

Psychology and Law

There are many fields that are connected to psychology. Usually these fields are applied, meaning they involve taking basic findings of psychology and seeing how they can relate to other fields such as business, health, law, etc. For today's lecture, we will only focus on psychology and law to provide an example. The American justice system is one of the most important institutions in the US. Like every institution especially when they are important, it is scrutinized. People are interested in asking: where is the system not operating right? Where can it be improved? Psychology and law looks at those areas and tries to see how to improve them by looking at the human mind and how what is known about it has implications for jurisprudence.

1. Eyewitness testimony

One of the best pieces of evidence in almost any cases comes from eyewitness testimony. Also it can be very compelling for jurors to see a witness testify. Psychology research is relevant to eyewitness testimony because of what psychologists have found about memory. Eye witness testimony, despite all its value isn't perfect. For example, a newspaper clip shows that the Baltimore police had charged a dead man for a crime after a witness identified his picture. What psychologists know from the research done has implications for when we can or can't trust eyewitness testimony. Some of those factors:

- **Emotional stress** has implications for memory: having some arousal can focus attention, but too much arousal can focus memory on things that are not relevant. A study found that memory for faces was worse when the person whose face it was was holding a gun instead of a wallet. The gun is so arousing that people can't remember the faces.
- **Storage:** we know from previous lectures that memories are constantly being constructed and reconstructed based on other events that follow, expectations, etc. Although people are trying to be accurate, there are factors that can influence recall of the particular event. We talked about the effect of leading questions. Asking "did you see the stop" sign, vs. "did you see a stop sign" changes memory. The question "did you see the..." implies that the sign was there, whereas "a stop sign" does not imply anything.
- **Memory for faces:** We also talked about the way in which one is asked to remember faces is something that can influence the memory for faces: whether you are asked to describe a face before being asked to remember it makes accuracy worse. Again, being asked to describe the faces first is not how we usually remember faces.

- Memory plays a big role in lineup, which involve a lot of **decision making processes**. Imagine the following scenario: you get mugged by a psychology professor at Gilmer Hall (sure...), all you remember is that it was an Asian woman. You see a lineup of 5 men and one Asian woman, then you are asked "who mugged you?", who would you pick? Of course it won't mean that the person you pick is the right person, you see the issue... Also if the leading questions give you a sense that the person has to be in the lineup (like if the question says "which one is it?"), this can affect the decision making process. The goal becomes to find the person while assuming that they have to be here, rather than just remembering the person. Also lineups that are constructed so that each person in it matches the description provided so far increases accuracy. For instance, if you described the aggressor as a bolding man, then the line up could be of 6 bolding men. Lineups are also worse if all of the faces are seen at once vs. one at a time. When you see one face at a time, the question is: "is it this one or not?". This is a very different decision making process than asking "if it's not this one, it must be one of those two, etc."; this type of judgment is less related to accuracy. Lineups are definitely a success story in terms of how basic research has been used to make improvements in applied settings. Due to this research, lineups are designed differently ow.

Video clip on eyewitness testimony: during the video focus on the processes that influenced the outcome case and lead the witness to identify someone who was innocent; focus especially on how later events influenced the recall of previous events. The person who was identified by the witness spent 11 years in prison before DNA evidence proved that he was innocent. What are some of things that happen in the process that can lead to such an outcome? The police might use the description provided by the witness to create the lineup, then the witness might have seen all of the pictures at once, and the question might have been "which one is it?", which suggests that the suspect has to be in the lineup. The police officers sometimes ask leading questions and have a body language that can influence the decision making process. Those aren't necessarily intentional. Then reinforcement might happen, the police officers might add information that reinforces the idea that the person picked was the suspect, for instance "yes, number 2 has a record already". Then the witness processes all of that information and it becomes part of their memory. Someone in the set of pictures might look like the person from the scene, but the memory becomes the person in the picture. Of course while the innocent person is in prison, the actual perpetrator is still out committing crimes.

The victim who made the identification in the clip makes an interesting observation: she had no intent of making a false identification, but the process did have an impact of how she remembered what she saw. As of today, 208 people who have later been

cleared by DNA evidence have been in prison for being wrongfully identified. 15 were on death row. The average number of years they served is 12.

Lineups can't be eliminated because they are a crucial part of evidence, but they can be improved in the following ways:

1. It shouldn't be implied that the suspect is in the group.
2. The people in the lineup should be matched on the reported features (again, if the main description was "bolding man", all the people in the lineup should be bolding men)
3. Using a sequential presentation to avoid the comparison process
4. Have the supervisor, as researchers usually are, be blind to whether the suspect is in the lineup to avoid unintentional influences
5. Ask for testimony as soon as possible to avoid the effects of decay and interference

Children's testimony

In some cases children are the only witness, and there is a lot of concern on whether their memory is reliable. There are different views on this: some argue that children's testimonies are completely inaccurate, others argue that children are as good as adults. Of course a position in the middle is more accurate. Children are able to be accurate, but they are subject to the same biases that adults are subject to, but to a much greater extent. Children are more suggestible than adults; leading questions have an even greater effect on children. Sometimes questions are repeated; kids might interpret that as: "maybe the adult didn't like previous answer I gave". Children want to give answers that please adults around them. They might tailor their answers to what adults want. They see adults as trustworthy and knowledgeable, so children are likely to believe that an adult's suggestions are more accurate than what they believe to be true.

