

THE SHIFTY LIAR AND OTHER ANCIENT MYTHS

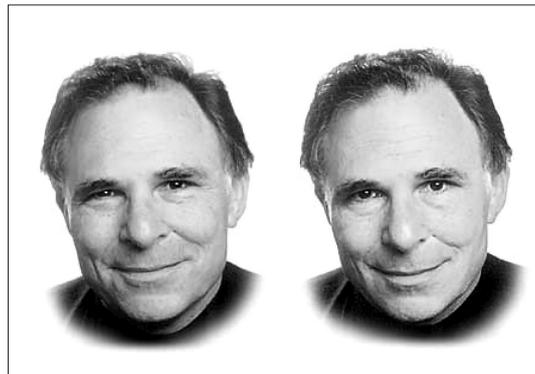


Assessing an individual's credibility is often a key factor in a judge reaching a determination. **Leslie Cuthbert** dispels some common beliefs about body language and what it can tell us about an individual's motives, feelings and statements.

ONE OF THE SMILES below is a 'genuine' smile and the other is a 'fake' smile. Are you able to distinguish which is which? A potential answer is at the end of this article. It's OK – you can go and look now before reading further.

Watching a witness

During hearings you are probably unlikely to be concerned about whether or not a person's smile is genuine – but what goes through your mind if you are listening to a witness or party in a hearing and you see them cross their arms? Do you conclude that they are being defensive about what they are now saying? What do you think if you see a person giving evidence look up and to the right as they are talking? Do you decide that they are accessing their imaginative side of the brain and so are more likely to be lying?



It is incredible the number of people who still believe that they can 'tell' when someone is lying simply by assessing the person's body language. While many research studies on communication have demonstrated that body language is a crucial element in how we communicate, other studies have shown that people are far worse at spotting liars based on body language than they realise.

One study showed that the average adult can only distinguish truth from falsehood 54 per cent of the time.¹ Research suggests, perhaps

surprisingly, that the more confident you are in your ability to detect that someone is lying, the worse you may in fact be.²

Commonly held beliefs

Some of the commonly held beliefs about body language include:

- When a child tells a lie, they will often cover their mouth; as adults, they become more sophisticated but may quickly touch near their mouth or nose shortly after having told a lie – akin perhaps to 'speak no evil'.
- Individuals will often touch or try to cover their eyes when lying; attempting perhaps to 'see no evil'.
- People wringing their hands are working hard to hide something.
- People will wriggle or shuffle about, whether standing or sitting down, when telling a lie.
- A person's rate of blinking may increase when they are lying.
- The person may flush when they know they are lying.
- People avert their gaze when lying.

Dangerous

Let me take just one of these commonly held beliefs – the idea that liars cannot look directly into the eyes of another person they are trying to deceive. Were this true, it might lead a judge

to challenge what the person is saying. Research suggests, however, that:

‘Gaze aversion is not a reliable indicator of deception . . . Evidence that eye movements indicate deception is lacking. Even those authors who suggested that this relationship exists never presented any data supporting their view’.³

If someone isn’t lying what then may be the cause of their averting their eyes? Many reasons are possible such as the person feeling anxious, nervous or stressed; it may be due to their culture or upbringing.

If anything, there is a suggestion that people who maintain greater eye contact may be people with some form of personality disorder, psychopathy or are habitual liars.⁴ This is because knowing the myth about gaze aversion they may strive to make greater eye contact to convince the listener of the truth of what they are saying.

Rigorous steps

In order to be able to interpret body language, a person would need to undertake certain rigorous steps.

- They would need to obtain a baseline for the individual’s behaviour in a number of situations, such as telling the truth, lying, being annoyed and feeling calm.
- They would need to record visually and audibly the entirety of what the person is saying to them.
- They would need to then spend a much longer period of time watching the recording back in an effort to identify the ‘micro-expressions’ the person reveals as the conversation progresses.

Micro-expressions are the minute facial or bodily ticks that someone will make when their words

and feelings are contradictory.⁵ The difficulty in reading someone’s body language is that people become very good at squashing these expressions so that they take place in a micro-second.

Neither is it realistic nor practical to expect to obtain a baseline for a person’s behaviour in a hearing or to be able to record them and have the time to watch it back or to pick up on micro-expressions.

