“Suggestibility is one of the most important psychological concepts to capture the imagination of scientists, both past and present. The internationally known contributors to this volume tackle this concept with scientific astuteness and balance, and with an eye towards its importance for the legal field. It is a must read for researchers and practitioners alike.”

Elizabeth F. Loftus, Distinguished Professor, University of California, Irvine

Suggestibility in Legal Contexts is a comprehensive guide to the theory, research and forensic implications related to suggestibility in legal contexts. It traces the history of the topic from the early twentieth century to the present, including its post-1970s resurgence after the publication of the seminal research of Elizabeth F. Loftus.

The text engages with the investigative and theoretical controversies that have attended the subject, including controversial topics such as recovered memories of childhood sexual abuse in adulthood, and coerced or false confessions.

Core chapters are structured thematically and cover salient aspects of the field such as research on “immediate” versus “delayed” suggestibility; memory conformity and the relationship between suggestibility and vulnerability factors including age, intellectual disabilities, personality and memory. The text also outlines witness interview techniques that can reduce the effect of suggested evidence in legal cases.

Anne M. Ridley is Principal Lecturer in Psychology at London South Bank University, UK, with particular interest in individual differences in witness suggestibility as well as strategies for supporting vulnerable witnesses in the legal system. In 2008, she was awarded a National Teaching Fellowship by the Higher Education Academy.

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Suggestibility in Legal Contexts
The Wiley Series in the Psychology of Crime, Policing and Law publishes concise and integrative reviews on important emerging areas of contemporary research. The purpose of the series is not merely to present research findings in a clear and readable form, but also to bring out their implications for both practice and policy. In this way, it is hoped the series will not only be useful to psychologists but also to all those concerned with crime detection and prevention, policing, and the judicial process.

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Suggestibility in Legal Contexts
Psychological Research and Forensic Implications

Edited by
Anne M. Ridley, Fiona Gabbert and David J. La Rooy
Dedications

AMR: For my family – Michael, Nick, Jo and Lew
FG: For Bry, whom I married while working on this book
DJLR: For my friend, Roger Smith
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Series Preface

The Wiley Series in the Psychology of Crime, Policing and the Law publishes both single and multi-authored monographs and edited reviews of important and emerging areas of contemporary research. The purpose of this series is not merely to present research findings in a clear and readable form, but also to bring out their implications for both practice and policy. Books in this series are useful not only to psychologists, but also to all those involved in crime detection and prevention, child protection, policing and judicial processes.

The terms ‘Suggestible’ and ‘Suggestibility’ must be among the most widely used but least understood descriptors in law and psychology. These labels have been applied across a diverse range of persons and situations: from the character of a young offender, through the memories of a child witness, to characterizing the continuing beliefs among world leaders regarding the presence of weapons of mass destruction in Iraq. Given this ubiquity, it is perhaps surprising that so few books have been devoted to pinning down this elusive concept and exploring its impact on crime and the law.

As Anne Ridley’s opening chapter makes clear, this was not always so in the history of psychology. If we go back to the dawn of empirical psychology, we find such pioneers as Alfred Binet and Hugo Münsterberg promoting suggestibility as a central concept in understanding witness testimony, while Sigmund Freud and Pierre Janet invoked it as an explanation for otherwise irrational behaviour and beliefs among their patients. While clinical psychology continued to explore the term, notably through the work of Hans Eysenck, Desmond Ferneaux and latterly, Gisli Gudjonsson, experimental psychology largely turned its back on research into this most mentalistic of concepts, under the baleful influence of Behaviourism. It was the advent of Cognitive Psychology and in particular the research of Elizabeth Loftus which saw the return of suggestibility to the mainstream. Loftus’s work on
post-event misinformation treated suggestibility as a consequence of situational factors impacting on the individual witness, particularly the phrasing of verbal statements and questions. This approach contrasted with the emphasis in Gudjonsson's work on individual differences in vulnerability to suggestion of defendants and its consequences for false confessions. The role of individual and situational factors in producing suggestibility had been argued over by the early pioneers and the controversy has been revived today, most notably in the ongoing debate between the followers of Stephen Ceci and Gail Goodman over the extent to which young witnesses can be said to be inherently suggestible and the consequences for the reliability of their testimony at court.

