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## Good Witnesses Don't Smile (Much)

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**I**T IS NATURAL AND EASY to smile; even cavemen and cavewomen did it. People of all ages and cultures smile as a natural response when expressing emotion and even very young babies respond positively to smiles. Although smiles are most frequently associated with positive emotions like happiness, they are sometimes used for other feelings (Ekman & Friesen, 1969). For instance, some people have nervous smiles, embarrassed smiles, polite smiles, or even devious smiles. Think of the Cheshire cat's smile in *Alice and Wonderland* or the toothy, terrifying, yet occasionally contagious, smiling of Jack Torrance in *The Shining* (Hess, 2010).

### Smiles Aren't All Happiness

But not all smiles are readily interpretable. While some smiles reflect genuine happiness and pleasure, other smiles are posed – much like the simulation of pleasure one is directed to produce for photographs. People may use the explicit association between smiling and happiness to mask their feelings of nervousness, embarrassment, or even deviousness (Ekman, Friesen, & Davidson, 1990). Think of a time you have been embarrassed: your heart is beating fast, your face is warming

up... but then you smile to let any onlooker know that you are okay. By flashing a grin, you display a positive facial expression in order to conceal the negative emotions beneath the surface (Ekman, Friesen, & O'Sullivan, 1988).

### Separate ... and Unequal Smiles

Smiles are not created equally. How can one tell when a smile is genuine or fake? Genuine smiles and fake smiles have been attributed to different parts of the brain, which control different muscle movements displaying these smiles (Ekman, 1993; Ekman, Roper, & Hager, 1980). Although we cannot observe the different brain processes to detect genuine or fake smiles, we can look at a person's face and make judgments on the authenticity of a smile. Many of us can recognize when a best friend is faking a smile. It is less certain when a stranger – say, a waiter at a restaurant – is faking a smile.

Genuine smiles are expressed automatically during conscious and unconscious feelings of happiness or other positive emotions. One way to spot a fake smile is by looking at the eyes. Eye muscle movements allow us to distinguish between genuine and fake smiles. With a genuine smile, the muscles

surrounding the eye tense up, the eyelids flatten, and the skin wrinkles up to make “crow’s feet” at the corners of the eyes. The crow’s feet wrinkles are created by the outer pars lateralis section of the obicularis oculi muscle, movements that are difficult for individuals to voluntarily and intentionally produce (Ekman, Roper, & Hager, 1980).

On the other hand, fake smiles are consciously controlled expressions that use deliberate processing (Ekman & Davidson, 1993). There is less movement displayed around the eyes with a phony smile due to the difficulty in producing the crow’s feet wrinkles. Therefore, when judging whether a smile is genuine or fake, a general rule is to scan the eyes and not only the mouth and lips.

Smiles vary by emotional states and feelings of authenticity, but they also vary by context. Think about when you smile the most; it is probably in easygoing, social situations. Now think about the formal, professional context accompanying the trial process in a courtroom. It is hard to anticipate much smiling occurring there, especially with the serious nature associated with trials. That brings us to the essence of this article: should smiling be mostly or completely absent from the courtroom, in terms of the interpersonal aims of the participants?

Most research on smiling behaviors has been conducted in social contexts different than that of a courtroom. During trials, it is expected that there will be a high degree of seriousness and a modest frequency, at most, of positive content. Testifying as a witness may lead to a variety of emotions such as fear or nervousness (Brodsky, 2004; 2009). Witnesses may also be worried about cross-examination, about potentially making errors, or about remembering case facts. Given this context, what does it mean when one observes a smile in the demanding world of testifying?

### **Should Witnesses Smile?**

It may be beneficial for witnesses to think about what their smiles (or lack thereof) communicate to a jury. Scholars have asserted that facial expressions are important when attempting to use deceptive behaviors. It appears that

individuals are aware of their facial expressions, and may control their smiling behaviors to communicate a specific image or feeling to others.

Not only are individuals aware of their own smiling behaviors, but they also respond to smiling by others as well. Jurors may use their perceptions of smiling behaviors to determine the credibility of witnesses. Researchers have recognized that facial expressions, including smiling, are important when assessing whether speakers are presenting deceptive information. The recognition of both types of the aforementioned smiles – genuine smiles and fake smiles – are related to the processing of deception.

