

Source Credibility and Lying Police

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Abstract

Police lying has been a subject in a number of law journals. This paper takes into consideration the subject of police lying in regards to the effects it has on the legal process. More specifically, it examines how the inflated credibility of police witnesses affects how jurors come to decide on various cases. This paper takes into account communication research on source credibility and how it can be applied to police witnesses. Extant literature on source credibility is analyzed alongside law journal articles focusing on police lying, then implications for this study's use in real courtrooms are discussed. For example, jurors could be educated about the effects of source credibility prior to serving to make them more apt to better scrutinize police witness testimony. Limitations of this use of source credibility are also discussed.

Keywords: source credibility, police, lying, courts, juries, judges, communication

Source credibility and lying police.

Police are viewed as the authority figures with which the public entrusts much of their safety. Television shows, such as *Hill Street Blues* (Bochco & Kozoll, 1981), have long depicted the police as trustworthy crusaders championing the cause of public safety who search for the truth when fighting crime. However, in a number of law journals (Dorfman, 1999; Wilson, 2010, Zeidman, 2005) police lying in court has been found to be widely acknowledged and widespread. Wilson (2010) cites a court case in which police were caught lying by showing a video tape exonerating the defendant, a case which contradicts many portrayals by television shows.

The court system turns a blind eye to much of this police behavior because it may put the courts in a bad light or make it seem that they are “soft on crime” by letting an obvious criminal get away. Police testimony is many times the main source of communication in a court case for the jury to consider when weighing guilt of a defendant, and if juries came to see police as less credible due to revelations of rampant lying, it could undermine the justice process. In communication research, it has been found that the more trustworthy or credible a source is viewed, the more persuasive their message (Hovland & Weiss, 1952). Fear (e.g., crime) when combined with a more credible source will have an enhanced persuasive effect (Hewgill & Miller, 1965).

Police are viewed as authority figures, are seen as the “living embodiment of ‘law’ in our communities” (Dorfman, 1999, para. 8) and are afforded credibility (and are thus more persuasive) due to their positions. Through analysis of the source material mentioned above, it will be shown that there exists a disconnect between held perceptions of police credibility and actual behavior of police. This study will start with a review of three articles of law literature on

police lying and also literature on source credibility. It will then move to explain how source credibility of police plays a role in perceptions by juries, legal establishments, and police themselves. Finally, an explanation of how the source credibility literature can be used as a lens to scrutinize police testimony will be given, followed by limitations of the study.

Police Lying

Dorfman (1999) explained how police scandals are cyclical, police perjury is commonplace, and that police admit to lying often as part of their job. He said that even police officers themselves admit that lying is a regular part of the everyday life of a cop. Scandals are regularly featured in newspapers on police brutality, corruption, and criminality, which police lie to deny and disguise. More specifically, he looked at how the rule that excludes illegally obtained evidence by police (exclusionary rule) encourages police perjury and “scamming.” On another level, he forwarded the notion that “Judges should encourage a much deeper exploration of the issue of police credibility than presently occurs in our criminal courts” (para. 11). The author explains how judges have given police testimony the “wink and nod” and work under the improper and illegal assumption that favors police witness credibility. He added that one of the strongest reasons for police lies in courts is that judges allow them to get away with it.

The exclusionary rule, mentioned above, states that evidence obtained through illegal search and seizures cannot be used against the defendant in a criminal prosecution. Wilson (2010) recently argued that police often lie successfully at pretrial hearings to avoid application of this rule. She advocates for the modification of this rule so police will be more likely to tell the truth. Wilson (2010) points out that some of these lies have led to convictions of innocent people and that it ultimately decays the public’s confidence in the integrity of our criminal justice system, as well as eroding police credibility. She also added that even the Supreme Court

accepts some police lying, false testimony, and violations of the Constitution leading to a culture of acceptance of the lies or violations if the guilty are brought to justice.

