (see Miller & Turnbull, 1986, for a review). We have chosen to narrow the focus for the Special Issue by examining how these constructs operate within the legal system. Beliefs and expectancies affect how we think by guiding what we attend to, encode, and remember in the world around us (Roese & Sherman, 2007). We actively tend to seek out information that confirms (rather than disconfirms) our pre-existing beliefs and expectancies (Lord, Ross, & Lepper, 1979). Social and cognitive psychologists refer to this tendency as a 'confirmation bias', and applied psychologists have repackaged it as 'experimenter bias', 'investigator bias', and 'interviewer bias'. The gist of this concept is captured by the colloquialisms 'Seek and ye shall find' and 'What we see is what we expect'. Whether actors are fans from rival athletic teams (Hastorf & Cantril, 1954), students evaluating a professor (Kelley, 1950), bystanders witnessing an ambiguous shove (Duncan, 1976), or an experimenter testing a hypothesis (Rosenthal, 1976), people tend to interpret information in line with their previously held beliefs and expectancies. This tendency has direct implications for anyone involved in the legal system. A police officer's determination of a suspect's truthfulness, a forensic examiner's evaluation of a defendant's competency, or a juror's assessment of a witness's credibility, are but a few examples of how beliefs and expectancies impact legal outcomes. Suspects may be released or detained, defendants may be tried or committed, and witnesses may be believed or discarded in a

biased fashion. According to this perspective, knowing a person's beliefs or expectancies should provide valuable information when attempting to predict or understand legal decision making.

Beliefs and expectancies guide our behavior in addition to influencing how we think. Of particular concern is that we tend to behave in ways that elicit the outcomes we expect. Psychologists have used various labels to describe this phenomenon, such as 'expectancy effects', 'self-fulfilling prophecy', and 'behavioral confirmation'. The behaviors involved can vary along several dimensions. They may be verbal or nonverbal, deliberate or unintentional, and positive or negative. They may exert influence alone or in concert with one another. Early research by Rosenthal and his colleagues documented expectancy effects in classroom and laboratory settings. Elementary students randomly labeled as 'bloomers' and rats randomly labeled as 'maze smart' outperformed their counterparts when teachers and experimenters were told these labels in advance (Rosenthal, 1976; Rosenthal & Jacobson, 1968). In essence, the labels caused teachers/experimenters to behave in ways that facilitated outcomes consistent with their beliefs and expectancies (i.e., better grades and faster maze times).

Similar findings have emerged on tasks more directly related to the legal system such as eyewitness lineup identifications and suspect interrogations. In fact, one could argue that expectancy effects are even more likely to occur in this setting, given the significance of the decisions being made (crime investigation, determination of guilt/innocence, terminating parental rights, sentencing) and the firmly-held convictions of the parties involved (police officers, corrections officers, forensic interviewers, experts, judges, and attorneys). Investigator bias can arise in eyewitness identification lineups when the lineup administrator knows the identity of the suspect (who may or may not be the actual perpetrator). Compared to double-blind lineups in which neither the administrator nor the eyewitness knows the suspect's identity, single-blind lineups in which the administrator knows the suspect's identity result in higher identification rates of the suspect (Greathouse & Kovera, 2009; Haw & Fisher, 2004; Phillips, McAuliff, Kovera, & Cutler, 1999), higher levels of eyewitness confidence in the identification decision (Garrioch & Brimacombe, 2001), and differences in the verbal and nonverbal behavior of the lineup administrator (Greathouse & Kovera, 2009). Even more troubling, eyewitnesses and lineup administrators report few if any differences in administrator influence as a function of the single- versus double-blind procedure (Greathouse & Kovera, 2009; Phillips et al., 1999). Either they are unaware of the bias or simply refuse to report it.

Researchers studying interrogations and confessions have found that interrogators who are led to believe the suspect is guilty tend to ask more guilt-presumptive questions, use tougher interrogation tactics, and exert more pressure on suspects to get a confession than those who are led to believe the suspect is innocent (Kassin, Goldstein, & Savitsky, 2003). Interestingly, the effect of this interrogator bias is not the same for suspects who are truly guilty versus truly innocent; the bias increases the likelihood of confessions by innocent suspects, but has no effect on the likelihood of confessions from guilty suspects (Narchet, Meissner, & Russano, 2011). Breaking this process down, we can see that an innocent suspect is more likely to confess when the interrogator believes the suspect is guilty because this belief leads the interrogator to behave differently during the interrogation, which in turn elicits behavior from the suspect (a confession) that confirms the interrogator's initial (and in this case, incorrect) belief.

