

Proposed Instructions to Juries about Judging Credibility

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You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the character of the testimony given or by evidence to the contrary of the testimony given. Consider each witness' intelligence, motive, state of mind and demeanor while on the stand.

Try not to be swayed by the appearance of the witness, the clothing, hairstyle, or grooming. Guard against the natural tendency to believe people whose appearance is similar to your own dress and grooming. Also be on guard against being influenced by how attractive the witness may be. Beware of an inclination to be more sympathetic to a witness who is appealing in his or her appearance. These factors are often unrelated to a witness's truthfulness.

Mannerisms can also be misleading. Sometimes a truthful witness may seem to be nervous or tense. Such a witness may be intimidated by the courtroom, and some witnesses are typically nervous, fidgety or tense in their manner.

Evaluate not just what the witness says but how the witness says it. Pay attention to the facial expressions, gestures, posture and tone of voice. Look for discrepancies between what the witness says and how the witness says it. But remember that sometimes truthful witnesses may look worried, if they are afraid of being disbelieved, and some liars can behave very convincingly.

Note

1. This wording is unchanged from the Manual of Model Jury Instructions for the Ninth Circuit, except that I deleted the following from it: "You may be guided by the appearance...or by the manner in which the witness testifies. The rest of the text which follows is new.

2. G.R. Miller and J.K. Burgoon "Factors affecting assessments of witness credibility". A chapter in R. Bray and N.L. Kerr (Editors), *THE PSYCHOLOGY OF THE COURTROOM*. New York: Academic Press 1982.

3. M.G. Efran "The effect of physical appearance on the judgment of guilt, interpersonal attraction, and severity of recommended punishment in a simulated jury task. *JOURNAL OF RESEARCH IN PERSONALITY*, 8, pages 45-54, 1974.

4. A number of research studies which support this are described in: Paul Ekman, *TELLING LIES*, Second Edition, paper, New York: W.W. Norton, 2001. Also see Paul Ekman, Maureen O'Sullivan, W.V. Friesen, and Klaus Scherer. "Face, voice and body in detecting deception". *JOURNAL OF NONVERBAL BEHAVIOR*, 15, 1991 125-135.

5. Paul Ekman and Maureen O'Sullivan. "Who Can Catch A liar" *AMERICAN PSYCHOLOGIST*, 1991, 46, 913-920.

Comments on Problems in the Current Federal Instructions to Juries

FROM MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT:

"You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You may be guided by the appearance and conduct of the witness, or by the manner in which the witness testifies, or by the character of the testimony given, or by evidence to the contrary of the testimony given. ...Consider each witness' intelligence, motive and state of mind and demeanor or manner while on stand."

PROBLEMS:

1. **APPEARANCE:** probably most misleading and source of stereotypes. Juries should be told to disregard appearance, to guard against our natural tendency to disbelieve those who are unattractive or whose dress and appearance is unconventional.
2. **MANNER:** Manner can be very misleading. Juries need to be warned about being influenced by personal mannerisms or idiosyncrasies. Very truthful people may be restless, tense or nervous when they testify.
3. **CONDUCT:** This is an old fashioned word but not a bad one. Jurors should be told to consider not just what the witness says but how they say it -- expressions, gestures, posture, and tone of voice. Focus on changes in demeanor with a change in what the witness is asked about.