Lastly, Zeidman (2005) examined the court system (judges, court administrators, prosecutors) in New York City and how, or even whether, they promote justice by actively and critically examining police behavior. He noted that although arrests have gone up in the city, cases going to trial have plummeted and constitutionality checks on officers' ability to stop, search, and arrest are few and far between. Coupled with other factors, "The result is virtually unfettered, unchecked police activity and discretion. Once an officer makes an arrest, it is for all intents and purposes insulated from any meaningful challenge or review" (para. 9). Of parallel concern to Zeidman (2005) are police falsifications, which he divided into three categories: testimonial perjury, documentary perjury, and falsification of police records. It is so prevalent in the courts, he said, that it generated the term "testilying." Zeidman (2005) examined how the courts handle these matters, and show how they are all too willing to turn a blind eye to them.

This law literature points out that police officers as a whole should be viewed as less credible than they are presently. Communication literature on source credibility outlines some of the processes by which judges, juries, and lawyers can come to view them as more credible than they should be viewed.

Source Credibility

Slater and Rouner (1996) found that evaluations of message quality predicted following assessments of the credibility of a source for expert sources, but not in the case of biased sources. Participants in the study did not use message quality to judge objectivity or bias, rather they used the expertise of the source. They also found that in the case of expertise, message quality evaluations partially mediated the effect of initial source credibility assessment on source

credibility assessment after the message. This research outlines how important message variables are in affecting attitude change.

Hovland and Weiss (1952) studied how identical communications from either a trustworthy or untrustworthy communicator changed opinions directly after the communication and after a period of time. They found that opinions changed more in the direction of presentation by a trustworthy source than by an untrustworthy source. However, agreement to the position advocated by a trustworthy source decreased after an interval of time, and increased for the untrustworthy source.

Sternthal, Dholakia, and Leavitt (1978) hypothesized that when a communicator's identity precedes a message, a moderately credible source would induce greater persuasion than a highly credible source due to the fact that a moderately credible source was expected to stimulate greater support argumentation. Concurrently they reasoned that when a source is identified after a message is given, the message will serve as the only persuasive influence because the credibility of the source would not affect the recipient's thought generation process early enough. In a second experiment, they hypothesized that a highly credible source would be more persuasive when recipients were negatively predisposed to an issue, but a moderately credible source would be more persuasive when a recipient was positively predisposed to an issue. They supported all three of these notions, and also supported the concept of cognitive response information processing, or that initial predispositions play a large role in the persuasion process.

Hewgill and Miller (1965) hypothesized that a source with high credibility who uses appeals that elicit strong fear for individuals highly valued by a receiver will elicit greater attitude change than appeals with mild fear. They also hypothesized that a low credibility source

who uses appeals that elicit mild fear for individuals highly valued by a receiver will effect greater attitude change than strong fear appears. Hewgill and Miller (1965) found support only for the first hypothesis – high fear messages were more effective than the low-fear message.

What it all Means

The law journals mentioned above show how police credibility should be better scrutinized, but instead is given more weight and legitimacy than it should. The papers are consistent with research on source credibility in that juries, judges, and others involved in the legal process look at police testimony as being more credible than not. Judges many times give more credibility, weight, and less scrutiny to police testimony. Dorfman (1999) showed that judges have a strong tendency to accredit police testimony due to the strong tendency to find in their favor when their conduct is under review. He added five reasons why judges' review of police witness credibility is bound to be less scrutinized during pre-trial hearings and why judges accept perjured testimony from police regarding search and seizure. Among them are the fact that if judges work under the presumption that police officers are trustworthy, it can be hard to gauge if they are lying. Dorfman (1999) also added that police are often experienced witnesses who can frame their accounts of an event to conform to the Constitution. Two other reasons Dorfman (1999) gave are that “assuming a swearing contest between the defendant and the police officer, judges are likely to disbelieve the defendant; and finally, judges do not like to call police officers liars” (p. 6). This is backed up by Zeidman (2005) who stated that courts use deliberate efforts to avoid calling police officers liars and use more careful language.

It may be safe to assume that since judges operate in this manner, juries may be more likely to operate this way as well. As Zynda (1986) pointed out, shows like *Hill Street Blues* are built upon offering a credible and realistic view of the life of police. Television depictions may

be the only way many jury members get to form their opinions about police and their credibility. For instance, the TV show *NYPD Blue* (Bochco & Milch, 1993) most likely will exclude the fact that, as Zeidman (2005) stated, “The NYPD, however, has shown little interest in policing falsifications” (p. 4).