All of these key issues are given a contemporary edge by the contributors to the new volume, together with new forensic issues which have emerged in recent years. Both post-event misinformation effects and interrogative suggestibility receive widespread attention, both from a legal and psychological standpoint. The possible link between mental or emotional vulnerability and heightened suggestibility for witnesses and suspects is also thoroughly explored, while recovered memories are considered as a contemporary manifestation of suggestive responding. If Binet and Münsterberg were alive today, they would be surprised at just how much we had learned – and how many of the basic issues had stayed the same.

The Editors have done an excellent job of gathering a host of internationally known contributors for the current volume and fashioning their contributions into a coherent whole. Dr Anne Ridley is currently Principal Lecturer in Psychology at London South Bank University, with teaching and research interests in forensic psychology, who contributes to their Master’s programme in Investigative Forensic Psychology, as well as acting as Faculty Director of Teaching and Learning. Anne originated and developed the idea for a book on suggestibility and has overseen its development through to press. She has been ably assisted by Dr Fiona Gabbert and Dr David J. La Rooy of the University of Abertay, Scotland, both experienced researchers on witness evidence, who have helped in reviewing and developing manuscripts. Suggestibility in Legal Contexts: Psychological Research and Forensic Implications can be read with profit by all practitioners and researchers who must deal with offenders and witnesses within the criminal justice system.

Graham M. Davies
University of Leicester
Preface

The seeds of this book were sown while working on my doctorate *Anxiety in Eyewitness Testimony*, completed in 2003. It was several years later during a conversation with Professor Ray Bull on a coach to a conference dinner in Maastricht that the idea of a book on suggestibility in legal contexts really started to germinate. Ray suggested that the topic might be of interest to Wiley for their Psychology of Crime, Policing and Law series. My original ambition was to write the entire book myself in order to clearly delineate the mechanisms underpinning the different ‘types’ of suggestibility. I soon realized, however, that undertaking such a big project was going to be much more difficult than I had originally thought! During the early stages, I worked closely with Professor Graham Davies (the Series Editor along with Ray Bull) who gave me invaluable advice including the suggestion that it might be worthwhile to consider an edited volume. Graham proved to be an excellent sounding board regarding authors who could provide as broad an overview of suggestibility as possible. I am very grateful that so many experts were willing and able to contribute.

While writing my own chapters, and receiving submissions, I soon realized that reviewing and editing would be a lonely furrow on my own. Fiona Gabbert, whom I first met when we were both PhD students, was one of the first people involved in the book, so I invited her to become a co-editor. We felt that a third editor would be ideal and that David La Rooy’s knowledge of research on child interviewing and recent experience of editing Wiley’s *Children’s Testimony* would make him an excellent fit. We have all learned a huge amount about suggestibility from working with all our contributors and each other. What’s more, it has been a very enjoyable experience.
We hope that this volume, outlining current findings and ideas for future research, makes an important, up-to-date contribution to the literature on suggestibility and that academics, students and practitioners alike will find it useful and illuminating.

Anne Ridley
Without our contributors this volume would not have been possible so we are very grateful to them all. Our thanks also go to the series editors, Professors Graham Davies and Ray Bull for their advice and encouragement. Finally, to everyone at Wiley, for the opportunity to publish this book, particularly Andrew Peart, Karen Shield and Victoria Halliday for their patience and support, and to their colleagues who helped bring it to press.
1

Suggestibility: A History and Introduction

Anne M. Ridley

KEY POINTS

This chapter will provide an overview of the conceptual and historical factors that have contributed to modern research and theories of suggestibility in legal contexts:

- Definitions of suggestibility.
- Early work to establish whether suggestibility was one or more phenomena.
- Eyewitness testimony in the early twentieth century.
- Suggestibility in the early twentieth century.
- Cognitive and social theories relevant to suggestibility.

