6. *Confirmation Bias*

"*Confirmation Bias*"

> *"the tendency to process information by looking for, or interpreting, information that is consistent with one's existing beliefs. This biased approach to decision making is largely unintentional and often results in ignoring inconsistent information. Existing beliefs can include one's expectations in a given situation and predictions about a particular outcome. People are especially likely to process information to support their own beliefs when the issue is highly important or self-relevant."* (The Encyclopedia Britannica, britannica.com/science/confirmation-bias)

"When the only tool you have is a hammer, every problem looks starts to look like a nail."

Psychological science has found that experts tend to find what they "expect" to find. This goes by different names: "*Confirmatory Bias*", the "*Rosenthal Effect*" ("*Pygmalion Effect*"), the "*Rosenhan Experiment* (*Sane in Insane Places*)", "*Mental Set*", "*Primacy Effect*", or "*First Impressions*" dynamic. The CIB expert needs to demonstrate they are cognizant of this phenomenon that adversely affects objective decision-making and show reasonable steps have been taken to avoid the various pitfalls. For example - the tendency for information gathering to be influenced by first impressions or a bias. There is a natural (albeit it unintentional) tendency to accept the essential accuracy of the self-reports of subjects in a study.

- Confirmation biases can occur through a researcher engaging in hypothesis-confirming information seeking and interpretation, overweighting confirmatory signs and underweighting dis-confirmatory signs, especially in unstructured interviews.
- Interviewers' characteristics and biases can influence how interviewers interpret information and determine subsequent queries (Tanaka-Matsumi, 2004).
- A lack of training and experience on the part of the research interviewers can result in erroneous information and weaken the validity of their findings (Bootzin & Ruggill, 1988).
- Data gathered from interviews can be biased due to social desirability and participants' own discomfort with disclosing personal information (Guinn et al., 2010). Self-report data can be accurate, but also can be an exaggeration or a minimization (Haynes, Mumma, & Pinson, 2009; Haynes, O'Brien, & Kaholokula, 2011).
- Because the interview method requires retrospective recall, information gathered is prone to memory errors and recall biases (Graham, Catania, Brand, Duong, & Canchola, 2003)."

Psychological research frequently uses techniques for mitigating the effects of confirmation biases, called "*blind*" or "*double-blind*" experimental protocols (Gluud, 2006). This is where the interviewer and/or the interviewee do not know the underlying purpose of the study. This helps to eliminate confirmatory bias. This writer doesn't know of a single CIB study that has used "blind" interviewers or interviewees. This is an important failure that undermines research into CIB.

CIB Should Not Be Used to Infer That Sexual Assault Has or Has Not Occurred

The Defense attorney should never allow CIB to be an implied "*dispositive tool*" (truth-telling instrument). As already described, the data reported in anecdotal CIB studies do not distinguish between true, unfounded, or false reports of sexual assault. In addition, because no determination was made to gain additional assurance that sexual assault indeed had occurred, few if any quantitative relations of symptoms or stages have been developed. There can be many other pathways to the symptoms found (other trauma, past childhood abuse, etc.). These symptoms were not shown in CIB studies to be unique to sexual assault. Thus, it would be improper to reason backward in an attempt to conclude that because features of the CIB were or were not found in an individual case that the person was or was not sexually assaulted.

A Logical Error

CIB experts can sometimes insinuate a flawed logic in cause-and-effect. Here's how it works.

Situation A

a) Bob went snow skiing,
b) While doing so, he broke his foot. (Forward logic - "a" led to "b")
c) I see a number of people day-to-day who have a broken foot.
d) THEREFORE, they must have broken it while skiing. (Backwards logic – a broken foot means the person was skiing)

Situation B

a) A person is sexually assaulted.
b) That person goes on to display a number of maladaptive behaviors in the future, like staying in the abusive relationship and delaying disclosure of the abuse. (Forward logic – "a" leads to "b")
c) The complaining witness in this case stayed in the relationship with the accused and delayed disclosing until after they broke up.
d) This is behavioral proof that the victim was sexually assaulted. (Backwards logic)

This is a logical fallacy termed **"*affirming the consequent*."** In the first situation backwards logic would lead the jury to conclude all individuals with a broken foot did so while skiing. In the second situation a complaining witness staying with her assailant is proof that the abuse happened. When examined rationally the conclusion is nonsensical. However, jurors might accept this line of reasoning because it *sounds* logical, when in fact it is completely illogical. Counterintuitive Behaviors are not dispositive as to whether sexual abuse actually occurred.

Counterintuitive Behaviors are never evidence that the sexual abuse actually occurred. The proper use of Counterintuitive Behavior testimony is to educate the court so that the court does not instinctively conclude that the sexual abuse did not occur based solely on a victim acting in a manner that the court believes is inconsistent with how a "real" victim of sexual assault would behave.

An example might be to compare intuitive behaviors and counterintuitive behaviors: If the evidence demonstrates that a sexual assault victim scratched the face of her attacker; that would likely be considered an "intuitive behavior" and would be evidence that the attack actually occurred. If the evidence demonstrates that the victim made no attempt to physically prevent the sexual assault, that would likely be considered a counterintuitive behavior and is NOT evidence that the attack actually occurred. The relevance of CIB testimony is to point out that, even though you might think they would, not every victim of sexual assault physically resists the unwanted sexual act. Expert testimony is meant to ensure that the factfinder does not put too much weight on that one fact – the lack of physical resistance – when considering the evidence. Unfortunately, the government tries to use CIB to "corroborate" an alleged victim's allegations. That is inconsistent with the science and the law.

Bottom Line:
CIB claims are prone to confirmation biases because proponents of the theory conducted all of their study interviews and were not blind to their own hypotheses. Consider asking the expert:

- What is confirmatory bias?
- How do researchers correct for confirmatory bias?
- Can you name a single CIB study that has included a blind or double-blind format?
- Did the gathering of psychological data systematically rule out rival explanations? What contradictory points of data were found?
- Did researchers believe the self-reports of subjects were factual truths?