

Assessing Witnesses

Judicial Studies Committee
Skills Course

Ekman & O'Sullivan Study (American Psychologists, 1991)

Study

How do various "groups" in society compare when trying to detect a liar?

Study Groups

Police, psychiatrists, polygraphers, Secret Service officers, students, judges

Experiment

Videotaped interviews shown to study groups and asked to assess witnesses based on demeanour (non-verbal communication)

Results and conclusions

Correct assessments made:

Students: 56%

Police: 55%

Judges: 56%

Psychiatrists: 57%

Secret Service Officers: 64%

- Apart from Secret Service Officers, most groups could only assess whether someone was telling the truth slightly better than by chance
- Wide disparity within groups – some individuals including some judges scored significantly below chance (30% or less)
- Follow-up study 1999 – new test but still based on demeanour
 - most still did poorly, though some were highly accurate
 - those who did well were better at detecting lies than in detecting truth (might be problematic if accused is telling truth, say re. alibi)

Further research – Prof N Bala (Canada, 2005)

Study

Credibility of child witnesses

Study Groups and Results

Law students: 44%

Police, lawyers, social workers, doctors, victim
support: 51%

Child protection workers: 54%

Judges: 56%

Reliance on the Unreliable

- Demeanour may indicate truthfulness but can be misleading
- Prof. J W Rand, "The Demeanour Gap" – "persons who only saw a transcript were better able to determine accuracy" (62%)
- During a trial/proof witnesses appear briefly in an artificial environment and you do not know what this individual looks like when they are telling the truth (the "hearing dilemma")

There is no “Pinnochio effect”

(Mann, Vrij & Bull- real life police interviews, UK, 2002)

- Stereotypical nervousness, e.g. averting gaze, fidgeting, greater hand and arm movement, increased stuttering, hurried speech or fillers (“ah”, “um” or “er”) were NOT clearly demonstrated by liars
- In fact liars increased their pauses and decreased their hand movements. Suspects who were lying made fewer eye blinks
- Contradicts generally-held belief that liars can’t look you in the eye

Other Research Conclusions

- No reliable relationship between confidence in one's ability to detect lies and one's actual ability
- Experienced fact finders make as many or more mistakes as others when decision is based on demeanour
- The more police officers endorsed police manuals and relied on stereotypical cues like gaze, posture changes, self manipulation, hand over mouth, the **worse** they were
- Individual differences due to personality or cultural background can make the judges task more difficult
- For example, introverts and socially anxious people can appear less credible than socially skilled people

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- Jurors tend to find attractive people more credible (UK, 2003)
- Judges at summary level in US did the same (1981) and gave attractive people shorter sentences
- In civil cases attractive people received larger awards
- Adults with large eyes are perceived as warm and naïve
- Psychopaths are persuasive and practised liars – they show little anxiety about lying (2003)
- Liars tend to recount a story in chronological order whereas truth tellers tend to include more spontaneous corrections (UK, 2004) – “the Truthful Witness Paradox”

“Just when you thought it was safe

- Traditionally consistency has been considered one of the most important measures of witness credibility
- Self-contradiction is believed to be a result of a defect in memory or honesty of a witness
- So credibility is frequently attacked by highlighting inconsistencies in statements.

But the science says.....

- Inconsistencies of testimony are not always related to accuracy (Fisher & Cutler, USA, 1996)
- Memory is a product of questioning. So if the question posed to a witness changes from one interview to next, their recollection may change
- The way in which a question is posed can affect how a witness remembers an incident (Loftus & Palmer, USA, 1974)
- Effective questioning can result in new information (Reminiscence)
- Reminiscence is natural process of memory and can produce reasonably accurate statements.

- Truth-tellers will be relying on their memory so they could lose details, add new information or change details over time.
- Someone who is highly motivated to lie may rely on a well rehearsed script and a strategy to present a consistent report each time they are questioned.
- They may provide just enough information to be convincing but avoid being caught out

Some valid indicators

Truthful statements (Porter, etc., US, 2001):

- Generally remain consistent and coherent over time
- Include sufficient detail
- Are less concerned about impression (e.g. will admit memory failure)
- Have a clear logical context

Untruthful statements: Some deception clues

- More pauses
- Slower speech
- Excessive detail if time to prepare
- Repeat information

Conclusions

- Effective detection of truth requires an eclectic combination of techniques
- Credibility assessment is not simply a matter of common-sense
- Judicial decision makers should think critically about their decision making and be aware of the dangers of relying simply on their intuition
- Consider context and how memory works
- Be aware of own constraints and possible biases