Credibility contests: the elephant in the room

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Abstract The primary duty of a court is to do justice. Implicit in this process is the principle that the court should assess the evidence in accordance with current scientific knowledge. Trials by ordeal and combat have long since been abandoned as it was recognised that they did not produce reliable, just outcomes. The law moved with the times. In criminal cases juries are directed that they can only convict 'if they are sure'. The jurors might be sure, but are they correct? There now exists a substantial body of scientific evidence, which indicates that humans are very poor lie detectors, in fact performing at around chance. Given this incongruity in the system, is it not time to re-evaluate how cases are put before the courts, and what weight is placed on oral testimony? This is particularly acute in 'credibility contests' where, it is argued, it is usually unsafe to convict.

Keywords Lie detection; Witness reliability; Jury trials; Safety of convictions

The most important task facing any court is that of separating the guilty from the innocent. In a civilised society, it is important that wrongdoing is punished. This desire, however, must be balanced against the danger of convicting, and therefore punishing, the innocent. In this context, it is important to remember that the starting point of any criminal investigation ought to be the presumption of innocence. An accused should only be convicted where his guilt has been shown beyond a reasonable doubt. It is the aim of this article to argue that such a standard cannot be reached objectively in two circumstances: first, when the court is faced with a credibility contest, where the principal evidence for the prosecution is the uncorroborated testimony of a single witness, often a police officer or the complainant, and, secondly, where the court has to decide if a defendant is telling the truth regarding his or her state of mind at the time of the offence. Such a suggestion will, undoubtedly, be an anathema to many; however, it will be argued that when taken from first principles, many convictions based on the uncorroborated evidence of a single witness will be unsound and unsafe.

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The legal systems employed in common law countries are based, in part, on a fundamentally flawed principle. This is that the human beings who are charged with the task of discriminating truthful from deceptive evidence are able to do so accurately and consistently.

Take, for example, the Supreme Court of Canada. In the case of *R* v *Marquard*,[1] the court held that the determination of the honesty of a witness is a matter of common sense. Further, the court said that:

> Credibility is a matter within the competence of lay people. Ordinary people draw conclusions about whether someone is lying or telling the truth on a daily basis.

In a similar vein, in the case of *R* v *François*,[2] McLoughlin J stated:

> In the end, the jury must decide whether it believes the witness's story in whole or in part. That determination turns ... on the demeanour of the witness and the common sense of the jury.

It falls to judges and juries to hear the evidence both for the prosecution and the defence and then decide questions of guilt or innocence based on that evidence. In many cases this task will involve the assessment of evidence from a number of different sources such as documents, laboratory-based forensic evidence and eyewitness testimony. Where the court has such a diversity of evidence which is potentially corroborative of oral testimony, it is easy to see how a decision of guilt can be reached which meets the standard of being beyond a reasonable doubt. However, there are a significant number of cases, often, but by no means always, involving allegations of sexual offences, where the only evidence against the defendant is the oral testimony of the complainant or that of a police officer. The fact that there is no guilty plea inevitably means such evidence is challenged by

1 *R* v *Marquard* [1993] 4 SCR 223, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/1074/1/document.do>, accessed 30 October 2013.

2 [1994] 2 SCR 827, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/1162/1/document.do>, accessed 30 October 2013.

the defendant. The difficulty in these cases becomes particularly acute where the version of events put forward by the defendant is plausible. The court is then faced with deciding guilt or innocence on the basis of which of the protagonists it considers is telling the truth. This position, in itself, could be argued to give rise to a reasonable doubt, but such a conclusion becomes inevitable when the actual ability of judges and juries to determine truth from lies is considered. If the tribunal of fact can be shown objectively to be incapable of determining who is telling the truth, how can their verdict be considered to be safe?

Similar issues arise where an element of the alleged offence is the state of mind or belief of the defendant at the time the offence is said to have been committed. Sometimes that state of mind or belief can be reliably inferred from the known conduct of the defendant, but on other occasions, guilt or innocence may turn on simply whether or not the court believes what the defendant has to say in respect of their state of mind or belief at the relevant time. In such circumstances, guilt or innocence may be decided solely on whether or not the defendant is believed. As we shall see, that determination of the truthfulness of the defendant's evidence is highly fallible.

The scientific evidence

Human beings are very poor lie detectors,[3] despite their own views to the contrary. The reasons for this deficiency in human abilities are many and varied and we will return to these later.