The 1970s and early 1980s heralded a new era in the study of suggestibility in legal contexts, an area that had been largely neglected since the early twentieth century. Using experimental studies, Elizabeth Loftus in the USA demonstrated how easy it was, under certain circumstances, to mislead people into remembering incorrect details about a witnessed event (Loftus, Miller, & Burns, 1978). Loftus’s was an experimental approach. In Europe, through his clinical and forensic work, Gisli Gudjonsson
noted that some individuals seemed to be more suggestible than others. This approach assumed that suggestibility is a *trait* and led to the development of a model of interrogative suggestibility (Gudjonsson & Clark, 1986). Much research and debate have followed to establish whether suggestibility is a trait (i.e. some people are inherently more suggestible than others), or whether suggestibility is merely the result of situational factors that can be manipulated experimentally. Nevertheless, what both approaches have in common is the fact that they consider suggestibility from the point of view of its impact on the accuracy of information obtained during the investigation of crimes, and that is the focus of this book.

The notion of *interrogative suggestibility* was originally proposed by Binet (1900) and has been used since by others, particularly Gudjonsson (e.g. Gudjonsson 2003; Gudjonsson & Clark, 1986). Recent use of the term interrogative suggestibility is usually restricted to suggestibility that occurs in the presence of inappropriate questioning plus pressure, either in the form of negative feedback and/or coercive interview techniques. If suggestibility is indeed a trait (and the evidence is equivocal: see Baxter, 1990, for a review), then it is one that is most likely to emerge when such situational pressures are present. Nevertheless, it is also possible for individuals to be suggestible simply through exposure to incorrect information about a previously witnessed event, or in response to leading questions, in an otherwise supportive evidence-gathering interview. We would argue that the term *investigative suggestibility* should be used to distinguish suggestibility that occurs incidentally in this way from suggestibility that occurs due to interrogative pressure, and will therefore use these two terms, when appropriate in this book.

**WHAT IS SUGGESTIBILITY?**

Suggestibility is ‘a peculiar state of mind which is favourable to suggestion.’ (Sidis, 1898, p. 15)

Definitions of *suggestibility* and *suggestion* are many and varied, reflecting the difficulty in pinning down this pervasive yet perplexing aspect of human behaviour. Marcuse (1976, cited in Wagstaff, 1991) describes *suggestibility* in situational terms including ‘the influence of one person on another without his or her consent, the implanting of an idea, possessing a submissive tendency, and appealing to the unconscious’ (p. 132). In a similar vein, Stern (1910, p. 273), while talking of the psychology of testimony, defines *suggestion* from the influenced individual’s viewpoint as ‘the imitative assumption of a mental attitude under the illusion of assuming it spontaneously’. This latter definition is rather
more suggestibility than suggestion, a distinction that was perhaps lost in translation from the German original.

Suggestion and suggestibility are linked but distinct concepts, with the latter generally resulting from the former. “Suggestion” refers to a type of influential communication, while “suggestibility” refers to the individual differences between those responding to suggestion under comparable circumstances’ (Hilgard, 1991, p. 37), a distinction elegantly captured by Sidis’s (1898) much earlier definition highlighted above. Thus, suggestion, whether in the context of hypnosis, social influence or incorrect information, can lead to a state or moment of suggestibility. In forensic psychology, suggestibility has been described in psychosocial terms as ‘the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as the result of which their subsequent behavioural response is affected’ (Gudjonsson & Clark, 1986, p. 84). In distinct contrast to the preceding definitions, Powers, Andriks, and Loftus (1979) define suggestibility in terms of memory processes, stating that it is ‘the extent to which they [people] come to accept a piece of post-event information and incorporate it into their recollection’ (p. 339). Whether suggestion has an impact on memory rather than behaviour, mirrors the situational versus trait approaches to suggestibility that have been the subject of sometimes strong debate since the 1980s.