Police are viewed as credible, so it stands to reason that police testimony will be more persuasive to judges and juries. Hovland and Weiss (1952) showed how a source deemed credible will have a more persuasive effect immediately after a communication. As police officers are not academics or widely studied expert witnesses (i.e., such as doctors), it may also be assumed that police officers are viewed as moderately credible. Sternthal, Dholakia, and Leavitt (1978) showed that a moderately credible source would induce greater persuasion than a highly credible source due to the fact that a moderately credible source was expected to stimulate greater support argumentation. Police have to submit evidence and make arguments as to the relevance of this evidence, as well as form narratives as to how a crime was committed. As mentioned above, police testimony and submission of evidence is many times not fully trustworthy. So juries may be persuaded by perjured testimony and evidence that was obtained illegally, or even fabricated, due to it being allowed by a judge.

When the perceived credibility of police is paired with the fact that fear usually enters the equation in many trials, the persuasive effects of a lying officer’s message can be heightened. Juries may hear police accounts of a defendant’s activities and come to fear that individual and the potential for harm that may come to loved ones. When coupled with Hewgill and Miller’s (1965) finding that high-fear messages from credible sources were more persuasive, an outline of how juries and judges may rule becomes clearer.

Source credibility research is consistent with what is demonstrated in the law papers mentioned above. As Wilson (2010) pointed out, “Although statistics are currently unavailable to show how many trial-level judges tend to favor the testimony of officers over the testimony of defendants or the witnesses offered by defendants, when credibility is in doubt, there are additional incentives for these judges to make credibility findings in favor of the government” (pp. 15-16). Dorfman (1999) pointed out that judges have various reasons to lean toward credibility of police, one of which is to not look soft on crime. So police may start, coming out of pre-trial hearings, with more credibility and ability to persuade a jury due to a judge’s bias. “A trial judge's unwillingness to discredit police testimony, the presumption of both the defendant's guilt and unreliability as a witness, the adoption of the police officer's grey zone moral perspective, and the political pressures to side with the prosecution, apply whenever a criminal court judge finds facts” (p. 6).

Something police may use to further enhance their advantage in appearing credible and obtaining convictions are narratives. Since police write reports and make up the “story” of what happened at a crime scene, it may be stated that they are somewhat adept at formulating narratives to make sure their deceptions get by judges, juries, and lawyers. Griffin (1997) stated that “people are essentially storytellers” who “can make decisions on the basis of good and bad reasons” (p. 326). Essentially, he stated that the world is simply a set of stories from which we choose, and thus these can define or re-define our lives. A main idea that goes with this paradigm is that people who are armed with a bit of common sense can most times spot a good story. However, the story needs to have narrative rationality, according to Griffin (1997), which is separated into two parts—narrative coherence and narrative fidelity. With the first notion, the question is posed as to how probable the story seems. With the second, a listener will evaluate

how true the story rings with their own experiences. In effect the narrative paradigm points out how police officers, and to a greater extent experienced officers, can craft a “story” that will have increased credibility with jurors and judges. As long as the story they are telling is coherent and rings true with the jurors, police can only enhance the persuasiveness of their messages, whether true or not.

Slater and Rouner (1996) pointed out how a message is important in determining a source’s credibility. This was especially true for expert credible sources, which police are deemed to be more often than not. According to their findings, evaluations of the quality of a message will affect how credible a jury will see a police witness. This outlines how important it is for a police officer, who for some reason feels the need to lie, to have a well-crafted story in order to maintain their initial credibility. If the story is indeed evaluated positively, the fact that it comes from a supposedly trustworthy source will give it more of a chance to change opinions (e.g., of jurors and judges) directly after it is given (Hovland & Weiss, 1952). However as Hovland and Weiss (1952) pointed out, agreement with an officer’s testimony will decrease after a certain amount of time, possibly after the “all police are credible witnesses” effect wears off.

The study of source credibility could outline much about the processes involved in the ways certain members in public service, such as police, come to be put on a pedestal and viewed as more credible than their behavior in many law journals indicate. It is suggested by this author that police, not unlike anyone else, are human and are prone to the human condition. Hence, police will sometimes lie. It is acknowledging this fact that will lead to judges, and in turn juries, not placing the police in a grey moral zone. It is in the grey zone where police are given the benefit of the doubt because they are credible fighters of crime as Dorfman (1999) pointed out. He also pointed out that this practice places judges in a grey moral (if not legal) universe.