In the meantime, it may be helpful to consider one piece of research which illustrates a number of matters which are of relevance to the present discussion. The research in question was carried out by Sara Landström and her colleagues at Gothenburg University, Sweden.[4]

Although the original aim of Landström *et al.* was to compare the effects on mock jurors of the presentation of witness evidence, both live and by video link, the res generated by their study are relevant to our present discussion and serve to illustrate the issues raised by modern research, which are highly relevant to legal practitioners and policy-makers, but which are, all too often, outside the scope of their training and knowledge.

3 A. Virj, *Detecting Lies and Deceit: Pitfalls and Opportunities* (Wiley: Chichester, 2008).

4 S. Landström, P. A. Granhag and M. Hartwig, 'Witnesses Appearing Live vs on Video: Effects on Observers' Perception, Veracity Assessments and Memory' (2005) 19 *Applied Cognitive Psychology* 913.

The Landström *et al.* article sought to determine whether observers perceive and evaluate witness evidence differently, when it is delivered live or via a video link. This has clear implications for the justice system as the use of video evidence has become far more prevalent in recent times. The experimental subjects (mock jurors) were passive recipients of the evidence of witnesses. The evidence delivered 'live' was videoed and provided to the recipients of the video evidence. Both groups of subjects, therefore, received identical information, presented by the same 'witnesses' but via two different routes. The first question which the experiment sought to determine concerned differences in the observers' perceptions of the witnesses' statements and appearance due to the veracity (truthfulness) of the statements themselves. The sample of witnesses consisted of 12 undergraduate students (seven females and five males). They were guaranteed a payment of 280SEK (approximately $40) and were told that if they managed to convince the majority of observers that they were telling the truth, they would be given an additional payment of 140SEK. The observers consisted of 122 undergraduate students (40 male and 82 female). Of these observers, 86 per cent were law students with the remaining 14 per cent being from other disciplines. The observers were each paid the equivalent of 70SEK (approximately $10) and were told that if they made a correct veracity judgement of the witnesses, they would receive an additional 70SEK. The presentation of the evidence was divided into four subsets: live and truthful; live and deceptive; video and truthful; video and deceptive.

The experiment was conducted by the construction of an accident involving a cyclist being knocked off his bicycle by a car driver who was using a mobile phone whilst driving. Both the cyclist and car driver were experienced stunt men. The accident took place in a car park and was watched by the 12 witnesses. The witnesses were then divided into two groups. The first group was told that they would be interviewed about what they had seen and had to tell the truth. The second group was told by the car driver that he wanted them to fabricate a story in his favour and would pay them 5,000SEK (approximately $600) if they were prepared to lie for him. The deceptive witnesses were each given written information upon which to base their fabricated story and were given some time to prepare.

There then followed a preliminary interview of the witnesses, to simulate an interview at the scene of an accident by a police officer. The witnesses were asked about matters such as the speed of the car and how far away they were when they saw the accident. They were also asked to consider whom they thought responsible for the accident. Each interview was recorded on tape. It was confirmed that the witnesses followed their instructions in respect of whether or not they were to tell the truth or to lie.

Three weeks after the preliminary interviews the witnesses were brought back for a hearing in court. The witnesses were interviewed in court by two persons who were blind to the status of the witness. The interviewers conducted six interviews each and treated each of the witnesses in the same manner. As stated above, some of the observers watched the evidence live. The evidence was also videotaped to be played later to the other group of observers.

The results of the study, part of which are relevant here, were very revealing. They showed that the accuracy of deception detection was modest. The accuracy rate for live observers was 49.2 per cent and for video observers 50.8 per cent. A statistical analysis showed that neither live nor video observers achieved an accuracy level different to that expected by chance. In other words, when it came to determining whether or not the witnesses were lying or telling the truth, the observers were no more accurate than they would have been had they simply tossed a coin to decide. This finding held whether or not the evidence was presented live or via video link. A further, and perhaps slightly more worrying, result of this research comes from an analysis of the observers' subjective confidence when making their judgements as to the truthfulness of the evidence. The observers were asked to state how confident they were in their conclusion as to whether or not a witness was truthful or deceptive. The results demonstrated that there was a significant negative correlation between accuracy and confidence. In other words, the observers were more confident when making an incorrect judgement of truthfulness than they were when making a correct judgement. As jurors are asked to convict only when they are sure, this research suggests that they are more likely to be sure when their judgement as to the truthfulness of the witness is wrong than when their judgement is correct.