An example of when this kind of rigorous analysis is used, and can become a very high predictor of behaviour, is in the work of John

Gottman who has a reputed 90 per cent accuracy rate for identifying whether or not married couples will stay together or go on to divorce.⁶

The relevance for tribunals

As decision-makers, assessing an individual’s credibility is often a key factor in reaching our determination. Be wary, therefore, of colleagues who make assertions such as: ‘Well, he was obviously lying.’ Probe to uncover why they have that view and, if it is based upon a body language myth, challenge them.

Equally, be careful when people refer to simply having a ‘gut feeling’ about someone. This is very often code for having reached a view based on that person’s body language while they gave their evidence. It would never do to give the reason for a decision that ‘I had a gut feeling that the witness was lying’. Yet, equally, is it sufficient for a decision-maker to merely state, ‘I find Mr X to be an honest witness’?

Decision-makers need to identify what led them to conclude that the person was being honest and thereby credible in their evidence, but without relying upon inappropriate interpretations of body language.

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Self-deception

There is also always the possibility that the speaker believes their own narrative, in other words that there is a degree of self-deception. This was highlighted by Sedley LJ who said:

‘Credibility, in other words, is not necessarily the end of the road: a witness may be credible, honest and mistaken, and never more so than when his evidence concerns things of which he himself may not be conscious.’⁷

For yourself, be wary of jumping to conclusions based on your perception of what an individual’s body language implies. Don’t change your open-minded, impartial approach simply because a witness is not behaving as you would expect an ‘honest’ person to behave. Finally, no matter how great your experience, never believe that you are an expert in assessing someone’s body language.

There are other ways to assess a witness’s truthfulness, including linguistic analysis – the subject for another article. Readers may be assisted in the meantime by looking at two previous articles written by Andrew Bano on the rational process by which a tribunal can establish the facts of a case and decide the weight to be given to a particular piece of evidence.⁸ Also likely to be of interest is Lord Bingham’s essay ‘The Judge as Juror: The Judicial Determination of Factual Issues’⁹ in which the author examines what the judge’s factual task involves and how he or she sets about it.

The answer

And finally, in relation to the pictures at the start of this article, body language experts would tell you to look to the smiler’s eyes. A genuine smile

usually involves the muscles around the eyes as well as those around the mouth – which means it is more likely than not that the photograph on the left is the genuine smile. You can try out more attempts at distinguishing fake and genuine smiles at www.bbc.co.uk/science/humanbody/mind/surveys/smiles.

Why did I say that this is only a ‘potential’ answer? Very simply, because such a distinction can often be very subtle and 10 per cent of people are able to manipulate the muscles around their eyes as well as those around their mouth when smiling.¹⁰

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¹ Charles F Bond Jr and Bella M DePaulo, ‘Accuracy of Deception Judgments’, *Personality and Social Psychology Review* 10 (2006): 214–234.

² PB Seager and R Wiseman, ‘Can the Use of Intuition Improve Lie Detection Accuracy? as noted in PB Seager’s ‘Detecting Lies: Are You As Good As You Think You Are?’ *Forensic Update* 77 (2004): 5–9.

³ Aldert Vrij, ‘Detecting Lies and Deceit’, John Wiley and Sons, 2000, pp36–39.

⁴ Ibid.

⁵ To see just how difficult it is to spot micro-expressions, go to: www.cio.com/article/facial-expressions-test.

⁶ John M Gottman and Nan Silver, ‘The Seven Principles for Making Marriage Work’, Three Rivers Press, 1999, pp29–31.

⁷ Para 25, *Anya v University of Oxford and Another* [2001] EWCA Civ 405.

⁸ www.judiciary.gov.uk/Resources/JCO/Documents/Tribunals/14%20Establishing%20facts%20-%20Bano.pdf and www.judiciary.gov.uk/Resources/JCO/Documents/Tribunals/11%20Finding%20facts%20and%20weighing%20evidence%20Bano.pdf

⁹ ‘The Business of Judging: Selected Essays and Speeches’, Tom Bingham, Oxford University Press, 2000.

¹⁰ Mary Dunewald, ‘The Physiology of Facial Expressions’, *Discover*, January 2005.