

The Value of Hiring a "Credible" Attorney *Part One*



By Steve M. Wood, Ph.D.

Attorney credibility has been a topic of interest in academia and the legal community for quite some time.

More importantly, attorney credibility has been an area of interest to attorneys themselves. Based on the literature and personal discussions with many trial attorneys, there appears to be two camps when it comes to this topic. The first camp often states, “Of course attorney credibility matters,” while the second camp often espouses sentiments such as, “What does the attorney’s credibility have to do with the case? The facts are the facts.” There does not appear to be much middle ground—it is an all or nothing proposition.

However, the answer to the question, “Does an attorney’s credibility matter in the courtroom?” may not

be that straightforward. The literature is replete with recommendations on how attorneys can become more persuasive in the courtroom; however, there are only a few scientific studies related to civil litigation that examine whether the perceived characteristics of attorneys are related to courtroom outcomes. Moreover, there has been little discussion about the things that jurors have stated that attorneys should not do in the courtroom. In this first part of a two-part series, we will (1) define what attorney credibility is and what it is not and (2) examine how attorney credibility influences verdict outcomes.

Why Should Attorneys (and Their Clients) Care?

Whether attorneys believe that their credibility influences jurors’ beliefs, attitudes, or decisions, there are several reasons why they (as well as the clients who are hiring them) should be interested in how jurors perceive them. One of the primary reasons is that attorneys provide the lens through which jurors view a lawsuit. It is not in their clients’ best interests for the attorneys to present themselves in such a way as to provide the wrong lens inadvertently because of their behaviors or mannerisms.

We have heard loud and clear from jurors that they are paying attention to the extralegal characteristics of the attorneys. For example, during mock trials and “mirror,” or “shadow,” juries, we have heard from jurors who have noticed minute behaviors of attorneys, such as chewing tobacco, rolling their eyes during the other party’s presentation, and “the way in which an attorney flipped her hair.” Lead counsel are not the only ones who are being watched, either. Jurors also notice the behaviors and demeanor of the other individuals sitting at the counsel tables or just behind. For example, we have had mirror jurors tell us that they did not like the fact that defense co-counsel was constantly whispering to one of her colleagues who was seated behind the counsel’s table during the plaintiff’s presentation. Aside from being distracting, it was viewed as disrespectful to the opposing party.

Attorneys also need to consider their behaviors outside of the courtroom and within the vicinity of the courthouse. As we often advise attorneys and witnesses, “You should always assume that jurors are watching your behaviors, even before you step inside the courthouse.” We witnessed a quintessential example of this several years ago. A corporate executive of a convenience store chain provided powerful, effective, and compassionate courtroom testimony. However, after he left the courtroom, some jurors overheard him on the telephone berating his secretary. After witnessing and hearing these behaviors, the jurors formed an extremely unfavorable opinion of the corporate executive and ultimately sided against his company. During post-trial interviews, several jurors pointed to the telephone interaction as a glimpse into who they believed the corporate executive really was. To these jurors, the individual they saw on the stand was a “fake.” The mistake made by this corporate executive has been made by attorneys as well. In numerous post-trial interviews, jurors have commented on attorneys’ behavior outside the courtroom as discrediting them in the same manner.

Clients should also be interested in how jurors perceive attorneys because the academic literature suggests that there are several instances in which an attorney’s credibility may play a role in verdict decisions. Jurors are likely to rely on

simple heuristics (e.g., likability and credibility) in cases when the evidentiary strength is not obvious for one party (Findley & Sales, 2012). These moderately strong cases are precisely the ones that are likely to make it to the courtroom. Jurors will also rely on heuristics when they do not have the ability to attend to a message (Petty & Wegener, 1998). Complex cases increase this likelihood, making patent infringement litigation rife for situations in which jurors will rely on attorney credibility to help them make verdict decisions. It was once thought that jurors will attend to heuristic cues if they did not enjoy thinking at a deep level (e.g., Cacioppo, Petty, Feinstein, & Jarvis, 1996). However, more recent findings indicate that jurors will attend to the attorney’s credibility, regardless of their enjoyment of thinking at a deep level (Wood, DeVault, Miller, Kemmelmeier, & Summers, 2018).

