Psychology and Law

Second Edition

Truthfulness, Accuracy and Credibility

Amina Memon, Aldert Vrij and Ray Bull

Psychology and Law: Truthfulness, Accuracy and Credibility

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PREFACE

The first edition of *Psychology and Law* was published in spring 1998. Much of the text was written in 1995–6, and the last eight years have seen a number of important developments in research and practice in most of the areas covered in the book. The volume of new research in the psychology and law area is reflected in the launch of several new journals, including the British Psychological Society's *Legal and Criminological Psychology* and the *International Journal of Police Science and Management*. This book is based on a detailed analysis of the published research literature as well as on material published in scientific reports, on conference proceedings and on data gathered during the course of our own recent research projects. Not only is our review exhaustive, but it is also up to date so that students and researchers can have access to the latest developments in the field. Our text is directed at students and researchers interested in the forensic issues to do with gathering evidence. We present the experimental and theoretical detail that is required for scientists to be able to evaluate the research and disseminate the findings to relevant professionals.

The emphasis of the current text, like the earlier edition, is on the perceived credibility of participants in the criminal justice system (be they witnesses, suspects or victims) and factors that influence the accuracy of evidence. Chapter 2, for example, examines the nonverbal characteristics and physiological correlates of deception. Chapter 3 reviews work on criminal appearance stereotyping. Throughout the text, there is an emphasis on the usefulness of the research. Thus, in Chapter 3, we ask whether research on stereotyping may help us understand why certain people (such as innocent suspects) may be chosen more often from line-ups than other people, and why the facial appearance of defendants can influence judicial decision making. We also examine how research has influenced practice. For example, Chapter 5 surveys psychology's major contributions to improving the ways that witnesses should be interviewed. The major focus is on children and other vulnerable witnesses (such as adults with learning disabilities). The way that the results from many research studies from several different countries cohere into a set of guidelines (such as those published by the Home Office) is described.

In addition to illustrating the practical relevance of research in the psychology and law area, our text examines the strengths and weaknesses of research methods that have been used to collect data in the laboratory and the field. For example, in Chapter 8, we critically evaluate studies that have used the mock-jury paradigm. Chapter 6 assesses research on factors influencing the quality of witness evidence, and Chapter 9 considers the extent to which there is a

consensus among psychologists on the variables influencing eyewitness reliability.

We are grateful to our research collaborators and students for providing us with material for this text and commenting on earlier drafts. The research reported here was supported by grants from the Dutch Organisation of Scientific Research, the Dutch Ministry of Justice, the Economic and Social Research Council, the Home Office, the Leverhulme Trust, the National Science Foundation, the British Academy and the Royal Society.

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CHAPTER 1

INTRODUCTION

This text, *Psychology and Law: Truthfulness, Accuracy and Credibility*, provides a comprehensive review of relevant topics as far as determining the accuracy of a witness, victim or suspect is concerned. Each chapter not only focuses on relevant research but also presents readers with a detailed understanding of the research methodology, the theoretical perspectives, the shortcomings of the research/theory and the practical significance of the findings.

Chapter 2 examines the characteristics of liars. Nonverbal, verbal and physiological cues (such as the polygraph) to deception are described together with a discussion of what professional lie catchers believe to be cues to deception and of their ability to detect deceit. We discuss the reasons why professional lie catchers (and people in general) make mistakes while attempting to detect deceit. We also examine the social contexts in which lying occurs and people's reasons for lying. Liars are said to experience three processes during the time that they are engaging in deception (and probably afterwards, too), and much of the research literature is organised around the study of these three processes. The first is an emotional reaction (such as guilt, fear and excitement), and this can independently influence behaviour. For example, guilt may sometimes result in gaze aversion. The second is "cognitive overload" arising from the difficulty of maintaining deceitful behaviour. This can result in disturbances in speech content, gaze aversion and other behaviours. The third process is behavioural control or impression management. This can suppress the behaviours that liars believe may "give away" a lie (for example, a reduction in hand movements). We argue that behavioural cues to deception may become visible only if a liar substantially experiences at least one of these three processes. The bulk of research in this area is laboratory based. However, there are some examples of deception detection in high-stake real-life situations. For example, we describe an analysis of former US President Bill Clinton's behaviour during his testimony before the grand jury in 1998 about his alleged sexual affair with Monica Lewinsky. We also report an in-depth study of the behaviour displayed by 16 suspects who were interviewed by the police in connection with serious crimes such as murder, rape and arson (Mann, Vrij & Bull, 2002).

We end Chapter 2 by concluding that no perfect lie detection test exists, and that lie detection experts make wrong judgements on a regular basis. However, there are detection methods which enable lie detectors to determine whether someone is lying or telling the truth above the level of chance, and these may assist investigators in early stages of their investigation.