These research conclusions are far from unique. In a recent study Hart and colleagues[5] also carried out research looking at the accuracy of lay persons who attempted to judge the veracity of statements observed on video. In this study, 20 subjects were videotaped answering four questions each. Half the subjects were instructed to lie in response to the fourth question put to them, while the other half of the subjects were instructed to give truthful responses to all four questions. The video showed each subject seated and gave a full head to toe portrayal of them. The videos were viewed by 104 participants, who were undergraduate students. Half of the viewers were informed that they were participating in an experiment to determine their ability to differentiate between lies and truthful statements, the other half of the viewers were told they were participating in a behavioural

5 C. L. Hart, D. G. Fillmore and J. D. Griffith, 'Indirect Detection of Deception: Looking for Change' (2009) 14 *Current Issues in Social Psychology* 134.

study. Each of the viewers who believed they were participating in a study to detect lies from truth scored the videos attempting to determine which of the statements were true and which were not. The viewers in this part of the experiment detected the lies at a mean of 49.4 per cent, marginally below chance. The viewers in the other half of the experiment, who were directed to look for changes in behaviour, rather than lies, did marginally better, identifying (indirectly) a mean of 55.2 per cent of the lies. It seems, therefore, that in this particular experiment, observers who were asked to detect lies directly performed marginally below chance, whereas those who were asked to detect changes in the behaviour of the maker of the statement (and indirectly whether they were lying or not) did slightly better, but, again, their performance was only marginally above chance.

These findings are representative of a much larger body of evidence. In a summary of the results of studies examining the accuracy rates of lay persons judging truth and deception in strangers, Virj[6] sets out the findings of 79 studies reported in the literature between 1981 and 2007. While it is clear that these journal articles did not follow the same experimental protocol, general conclusions can still be derived from the results. Taken as an overall mean, the accuracy rate in determining truth is shown to be 63.41 per cent, while the accuracy rate in determining lies is shown to be a mean of 48.15 per cent. This gives an overall mean of accuracy of 54.27 per cent.

The ability of lay persons to discern lies and truth is widely reported in the literature to be at or around the level of chance. It may, therefore, be worth considering whether professional investigators, such as police and customs officers, are able to do any better. Virj[7] sets out a table where he summarises the results of 31 published studies which look at the accuracy rates of professional investigators whilst attempting to judge the veracity of statements in adults. The table sets out the average rate as a percentage of the professional investigator's ability to detect truth, lies, and the overall average. It can be seen that the ability to identify truth comes to a mean of 56.35 per cent, whereas the ability to detect lies is expressed as 56.11 per cent. The overall average is shown as 55.91 per cent. While it has to be admitted that there are some qualifications to the figures given in this table, it does serve to reinforce the general thrust of the argument deployed in this present article, which is that neither lay persons, nor professional investigators, can really perform much better than chance when attempting to separate lies from truth.

6 Virj, above n. 3 at 187–8.
7 Ibid. at 161.

Those employed in the justice system, be they investigators, lawyers, judges or policy-makers, should see these findings as a cause for concern. It is clear from the above reported experimental findings, which constitute only a small proportion of a very large worldwide literature, that human beings, for various reasons, are poor at determining when others are attempting to deceive them.

An initial consideration of these results, and their application to live juries, may lead some observers to conclude that this effect, as demonstrated by the research of Landström *et al.*, is unlikely to be a real problem for actual juries as, over the 12 members of the jury, the effects will cancel themselves out so that as many jurors will incorrectly support veracity as incorrectly support deception in a witness. However, a moment's thought should convince the reader that if that proposition were true, it should almost always result in a hung jury. There is, therefore, clearly more going on here than the experiment described above reveals on its own. To explore this further we should, therefore, consider some of the aspects of deception detection by people in general which may push a jury towards one conclusion or another, entirely irrespective of whether or not that conclusion is, in fact, correct.

Common errors in lie detection

The published literature on why people make poor lie detectors is extensive. Common factors are reviewed by, for example,Virj,[8] and Virj Granhag and Porter.[9]

Lie detection in a witness can be subdivided into two clear categories. The first of these is verbal lie detection, whereby the content of the witness's speech is examined to determine if it is likely to be true or deceitful. Such an approach is very powerful where those carrying out the evaluation have relevant background knowledge. If a man tells a female stranger in a bar that he is not married, she will not be able to tell, from the content of his speech, whether he is telling the truth or not. However, if he made the same statement to a friend of his wife, it is most likely that she would detect the obvious deceit. Where such background information is not available, people tend to rely on the alternative method of lie detection, which is the use of non-verbal clues. This will be the case for most judges and jurors in a court context.

