

Forensic Psychological :: evaluation of demeanor of witnesses

B. G. Rathod

Student of Ph.D., & Principal Civil Judge, Palasana

Under the guidance of Hon'ble Prof. Dr. N. K. Indrayan (former H.O.D., Dept. of Law).

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Introduction ::

The individual is the primary unit of analysis. **Freud** who was considered as the father of modern psychology said that *"Psychoanalysis depends on understanding how the mind works."* He considered an Iceberg Model. And it says that what we saw in a person is the outer part, as an iceberg in the high seas. it's what's underneath that counts.

In a trial before a Court, especially in criminal trials witnesses are often declared hostiled. Though there are various reasons behind this, but in my view sometimes a person may not recollect such event in a spur of moment. It doesn't mean that witness has forgot or he tells lie before the Court. It is stored in his unconscious mind, which need to stimulate from his unconscious mind.

When it comes before the court, to the Judge, also makes the determination of the witnesses' basic competency to testify, the system has generally 3 methods;

- ¹ witnesses are required to testify under oath or some equivalent solemn affirmation;
- ² opposite counsel has on opportunity to cross-examine the witness;
- ³ Judge is able to observe the witnesses, demeanor on the stand as an aid in determining their credibility.

Oath is often cited as general safeguard to credibility. **McCormick** said on Cross-examination that: *"for two centuries common law judges and lawyers have regarded the opportunity of cross-examination as an essential safe-guard of the accuracy and completeness of testimony."*

Finally, the Judge is trusted to make the best possible evaluation of a witness, because the Judge has the possible opportunity to observe the 'demeanor' of each witness. Like observing the movements of eyes, hands, body-language, his actions and reactions to the questions asked to them etc.

In our legal system having backlog of thousands of cases, trial of an offence took place after years sometimes. In some cases, witnesses would have change their residence also, in that situation one can not expect that he will speak word to word as he has stated in his statement before police. But this theory of psychological evaluation of witness would not helpful in all cases. Idea behind evaluation of demeanor of eye-witness is for the "star-witness", whose testimony/deposition on oath before the Court is crucial thing for conducting trial or reach to a conclusion at the end of the trial.

Forensic scientists begin the evaluation of witnesses' testimony even before they speak their first words. Even before they take the oath or recite their qualifications, the Court is assessing their credibility by their demeanor. Simply put, demeanor evidence is the body's compass, pointing in the direction of credibility. It includes gestures, intonations, posture, mannerisms, eye movements, inflections, and expressions. Judges listen and look very closely to demeanor evidence to assess the credibility of forensic testimony. Research has repeatedly shown that demeanor evidence significantly determines court decisions.

*The U.S. Supreme Court has reinforced the importance of demeanor evidence in the 2009 case of **Melendez-Diaz v. Massachusetts** (129 S. Ct. 2527; 174 L. Ed. 2d 314; U.S. LEXIS 4734 (2009)). Forensic science testimony now requires as much attention to the manner in which they testify as to their scientific research. It is no longer enough to be good scientists, forensic experts need to be effective communicators. Because it is unlikely they will have had testimony training or education in their formal schooling, forensic scientists will need to get additional training, particularly in communication and persuasion skills, human relations, and relaxation techniques.*

That the evaluation of a person's demeanor in the witness box may be highly subjective and oft-times difficult of logical exposition has been recognized by the Supreme Court of Canada.

*In **R. v. Lifchus** (1997), 9 C.R. (5th) 1, 118 C.C.C. (3d) 1, 150 D.L.R. (4th) 733, 216 N.R. 215, 118 Man. R. (2d) 218, at page 11, para. 29 [C.R.], **Cory J.** held that: "... there may be something about a person's demeanor in the witness box which will lead a juror to conclude that the witness is not credible. It may*

be that the juror is unable to point to the precise aspect of the witness's demeanor which was found to be suspicious, and as a result cannot articulate either to himself or others exactly why the witness should not be believed. A juror should not be made to feel that the overall, perhaps intangible, effect of a witness's demeanor cannot be taken into consideration in the assessment of credibility."

Factors affecting testimony of eye-witness ::

- Stress: High levels impair accuracy.
- Weapon Focus: Presence of a weapon impairs eyewitness' accuracy.
- Exposure Time: Less time an eyewitness has to observe an event, the less she/he will perceive and remember it.
- Accuracy-Confidence: Confidence is not a good predictor of his/her accuracy.
- Cross-Racial Perceptions: Eyewitnesses are better at identifying members of their own race than of other races.
- Post-Event Information: Testimony reflects not only what was actually seen but also information obtained later on.
- Color Perception: Judgments of color made under monochromatic light are very unreliable.
- Unconscious Transference: A culprit who is identified may have been seen in another situation or context.
- Alcohol Intoxication: Impairs later ability to recall events.
- Attitudes and Expectations: May affect eyewitness' perception of events.

Implications of Eyewitness Testimony ::-

- [1] Reality Testing: Obtaining additional information to check his/her perceptions.
- [2] Habituate: Tend to respond less to predictable and unchanging stimuli.
- [3] Dis-habituation: Reversal of habituation.

