

When the Truth Looks Like a Lie

The witness had been accused of hurting her 14-year-old stepson by grabbing him by the arm. When she insisted that she had not hurt him her voice was sharp, her sentences halting, and she kept breaking eye contact. She had all the signs of lying. Except she wasn't.

In training witnesses, I am extremely conscious of how this kind of nonverbal communication can be interpreted – and sometimes misinterpreted. I specifically use the word interpret, because communication is 90 percent nonverbal. Only 10 percent is about the words spoken. More important, our brains are built to prioritize the nonverbal. It is always on alert for disconnects between the words and the nonverbal signals. It's part of what makes us human.

NONVERBAL IS THE YARDSTICK FOR MEASURING WORDS

For example, your best friend says she's fine, but she is grimacing, and her shoulders are hunched. Nonverbal trumps words every time, so in this case your brain tells you your friend is not telling you the truth. Which is the correct interpretation.

What about the opposite? What happens when the words are true but the nonverbal is sending out a false signal? This is critical when you're preparing a witness to testify.

MISINTERPRETATION IS RAMPANT

Testimony is not normal communication. It's artificial. And it's infused with stress, confrontation, anxiety, confusion, as well as time and procedural constraints.

Time and again I see witnesses struggle with their communication in these stilted circumstances. Their nonverbal can easily get out of sync with their words – for innocent reasons. A jury can interpret furtive glances as evasive or lying. When in

reality the witness may be afraid of opposing counsel. A witness who puts their hand over their mouth when speaking can be interpreted as lying. But the truth is, they are afraid of saying the name of the man who robbed them.

FINE-TUNE YOUR ASSESSMENT

Attorneys sometimes overlook these disconnects between what a witness means and what they are projecting. I've seen devastating results when the jury misinterprets a witness' communication.

HERE ARE FOUR COMMONLY OVERLOOKED DISCONNECTS IN WITNESSES.

Eye dart. Shifty eyes are a signal for lying. But, in the duress of testimony breaking eye contact can be a way to break the stress. Work with your witness, going over the toughest questions to desensitize them. When you've helped them lower their stress level they can maintain smoother eye contact.

Breathing. Shortness of breath or panting is a stress response associated with lying. It's also part of our fight or flight mechanism. Under the pressure of testimony, it's not unusual at all. Teach your witness breathing and relaxation exercises until they can calm down and control their breathing at a more natural rhythm.

Mouth and nose. Anything that covers or distorts the mouth is a dead giveaway for lying. Under typical circumstances anything that obstructs the mouth is literally a "cover-up." But often in emotionally charged testimony – rape, molestation, abuse, medical, tragic accidents – the opposite is true. The witness is struggling to say the truth, out loud. Covering their mouth is an instinctive protection. Work with your witness to be able to say what they need to say in a strong,

clear voice (with no hand on their mouth).

Rubbing your nose can also be a sign of dishonesty. Remember, that the interpretation of nonverbal signals happens on a subconscious level. I know it may sound superfluous, but if your witness has allergies or a cold, don't allow the jury to jump to the wrong conclusion. Get some antihistamine.

Vulnerable body parts. When a person is lying they will often exhibit self-protection. They will cross their arms over their chest or put a hand on their neck or carotid artery or place their hands over their stomach. Again, these exact same actions can be a way of your honest witness to protect themselves from hostile cross examination, painful memories, or emotional testimony.

PRACTICE, PRACTICE, PRACTICE

Witness can learn new skills to keep their nonverbal in sync with their verbal. When I work with witnesses, the first step is to make the witness aware of what isn't working. I videotape every session and show them clips. It's a powerful teaching tool and will fast-forward the learning curve. If they have a bad habit to break, like rolling eyes or hunching over, I use a neuropsychology technique called pattern interrupt. Then, we work together on new skills that help them both speak the truth and project the truth in their body language.

CONCLUSION

Nonverbal communication will always trump words, so make sure your witness's total communication package tells and shows the truth.

Deborah Johnson, MC is the president of High-Stakes Communication. She is an industry expert in effective communication and a six-time EMMY Award-winning writer/producer. She has consulted on a wide variety of high-stakes civil, criminal, and family law cases, including a \$5.3 million civil rights case and multimillion-dollar divorce cases.

