“Don’t Lie to Me” – Common Errors in Assessing Credibility Effectively

Credibility is the process of weighing the accuracy and veracity of evidence. To assess credibility, you have to evaluate the source, the content, and the plausibility of what is offered. When source, content, and plausibility are strong, credibility is strong. Credibility exists on a 100 percent point scale, with the most credible evidence being 100 percent, and the least credible being zero percent. Most evidence lies somewhere in between. Your job is to figure out where, especially where believing one party and not the other is enough to establish that policy has been violated.

If credibility dips below 50 percent, the witness or evidence is less credible than more. That doesn’t weight the scale as you are trying to determine where the preponderance of the evidence lies, where whatever tips the scale one way or the other is enough to establish a preponderance. Evidence has to be more credible than not to weight the scale at all.

Some aspects of credibility are positional/locational. Could witnesses hear what they say they heard? See what they say they saw? Know what they claim to know? Some aspects of credibility are based on credentials/knowledge/expertise, but those factors need to be established, not assumed. Some aspects of credibility are weighted based on neutrality, impartiality, and objectivity. The more loyal a witness is based on relationships to one party, the more biased their evidence may be. Neutral witnesses may be more objective than partisan witnesses.

Credibility is best established through corroboration, which is provided through sufficient independent evidence to support the fact at issue. Corroboration is not merely another witness who agrees with the first witness (they could be lying to support each other), but evidentiary support for what the witness contends, evaluating source, content, and plausibility together. Also, look for subtle bias, which the witness may not even be aware of, including victim-blaming attitudes, group defensiveness (think teams and fraternities), or whether the witness fears getting in trouble. Lack of proximity detracts from credibility. What you saw in person is most valuable. What you heard from the responding party about the incident after the fact is less so, and what you learned after the fact from the responding party’s best friend about what the responding party told him/her is even less so.

Credibility can also be assessed by triangulation, which means using two (or more) data points to extrapolate or infer that a third data point is more likely than other possibilities. If X and Y are true, Z is more likely to be true than A, B or C. This is an example of what is known as abductive reasoning.

Generally, avoid micro-expression analysis and gestic unless you are an expert and have discovered someone’s tell for deceit. Otherwise, crossing limbs, looking up to the right, and other so-called telltales are not evidence. Let’s explore credibility assessment in context to get a better feel for it.

The harassing behavior continued after the responding party was informed that the behavior was unwelcome. If established, this would add credibility to the reporting party’s account as corroborative.

Major inconsistencies in testimony would likely detract from credibility. Minor inconsistencies usually would not detract from credibility. Even lying is not a 100 percent credibility killer. We all lie. The job of the investigator is to determine why the witness is lying, or what the lie is about. Lying about alcohol consumption to avoid an alcohol violation does not prove or disprove the underlying interpersonal violence allegation.
A delay in reporting harassment does not detract from credibility. Individuals may delay reporting because of fear of retaliation, not knowing or trusting the policy, fear of being blamed for causing the harassment, not understanding it was harassment, etc.

Changes in the behavior of the reporting party after the harassment might add to credibility. For example, after being harassed, the reporting party cried; was upset; avoided class, meetings, or certain areas; the student’s grades or performance deteriorated; etc.

However, if none of these things occurred, it would not mean that the allegation was not credible, only that the individual who complained perhaps was affected differently, less intensely than others might, or did not express emotions openly. Similarly, the reporting party could be displaying the classic symptoms of traumatic response because that individual thinks an incident happened, not because it did, or because the person may want you to think it happened, but it didn’t. This is infrequent, but still must be accounted for by investigators.

Documents such as diaries, calendar entries, journals, notes, or letters describing the incident(s) can add to credibility, but can also be manufactured after-the-fact. The adage, “Trust, but verify,” applies.

Telling another person about the harassment may add to credibility, but if the accounts provided to others vary meaningfully, that can also undermine credibility.

Other allegations about the responding party could add to credibility of the allegation.

The fact that a relationship was at one time or in some aspects consensual does not detract from credibility nor is it a defense against a subsequent charge of sexual harassment. Consensual relationships can be followed by sexual harassment when one person tries to end the relationship and the other person uses his/her power to intimidate the former partner into staying in the relationship. People can be assaulted after consensual sexual acts, or engage in consensual sexual acts after having been assaulted.

The fact that the responding party did not intend to harass the reporting party is not a defense to an allegation of sexual harassment. It is the act itself that is important, not the intent of the person who engaged in the behavior. Exceptions might include accidental or incidental sexual contact, or causing your intimate partner accidental physical harm.

Not knowing that the behavior was offensive and unwelcome is not a defense to an allegation of sexual harassment. The standard is whether a reasonable person would deem the behavior offensive and unwelcome.