The question is: what can be done about the quality of eyewitness testimony? Judges and lawyers might have a case now and might need to know what they can do right now. Researchers can't just say "it's bad" without helping improve those processes. Some attempts to improve the processes include:

- Training people to pay attention to their surroundings so if needed they can identify an aggressor. This has had very limited success because people can't pay attention all times. One main aspect of a crime is that it's unpredictable.
- Hypnosis has been used to get people to remember things that they did not remember completely, to improve memories. This is very controversial because hypnosis doesn't do a good job of improving memory all the time. It works on some cases but sometimes it might make people invent things. What it does is that it increases people's confidence that the memories are accurate.
- Cognitive interviews: the questioning can be structured to improve accuracy. This probably has the most promise but it will never be a perfect solution because memories aren't perfect and can't be.

There are other things that can be done which are consistent with what we talked about so far:

- Reports should be made as soon as possible, and the person should have an opportunity to make their own narrative rather than responding to leading questions
- Witnesses should be prevented from sharing stories with each other. People might remember what the other witnesses said as what they saw
- Accuracy of a memory is not the same as confidence, this is especially important for jurors who tend to be influenced by confidence. People are not well calibrated: they might be very confident but their confidence does not match the accuracy of their judgments.
- Open ended questions that let people describe what they saw are better because people are not as influenced by the investigator's theories
- Questions that lead witnesses to a particular path should be avoided.

Video clip: child witness testimony. There were several cases in the 90's where child witness testimony was the main evidence, and it had turned out that the events described by the children did not happen. There were cases around this time where health care providers were accused of sexual misconduct, some were probably guilty of it, but a lot were not. The researcher in the clip is interested in studying the accuracy of child witness testimonies. Children in the study interact with a pediatrician who puts a ribbon around their wrist, a sticker on their belly, and tickles their feet with a stick. When asked right after the "did the doctor touch you around you're your vagina?", girls answer no. But when they come back on a different day, not only do they answer yes, but when they are given a doll to demonstrate what had happened, they make stuff up. One child reported that the doctor tied the ribbon around her neck to strangle her.

2. jury decision making

Juries have a very important job and work very hard to reach a consensus to decide what should be the outcome of a case and this can be difficult. Sometimes some evidence is presented that the jury is not supposed to pay attention to. That often happens when one side presents something, and the other side says "objection". The jury is then asked to disregard the evidence. Can people really ignore information they have been presented with? In one study, mock jurors were given information about a case. Everything in the case was the same except the following: in one condition, the mock jurors were told that the defendant did not confess; in the second condition they were told that the defendant had confessed; in the third condition they were told that the defendant had confessed, but the confession was inadmissible because the defendant was coerced to confess. The researchers were interested in what percent of participants in the study find the defendant guilty in each condition? Can people ignore the non admissible confession? If they can, their ratings should look like the

ratings the condition in which there was no confession; if they can't then their ratings should look like the condition in which the defendant had confessed. The researchers found that 25% of participants rated the defendant as guilty in the no confession condition, 60% in the admissible confession condition, 50% in the confession non admissible condition, almost like the confession admissible. People have a hard time if the confession was not admissible, although people admitted and recognized that they should not use that information. Our ability to override the information is very difficult, also despite our best intentions we don't have introspective abilities that can help us know the exact basis of our decisions.

3. Interrogation techniques and confessions

In criminal law, the best thing that can happen to a prosecutor is the person admitting to a crime. Due process is to protect a suspect so that they are not put in a situation where they would say anything just to get out of the situation. The explicit use of promises of leniency, and deprivation of food and sleep are not allowed. So what can interrogators do to get people to confess? Officers can use a number of interrogation techniques. There is a bible that was written by investigators with a lot of experience on how interrogation can be done to help elicit confessions. Some of those techniques have a basis in research, others are based on practical experience. Some techniques from the book involve changing the situational features of the interrogation to increase the desire to cooperate. Those techniques are:

- to increase **Social isolation** through sensory deprivation (a room without windows),
- to deprive the suspect of **their sense of control**: this can be done by furnishing the room with a few chairs, that are fixed, that don't have a back, and by invading a suspect's personal space. The point of those techniques is to set the space so as to make people feel less certain about what they are and who they are.
- **Confrontation procedure**: confronting a suspect with guilt can elicit confessions, for instance saying "I know you did it, we have the evidence, confess". Also providing themes to excuse the crime, so that the suspect can draw on them when getting close to confessing. Another procedure involves interrupting all denials and overcoming of all the objections of the suspect. For example if the suspect says "I have moral reasons why I wouldn't do it" ,, an investigator can provide alternative ways in which they could have done it.
- It's also important to prevent the suspect from being passive by not letting them tune out.
- It helps to show some sympathy and understanding, reasons for them to believe that you that other people could have done the crime too.
- Also, interrogators can provide ways for the suspect to save face like : "sure you did, but that person was a jerk".
- Once a suspect breaks down, they should be asked to recount and repeat the story and to convert the verbal confession to a written statement.