A third reason why attorneys should be interested in their perceived credibility is that it has the potential to influence the perceived credibility of witnesses. An experimental study found that manipulating the plaintiff and defense attorneys’ credibility can affect jurors’ perceptions of

an expert witness’s credibility. Participants rated the plaintiff expert witness’s credibility higher when the plaintiff attorney was viewed as credible compared to non-credible. Likewise, the expert witness for the defense was evaluated as more credible when the defense attorney was viewed as credible compared to non-credible. This study did not evaluate perceptions of fact witness credibility; however, we believe that these findings can be extrapolated to fact witnesses because their credibility is being assessed “on the fly” more so than expert witnesses, who provide their credentials to a court. This becomes incredibly important when considering that perceptions of fact witnesses are often one of the most important elements of juror decision-making.

In sum, attorneys and their clients have several reasons why there should be a concern with jurors’ perceptions of an attorney’s credibility. Moreover, attending to their credibility is something that attorneys should worry about regardless of the case type, who is sitting in the jury box, and who is sitting on the witness stand.



Attorney Credibility in the Courtroom

With a clearer understanding of what attorney credibility is, the question remains, “Does it matter to courtroom verdicts?” Within the realm of civil litigation, the answer to this question is, “It depends.” Specifically, it depends on (1) how attorney influence is being measured and (2) which attorney is being referred to.

Wood, Sicafuse, Miller, and Chomos (2011) conducted a study using data from federal court jurors from the U.S. District Court for the Southern District of Iowa who served between the years of 1997 and 2009. These jurors were asked to rate the plaintiff and defense attorneys’ opening statements, evidence presentation, closing arguments, courtroom demeanor, sincerity, competence, and preparedness on a 5-point scale, ranging from 1 = very poor to 5 = excellent. Wood et al. (2011) collapsed the opening statements, evidence presentation, and closing arguments ratings into one “presentation” variable. Similarly, the authors combined courtroom demeanor, sincerity, competence, and preparedness into a single “credibility” variable. The study results showed that two factors were related to final verdicts: plaintiff attorney presentation scores and defense attorney credibility. The higher the plaintiff attorney’s presentation

scores, the more likely the jury was to find for the plaintiff. The higher the defense attorney’s credibility scores, the more likely the jury was to find for the defense.

However, one potential drawback of these studies is that they are correlational in nature and do not allow for a clear examination of attorney credibility. Academics have suggested a true test of attorney influence can only be done with a scientific experiment in which everything is held constant except for the attorney behaviors. A recent study did just this. After experimentally manipulating the plaintiff attorney’s credibility (credible or non-credible), the defense attorney’s credibility (credible or non-credible), and the plaintiff’s evidence strength (strong or ambiguous) in a toxic tort case, attorney credibility was found to be an influential factor in jury decision making (Wood et al., 2018). Across liability, causation, and compensatory damage verdict decisions, attorney credibility, and not case evidence, was found to be the primary determinant in jurors’ decision making. However, as will be shown next, not all attorneys have equal influence on jurors.

Findings from the Wood et al. (2018) study showed that the plaintiff attorney’s credibility had a more direct

influence on liability, causation, and compensatory damage decisions than the defense attorney’s credibility. Regarding liability decisions, participants were more likely to render liability verdicts when the plaintiff attorney was credible versus non-credible. (For the sake of parsimony and clarity, only the results related to the ambiguous evidence condition are reported for liability verdicts. Different results were found when the plaintiff’s evidence was strong. However, ambiguous cases are the ones more likely to go on to trials; therefore, the results are more useful than the ones related to strong cases. For results related to the strong evidence condition, please contact the author. The findings for causation and compensatory damage awards are presented independent of evidence strength.) However, this only occurred when the defense attorney was credible. When the defense attorney was not credible, the plaintiff attorney’s credibility did not influence liability verdicts. This suggests that a credible defense attorney can place the onus on the plaintiff attorney to ensure that he or she is seen by jurors as a credible source. If the plaintiff attorney cannot do this, the likelihood of a favorable verdict decreases because jurors seem to be making those individuals who possess the burden of proof pay for any perceived non-credibility.