**IS SUGGESTIBILITY ONE CONSTRUCT OR MORE?**

As illustrated in the above sections, suggestibility is hard to pin down. Many researchers have pointed out over the past century or so that there is no unitary concept of suggestibility and that the one word is used to describe a variety of phenomena (e.g. Binet, 1900; Eysenck, 1989; Wagstaff, 1991). In an attempt to resolve the issue, Eysenck (1947) proposed three types of suggestibility: primary, secondary and tertiary.

Primary suggestibility describes an ideo-motor phenomenon whereby thinking about or imagining one’s body moving can cause it to occur. This has been demonstrated experimentally in the body sway test (see Box 1.1), arm lowering, and pendulum tests. Primary suggestibility correlates highly with hypnotizability and neuroticism. In contrast, secondary suggestibility is linked to indirect suggestions where the purpose of the suggestion is not clear. It is not related to hypnotizability and is negatively related to intelligence. In other words, people who are ‘gullible’ (Eysenck & Furneaux, 1945) tend to be more suggestible.

Studies carried out since those by Eysenck and his colleagues have supported the notion of primary suggestibility (e.g. Duke, 1964; Evans, 1966, cited in Evans, 1967; Stukat, 1958), but this is not the case for
Eysenck and Furneaux raised the question of whether suggestibility is a single mental trait or a number of separate ‘suggestibilities’ (p. 485). They carried out a study among 60 neurotic patients in an army hospital. A battery of 12 different tests was administered in order to understand the relationships between them and whether they would support the notions of primary and secondary suggestibility.

Examples of tests given and the type of suggestibility it was hypothesized that they related to:

**Picture Report** (secondary): A picture was studied for 30 seconds, followed by 14 questions about it, of which five contained incorrect details. Suggestibility was measured by the number of suggested details accepted.

**Ink Blot Suggestion Test** (secondary): Typical responses to Rorschach ink blots were suggested as well as implausible responses. Suggestibility was measured by the number of implausible suggestions accepted.

**Body Sway Test** (primary): Participants closed their eyes and it was suggested they were falling forward. The amount of sway was measured via a thread attached to the participants’ clothing. ‘Complete falls are arbitrarily scored as 12 inches’ (p. 487).

**Odour Suggestion Test** (secondary): Participants were asked to identify the scents presented in different bottles. The three final bottles presented contained water. Suggestibility was measured by the number of these placebo bottles that had an odour attributed to them.

**Hypnosis** (primary): Attempted induction was via ‘fixation of a bright object, a constant low sound, and verbal suggestion’ (p. 488). Various suggestions were made to participants such as tiredness and hallucinations. A total hypnosis score was derived from responses to the suggestions.

Analysis supported the two types of suggestibility, although more so for primary than for secondary suggestibility. The best tests of primary suggestibility were the body sway test and hypnosis, while the ink blot and odour tests were the best tests of secondary suggestibility.

Of particular relevance to suggestibility in legal contexts is the picture report test, which used a method very similar to that since adopted in studies of investigative suggestibility. The suggestibility effect was relatively small with a mean of 1.0 (SD 1.1) out of a possible 5.0, and the picture report test did not map strongly onto the concept of secondary suggestibility.
secondary suggestibility. Evans (1967) questioned the methodology of Eysenck and Furneaux (1945). He re-evaluated the data and found that the notion of secondary suggestibility could not be justified. Evans concluded that three types of suggestibility could be identified: ‘primary’ (passive motor), ‘challenge’,¹ and ‘imagery’ (sensory) suggestibility (p. 127). As they involve physical movement, primary and challenge suggestibility are of little relevance to investigative suggestibility. Imagery is more promising, and its relationship with investigative suggestibility has since been researched (see Eisen, Winograd, & Qin, 2002, for a review).

Eysenck (1947) also proposed a third or ‘tertiary’ type of suggestibility. He linked this to attitude change and persuasion, emphasizing the importance of interpersonal factors such as the perceived authority of the person providing the suggestion. Although Evans (1967) concluded that there was little evidence of this effect, more recent research in the area of suggestibility in legal contexts indicates otherwise, to the extent that there is now an acknowledged link between interrogative suggestibility and tertiary suggestibility (Eysenck, 1989; Sheehan, 1989). Furthermore, Sheehan (1989) proposed that Gudjonsson’s suggestibility scales are a form of indirect suggestion. The term ‘indirect’ links back to secondary suggestibility. Thus it can be argued that interrogative suggestibility may bridge two of Eysenck’s categories of suggestibility: secondary and tertiary.