Why do beliefs and expectancies exert such a strong influence on the behavior of others? One potential mechanism is demand characteristics, which refer to the totality of cues present in a situation that convey the expected or desired outcome to an individual (Orne,

1962). Whereas expectancy effects are rooted in the motives of the actor, demand characteristics depend on the perceptions of the individual in the situation with the actor. Wells and Luus (1990) extended Orne's original work on demand characteristics in psychological experiments to eyewitness identification lineups by likening an investigator to an experimenter and an eyewitness to a participant. Much like participants in experiments want to provide the experimenter 'good data', witnesses are motivated to do the same for investigators for several reasons.

One reason is altruism, which motivates people to do what they believe is good or right in a given situation. Just as a participant wants to contribute to a successful experiment by confirming the experimenter's hypothesis, so too does a victim or witness during a lineup/interview want to help by providing whatever information is expected by the investigator. This information may consist of details about an alleged crime or the identification of a suspect from a photo lineup. Child witnesses are particularly susceptible to subtle (and sometimes not-so-subtle) expectancies conveyed by the interviewer as to what the 'right' answer is, leading them, for example, to be more likely to change their answer when asked the same question multiple times (e.g., Ceci & Friedman, 2000).

Evaluation apprehension is a second reason why participants are sensitive to demand characteristics in experiments and other situations (Orne, 1962). We seek to generate favorable impressions of ourselves in others, and one way to do so is to comply with the perceived goals or expectancies of others in a situation. In experiments, participants desire to win the approval of the experimenter and attempt to maximize the positive aspects of their evaluation while minimizing any negative aspects (Rosenthal & Rosnow, 1991). Victims and witnesses may behave similarly in legal contexts. Evaluation apprehension may be reflected in the tendency of inaccurate eyewitnesses to provide more detailed explanations of their identification process ('I compared the photos to each other to narrow the choices') than accurate eyewitnesses (Dunning & Stern, 1994). Essentially, they want to appear like a 'good eyewitness' to gain the approval of the investigator. The need for positive evaluation also might help explain why affirming post-identification feedback from an investigator (e.g., 'Good, you identified the suspect') causes eyewitnesses to overestimate the positive aspects of the witnessing experience, including their certainty, quality of view, clarity of memory, and attention during the event (Wells & Bradfield, 1998).

Obedience to authority is a third reason why people are motivated to comply with demand characteristics. In a psychological experiment, this refers to participants' desire to do what is asked of them because they see the experimenter as an authority figure who should be obeyed (Rosenthal & Rosnow, 1991). A classic example of this phenomenon is Milgram's (1963) study of obedience to authority in which participants were willing to administer dangerously high levels of an electrical shock to another person simply because the experimenter encouraged them to do so. High stress and situation unfamiliarity may exacerbate deference to authority figures as well—attributes that some would argue characterize any interaction with law enforcement or other members of the legal system. Like experimenters, legal professionals must be cognizant of and vigilant against the influence of demand characteristics arising from altruism, evaluation apprehension, and obedience to authority.

Finally, much like beliefs and expectancies influence our thoughts and behavior, they affect our feelings as well. We react negatively to information that disconfirms our pre-existing beliefs and expectancies (Olson et al., 1996). Some researchers have argued that this negative affective state is caused by the disruption of processing fluency (Winkielman & Cacioppo, 2001). In other words, we do not like having to expend the additional cognitive resources required to reconcile disconfirming information or experiences. Another possible

explanation involves the false consensus effect, which states that we tend to overestimate the degree to which others agree with us (Marks & Miller, 1987). If false consensus is psychologically comforting and self-validating, then the exact opposite may be true when we realize that others do not share our beliefs or expectancies. Simply put, disconfirming evidence yields an unpleasant, negative affective state that we seek to reduce, eliminate, or avoid altogether. The emotional effects of expectancy confirmation or disconfirmation are especially relevant for jurors evaluating witness behavior in court (Bornstein & Greene, 2011), but we can see how they might affect other actors in the legal system too. For example, imagine a forensic interviewer who believes a child was sexually abused based on information provided by a school counselor. She might experience frustration or other negative emotions if the child provides information that is inconsistent with what she believes happened. This negative emotional reaction could bleed into her verbal and nonverbal behavior (how she asks questions/responds to answers), which in turn could influence the child's responses as a function of demand characteristics. The end result could be a child alleging abuse that did not occur.

