

JUROR DECISIONS REGARDING FALSE MEMORIES

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Introduction

Jurors are regularly confronted with false testimony, sometimes stated intentionally and sometimes unknowingly. In criminal cases the stakes are increasingly high and warrant careful scrutiny and deliberation in order to not assign a wrongful conviction.

Prior research has shown that people will often attempt to present themselves favorably and/or use deception to attain a desired result (Grover, 2005).

When under extreme pressure or strain, such as being on trial, people are even more likely to engage in deceptive behavior if they believe it will enhance their chances of a more favorable outcome (2005).

It is not necessarily the witnesses themselves who attempt to alter their testimony, but rather parents, caregivers, therapists, police investigators, attorneys, and/or other invested (or not) individuals.

Outside parties may intentionally or unintentionally plant ideas or suggestions that may lead to false memories in the person. This is most commonly seen in cases where children are involved, such as trials regarding sexual abuse or heated custody battles (Khurshid, & Jacquin, 2013; Otgaar, Howe, Peters, Sauerland, & Raymaekers, 2013).

Lying

The human brain works most efficiently when it is being truthful. Honesty is considered to be the brain's natural default (Verschuere, Spruyt, Meijer, & Otgaar 2011; Yin, Reuter, & Weber, 2016).

According to Verschuere et al. (2011), for a person to tell a lie, he or she has to first intentionally suppress the truth and second formulate the lie. While this process often happens at lightening speeds, it requires a great deal of cognitive energy to facilitate.

This mental strain causes the brain varying degrees of stress, or neuromotor noise (Van Gemmert, & Van Galen, 1997), altering blood oxygen level dependent (BOLD) activities (Wu, Loke, Xu, & Lee, 2011) and causing physical symptoms of stress, such as flushing, increased pulse, sweat, and eye dilation (Knight, 2004; Meijer, Verschuere, Gamer, Merckelbach, & Ben-Shakhar, 2016).

The degree of cognitive and physical response(s) are often contingent on the type of lie, the circumstances regarding the lie, and the frequency a person engages in telling lies.

The brain is highly adaptable, and with repetition, lying can become the new norm (Verschuere et al., 2011).

However, in most cases, spontaneous and willful deception will result in some level of psychological and physical stress (Yin et al., 2016).

In a court of law, these types of involuntary responses are especially critical as they aid in lie detection.

False Memories

Current research states that, “suggestive processes can result in the formation of complex false memories and to detailed descriptions of events that are believed to be true although they actually never happened” (Volbert & Steller, 2014, p. 214).

A person who experiences false memories typically does not experience the same physiological manifestations as someone who engages in lying.

In most cases, a person with false memories functions under the misconception that he or she is telling the truth.

Suggestion-based false memories are believed to stem either from misinformation or implantation, and are more commonly found in children than adults (Otgaar et al., 2013).

It is believed that children are more susceptible to suggestion-based false memories due to their faith in authoritative figures and because their critical thinking skills have not yet fully developed.

Unless intellectually impaired or under extreme mental duress, adults are typically less susceptible and more cognitively savvy to suggestibility or implantation.

Suggestion-based false memories differ from ‘spontaneous’ false memories, in that they develop internally, independently, and without external suggestion (2013).

Jury Decisions

The implications of the accuracy of memory based testimony in trials are numerous and profound.

Importantly, “in legal cases, memory recollections are often the determining evidence factor in deciding whether a suspect should be convicted” (Otgaar et al., 2013, p. 666).

It can be a difficult and arduous task for jurors to determine whether testimony is truth, lies, false memories, or consisting of all three.

False memories deceive but not intentionally.

It is important that jurors focus more on why and how a statement has emerged and evolved, rather than overtly trying to hone in on whether a statement is deceitful (Volbert & Steller, 2014).

There are two common approaches in determining whether testimony is fabricated or a false memory:

- Criterion-Based Content Analysis (CBCA), a systematic strategy employed by interrogators and officials to ascertain truthful versus fabricated testimony.

- Statement Validity Assessment (SVA) which takes CBCA a step further to look at the construction of the statements, such as how people relate to an experience.

Research is mixed about the success of these approaches (Lamb et al., 1997; Rassin, 2000).

Conclusion

It is crucial for jurors to be able to differentiate the truth from false memories or more blatant lying in witness testimony. Currently, further research is necessary to ascertain juror knowledge, understanding, and perceptions of the accuracy and/or intent of suspected or established false memory testimony.