Eyewitness testimony: the unreliable of human memory

Convictions in criminal cases often depend on the quality of what witnesses remember, but human memory can be highly fragile. To improve people's memory, forensic psychologists may exercised in the manner that witnesses should be encouraged to recreate the entire context of an event in their mind - the setting, the sounds and smells, even the weather. Recall is also better when police reject a confrontational style of questioning in favour of a more open-ended discussion, where the pace of questioning is slowed down and witnesses are given sufficient time to think and respond fully.

Forensic evaluation of eye-witness ::

There has been an explosion of interest in forensic psychology since the 1970s. At the same time, forensic psychologists are not always welcomed in court by judges and lawyers. Despite a wealth of objective scientific research, many legal decisions are made on the basis of intuition and experience. But these are not always reliable. In one case, the judge decreed that seeing the defendant surrounded by security guards would not bias the jury. Yet there is ample research evidence that such scenes do have a negative effect on juries.

Legal system and neuro-science ::

First, telling scientific truth and testifying to persuasive truth is not the same thing. Being technically correct is not the same as being persuasively competent. Forensic scientists must distinguish the credibility of their own testimony from the conclusion of their opposite number. After all, qualified forensic scientists on both sides will testify to opposing scientific truth. It teaches that demeanor credibility consistently ranks as a significant factor in persuasion.

Second, demeanor evidence is important because it is how humans communicate and make decisions. One of the lessons of neuroscience is that our demeanor says much more than our words. Scholars estimate, for example, that at least 80% of our communication is nonverbal. Everyone notices the processes of communication more quickly and more efficiently than the content of communication. Forensic expert conveys their research equally compelling as the results themselves. Words conveying information came later in our evolutionary stage than physical expression. Our prehistoric ancestors had to quickly scan the environment for predators. In fact, a large part of our demeanor assessments are conducted in the brain's most ancient regions. So, demeanor evidence is an instinctual part of our behavior.

Yet, our demeanor assessments are not always correct. Evidence shows that judges do not only rely upon demeanor evidence in assessing witness credibility, they report that they are pretty good at it. It will

depend more upon non-verbal cues to assess credibility as expert credentials and forensic technology become more complex and standardized. Forensic scientists will likely face increasingly sophisticated demeanor testimony as more and more scientists are called to testify. They serve justice by presenting competent demeanor evidence.

Third, not only do judges scrutinize witness demeanor, but they do so almost instantaneously. Our brains process demeanor as quickly as 100 milliseconds. This means that it size up experts before they utter their first word or even take the stand. They will begin assessing the forensic scientist even as he or she walks into the courtroom or takes the oath. Those immediate impressions tend to last throughout deliberations.

Fourth, that Court find the eyes of a witness to be the single most important visual cue to assess credibility. In one case, an accused insisted upon wearing sunglasses at the trial and unsuccessfully appealed the conviction based upon how the sunglasses may have undermined the testimony. This is how forensic psychologist evaluate the demeanor of accused to caught up at trial.

Fifth, a confident witness is more persuasive than a hesitant one. Acting confidently, even passionately helps establish credibility. It was found that Courts are twice as likely to trust a confident expert over an uncertain or unsure expert or even three times as much.

Conclusion

The best message comes from the best messenger. The scientific evidence put forth at trial is only as effective as the scientist who presents it. Courts should use demeanor evidence to determine credibility. Because trial court faces scientific testimony from opposing experts, they use demeanor evidence to determine which opposing testimony seems more authentic and plausible. Trial courts use the body's compass to determine which witness to find most credible. But if the Court takes help of expert in this behalf, the credibility of witness, especially star witness in some cases, would help to come to an approximate final conclusion. Legal mandate brings in the need for demeanor training for Judiciary, so they can testify just as effectively.

Forensic science doesn't just offer science to a Judicial system. They offer a human being. All-in-all, the single, psychological testimony an expert can offer the Court is the expert themselves.

References and acknowledgements ::

- www.legalservicesindia.com
- wikipedia.
- www.shodhganga.com
- www.lawcommissionofindia.com
- DFS-Gujarat, Gandhinagar.
- Ashlock, S. Expert witness: effective courtroom testimony. ForensicMag.com posted February 1, 2010.
- Lindsay, R. et.al. (1994). Can people detect eyewitness-identification accuracy within and across situations? *Journal of Applied Psychology*, 79, 83.
- Wells, G. (1984). How adequate is human intuition for judging eyewitness testimony? In *Eyewitness Testimony: Psychological Perspectives* 256, 254 (Gary Wells & Elizabeth Loftus, eds.)
- Jeremy A. Blumenthal, A Wipe of the Hands, A Lick of the Lips: The Validity of Demeanor Evidence in Assessing Witness Credibility, 72 NEB. L. REV. 1157, 1189 (1993)
- Blackburn, R. (1993). *The Psychology of Criminal Conduct: Theory, Research and Practice*. Chichester: John Wiley & Sons. A closely argued text that reaches a more advanced readership.
- Hollin, C.R. (1989). *Psychology and Crime: An Introduction to Criminological Psychology*. London: Routledge. This book and its 1992 companion (see below) are broad-based texts primarily for undergraduate courses.
- Hollin, C.R. (1992). *Criminal Behaviour: A Psychological Approach to Explanation and Prevention*. London: Taylor & Francis.