

DETECTING DECEPTION IN THE CRIMINAL JUSTICE SYSTEM: THE NIGERIAN EXPERIENCE *

Abstract

Lie detection is an assessment of a verbal statement with the goal to reveal a possible intention of deceit. Lie detection may refer to a cognitive process of detecting deception by evaluating message content as well as non-verbal cues. The problem of this work is that witnesses and suspects tell lies to deceive the court and law enforcement agents. The findings of this work is that there are ways and means by which lying can be detected. Doctrinal method was used and the researcher advocates for more research and clinical training in lie detection skills and techniques.

Keywords: Criminal Justice System, Deception, Detecting, Nigeria

1. Introduction:

Davies & Beech¹ defined deception as an act intended to foster in another a belief or understanding which the deceiver considers to be false. Deception is as old as human existence and is a social concept that infiltrates every aspect of human life not minding the content, one's age, gender, education and occupation. Deception includes practical jokes, forgery, imposture, conjuring, confidence games, consumer and health fraud, military and strategic deception, white lies, feints and plays in games and sport, gambling scams, psychic hoaxes and much more². The law generally defines a number of criminal and civil offences that involve deception and provide for sanctions. Criminal offences include obtaining property by deception and obtaining a financial advantage by deception.³ The Corporations Law also provides for such offences as fraudulent trading⁴. Making a false complaint to the police or lying in court under oath if found out are criminal offence.⁵ Most countries also have consumer protection legislation that prohibits deceptive advertising⁶ while the use of deceit could render a contract invalid.

2. Approaches that Can Help in Detecting Deception.

The Emotional Approach

According to Eckman⁷ the emotional approach states that lying causes emotions that differ from those experienced while telling the truth. For example, a liar may experience fear of being judged as not being truthful. The consequences of being judged as a liar and hence the fear of apprehension may differ depending on the context. According to them, experiencing emotions when lying can have behavioural consequences. It is predicted that fear of apprehension will cause liars to experience stress and arousal causing the pitch of voice to rise and increasing blushing, sweating and the amount of speech errors, while feelings of guilt will cause liars to avert their gaze. Accordingly to Ekman⁸, the stronger the emotions experienced by liars, the more likely that these emotions will leak, leaving visible traces in demeanor.

The Cognitive Approach

The Cognitive Approach is based on the notion that lying may be more mentally demanding than telling the truth⁹. Lying can be a more difficult task than telling the truth in that a liar must provide a story consistent with the facts known by the interviewer, detailed enough to appear based on something self experienced but simple enough to

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¹ Davies, G & Beech A. *Forensic Psychology*. Chichester, Johnwilley & Co 2012

² Hyman, R. 'The Psychology of Deception in Animal' *Review of Psychology*, 40 133-54 1989

³ *Oluwasheun v. Federal Republic of Nigeria* (2014) (2016) NGCA 32

⁴ Udofia, K. 'Fraudulent Trading rule: Asset recovery Mechanism in winding-up Proceedings' *This day Newspaper*, 6/12/2016

⁵ *Terytex (Nigeria) Limited v. Nigerian Ports Authority* (1988) LCN/0043 (CA)

⁶ Ukaegbu R. C. 'Deceptive Advertizing and Consumer Reaction': *Open Access Library Journal*, 7: e5865 <https://doi.org/10.4236/oalib.1105865>.2020

⁷ Ekman, P. *Telling lies; clues to deceit in the market place, politics and marriage*. New-York: Norton 2002

⁸ Ekam, P. *ibid*

⁹ Polage, D. 'The Effect of Telling Lies and Belief in the Truth. *Eur J. Psychol.* 13 (4): 633-644. 2017 published online 2017 Nov. 30. doi:10.5964/ejop.v13i4.1422'

be remembered if one is asked to repeat the story later on¹⁰. Research has shown that cognitive demanding tasks can result in gaze aversion¹¹, since it can be distracting to look at the conversation partner. This approach predicts that engaging in a cognitively demanding task will result in fewer body movements¹² and long pauses within a statement, as well as between the interviewers' questions and the reply.

The Attempted Control Approach

The Attempted Control Approach suggests that liars may be aware that interval processes (such as emotions) could result in cues to deception; consequently, they may try to minimize such cues in order to avoid detection¹³. Paradoxically, attempting to control one's behaviour in order to prevent leakage deception cues may in itself result in cues to deception¹⁴. For example, trying to inhibit movements caused by nervousness and arousal may result in over control, creating an unnaturally stiff impression.