8 Ibid. at ch. 5.

9 A. Virj, P. A. Granhag and S. Porter, 'Pitfalls and Opportunities in Non Verbal and Verbal Lie Detection' (2010) 11 *Psychological Sciences in the Public Interest* 89.

There is a range of non-verbal cues which are said to be associated with deceit. In an international study known as the Global Deception Team[10] researchers in 58 countries questioned 20 men and 20 women in each country in relation to the cues which they would associate with deception. It was found that 64 per cent of the participants questioned quoted gaze aversion as the most reliable cue for a statement being false. In fact, gaze aversion was the most popular cue in 51 out of the 58 countries covered by the survey. The generally held view that 'he couldn't look me in the eye' is a sign of deceit is clearly widespread. In reality, however, this is a fallacy. The position is made more complex due to cultural differences. It may be polite to meet the gaze of your conversation partner in Western Europe, but not so in other cultures.

Similarly, fidgeting and self-grooming are commonly reported indicators of deceit. Unfortunately, as a sign of deceit, they are as unreliable as they are popular.

A further commonly held view is that the nervous witness is considered to be untruthful. The frequently heard (in fiction at least) police reassurance, that if you have nothing to hide, you have nothing to fear, is itself a gross distortion of the truth. No, upon reflection, it is an outright lie. There can, in fact, be few situations more stressful than being accused of a serious criminal offence, which you know you did not commit. The defendant who is wholly innocent, and giving evidence on his own behalf, must feel under enormous stress. Defendants' 'performance' as a witness, and in particular whether they are believed or not, could have far-reaching consequences for the rest of their lives. It would not, therefore, be at all unusual to find defendants in those circumstances appearing quite nervous. Unfortunately, however, their nervous demeanour is likely to be interpreted by jurors as a sign of guilt. The guilty, confident, liar is more likely to be acquitted than the innocent, nervous, truth teller.

Given how widely held these misconceptions about non-verbal cues to deceit appear to be, it is hardly surprising that, in observing the same witness or defendant, judges or members of a jury will reach similar, if erroneous, conclusions.

Discussion

The scientific evidence, as set out above, is but a small part of a much wider literature. This body of research, which is subject to the usual rigorous standards of scientific peer review, is consistent in its findings, which appear to be remarkably

10 The Global Deception Team, 'A World of Lies' (2006) 37 *Journal of Cross-Cultural Psychology* 60.

generalisable. In other words, there can be no doubt, reasonable or otherwise, that the findings described briefly above represent the real world in which justice systems operate.[11] The key question for all those engaged in the justice system is what impact, if any, these findings should have on the way that the courts treat oral witness testimony. There is, undoubtedly, a general feeling held by the professionals involved that they are competent lie detectors. The system of law enforcement, from the police officer on the street to trials before the highest courts, have their foundations in that long-held but erroneous belief. In fact, the evidence would suggest that the more confident decision-makers are in their view of the honesty of the witness, the more likely they are to be wrong in that judgement.[12]

This research, which appears to be systematically ignored by law enforcement agencies, the courts, lawyers and governments alike, actually has profound implications for all involved in the justice system. This is particularly so where a trial effectively comes down to a credibility contest between a single witness and the accused. There may, of course, be many occasions where the story put forward by the accused in his or her own defence is so implausible that it can be rejected with reasonable safety. There are, however, many other cases where the accused advances a plausible version of events which is, on the face of it, equally as probable as the version advanced by the complainant or single witness. This, in itself, could be argued to constitute reasonable doubt. In reality, however, not all lawyers see it in that way. Academic debate has considered the effects, or possible effects, which may flow from a situation in which the version of events advanced by a defendant, even if not believed, may still amount to a reasonable doubt.[13] Whilst such arguments are skilfully put and informative, they miss the 'elephant in the room' referred to in the title of this article which is that judges and juries simply cannot tell which of the protagonists is telling the truth. The accuracy rate of such decisions is roughly that of chance. Should the fate of a defendant be decided using a system which has the statistical equivalence of the toss of a coin? Can safe convictions be founded on such decisions? The answer is, surely, no.

