

Misuse of Demeanor in Credibility Assessments

By Trish K. Murphy



“He started shifting in his seat after being questioned about the theft.”

“When asked if she engaged in the alleged misconduct, her eye twitched.”

These are the types of observations an investigator should rely on in making credibility assessments, right?

In investigations, a common misperception is that credibility assessments should include scrutinizing and interpreting an interviewee’s demeanor. In truth, demeanor is not a reliable factor to use in determining credibility, and it can be problematic for the integrity of the investigation. This article explains five reasons to avoid using demeanor to make credibility assessments.

1. Social science research does not support it.

While the belief that individuals perform well at evaluating credibility through demeanor is widely held, it simply is not supported by evidence. Decades of behavioral science research consistently has established that physical cues such as a flushed face, fidgeting, and stammering speech are not indicators of a witness's truthfulness.

Research has shown that in controlled studies, people – including experienced investigators – detect deception about as well as flipping a coin.

For a more detailed discussion, see Mark W. Bennett, *Unspringing the Witness Memory and Demeanor Trap: What Every Judge and Juror Needs to Know About Cognitive Psychology and Witness Credibility*, 64 AM. U.L. REV. 1331 (2015).

2. It fails to account for human beings' idiosyncrasies and myriad factors that could be at play.

Human beings are unique and often quirky. Things like eye contact (or lack thereof), facial expressions, and body language can vary considerably between individuals and cultures. And sometimes people may exhibit symptoms of a trauma response or a condition that impacts how they present in an interview.

It is important to acknowledge that we do not know the reason a person might appear as they do. They might be feeling some degree of anxiety at being the focus of an investigator's attention. They might feel uncomfortable talking about a sensitive topic. Or they might just need a break.

3. It is a distraction.

Relying on observations of demeanor inhibits a thorough and impartial analysis and detracts from the importance of evaluating legitimate credibility factors.

4. It is unnecessary.

When assessing credibility to resolve factual disputes, investigators possess a variety of evidence-based factors they may employ, including:

- direct or indirect corroboration
- lack of corroboration
- motivations of parties and witnesses
- inherent plausibility
- consistent and inconsistent evidence
- material omissions
- proximity in time and
- articulated rationale for actions or decisions.

5. It is not fair.

Any interpretation of demeanor is subject to the whims and biases of the investigator. Because social science research does not support it, the use of demeanor observations gives an investigator carte blanche to make whatever credibility finding they choose.

In a worst-case scenario, demeanor can be used to justify an outcome that is not supported by other evidence.

One example of a misuse of demeanor appeared in an investigation report reviewed by this author. The external investigator stated that the two complainants were emotional (crying) in their interviews and for that reason they were less credible than the respondent, who was not emotional. This example illustrates how problematic – and unfair – demeanor-based credibility assessments can be.

For another illustration of the unfairness that can result from demeanor assessments, see T. Christian Miller & Ken Armstrong, *Unbelievable: The Story of Two Detectives' Relentless Search for the Truth*.

Conclusion

Does all of this mean that observing an interviewee's demeanor has no value? Not at all. If the investigator observes something about an interviewee's demeanor that seems unusual or notable, it may be an indication that they should ask more questions, particularly in regard to any topic that appears to trigger a change.