When the defense attorney is not credible, the onus on the plaintiff attorney to be perceived as credible is removed. Therefore, a non-credible plaintiff attorney could still be successful against a non-credible defense attorney, but a non-credible plaintiff attorney will not be successful against a credible defense attorney. See Table 1 for the percentage of liability verdicts across attorney credibility and evidence strength.

Table 1. Percentage of Liability Verdicts by Attorney Credibility

Plaintiff Attorney Credibility	Defense Attorney Credibility	Liability Verdicts
Non-Credible	Non-Credible	60 percent
Non-Credible	Credible	52 percent
Credible	Non-Credible	74 percent
Credible	Credible	81 percent

Regarding causation verdicts, Wood et al. (2018) found that an individual’s need for cognition interacted with the plaintiff’s credibility. “Need for cognition” relates to an individual’s tendency to engage in and enjoy effortful thinking (Cacioppo et al., 1996). Individuals with high need for cognition engage in and enjoy effortful thinking more than individuals with low need for cognition. Results from the study (as indicated in Table 2) showed that individuals who had higher need for cognition were more likely to render a causation verdict in favor of the plaintiff when the plaintiff attorney was credible versus non-credible. For individuals who had low need for cognition, the plaintiff attorney’s credibility did not matter. Therefore, individuals who enjoy effortful thinking are attending to a plaintiff attorney’s credibility when rendering causation verdicts more so than individuals who do not enjoy effortful thinking. It is believed that the reason why this occurs is that high need for cognition individuals are scanning their environment and looking for pieces of information that they can use to make an informed decision. The plaintiff attorney’s credibility is seen by these individuals as an additional piece of evidence, rather than some periphery piece of information.

Interestingly, across both groups, the defense attorney’s credibility did not influence causation verdicts. This suggests that jurors were focusing more on the plaintiff attorney’s credibility when making causation determinations than the defense attorney’s credibility. This is yet another example that jurors are placing the burden on plaintiff attorneys not only to prove their case, but also to prove that they are credible. Jurors will make plaintiff attorneys pay if they fail to meet their burden. Such a burden is not being placed on defense attorneys.

Table 2. Percentage of Causation Verdicts by Attorney Credibility and Need for Cognition

Plaintiff Attorney Credibility	Defense Attorney Credibility	Low Need for Cognition	High Need for Cognition
Non-Credible	Non-Credible	70 percent	60 percent
Non-Credible	Credible	71 percent	58 percent
Credible	Non-Credible	73 percent	87 percent
Credible	Credible	70 percent	83 percent

Finally, Wood et al. (2018) found that only the plaintiff attorney’s credibility mattered when jurors were considering compensatory damage awards. The plaintiff was more likely to receive the amount that she asked for (\$500,000), or more than she asked for (average award of \$3,161,666.67), when the plaintiff attorney was credible versus non-credible. Alternatively, the plaintiff was more likely to receive less than she asked for (average award of \$224,016.04) when the plaintiff attorney was non-credible versus credible. These findings suggest that jurors are monetarily rewarding credible plaintiff attorneys and their clients, while punishing non-credible plaintiff attorneys and their clients.

Someone may argue that the findings from these studies make intuitive sense because jurors were trying to rationalize why they voted a certain way. For example, jurors were thinking, “Of course I think the plaintiff attorney is credible because I sided with the plaintiff.” However, these arguments are problematic for a few reasons. First, the Iowa study using federal jurors found that the plaintiff attorney’s presentation was related to verdict decisions. On the other hand, the defense attorney’s credibility was related to verdict decisions. If jurors are attempting to rationalize their decisions, why would they use one metric for the plaintiff attorney and another for the defense? It seems more practical that jurors would use presentation or credibility to rationalize their decision, not a mixture of the two.