Smiling is linked to perceived attractiveness (Abel & Watters, 2005; Darby & Jeffers, 1988; Mueser, Grau, Sussman, & Rosen, 1984; Remland, 1993), and attractiveness is related to perceived likeability, trustworthiness, credibility (Brodsky, Neal, Cramer, & Ziemke, 2009) and positive evaluations (Lau, 1982). Attractiveness has also been associated with the “halo effect” (Darby & Jeffers ; Remland, 1993) of “what is beautiful is good” (Dion, Bersheid, & Walster, 1972). In simulated trials research, attractive defendants are seen as less culpable, guilty less often, and given more leniency (Darby & Jeffers, 1988; Efran, 1974; McFatter, 1978). In addition, the absence of smiling and physical attractiveness has been associated with ratings of culpability and punishment of defendants (Abel and Watters, 2005). The “smile-leniency effect” (LaFrance & Hecht, 1995) is seen with defendants and also seen with testifying witnesses.

The findings from Witness Credibility Scale (WCS; Brodsky, Griffin, & Cramer, 2010), indicate that witnesses are perceived as more credible when they show confidence, knowledge, likeability, and trustworthiness. Some of these components are positively associated with factors such as kindness, friendliness, charm, competence, and talent; almost every component is negatively associated with factors like phoniness (Brodsky et al., 2010). Witnesses with genuine smiles may be perceived favorably and as having positive traits, while witnesses with fake smiles may be perceived negatively as

coming across as phony.

### **Our Findings**

For approximately 8 months in 2011-2012, we conducted a naturalistic observation to investigate the presence and frequency of smiling behaviors during actual trials. We watched witnesses testify in 11 criminal and civil trials in a courthouse in a medium-sized southern county. Our objective was to evaluate the relation between believability and amount of smiling, with independent ratings generated for each variable.

The single most compelling finding was that few smiling behaviors were seen during witness testimony. Most witnesses stayed serious and often grim. Even though smiles were mostly absent during testimony, approximately 72% of witnesses did exhibit smiling behaviors at some point during testimony. Genuine smiles were significantly and positively correlated with likeability, as measured by the WCS.

Our study was the first to use the WCS with a methodology outside of the laboratory environment, and among the few studies to look at credibility with actual witnesses testifying in trial. Additionally, we were the first to use the WCS to measure credibility not only with expert witnesses, but with lay witnesses as well. Therefore, our findings on smiling behaviors may generalize to practices because we examined them in actual lay and expert witness testimony.


### **Smile A Little?**

Even though it is less likely that individuals will smile in a courtroom trial than a wedding or most social situations, witnesses have been encouraged to smile and show happiness when sincere and when the behavior fits with the situation. (Boccaccini, 2002; Brodsky, 2004; 2009). For instance, Brodsky (2004) suggests that humor may be a useful strategy for witnesses during testimony. Humor can help to humanize a witness, but only if used in a good-natured, gentle, and respectful manner.

Additionally, there are informal opportunities during trials that allow witnesses to show emotion and to smile genuinely. There may be greetings, compliments, jokes, or other events that

elicit an emotionally positive response. There may even be pleasant moments in pauses during direct and cross-examination. We saw a judge to hand out peppermints to a witness and jury, an act that elicited shared smiling. With such a light-hearted and friendly gesture, it is appropriate for a witness to smile at the jurors while passing along treats during a long trial.

### **Good Witness Don't Smile (Much)**

In conclusion, our title says it all. Good witnesses do not smile so much that they seem disingenuous or fake, but they do offer smiles at appropriate times. Whether it is a polite smile during introductions with the attorney or a restrained but happy smile during a break, witnesses should smile on occasion to show sincerity and credibility. Although there are few chances in a courtroom context that would warrant a genuine smile, witnesses should act naturally and use opportunities to display authentic emotion. So before your witnesses testify on the stand, be mindful of their emotional expressions and be sure that they use (and not overuse) their chance to smile in court. 

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