The test for conviction is that the jury is satisfied of guilt beyond a reasonable doubt. In other words, the jury is instructed only to convict if they are sure of guilt. What constitutes a reasonable doubt has been the subject of judicial comment. It is for the judge to direct the jury on the standard of proof that the prosecution is required to meet before a guilty verdict can be returned. One such definition was

11 Virj, above n. 3 at 166–7.

12 Landström, Granhag and Hartwig, above n. 4.

13 C. Boyle, 'Reasonable Doubt in Credibility Contests: Sexual Assault and Sexual Equality' (2009) 13 E&P 269.

provided by Denning J in *Miller* v *Minister of Pensions*[14] where he described the standard of proof thus:

> It need not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice.

Similarly, in *R* v *Yap Chuan Ching*,[15] the judge directed the jury that it was for the prosecution to prove the charges so that they were sure that they had been made out, or to prove them beyond a reasonable doubt. During the deliberations of the jury, they came back to court and asked for further direction on the standard of proof. The judge restated the test of proof beyond a reasonable doubt and continued:

> A reasonable doubt ... is a doubt to which you can give a reason as opposed to a mere fanciful sort of speculation such as 'well, nothing in this world is certain, nothing in this world can be proved.' ... it is sometimes said the sort of matter which might influence you if you were to consider some business matter. A matter, for example, of a mortgage concerning your house, or something of that nature.

The Court of Appeal considered that the judge's direction on the standard of proof could not have been clearer or more accurate.

It seems, therefore, that there is a general consensus as to the fact that jurors should satisfy themselves of guilt to a point where any doubt which remains is not fanciful and could be explained and supported by reasons.

In the United Kingdom, prior to the Criminal Justice and Public Order Act 1994, there was a requirement at common law that the tribunal of fact had to be warned of the dangers of acting on evidence if not corroborated where that evidence emanated from either an accomplice of the accused or the victim of an alleged sexual offence. The warning, which became known as the 'full warning',

14 *Miller* v *Minister of Pensions* [1947] 2 All ER 372 at 373–4.

15 *R* v *Yap Chuan Ching* (1976) 63 Cr App R 7, CA.

comprised four parts. These were, first, the warning itself, that is, that it was dangerous to convict on the uncorroborated evidence of the witness, but that if they were satisfied of the truth of such evidence, the jury might convict in any event. The second element was an explanation of the meaning of corroboration in a technical legal sense. The third and fourth parts were an indication of what evidence was, and was not, capable in law of amounting to corroboration in this case, and an explanation that it fell to the jury to decide whether that evidence did in fact constitute corroboration. The position now, however, is that no such warning need be given. The members of the jury are, therefore, free to convict if they believe the complainant or single witness is telling the truth. How does this sit with what we know of their ability to make such a judgement?

This question can be analysed in a number of different ways. First, it is necessary to consider whether or not the requirement for reasonable doubt is viewed from an objective perspective (that of an appellate court), or the subjective view of that particular judge or jury. If the latter, then that particular jury have to be sure of guilt to convict. However, their judgement in reaching such a view is undoubtedly clouded by the fact that they will almost certainly not appreciate the limitations on their ability to determine whether it is the complainant or the defendant (or indeed either of them) who is telling the truth. If it were explained to the jury at the start of their deliberations that they were not, in reality, able to separate accurately truth from falsehood, it is likely that most juries would realise that they were unable to reach any reliable conclusion and, therefore, could not be sure. If, as at the moment, this is not explained to them, then the scientific evidence would suggest that the more sure they are that someone is lying, the more likely they are to be wrong in that view.

If the jury were to be warned of their limitations, then surely those limitations would be seen as 'a doubt to which you can give a reason'[16] and, therefore, sufficient to make an acquittal the necessary outcome.

If viewed objectively, a third party considering the ability of the jury would, surely, reach the same conclusion, namely that without the ability to discriminate whose version of events is correct, the jury cannot be sure of guilt. In those circumstances, the defendant would benefit from that doubt and have to be acquitted.

By similar logic, where defendants may be able to secure a not guilty verdict if they are believed in respect of their evidence on their state of mind or belief at the time of the alleged offence, as the court is unable to discriminate accurately between

16 *Miller* v *Minister of Pensions* [1947] 2 All ER 372.

the truthful and deceptive defendant based only on observing their oral testimony, and where there is no additional extrinsic evidence to assist the court either way, the only safe option is to acquit. There may, of course, be circumstances where the state of mind of the defendant or his or her belief at the relevant time can be inferred from his or her conduct or other extrinsic evidence. There will, however, be cases where the decision of the court is based solely on what the defendant says in his or her own defence in the witness box. Where this occurs, the tribunal of fact has a roughly 50 per cent chance of getting its decision correct. This cannot be an acceptable risk for the defendant to face.