The Self Presentational Perspective

Self-presentation has been defined as regulating one's own behaviors to create particular impression on others¹⁵. Liars and truth tellers are seen as having a mutual goal: to appear honest. The major difference between liars and truth tellers claims of honesty is that truth tellers have grounds for their claims and that they stay within the boundaries of truth. The result to this is that liars and truth tellers differ cognitively and emotionally in two ways thus: liars are aware that their claims of honesty are illegitimate, which may result in more negative feelings, making them appear less pleasant and more tense¹⁶. Again, since liars may be less familiar with the events or domains that their stories concern, they may provide less information. That is why during cross-examination of a lying witness, experienced cross-examiner go into details of areas the lying witness will not have information and in many occasions, it destabilizes them. Secondly, liars present stories that they know depart from the truth in order to seem credible and to do that, liars are likely to experience acting in a more effortful way¹⁷. Consequently, they attempt to control their behaviour as well as their feelings which may cause their actions to appear less convincing, less involved and more tense and may make them seem to hold back.

3. How to Recognize the Signs that someone is lying

It will be noted that lying can be hard to detect¹⁸. Clearly, behavioural differences between honest and lying individuals are difficult to discriminate and measure. Psychologists have utilized research on body languages and deception to help members of the law enforcement and lay persons distinguish between the truth and lies¹⁹. A few potential red flags that someone may be lying have been identified by researchers to include:

- Being vague, offering few details.
- Repeating questions before answering them.
- Being more tense and nervous and their pupils more dilated and voice pitch higher.
- Speaking in sentence fragments.
- Failing to provide specific details when a story is challenged.
- Grooming behaviours such as playing with hair or pressing fingers to lips.

Detecting lies requires training. Lead researcher R. Edward Geiselman suggest that while detecting deception is never easy, quality training can improve a person's ability to detect lies. According to him,

¹⁰Burgoon, J. K Buller D. B; & Guerrero L. K 'Interpersonal deception ix: Effects of social skills and nonverbal communication on deception success and detection accuracy' *Journal of anagoges and social psychology*, 14, 289-311. 1995

¹¹ Ekam P & Friesen, W. V 'Hand movements *Journal of combinations*', 22, 353-374. 1972

¹² Vrij, A 'why professional fails to catch liars and how they can improve' *Legal and Criminological Psychology*, 9, 159-181. 2004

¹³ Eunice J. I and Mark A. 'Motion: enhancing signals and concealing cues' 15(10). Bio 058762 doi:10.1242/bio.058762 e Pub 2021, Agu. 20

¹⁴Greene, J. O; Dan O'Hair, Cody M. J; Yen C. 'Planning and control of behaviour during Deception' *Human communications Research* Volume 1, pgs 335-364, 1985

¹⁵Dunning D, and Beauregard, K.. 'Regulating Impressions of others to affirm images of self' *social cognition* 18(2) 198-22, 2000.

¹⁶Deoaulo, B. M Lindsay, J. J, Malone, B. E; Muhlenbruck, L; Charlton, K. & cooper, H. 'Cues of deception' *Psychological Bulletin*, 129, 74-118. 2003.

¹⁷ Depaulo, B. M; Lemay, C. S & Epstein J. A 'Effects of importance of success and expectations for success on effectiveness at deceiving' *Personality and Social Psychology Bulletin*, 17, 14-24. 1991.

¹⁸Curci A, Lanciano, T. Bathista, F; Guaragno s & Ribatti R. M 'Accuracy, confidence and Experiential criteria for lie Detection through videotaped interview' *Frontiers in Psychiatry* 9, 748 2019.

¹⁹Geiselman, R. E, elmgren, S; Green, C & Rystad I. 'Training laypersons to detect deception'. *Am. J forensic Psychology* 32 1-22, 2011'

'Without training, many people think they can detect deception but their perceptions are unrelated to their actual ability. Quick, inadequate training sessions lead people to over-analyse and to do worse than if they go with their gut reactions'²⁰.

To accurately identify lying;

- a) Don't rely on body language alone while body language cues can sometimes hint at deception. Research suggests that many expected behaviours are not always associated with lying²¹. Researcher Howard Ehrlichman, a psychologist who has been studying eye movements since the 1970s, has found that eye movements do not signify lying at all. In fact, he suggests that shifting eyes mean that a person is thinking of more precisely, that he or she is accessing their long-term memory²². Other studies have shown that while individual signals and behaviours are useful indicators of deception, some of the ones most often linked to lying such as eye movements are among the worst predictors²³. So while body language can be a useful tool in the detection of lies, the key is to understand which signals to pay attention to.

The key is to focus on the right signal. One meta-analysis found that while people do often rely on valid cues for detecting lies, the problem might lie with the weakness of these cues as deception indicators in the first place²⁴. Some of the most accurate deception cues that people do pay attention to include:

Being Vague: If the speaker seems to intentionally leave out important details, it might be because they are lying.

Vocal Uncertainty: If the person seems to be unsure or insecure, they are more likely to be perceived lying.

Indifference: Shrugging, lack of expression, and a bored posture can be signs of lying since the person is trying to avoid conveying emotions and possible lies.