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Chapter 3 explores the relationship between facial appearance and criminality, a subject that continues to fascinate students and researchers in the psychology and law area. Is there an association between facial characteristics and certain types of crime? Do members of the public hold stereotypes about the facial appearance of criminals? Are attractive people more likely to get away with crime? We divide the review into three parts. The first section of this chapter examines research on the extent to which people assume there to be a relationship between facial appearance and criminality. We review studies which suggest that facial appearance influences ratings of honesty/trustworthiness and may also affect judgements of whether a person is telling the truth (Vine & Bull, 2003).

The second part of Chapter 3 asks whether less attractive faces are thought to be more likely to be associated with crime and what would happen if these faces were made more attractive? What follows is a review of studies on the impact upon prisoners' recidivism rates of surgery designed to improve their facial appearance. These studies suggest that facial surgery is associated with a reduction in recidivism and can aid rehabilitation. There are several problems with these studies, however. First, the details of the prisoners selected for surgery and the attitudes of those who are turned down may say more about recidivism than the changes in facial appearance following surgery. Moreover, it may be that with an improved facial appearance, criminals are less likely to be caught or to be found guilty.

The latter, that is, the effects of facial appearance on "mock" jurors' judgements and in real-life court proceedings, are reviewed in the third part of Chapter 3. The early work suggests that unattractive defendants are treated more harshly, but more recent studies have failed to replicate the findings. More recent work suggests that the effect of facial appearance is likely to be moderated by other factors relevant to the judicial setting such as strength of evidence (Vrij & Firmin, 2001). There is also research to suggest that the jury deliberation process may influence mock jurors' judgements, with evaluations of the attractive defendant becoming more lenient following group discussion (MacCoun, 1990). Finally, as illustrated in the final section of Chapter 3, an examination of the role of attractiveness in real-life cases fails to support the laboratory research suggesting a simple association between attractiveness and trial outcomes. The relationship is much more complex than assumed, and the quality of the methodology and the presence of confounding variables pose problems for researchers in this area.

Chapter 4 reviews relevant theory and research on interviews with suspects, and starts with the premise that the main aim of such interviews is to elicit information that may aid a police investigation. In most of the police literature, it is assumed that suspects are likely to be guilty and uncooperative (Ofshe & Leo, 1997a). The result has been the use of a variety of techniques designed to *force* the suspect to talk (Kalbfleisch, 1994). Perhaps the best illustration is the "nine-steps approach to effective interrogation" (Inbau, Reid & Buckley, 1986), which has proved popular, especially in the USA. This approach, which is described fully in Chapter 4, relies to some extent on the use of trickery and deceit, and it has elicited much controversy about the use of unethical practices. The

psychological limitations of this approach are detailed. We question the assumption that suspects are unwilling to talk. Research has shown that most suspects are willing to talk. We review research on the use of the police interview as an information-gathering tool (from cooperative suspects). For example, we review an interview procedure that places emphasis on the preparation/planning of an interview and the rapport-building and social skills of the interviewer (Baldwin, 1992). The advantages of this approach over the nine-steps procedure are described.

The final section of Chapter 4 examines why false confessions may occur with reference to real cases, and presents empirical research and theory on the conditions most likely to result in a false confession. We make a distinction between three psychologically distinct types of false confession: voluntary false confessions, coerced-compliant false confessions, and coerced-internalised false confessions. Voluntary false confessions are false confessions which are given without any external pressure from the police. Coerced-compliant confessions occur when suspects confess to something they know to be untrue as a result of pressure. Coerced-internalised false confessions occur when suspects, typically due to police tricks, are not certain that they did not commit the crime. Police persuasion makes them decide to confess. The conditions under which these different types of confession occur are discussed. The implementation of safeguards to reduce false confessions and ways of identifying vulnerable suspects are also considered.

While Chapter 4 focuses on interviews with suspects, Chapter 5 examines witness interviews with a special emphasis on child witnesses and vulnerable witnesses. Professionals in several important types of cases (such as sexual abuse) may rely heavily on the accounts of children in attempting to determine what happened and deliver justice. The last 25 years have seen a dramatic increase in psychological research on children's strengths and weaknesses as witnesses. The research has focused on children's ability to recall details of events as well as their ability to recognise accurately the faces of perpetrators in identification situations. Researchers have studied whether younger children are more vulnerable to misleading suggestions than older children and adults, and why this may be so. This literature is reviewed together with evidence on the reversed misinformation effect (the provision of misinformation prior to the witnessing of an event). The *Home Office Memorandum of Good Practice* and its successor, *Achieving Best Evidence*, are used to illustrate the impact of this research on policy in England and Wales. Issues to do with training and the conduct of interviews by professionals are also discussed. Chapter 5 also examines the small body of research on the ways in which interviewer manner can influence the conduct of interviews. Finally, there is an exhaustive review of the recent research on the interviewing of vulnerable adults (for example, those with learning disabilities and limited communication).