To summarize, beliefs and expectancies influence how we think, feel, and behave in essentially all situations, not excepting those presumed to be purely objective and dispassionate, such as legal contexts (Bornstein & Wiener, 2010). In the next section, we provide brief synopses of the papers selected for this Special Issue. Our goals in putting together the Special Issue were twofold: to include research that was novel both in content and approach, and to advance our understanding of beliefs and expectancies in legal decision making.

### **The Special Issue: a sneak peek**

We open with a paper on alibis by Jennifer Dysart and Deryn Strange. Alibi evidence has received increased attention from legal scholars and social scientists in the wake of recent Innocence Project DNA exonerations—some of which involved shaky or nonexistent alibis—and the publication of an alibi typology by Olsen and Wells (2004). Most research to date has focused on jurors' perceptions of alibi believability, yet law enforcement officers and prosecutors must make critical decisions about alibi believability before charging an individual with a crime and proceeding to trial. In their paper for this Special Issue, Dysart and Strange sought to fill this void in the literature by surveying US and Canadian senior law enforcement personnel about their beliefs and experiences involving alibi evidence. Overall, respondents were quite skeptical of alibis, but they believed that investigating alibis sooner rather than later increases their utility in determining a suspect's potential criminal involvement. The most believable alibi stories include physical evidence or a statement from an unmotivated other, but those occur only in a minority of cases. These survey findings shed light on an important, but heretofore overlooked, population with respect to alibi evidence. Whether prosecutors and, ultimately, jurors share similar beliefs and concerns about alibis remains an unanswered research question ripe for investigation.

Many states have introduced evidentiary and procedural innovations to help facilitate children's testimony in abuse cases. Certain innovations, such as closed-circuit television (CCTV) testimony, reduce children's stress and increase their accuracy; however, jurors tend to evaluate children who use CCTV more negatively on a variety of credibility-related dimensions (Goodman, Tobey, Batterman-Faunce, Orcutt, Thomas, Shapiro, et al., 1998). To better understand this vexing issue, McAuliff and Kovera's paper describes results from a survey in which prospective jurors listed their expectancies for a child's verbal and nonverbal behavior across five different testimony conditions (traditional versus several alternative forms of testimony), as well as their beliefs about discerning children's truthfulness, testimony stress, and fairness to trial parties. Prospective jurors expected a

child providing traditional testimony to be more nervous, tearful, and fidgety; less confident, cooperative, and fluent; and to maintain less eye contact and provide shorter responses than when the child provided alternative forms of testimony. They also believed it was easiest to determine a child's truthfulness and fairest to the defendant when the child testified live in court, but that this form of testimony was the most stressful and unfair to the child. If accommodated children remain nervous (and data from actual trials suggest this is so), they may fail to meet jurors' expectancies and be viewed more negatively as a result. Future research that systematically varies the presence or absence of children's expected behaviors is needed to determine how jurors react to expectancy violation, as well as the potential role of legal safeguards in reducing any unintended negative effects.

Eyewitness testimony can be extremely compelling yet imperfect trial evidence. Effectively evaluating such testimony requires that jurors know what factors influence eyewitness accuracy, identify those factors (when present) in a case, and weigh their potential impact on the eyewitness's memory accordingly. This is no small feat, and previous research has shown that laypeople's beliefs about factors that influence eyewitness accuracy are often incorrect (e.g., Boyce, Beaudry, & Lindsay, 2007). Neal, Christiansen, Bornstein, and Robicheaux expand this body of research in two studies examining mock jurors' beliefs about the effects of eyewitness age, weapon presence, and identification decision time on eyewitness accuracy and whether those beliefs predict trial-related decisions. Neal and her colleagues systemically manipulated eyewitness age, weapon presence, and identification decision time in different versions of a robbery-murder case and observed that, to some extent, participants' beliefs about these factors interacted with the manipulations to affect mock jurors' judgments. These findings highlight the continued need for expert testimony on factors that influence eyewitness accuracy. Voir dire surveys that target beliefs about specific factors such as eyewitness age and weapon presence, instead of more general beliefs about eyewitness accuracy, might also be useful to attorneys when selecting a jury in cases involving eyewitness evidence.