Over Thinking: If the individual seems to be thinking too hard to fill in the details of the story, it might be because they are deceiving you.

To cross check the veracity of the story or lie or truthfulness:

Ask them to tell their story in reverse

Lie detection can be seen as a passive process. People assume they can just observe the potential liar's body language and facial expression to spot obvious 'tells'. You can yield better results by taking a more active approach to uncover lies. Some researchers have suggested that asking people to report their stories in reverse order rather than chronological order can increase the accuracy of detection. Verbal and non-verbal cues that distinguish between lying and truth-telling may become more apparent as cognitive load increases.²⁵ Lying is more mentally taxing than telling the truth. If you add even more cognitive complexity, behavioural cues may become more apparent. Not only is telling a lie more cognitively demanding, but liars typically exert much more mental energy toward monitoring their behaviours and evaluating the response of others. They are consumed with their credulity and ensuring that other people believes their stories. All these takes a considerable amount of effort, so if you throw a difficult task like relating their story in reverse order, cracks in the story and other behavioural indicators might become easier to spot. Researchers have found that the reverse order interviews revealed more behavioural cues to deception²⁶.

Trust Your Instinct

Your immediate gut reactions might be more accurate than any conscious lie detection²⁷. The result suggests that people may have an unconscious, intuitive idea about whether someone is lying or not.

²⁰ Geiselman *et al* 2011 *ibid*

²¹ Duran N, Dale R, Kello C, T Street, C, N Richardson D, C 'Exploring the Movement Dynamics of Deception' *Front Psycho*. 4: 140, 2013

²² Ehrlichman, H & Micic D 'Why do people move their eyes when they think?' *Current Directions in Psychological Sciences* 21 (2) 96-100, 2012

²³ Wiseman R, Watt C; Ten Brink L, Porter, S; Couper S, L, & Rankin, C. 'The Eyes don't have it: Lie Detection and Neuro-Linguistic Programming' *Plos ONE* 7 (7) 2012: e40259. doi:10.1371/journal.pone.0040259

²⁴ Gurci, A. *et al* 2019 *Ibid*

²⁵ Walezyk J, J, Igou F, P; Dixon, A, P; Jeholokian, T. 'Advancing lie detection by inducing cognitive load on liars: a review of relevant theories and techniques guided by lesions from polygraph based approaches'. *Front Psychol*. 4: 14, 2013

²⁶ Vrij, A, Mann, S, A; Fisher R, P; Leal S., Milner, R., Bull, R. 'Increasing cognitive load to Facilitate Lie Detection: The benefit of recalling an event in a reverse order' *Law and Human Behaviour* 32 (3): 253-265, 2008

²⁷ Brinke L, T., Stimson, D, S, Carney D, R. 'Some Evidence for Unconscious Lie Detection' *Psychological Science* 25 (5) 1098- 1105, 2014

4. Lie Detecting and the Courts

In Nigeria, the issues of lie detection techniques have not gained much acceptability and research is basically rare among scholars. Although the Polygraph is used in recent times in Nigeria by the law enforcement, it has not culminated in decisions and cases that call for the court attention. The United States of America offers a good case study for our consideration where much research and case study abound.

The first report of American case involving admissibility of lie detector evidence was *Frye v. United States*²⁸. Frye, was convicted of murder in the second degree, appealed against his conviction claiming that the trial court refused an expert to testify to the results of a systolic blood pressure test to which Frye was submitted to. In affirming Frye's conviction and upholding the trials court refusal to admit same, the court held:

Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in the twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained an acceptance in the particular filed in which it belongs.

We think the systolic blood pressure deception test has not yet gained such standing and scientific recognition among physiological and psychological authorities as would justify the court in admitting expert testimony deduced from the discovery, development and experiments thus far made²⁹. In Ten years later, the Supreme Court of Wisconsin reached the same verdict in *State v. Bohner*³⁰. Bohner's conviction for robbery was affirmed and it was held that the trial judge had correctly excluded the defendant's offer of lie detector results. The Wisconsin court state thus: 'We are not satisfied that this instrument during the ten years that have elapsed since the decision in the Frye case have progressed from the experimental to the demonstrable stage'³¹ 'This judicial attitude towards the lie detector evidence expressed in Bohner has not changed markedly in the numerous cases decided since 1933. In this direction, in 1961, a New Jersey appellate court was right in pointing out thus: 'That there is not a single reported decision where an appellate court has permitted the introduction of the results of a polygraph or lie detector test as evidence in the absence of a sanctioning agreement or stipulation between the parties 'Consistent with this approach, the appellate courts have reversed convictions in cases where the lie detector results that were unfavorable against the defendant were placed before the juries inferentially as was held in *State v. Arnwine*^{32 33}. Further, it is uniformly held that a defendant is not permitted to introduce evidence of his willingness to take a lie detector test as was held in *Common Wealth v. Saunders*³⁴ nor can a defendant's refusal to submit to polygraphic interrogation be shown by the state directly³⁵ or indirectly.³⁶

