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OPINION

Criminal Evidence: the Backwards Story with a Future

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Algernon's observation that 'the truth is rarely pure and never simple'¹ has a particular resonance in cases that come before the criminal courts. As a consequence, manifold evidential rules and techniques have been developed to assist the court in coming to the truth of a matter.

A new technique of testing the story of a witness or suspect has been developed by psychologists. It involves asking the person telling their version of events to recount the events in reverse order. People who have fabricated a story find that recounting it backwards is very difficult whereas people who have really experienced a sequence of events find the mental rewinding required to tell the story in reverse less challenging.

Sooner or later, perhaps, mischievous characters might master how to get round the testing technique but unless and until that happens it bears every sign of being a useful method of evaluating the credibility of testimony. In law, the backwards story might have a future.

In this context, a recent report (*Interviewing to Detect Deception*, June, 2008, funded by the Economic and Social Research Council and undertaken by Aldert Vrij, Sam Mann, Ron Fisher, Ray Bull and Becky Milne at the University of Portsmouth) is of considerable interest.

Historically, police interviewing tactics have set importance on such visual and speech-related cues as people shifting uncomfortably in their seat and stumbling over words. The new research casts doubt on their effectiveness. The research suggests that placing additional mental stress on interviewees could help police identify deception.

Police manuals have recommended several approaches to help investigators decide whether they are being told the truth. The principal strategy focuses on visual cues such as eye contact and body movement, whilst the Baseline Method strategy involves investigators comparing a suspect's verbal and non-verbal responses during 'small talk' at the beginning of interview with those responses in the substantive part of the interview. A third approach, the Behavioural Analysis Interview (BAI) strategy, comprises a list of questions to which it is suggested liars and those telling the truth will give different verbal and non-verbal responses.

* The views expressed in this article are those of the author and do not necessarily reflect the views of The Open University or *The Journal of Criminal Law*.

1 *The Importance of Being Earnest*, Oscar Wilde, 1895 (Courier Dover Publications: 1990) 6.

The Portsmouth study entailed a series of experiments involving 255 student 'interviewees' and 290 police officers. In the study interviewees either lied or told the truth about staged events. Police officers were then asked to tell the liars from the truth tellers using the standard recommended techniques. Those officers paying attention to visual cues proved significantly worse at distinguishing liars from truth tellers than those officers looking for speech-related cues. In another experiment, liars appeared less nervous and more helpful than those telling the truth—contrary to the advice of the BAI strategy.

Professor Aldert Vrij explained: 'Certain visual behaviours are associated with lying, but this doesn't always work. Nor is comparing a suspect's responses during small talk, and then in a formal interview, likely to be much help. Whether lying or telling the truth, people are likely to behave quite differently in these two situations.'

He argues that evidence also suggests that liars are concerned about not being believed, and so are unlikely to come across as less helpful than truthful people during interview. If anything, he suggests, guilty people are probably even keener to make a positive impression. All of this, he observes, makes the investigator's job very difficult.

When the researchers raised the 'cognitive load' on interviewees by asking them to tell their stories in reverse order, interesting results followed. Professor Vrij explained: 'Lying takes a lot of mental effort in some situations, and we wanted to test the idea that introducing an extra demand would induce additional cues in liars. Analysis showed significantly more non-verbal cues occurring in the stories told in this way and, tellingly, police officers shown the interviews were better able to discriminate between truthful and false accounts.'

Witness testimony is, of course, a critical part of the criminal justice process so it is essential that the legal system makes use of the best techniques to ensure the reliability of such evidence. As another recent report has noted:

In legal cases memory may feature prominently as the main or as the only source of evidence. In such cases, evaluating accounts put forward as memories is nearly always critical to the course and outcome of the case or litigation.²

The report recognises that in the context of police questioning of witnesses, there are inappropriate questioning styles. These include:

... frequently interrupting the witness, over-talking on the part of the police officer, excessive use of closed or yes/no questions, and the inappropriate timing and sequencing of questions . . . These interview styles are undesirable as they interrupt witness concentration, give little opportunity for the witness to provide information which is not specifically requested, and encourage the witness to engage in ineffective and superficial searches of their memory.³

² The British Psychological Society, *Guidelines on Memory and the Law: Recommendations from the Scientific Study of Human Memory*, Research Board, July 2008, 4.

³ *Ibid.* at 29.

Nevertheless, provided an interviewee is not exposed to any of these or similar abuses, it seems reasonable to suppose that in some cases the results of asking interviewees simply to recount a series of events in reverse might well produce results useful to the exposure of truth in criminal cases. The technique is still the subject of continuing research and will, if pioneered, require its own set of specialist guidelines.

This new technique will not be a silver bullet. Not long after any new technique is pioneered to help the system of criminal justice, do those bent on subverting its application find a way to beat it.

People who commit crimes become aware of the ways in which they might get tripped up by police or prosecutor questions, and so find artful ways to try to thwart such techniques. Every clever development on one side of the cat-and-mouse contest is, sooner or later, outwitted by a development on the other side.

One aspect of this is in the physical world of crime prevention. For thousands of years, every invention of a crime prevention technique such as an 'unbeatable lock' or an 'impenetrable safe' has been followed soon after by a clever criminal way in which the technology is circumvented. Before he became a UN Director of Crime Prevention in the Far East, Norval Morris suggested car crime in the USA could be cut by 75 per cent with the installation of devices such as car alarms and steering locks. That was in 1969. Those devices eventually became standard car features but car crime continued to rise. The same *crooks v cops* battle of wits occurs where people who have committed crime learn how to play the system of interviews with police officers, and cross-questioning sessions by lawyers in courts. Forensic psychologists, though, will be able to continue to develop techniques to keep pace with or outpace those who inclined to dodge legal justice.

Sir John Mortimer QC once observed that 'A British criminal trial is not primarily an investigation to discover the truth, although truth may sometimes be disinterred by chance'.⁴ The probability of such disinterment might well be improved in some cases by a measured requirement of reverse story-telling.

4 J. Mortimer, *Clinging to the Wreckage* (Penguin: 1982) 213.