Throughout the process, different tactics can be used to bring about a confession:

Maximization tactic: exaggerate the crime and its consequences so that the only way out is to confess and show that it wasn't as extreme as the officers argued

Minimization tactic: to argue that the crime isn't a big deal, like: "everyone does something like this every once in a while".

Implying promises or threats explicitly is not allowed (can't say "we will knock out 5 years of your sentence"), but subtle approaches can be effective to induce confessions.

These procedures have been effective in eliciting confessions, but there is a concern as to what extent they would elicit false confessions. The question is, who is guilty of confessions and who is falsely confessing? One type of false confession is **voluntary**, and comes out of a need for fame (like for John Karl who confessed to killing Jeanbonnet Ramsy) or for pathological reasons.

Coerced compliance: because of the interrogation situation being very stressful and because getting out of it is more desirable than consequences of the confession in this moment, people might confess. We know from research that people tend to be overly focused in the moment.

Coerced internalized confession: it's like coerced confession where the person didn't do it, but the difference is that overtime, because of their suggestibility or vulnerability, the suspect starts to believe the confession. We talked about *Remembering Satan*, which is a book about a real story of a man who was accused by his daughter of being in a satanic cult and of abusing her and killing babies. The man ended up believing that it had actually happened and went to jail for it, before getting cleared by the lack of evidence. All of these bizarre situations in interrogation come from some processes:

- The power of situation: the desire to get out of the interrogation room makes people vulnerable emotionally, there are also individual differences in the vulnerability
- If false evidence is introduced, that creates issues: being told that something is true when it's not, makes people more likely to remember it as true.

A lab study was conducted to understand false confessions and to understand the basic psychological processes around it. Participants came into the study and were asked to complete a task on the computer. They are told that they have to be very careful not to hit the "alt" key because if they did, the computer would crash and all of the data would be lost. Another "participant" is sitting next to the real participant while they are doing the task. Then half way through the task, the computer crashes. The experimenter comes and yells at the participant: "what happened? You must have hit the "alt" key, I told you not to hit that key". Then the experimenter asks the other "participant" whether they saw the person hit the key. In one condition, the

confederate says yes, in the other condition the confederate says "I didn't see anything". The researchers manipulated something else: for half of the participants, the computer task was very fast, which increased the participants' uncertainty about hitting the key. Whereas for the other half the task was very slow. The researchers were interested in finding out who confesses by signing a statement saying "yes I hit the key". Additionally the study was set up so that when the participant leaves the room, they are asked by someone in the hallway: "what happened in there? I heard the experimenter yell". 70% of participants across all conditions confessed to hitting the key even though they did not. 30% internalized it (meaning they believed they actually did it), and 10% confabulated details (meaning they said things like "it must have been when I moved my arm"). That suggests that a lot of the stuff can happen quickly regardless of the condition. When the task was slow and the witness didn't see anything, 35% confessed, none internalized or confabulated. When the task was fast and the witness confirmed, 100% confessed, more than 60% internalized and almost 40% invented details that never happened. This group was the most vulnerable.

4. Detecting deception

All the concerns about confessions could be eliminated if we could reliably determine who is lying and who is not. So a lot is invested in distinguishing truth tellers and liars. Behaviors that are detected might have some relation to lying, but they can also be related to other things like stress, nervousness. We are not good at detecting lies. One method that's often used is to train investigators to detect deception based on non verbal behavior. Does this work? Participants were recruited in a study to show up somewhere where they would be pretend arrested. Half of the participants were told to commit a minor crime (like vandalizing something or shop lifting) right before the arrest, half were told not to commit the crime. All the participants are told to keep denying that they committed the crime, regardless of whether or not they actually did. Then participants came back to the lab for a mock interrogation. Only participants who resisted confessing were kept in the study. The question was: could the interrogators detect who is lying and who is not? If they are performing at chance level by guessing, there is 50% chance that they can detect it. The students who pretended to be investigators and who had no training at detection got it right 55% of the time. The students who pretended to be investigators but who did receive some training got 45% correct. The trained and experienced police investigators got 50% correct. So the techniques don't do well at helping detection. Another question of interest was: how confident are people about their answers on a scale from 1 (just guessing) to 10 (certain)? The untrained students gave a 5.9 on average, the trained students gave a 6.6 on average, and the experienced police investigators gave a 7.1 on average. Confidence increases with training but not accuracy. Why are the untrained students doing the best? Humans have subtle unconscious techniques they can use to detect liars which can be accurate, but the training focuses people on things that might not

be good indicators rather than letting them rely on the unconscious techniques. As of now, there aren't structured techniques that work for detecting liars.

Summary

Today we looked at how psychology can be applied to legal practice. The critical thing for the lecture was how basic research can be applied to professions and institutions that need the results right away to solve problems.

- Findings on psychological processes can explain errors in eyewitness testimony
- Juries work hard to make the right decision, but they are subject to the same reasoning biases as the rest of us because of how the human mind works.
- The power of the situation can induce false confessions even ones that the suspect comes to believe true.