The judicial reluctance to generally recognize the worth of lie- detector evidence in the court room has not been due to mere inertia. In affirming a first-degree rape conviction, the Oklahoma Criminal Court of Appeals quoted factors that occasion the Chief Difficulties in the Diagnosis and Perception of the Lie Detector Technique. They are:

Emotional Tension: 'Nervousness' experienced by a subject who is innocent and telling the truth regarding the offense in question, but who is nevertheless affected by: (a) Fear induced by the mere fact that suspicion or accusation has been directed against him and particularly where the subject has been extensively interrogated or perhaps physically abused by investigators prior to the time of the interview and testing by the lie-detector examiner; and (b) A guilt complex involving another offence of which he is guilty.

Physiological Abnormalities such as (a) Excessively high or excessively low blood pressure and (b) Disease of the heart (c) Respiratory disorders etc

Mental Abnormalities such as (a) Feeble-mindedness, as in idiots, imbeciles and morons, (b) Psychosis or insanities as in manic, depressive, paranoids, schizophrenics, parietic etc and (c) Psychoneuroses, and psychopathic as among so called 'parochial' or 'emotionally unstable' person that is those who are neither psychotic nor normal and who form the borderline between these two groups

²⁸ 55 App. DC. 46; 293 F. 1013, 34 A. LR 145, 1923

²⁹ 293 F at 1014 . Interestingly, after Frye was convicted and sentenced to life to life imprisonment, the real murderer confessed to the crime. See Wicjer, the Polygraphist Truth Test and the Law of Evidence, 22, *Tenn.L.Rev.* 711, 715 1953

³⁰ 210 Wis, 651, 246 N.W. 314, 86 A. L. R 611, 1933

³¹ 210 Wis at 658, 246 N. W at 317

³² 67 n Super, 483, 495, 171 A 2d 124, 131 1961

³³ *People v. Wochnick* 98 Cal. App 2D 124, 219 p 2D 70, 1980

³⁴ 386n PA. 149, 56-57 125 A . 2D 442, 445-446, 1956

³⁵ *State v. Kolander*, 236 minn 209, 52 NW 2 D, 458, 1952.

³⁶ see *People v. Carter*, 48 cal 2D, 737, 752, 312P. 2D 665, 674, 1957.

Unresponsiveness in lying or guilty subject because of (a) Lack of fear of detection, (b) Apparent ability to consciously control response by means of certain emotional sets or attitudes, (c) A condition of 'sub-shock' or 'adrenal exhaustion' at the time of the test, (d) Rationalization of the crime in advance of the test to such an extent that being about the offense arouses little or no emotional disturbances, (e) Extensive interrogation prior to the test.

Unobserved Muscular Movements which produce ambiguities or misleading indication in the blood pressure tracing.³⁷

In addition to the above scientific shortcomings of the polygraph technique and other lie-detector techniques, the following objections to the unrestricted use of its result in the court room have been recorded: (a) The supposed tendency of judges and juries to treat lie-detector evidence as conclusive on the issues of defendant's guilt³⁸ (b) Lack of standardization of test procedure³⁹ (c) Difficulty for jury evaluation examiners opinions. Finally, it appears that the present time and technique is not an accepted one among scientist whose approval is pre-requisite to judicial recognition⁴⁰. Lie-detectors can however be admitted in evidence on the agreement of a party⁴¹ or admissibility upon stipulation⁴².

5. Conclusion

Lie detection techniques can be very useful to practitioners and members of the bench especially when used to corroborate other qualitative and quantitative evidence on the subject matter of the case. Although the area is mixed and controversial in using the lie-detector techniques in court case, more research is advocated in the area to get to the extent that such results will be scientifically undisputed and accurate to be used in the court.

³⁷ See *Henderson v. State*, 94 Okl.crim.45, 51-52 230 p. 2D 495, 501-2 23A.L.R 2D 1292 cert. denied, 342 US 898, 72 S.ct 234, 96 I.ED, 673, 1951

³⁸ Highleyman. 'The Deceptive Certainty of the Lie-detector' 10 Hastings L-Rev 47, 1958

³⁹ Burack 'A Critical Analysis of the Theory, Method and Limitations of the lie-detector' 46; *crim.l;c&p.s* 414, 1955

⁴⁰ Cureton. A 'Consensus as to the validity of polygraph procedures', 22 *Tenn. L.Rev* 728, 739-41 1963

⁴¹ *State v. Mcnamara* 252 Lwa 19 104 N.W 2D 568, 574 1960

⁴² *Stone v. Earp* 331 mccl. 606, 50 N.w. 2 D 772 1951 574 1960