However inconvenient or even abhorrent a result which may be produced, the science is in no doubt and can be ignored no longer. The reality is that credibility contests cannot be reliably determined by judges and juries, because human beings are poor lie detectors. It is interesting to consider that over the last 20 years forensic science has advanced rapidly, particularly with regard to DNA testing, and these advances have been readily embraced by the courts. At the same time, other scientific advances such as those set out above have remained largely ignored by justice systems around the world and those who operate them. Is this because it would simply be politically too difficult to acknowledge the reality of the position and accept that such convictions are unsound and unsafe? Such an approach is not acceptable from politicians, and even less so from the judiciary and lawyers. This is a real and current problem which should be addressed forthwith.

Any justice system worthy of that name must take an objective view of its own methods and the consequences of the way it tries cases. The interests of the public are not served by ignoring scientific findings and carrying on regardless of the consequences for defendants and their alleged victims. It is no good academic writers and judges discussing the finer points of what constitutes a reasonable doubt while failing to address the 'elephant in the room', which is the inability of judges and jurors to accurately and consistently determine truth from lies in uncorroborated oral testimony. This inability has an effect in most trials, but is at its most acute in so-called credibility contests. In those cases the criminal justice system is reduced to working at best to the standard of proof of 'balance of probabilities', and at worst to the equivalent of the toss of a coin. Clearly, such a position is entirely unsatisfactory.

So what can be done to address this problem? No doubt many will argue that it is wrong that a defendant cannot be convicted on the word of one witness who is believed. The attractions of that argument are obvious. A victim who has suffered at the hands of a defendant and is telling the truth will undoubtedly feel that they

are being made a victim for a second time if the court cannot convict on their word alone. However, hard cases make bad law. There are long-standing principles in common law jurisdictions which have to be preserved if the system is to do justice in the majority of cases. Those principles include the presumption of innocence, and the requirement for the prosecution to prove its case beyond a reasonable doubt. These are principles which should not be set aside lightly. It is a dangerous and slippery slope to change or ignore these principles for a particular class of offence or circumstances in which the prosecution is brought. The reality is that from the police officer who first interviews the complainant through to the jurors who hear the trial, no one is as good a lie detector as they believe themselves to be. They all operate at or around the level of chance. That level of proficiency is not enough to reach a conclusion reliably, where that conclusion permits no reasonable doubt.

At the very least, if such prosecutions are to continue, the judge and jury should be informed of their actual abilities as lie detectors. The equivalent of the 'full warning' should be reintroduced for all cases where the sole prosecution evidence is the uncorroborated testimony of a single witness, irrespective of the alleged offence. Triers of fact can then make an informed assessment of the evidence in light of their real world abilities to detect deceit.

All, however, is not lost. Investigative agencies and prosecutors should be encouraged to review the way in which allegations are considered and prosecutions brought. As much emphasis as possible should be placed on physical and corroborative evidence, and less so on direct witness testimony. There will, clearly, always be some cases where it simply comes down to the word of one person against another. In the absence of a technological solution, in the form of a lie detector that actually works, there is little which can be done to decide those cases more accurately. The question must, therefore, be asked as to whether such cases can safely be tried at all. If the well-known principle attributed to Blackstone and others, such as Benjamin Franklin, is applied, to the effect that it is better that a number of guilty persons should go free rather than one innocent should suffer, then it is difficult to see how any prosecution based on the uncorroborated and challenged evidence of a single witness should be brought at all. The risks of a wrongful conviction are too great. Surely it must be the aim of every justice system to improve conviction accuracy, rather than merely improve conviction rates? This aim will not be achieved while basic and highly relevant scientific findings are being systematically ignored.

The corroboration warning in sexual offence trials: final vestige of the historic suspicion of sexual offence complainants or a necessary protection for defendants?

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Abstract In both England and Ireland, trial judges have discretion whether to issue a corroboration warning in a sexual offence case. However, there is little guidance as to when such a warning is appropriate or the form which it should take. This uncertainty has the potential to produce injustice for complainants because the inappropriate use of such warnings may unfairly prejudice their testimony. Further, continuing to place sexual offence complainants in a special category with respect to the provision of such warnings is objectionable on principle and contributes to the perpetuation of myths about high levels of false allegations of sexual crime. Of course, the current rules may be justified on the basis that it is unfair to convict a defendant on anything but the strongest of

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