Chapter 6 continues with the theme of witnesses, focusing on factors influencing the quality of eyewitness evidence. The latter plays a key role in the administration of justice, and identification errors can lead to miscarriages of

justice (Scheck, Neufeld & Dwyer, 2000). To address these concerns, researchers have attempted to identify the conditions under which eyewitnesses may be mistaken, and to promote safeguards to reduce the likelihood of eyewitness error. In this chapter, we review the variables that can influence eyewitness performance. We have organised our review around Wells's (1978) distinction between estimator variables (those variables over which the criminal justice system can exert little or no control) and system variables (those factors under the control of the criminal justice system). Both types of variables can be manipulated in research. Estimator variable research includes research on the age of witnesses, their physiological state at the time they witnessed the event, the length of exposure to the crime event and the presence of a weapon at the crime scene. System variable research includes work on the manner in which witnesses are questioned, instructions given to witnesses subject to a line-up or identification parade, the composition of the line-up and investigator biases. The ecological validity of eyewitness research and consensus among experts on the factors which reliably decrease or enhance witness performance are considered briefly in this chapter (a more detailed review on the latter is provided in Chapter 9).

Chapter 7 reviews evidence on the debate about the origin of "recovered memories". It reviews some of the theories about recovered memories and the methods used to study them—for example, studies of infants' memories for childhood events, clinical case studies of repression and experimental studies of retrieval inhibition. We also ask whether memories for traumatic events are any different from memories for non-traumatic events. The conditions under which false memories arise are then discussed with reference to laboratory research on the implantation of entirely "false" memories and to practices that may be used to elicit memories from clients undergoing therapy. It is argued that both the "demand characteristics" inherent in a memory-enhancing interview and the specific techniques (such as guided imagery) may increase a person's beliefs and memory reports about the occurrence of a false event (e.g., Mazzoni & Memon, in press). Moreover, it is argued that the process by which false beliefs and memories are produced may be no different from the processes by which accurate memories are retrieved (Mazzoni & Kirsch, 2003). The final section of the chapter on false memories considers how expert testimony based on scientific research can inform the courts about the reliability of recovered memories (see also Chapter 9).

Chapter 8 introduces the reader to juries as used in parts of Europe, New Zealand and North America. Empirical research on juries has focused largely on the variables that may influence the decisions of individual jurors and juries. Chapter 8 reviews the main research methods used to study jury decision making and examines the advantages and disadvantages of each approach, particularly the mock-jury paradigm. We examine the effect of juror demographics (gender, race and age), juror prejudices (pre-trial and during the trial), jury interaction and other factors on jurors' interpretation of evidence and verdicts. For example, juries are often exposed to information that is not admissible as evidence, and researchers have asked whether instructions to disregard this information can have the neutralising effect intended by the courts (Kassin & Studebaker, 1998).

Several areas of psychological research are relevant here. For instance, the cognitive psychology literature on thought suppression suggests that people find it difficult intentionally to suppress a thought upon instruction, particularly if it is emotionally salient. The harder one tries to suppress, the more difficult it can be (Wegner & Erber, 1992).

The final chapter examines some of the effects of expert witnessing, with a focus on expert testimony on the reliability of eyewitness memory. This chapter also discusses the standards for determining the admissibility of testimony, something that has been an issue for the courts, and ethical issues that may arise when giving expert testimony, particularly on sensitive issues. For example, we examine the effects of expert testimony in child abuse and rape trials. Taking expert testimony on eyewitness issues as an example, we also discuss whether or not an expert has anything useful to add to lay knowledge of variables influencing the reliability of testimony. The results of a recent survey of what experts testify about in court (Kassin et al., 2001) are presented together with a list of issues on which there is consensus among experts. Chapter 9 illustrates how the results of the psychological research reviewed in this text can be applied in legal contexts.

In this book, we have tried to focus in each chapter on how the discipline of psychology can inform the law (including policing) with reference to determining the accuracy of witnesses and suspects. It is our contention that over the last 25 years the contribution of psychology has been considerable in many countries.

CHAPTER 2

TELLING AND DETECTING LIES

Some Characteristics of Deception 7
Nonverbal Behaviour and Deception 11
Verbal Behaviour and Deception: Criteria-Based Content Analysis 19
Physiological Reactions and Deception: The Polygraph 20
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This chapter reviews nonverbal, verbal and physiological cues to deception. In particular, we will discuss how liars behave, what they say, how they physiologically react and how good professional lie detectors (police detectives, polygraph examiners and so on) are at detecting truths and lies while paying attention to such cues. The chapter reveals that professional lie catchers, among others, are to some extent able to detect lies by examining behaviour, speech content or physiological reactions. However, as this chapter will also show, no perfect lie detection test exists, and lie detection experts make wrong judgements on a regular basis. We will discuss several problems and pitfalls lie detectors typically face, but we start with some background information, such as a definition of deception, the types of lie people tell, the reasons why people lie and how frequently people tell lies.

SOME CHARACTERISTICS OF DECEPTION

Definition of Deception

Elsewhere we defined deception as "a successful or unsuccessful deliberate attempt, without forewarning, to create in another a belief which the communicator considers to be untrue" (Vrij, 2000a: p. 6). Some elements of this

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