THE HISTORY OF SUGGESTIBILITY RESEARCH

Hypnosis and Suggestibility

As the previous section illustrates, the history of suggestibility is closely intertwined with that of hypnosis. The two have been linked by Orne (1977, cited in Gheorghiu, 1989, p. 4) who defined hypnosis as ‘the state in which suggestion can be used to give rise to distortions in perception and memory’.

Hypnosis is characterized by a relaxed and drowsy state, during which the influenced individual is responsive to suggestions made such as hallucinations or age-regression. A further characteristic of the state is that the person involved is subsequently able to report that he was hypnotized (Barber, Spanos, & Chaves, 1974), although amnesia for experiences during hypnosis sometimes occurs. This amnesia may either be suggested or may happen independently of a specific suggestion (Eysenck & Furneaux, 1945). Hypnosis is used widely in therapies of various kinds, from psychological distress through to treatment of

¹ A challenge suggestion has two stages: the suggested inhibition of a movement, followed by a challenge to overcome the initial suggestion.
addiction and relief of pain. Such therapy has sometimes resulted in recovered memories of childhood sexual abuse, and hypnotism has also been used on occasions to obtain testimony in police investigations (see Orbach, Lamb, La Rooy, & Pipe, 2012, for an example).

The use of hypnosis has a long history, dating back at least as far as de Montagne in the seventeenth century and Franz Mesmer in the eighteenth century. Mesmer believed the effects observed when he *mesmerized* or hypnotized his patients were due to animal magnetism; an external life force that was a result of his connection to the patient. He disagreed with de Montagne, who proposed that the imagination of the patient was the primary cause. With hindsight it would seem that de Montagne was closer to the mark. The study of hypnotism continued through the work of Freud, Janet and Binet among others, although it was probably Bernheim (1888/1964) who first linked hypnosis to suggestibility. He proposed that the former was a heightened state of the latter. Modern researchers do not agree with this position due, in part, to the circular nature of the theory (suggestibility leads to hypnosis leads to suggestibility), although it is generally accepted that the two phenomena are closely linked. According to Edmonston (1989):

... although suggestion may be a route for establishing the condition of hypnosis, we should agree that hypnosis is not suggestion and suggestion is not hypnosis, and that to study one is not necessarily to study the other. (p. 73)

Edmonston also points out that an important aspect of the relationship between hypnotism and suggestibility is that the effects of suggestion are greater when under hypnosis than when in a waking state.

The issue of hypnosis and suggestibility has direct relevance to suggestibility in legal contexts. Under certain circumstances, hypnosis increases the likelihood of the recall of misleading information, creation of pseudomemories and acceptance of the persuasive messages contained in leading questions (Sheehan, 1989). However, Orbach *et al.* (2012) report the case of a child interviewed under hypnosis who provided details that were crucial to the apprehension of the person who had abducted her sister. Analysis of the interview indicated that no suggestive questions were used.

**Early Work on Eyewitness Testimony**

Münsterberg (1863–1916) has been described as the father of eyewitness testimony research (e.g. Wrightsman, 2001). Furthermore, as articles in a Special Issue of *Applied Cognitive Psychology* (2008) demonstrate (e.g. Bornstein & Penrod, 2008; Sporer, 2008), the early twentieth century was a boom period for psychology and law. What
follows will be a brief summary of the work of Münsterburg, Stern, Binet and other early investigative psychologists.