Much like alibi and eyewitness evidence, research on confessions has gained considerable momentum in the wake of recent DNA exonerations (for a review, see Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010). Horgan, Russano, Meissner, and Evans present research on the diagnostic value of confessions (i.e., the ratio of true to false confessions elicited) obtained using common minimization (i.e., expectation of leniency) and maximization (i.e., threat of harsher punishment) tactics. The authors used pilot data to identify minimization and maximization tactics believed to influence (or not influence) the expected consequences of confessing and then varied these tactics in a written description of the Russano, Meissner, Narchet, and Kassin (2005) paradigm. Participants were sensitive to the use of manipulative techniques in the interrogation descriptions and believed that such techniques could lead other people (but notably, not themselves) to confess falsely. However, when participants actually engaged in the Russano et al. interrogation paradigm in Study 2, they were vulnerable to the manipulation of consequences and were more likely to provide a false confession as a result. Horgan and her colleagues argue that even though the minimization and maximization tactics used in their studies are technically legal, they might undermine the goal of eliciting true confessions and place innocent suspects at greater risk.

Sexual assault cases often lack corroborative evidence, requiring jurors to discern between two dramatically conflicting accounts from the alleged victim and perpetrator. Judgments of credibility are paramount in this process and draw on laypeople's expectancies for how witnesses should behave while testifying. Researchers have studied the type of emotional reactions decision makers expect from victims, but less is known about the expected consistency of those emotional reactions over time. Klippenstine and Schuller address this lingering issue using a written trial simulation in which they orthogonally manipulated a

victim's response (tearful/upset versus calm/controlled) both the day following the alleged sexual assault and then again during her trial testimony. Quite interestingly, mock jurors were more supportive of the victim and less supportive of the accused on multiple measures when the victim's response was consistent over time, irrespective of whether that response was tearful/upset or calm/controlled. These findings raise concern for how a victim who improves her ability to cope over time (perhaps through counseling) may be disadvantaged in the eyes of jurors, given their expectancies for emotional consistency over time.

In cases of substantiated abuse or neglect, children often are removed from the home and placed in foster care. Child protection court judges must make crucial decisions involving the permanency plan for each child. A key consideration in this process is the perceived risk of the child's returning home versus remaining in foster care. Little is known regarding how judges actually determine perceived risk and what information factors into their determinations. For their contribution to this Special Issue, Summers, Gatowsky, and Dobbin surveyed child protection court judges to examine the influence of experience, expectancy-related case information, and other individual factors on their risk perceptions in a simulated termination of parental rights case. Three expectancy-related case factors varied across different versions of the case materials: sibling presence, parental involvement in a support group, and statistical information regarding the child's adoptability. Experienced judges' perceptions of risk were predicted by sibling presence and parental support group involvement, whereas less experienced judges' perceptions were predicted by adoptability statistics and individual factors including negative emotion, cognitive style, and age. Summers and her colleagues argue that less experienced judges may not be adequately equipped to recognize factors relevant to risk perceptions and that increased judicial rotations are necessary to improve judges' understanding of child abuse and neglect cases.

In the final article, Camilletti and Scullin present a survey of attorneys and college students on factors believed to influence jurors' perceptions of juvenile offender culpability. The two samples disagreed about the potential influence of certain factors such as abuse history, race/ethnicity, and poor quality of area schools, but agreed that a juvenile offender's youthful appearance would mitigate his perceived culpability and that juvenile crime trend information would have no effect. Contrary to those beliefs, a follow-up simulation study that manipulated both variables revealed that only juvenile crime trend information affected mock jurors' decisions. These data remind us that what attorneys believe are important mitigating factors for their juvenile clients may or may not correspond with jurors' actual beliefs and decisions in juvenile cases. Defense and prosecuting attorneys would benefit by targeting jurors' beliefs about juvenile crime trends during voir dire in cases involving juvenile offenders.

## Conclusions

We hope readers will enjoy the Special Issue and close by encouraging them to consider novel applications of beliefs and expectancies to the legal system. Given the ubiquitous nature of these constructs, there is no shortage of research to be done. Some understudied areas that appear particularly well-suited for examination include jury decision making in civil cases (e.g., expectancies about a 'reasonable' damages award), determinations of probation and parole made within the corrections system, the evaluation and interpretation of forensic evidence (e.g., handwriting, fingerprint, accident reconstruction, and tool mark analysis), attorney indoctrination of jurors during voir dire, and the role of unintentional adversarial allegiance in expert testimony, just to name a few. We look forward to revisiting the topic 10 years from now and pointing to all the great research that has been done—you might even say we expect it.

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