The fact that the person who made the allegation(s) did not tell the alleged harasser that the behavior was offensive does not affect credibility. Many people are fearful of doing so. Additionally, there is no obligation for the reporting party to inform the responding party that behavior is offensive.

Motivation to lie, exaggerate, or distort information should be assessed when there are differences in what was reported or questions about veracity or accuracy.

Questions to consider in assessing credibility:

1. How might a reasonable person react to the incident(s)?
2. What was the effect of the behavior on the reporting party?
A decision can be made that harassment occurred when the evidence of the allegation(s) is credible, even if there were no witnesses to the harassment. Put another way, a preponderance can be established simply because you believe one party and not the other, based on assessment of credibility of the party and the evidence provided.

Explanations of why the harassment occurred do not add to credibility. People who have sexually harassed others often acknowledge their behavior but explain and defend it in ways that do not justify their actions and should not add to their credibility. To the contrary, such excuses should be seen as admissions of having engaged in sexually harassing behaviors. For example:

- “It was an accident. I didn’t do it on purpose (from a student who put his hands on a female student’s crotch).”
- “I didn’t know it was against the rules.”
- “I was just joking around.”
- “She flirts all the time.”
- “I was just flirting with her.”
- “She was asking for it. She was leading me on!”
- “You have to understand, we guys have special needs.”
- “It’s no big deal. I don’t know why he is so upset.”
- “I wasn’t lying. She really is a slut (bitch, whore, etc.).”
- “She’s a snitch for telling on me.”

The following do not add or detract from credibility of the responding party because they are irrelevant:

- Character witnesses. (“He is such a good kid; I know he would never do that.”)
- Popularity with staff and other students. (“Everybody likes him; I just don’t believe he would do that.”)
- No history of past problems. (“She’s never been in trouble before.”)
- Academic performance. (“But he’s a really good student. His professors really like him.”)

The following do not add or detract from credibility of the reporting party:

- Clothing. (“Just look at what she was wearing.”) Clothing does not cause sexual harassment, nor does it give anyone permission to touch or make sexual remarks.
- Appearance. (“She is so pretty no wonder he did it,” or “She is so unattractive! I don’t believe anyone would do that to her.”)
- Flirting behavior. (“He’s always flirting with the boys, what did he expect?”)
- Males being victims. (“He should have realized she meant it as a compliment.”)
- Sexual orientation of victim (“Listen, he came out of the closet and told everyone. He should have expected that people would act like this.”)

Finally, politics, including athletics participation, concern about the team, concern about “getting a good student in trouble,” whether someone is a last semester senior, etc., cannot impact decisions about whether a policy has been violated.

Q: How do you articulate inherent plausibility when discussing credibility in an investigation report?

A: You need to use abductive reasoning to support a plausibility argument. Plausibility results from triangulation, which means using two (or more) data points to extrapolate or infer that a third data point
is more likely than other possibilities. If X and Y are true, Z is more likely to be true than A, B, or C. This is an example of what is known as abductive reasoning. The result is a belief in the inherent plausibility of the information.

For example, a student (let’s call him Handsy) fondled the breasts of a female student without consent, and admitted it. This is our X. Handsy also tried to give a hand job to a male student, and claimed he had consent, but we determined that he did not have consent. This is our Y. Z, our third potential victim, then came forward and alleged that he believed his penis was fondled by Handsy one night while sleeping in Handsy’s room, but isn’t positive because he was asleep and knows that Handsy likes girls. So, what does what we know about X and Y allow us to conclude about Z’s allegation? By triangulating X and Y, I can believe the inherent plausibility of Z’s allegation.

I know that Handsy may like girls, but also wants to touch penises (I have no idea if that means he likes boys, and that is not of concern to me, as the investigator). Therefore, X does not rule out Z. It makes Z more plausible than A,B and C (alternative explanations we might have). I also know that Handsy has fondled a penis before without consent, and that Z has no idea about X and Y. Thus, Y’s belief that he was fondled while sleeping is not influenced by anything but his own belief. He can’t fully self-corroborate, because he can’t say for sure that the conduct occurred, as he was asleep. But, triangulating from X and Y makes Z more likely than not, because both are part of a pattern that Handsy has enacted before, and Y occurred under very similar circumstances to Z.

This is how my reasoning for the inherent plausibility of the assault on Z comes from what we know about X and Y, not really because of the weight of Z’s evidence, itself. Similarly, you can use triangulation to adduce inherent implausibility, when X and Y don’t make Z more likely but Z is asserted as the logical inference if X and Y are true. Z will fail as a straw-man (straw person) when X and Y triangulate to A, not Z.