Münsterberg's book *On the Witness Stand* (1908/1925) contains a series of essays about psychology and law. Titles include ‘The Memory of the Witness’, ‘Untrue Confessions’ and ‘Suggestions in Court’. (See Box 1.2 for a section from the first of these essays.) Hugo Münsterberg, a student of Wilhelm Wundt, advocated an experimental approach to the study of eyewitness memory. He referred to the recent proliferation of psychological research in the USA and Europe, and lamented the fact that the courts took little notice of it, yet allowed findings from

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**Box 1.2 A Section from Münsterberg’s (1908/1925) Essay from *On the Witness Stand* about ‘The Memory of the Witness’**

This is based on his own memory for events surrounding a burglary at his house.

In this way, in spite of my best intentions, in spite of good memory and calm mood, a whole series of confusions, of illusions, of forgetting, of wrong conclusions, and of yielding to suggestions were mingled with what I had to report under oath, and my only consolation is the fact that in a thousand courts at a thousand places all over the world, witnesses every day affirm by oath in exactly the same way much worse mixtures of truth and untruth, combinations of memory and of illusion, of knowledge and of suggestion, of experience and wrong conclusions. Not one of my mistakes was of the slightest consequence. But is it probable that this is always so? Is it not more natural to suppose that every day errors creep into the work of justice through wrong evidence which has the outer marks of truth and trust-worthiness? Of course, judge and jury and, later, the newspaper reader try their best to weigh the evidence. Not every sworn statement is accepted as absolute reality. Contradictions between witnesses are too familiar. But the instinctive doubt refers primarily to veracity. The public in the main suspects that the witness lies, while taking for granted that if he is normal and conscious of responsibility he may forget a thing, but it would not believe that he could remember the wrong thing. The confidence in the reliability of memory is so general that the suspicion of memory illusions evidently plays a small rôle in the mind of the juryman, and even the cross-examining lawyer is mostly dominated by the idea that a false statement is the product of intentional falsehood.
other sciences like medicine and even what he called pseudosciences such as graphology to be presented as expert evidence in court. Münsterberg’s work has stood the test of time because it is accessible to read, and possibly, as Bornstein and Penrod (2008) suggest, because (on the basis that there is no such thing as bad publicity) it was pilloried by Wigmore (1909) in the *Illinois Law Review*.

Siegfried Sporer (2008) argues that modern researchers of eyewitness testimony owe at least as much to William Stern (1871–1938) as they do to Münsterberg. Although both Münsterberg and Stern were German, Münsterberg moved to Harvard, a move that facilitated the influence of his work in English-speaking countries. Much of Stern’s work, in contrast (as with Binet, 1900) has never been translated into English. Stern was well aware of the problems posed by post-event information, suggestive questions and false memory induction. He placed error and deception on a continuum of intention to illustrate the fact that individual witnesses may apply different standards of truthfulness when questioned. Thus truthfulness may vary as a function of the task and perceived consequences. In an experimental study, Stern found that taking an oath improved accuracy, although by no means eliminated error altogether (Stern, 1902, cited in Sporer, 2008). These issues reflect a theme that has been picked up more recently in many studies of confidence and accuracy as well as a series of papers by Asher Koriat and Morris Goldsmith in Haifa (e.g. Koriat & Goldsmith, 1996; Koriat, Goldsmith & Pansky, 2000) looking at factors that affect what people report, the level of specificity and the goal-dependent criteria they adopt when deciding how to respond.

### Suggestibility in Legal Contexts

Much of the early research on suggestibility in legal contexts was carried out on children. Based on his book *La Suggestibilité*, Alfred Binet (1900) could certainly claim to have been one of the first to highlight its importance, pointing out ‘the advantage that would accrue from the creation of a practical science of testimony’ (Whipple, 1909, p. 154). Binet (1900) emphasized that he wished to investigate suggestibility that was *not* a result of hypnotism. He did this using an individual differences approach, acknowledging that an individual who is susceptible to suggestion on one task may not demonstrate similar levels of suggestibility on another. He proposed that suggestibility is in fact a number of phenomena (with contemporary equivalence in brackets): obedience to an authority figure, which he felt is the true meaning of the word suggestibility; imitation (conformity); a preconceived notion that prevents critical thought (bias and stereotyping); unconscious errors of a vivid imagination (confabulation); and unconscious processes due to distraction or an altered state of consciousness.