

Assessing Credibility

Fall 2020 Hearing Panelist Training | UM System | Dr. Sybil Wyatt

Opening Thought

“More than analytical rigor, judging credibility requires imagination and empathy for the human condition.”



- Judge John L. Kane
US District Court for the District of Colorado

Role of a Hearing Panelist: Decider of Fact

- You are tasked with deciding the **accuracy** and **truthfulness** of testimony provided
- You are allocating a **level of credibility** to each party and all witnesses
- You must decide **what importance** to assign the testimony within the totality of the complaint
- You are expected to use **your own judgment and intuition** while remaining aware of **your own biases**

Cogs of Credibility





Patience

- Hold off on making any decisions until all testimony has been presented
- Do not attempt to resolve the complaint as each witness testifies
 - Instead, make notes about any statements or behaviors that “set off alarms” and be prepared to ask questions of the witnesses to clarify information and address your concerns



Active Listening

- Listen carefully, staying focused on the facts presented by the testimony
 - Avoid distractions by setting aside electronic devices, closing email/messaging, securing a private space
- Be aware of your nonverbal feedback
 - Exhibit welcoming behaviors such as eye contact, head nods, leaning in, open posture; these will elicit a greater level of trust on the part of the witness and often lead to a higher degree of disclosure
- Do not be swayed by extraneous details
 - Skill level of the advisor
 - Likeability of the witness
 - Emotional nature of the testimony
 - Number of witnesses testifying in support of or against the complaint
 - Quality over quantity



Impartial Review

- Do your best to remain impartial throughout the hearing and in your decision-making
- Acknowledge the effect your biases may have on what you see and hear
- Avoid judgment based on your subjective values, morals, or ethical beliefs
 - Even though you may not agree with the personal choices made by a party or witness, you must stay focused on the truthfulness and accuracy of their testimony and their contributions to the relevant facts rather than your *feelings* about their behaviors
- Check yourself often – “How else could that person, action, or situation be interpreted?”



Consistency

- Does the testimony of the witness align with the information they provided to investigator(s)?
- Is the testimony of the witness consistent with other witnesses regarding the same events?
- Does the testimony seem overly consistent, as if it was rehearsed?
 - If yes, what is more likely: 1) having gone over the events multiple times in preparation for the hearing, or 2) having consulted other witnesses to align testimony?
- If the testimony provided is secondhand information shared with the witness by one of the parties or another witness, are there contradictions in the information when comparing testimony?

If there are inconsistencies, ask yourself:

- Are the differences related to relevant facts?
- What importance will you place on the discrepancies?



Plausibility

- If the witness is providing firsthand testimony, are the facts as they present them plausible?
 - Could they see/hear the events based on their proximity and access, as well as the surrounding environment?
 - Do they seem to be filling in memory gaps rather than recalling events as they occurred?
- Was there any reason the witness would have a diminished capacity to recall events?
 - Physical/mental disabilities
 - Incapacitation due to sleep, medication, alcohol, illicit drugs
 - Substantial length of time has elapsed
 - Information is often forgotten very quickly unless it is recalled frequently
 - Events were of minor significance to the witness at the time
 - Events never made it into long-term memory
 - Other similar events have occurred and may cause “interference”



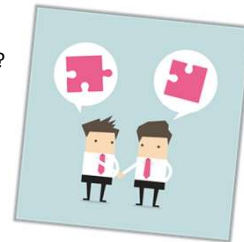
Witness Biases

- To what extent might the background, education, and experiences of the witness affect their testimony?
 - Information may be limited but consider what you do know or can surmise from the investigation report and context testimony
- What factors, if any, might reasonably contribute to any hostility displayed by a witness?
 - Experiences throughout the complaint process?
 - Lack of faith in the reliability or impartiality of the complaint process?
- Does/did the witness have a close relationship, especially of an intimate or romantic nature, with a party or witness?
- Did the witness express or indicate a belief that either party has a pattern or practice of being untruthful?



Motive

- To your knowledge or reasonable inference, did the witness:
 - Evade questions?
 - Decline to respond to questions asked, either in part or in whole?
 - Purposefully omit facts?
 - Provide incomplete responses?
 - Recant their earlier testimony to investigators, in full or in part?
 - Deliberately provide false testimony?
 - Make an admission of partial responsibility?
 - Have a personal interest in the outcome of the complaint?
- If yes, what might be their motivation?
 - Fear? Embarrassment?
 - A need to please?
 - Attempt to influence the outcome of the complaint?
 - To protect self or others?
 - To avoid punishment?



Delivery

Non-verbal behaviors and demeanor should be considered as *minimal* cues to credibility.

- Non-verbal behaviors
 - Folded or open arms?
 - Relaxed or rigid/tense body posture?
 - Frowning? Smiling? Neutral facial expression?
 - Fidgety? Still?
 - Stammering?
 - Hesitation in responding?
 - Tone/pitch of voice or voice pattern shifts/changes?
 - Eye contact – was it overly sustained? Was it rare?
 - Any seemingly nervous gestures or slight or overt repetitive movements?
 - Unreasonable focus on word selection?
 - Clenched or relaxed facial muscles?





Delivery

▪ Demeanor

- Calm? Anxious?
- Upset/angry? Upset/crying?
- Regret?
- Shame? Embarrassment?
- Sad? Sorrowful?
- Disconnected?
- Uncomfortable?



When considering the delivery of testimony by a witness, you should take into account how simply participating in the hearing might reasonably affect their body language and demeanor.

Overall, did the testimony, body language, and emotional state of the witness align for the majority of their testimony?



Questions?