Coming to the perception that police are at least as credible as anyone else may be important for providing a base level for jurors with which to work in deciding cases.

If juries were educated before the trial on research pertaining to source credibility, there may be less unlawfulness and/or convictions of innocent people. To put it less bluntly, juries will be more predisposed to carefully weigh the testimony of any witness, whether police or otherwise. It is commonly held that defendants will lie to get out of convictions, but it is less commonly held that police will lie in order to obtain convictions. The knowledge of source credibility and its effects on persuasion given to a juror before a trial would help to even out the playing field.

If defending lawyers also knew more of the effects of source credibility on persuading juries, they may place more scrutiny on the testimony police officers give. At the very least, they should make it known that police are not the inhuman (robotic) and impartial fact gatherers rather than, as Wilson (2010) points out, biased advocates trying to disprove innocence. Defense lawyers should make it a point to highly scrutinize everything a police witness says, if not only because they may not be credible in the current case, but because it will affect the credibility of the entire legal establishment.

One could argue that placing every police officer under increased scrutiny will affect the cops who are totally truthful in the way they conduct their activities. Of course, if jurors analyzed every bit of information coming out of a police witness's mouth, and they were all thought of as "liars," then nothing good would come. However, placing police on a base-level in regards to credibility with every other witness, allowing them to build their credibility as every witness does, and not letting them operate in a grey area may lead to better outcomes. This limitation to

using source credibility research in the courtroom could thus be tempered if it is done with an even hand.

Another limitation is that no communication research has been conducted directly considering how jurors view the credibility of police witnesses. It may be that jurors bring their own experiences to the table in regards to their interactions with police and will scrutinize police testimony in this way. It may also be that certain jurors are biased to either extreme in regards to police credibility. Some may give them all the credibility in the world, while others who have had bad experiences give them little to no credibility. Training jurors to better scrutinize police testimony may backfire in these cases or may polarize the jurors to a further extent, or may correct perceptions. More direct research may help give a better picture of how to instruct jurors in these cases.

This paper, of course, is not trying to declare that all police officers are liars and that in turn, all of their testimony should be held under a microscope. In our current society, we are taught to respect and trust our authority figures. Police officers are the most visible figures of authority in many cases and help to serve and protect individuals in need. It is when some officers use their position to reduce the credibility of police as a whole that problems in perceptions may arise. It is through the use of communication research that jurors may be provided a better initial starting point from which to scrutinize all testimony with the same discerning eye. Although some may have well-formed perceptions in place, others may have to rely on what they see on television, for instance. Recognizing that certain witnesses have the power to persuade more than others may ultimately help bring about better outcomes in the courtroom.

References

- Bohco, S. (Producer/Creator), & Kozoll, M. (Co-Creator). (1981). *Hill Street Blues* [Television Series]. Los Angeles: National Broadcasting Company.
- Bohco, S. (Producer/Co-Creator), & Milch, D. (Co-Creator) (1993). *NYPD Blue* [Television Series]. Los Angeles: 20th Century Fox Television
- Dorfman, D. N. (1999). Proving the lie: Litigating police credibility. *American Journal of Criminal Law*, 26, 455-503.
- Hewgill, M. A. & Miller, G. R. (1965). Source credibility and response to fear-arousing communications. *Speech Monographs*, 32, 95-101.
- Hovland, C. I., & Weiss, W. (1952). The influence of source credibility on communication effectiveness. *The Public Opinion Quarterly*, 15, 635-650.
- Slater, M. D., & Rouner, D. (1996). How message evaluation and source attributes may influence credibility assessment and belief change. *Journalism & Mass Communication Quarterly*, 73, 974-991.
- Sternthal, B., Dholakia, R., & Leavitt, C. (1978). The persuasive effect of source credibility: test of cognitive response. *Journal of Consumer Research*, 4, 252-260.
- Wilson, M. D. (2010). An exclusionary rule for police lies. *American Criminal Law Review*, 47, 1-55.
- Zeidman, S. (2005). Policing the police: The role of the courts and the prosecution. *Fordham Urban Law Journal*, 32, 315-353.
- Zynda, T. H. (1986). The metaphorical vision of Hill Street Blues. *Journal of Popular Film & Television*, 13, 100-113.