A second reason why a rationalization argument is problematic is because the current author has conducted three experimental studies in which attorney credibility has been manipulated and verdict decisions have been rendered. Across these studies, the presentation of the verdict decisions and attorney credibility ratings have been counterbalanced

(i.e., some participants render verdict decisions first and others provide attorney credibility ratings first). Findings indicate that it does not matter the order in which the verdict decisions or ratings are made. Credibility decisions are similar if they come before or after the verdict decisions, and verdict decisions are similar if they come before or after attorney credibility ratings. Therefore, it appears that jurors are not rationalizing their attorney credibility ratings based on their verdict decision and vice versa. What appears to

be happening, as mentioned earlier, is that jurors are using the attorney’s credibility as an additional piece of information with which to judge the merits of the case.

The courtroom is an environment in which there is a complex interplay between various factors. Some of these factors are within an attorney’s control, while others are not. Attorneys must approach each case with a heightened understanding that a strong case will not necessarily carry the day. There will be instances in which jurors will integrate an attorney’s perceived credibility into their decisions. There will also be instances in which the preconceived notions of the way in which a jury should process information will be

incorrect. Overlooking any of these aspects could mean the difference between a favorable or unfavorable verdict.

The data is clear: hiring credible attorneys is beneficial to plaintiffs and defendants. Fortunately, credibility is something that can be measured. We strongly encourage clients to contact experienced litigation psychologists who are skilled in evaluating attorney credibility.

In Part Two of the series, we will examine the ways in which attorneys can hurt their perceived credibility. We will also discuss how these findings can be put into practice by attorneys.

Clients should also be interested in how jurors perceive attorneys because the academic literature suggests that there are several instances in which an attorney’s credibility may play a role in verdict decisions.



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The Value of Hiring a "Credible" Attorney *Part Two*



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In Part One of our article, we discussed how attorney credibility can influence civil courtroom outcomes.

While this influence was more pronounced for plaintiff attorneys, defense attorneys play a pivotal role in forcing a plaintiff attorney to prove to the jury that he or she is credible. In the second part of our two-part series, we will (1) identify the actions and behaviors of attorneys that lead them to lose credibility with jurors and (2) provide insight into juror decision-making so that attorneys can increase their ability to deliver when the “bright lights come on” and the clients and jurors are watching.

For several years, we have been collecting data on attorney credibility across a wide variety of case types. Jurors are asked to indicate why they believe that the attorney was credible or non-credible. The following section provides jurors’ views on the ways in which attorneys hurt their credibility. We conclude each section by providing insight into the rationale for why jurors believe that these actions and behaviors decrease an attorney’s perceived credibility.

Lack of Proof

Even though jurors understand that the plaintiff has the burden of proof in civil trials, they still believe that defendants must disprove the plaintiff’s case as well, no matter the court’s admonishments. For jurors, it is never enough that the defense refutes the plaintiff’s claims and pokes holes in the plaintiff’s case: jurors expect the defense to provide them with credible “proof” that the plaintiff is lying, exaggerating, or misattributing blame. Jurors also expect the defense to provide them with evidence that the defendant acted consistently with the defendant’s duties and responsibilities in the matter at hand, regardless of whether these duties and responsibilities are outlined or challenged by counsel or perceived by jurors themselves. Without this type of evidence, jurors will begin to question the attorney’s credibility. This is because jurors will question whether the attorney can produce the requisite evidence. It may not be a question of whether the evidence exists, but whether the attorney is skilled enough to identify what is needed for the case and then locate the evidence.

We have heard jurors justify their low attorney credibility ratings by stating the following:

- “He didn’t check all the facts of the plaintiff’s case.”
- “He made several assertions with little to no support shown.”
- “Lots of unimportant and non-relevant information. Smoke and mirror tactics.”
- “He didn’t give me all the news that I needed, didn’t explain himself all the way.”
- “She was very vague with details.”

Interpretation:

Jurors expect that attorneys on both sides will provide clear, concrete, and credible cases. Moreover, jurors do not want to feel like the attorneys are attempting to trick them by providing vague, tangential, or irrelevant information. Not only will jurors believe the case is weak, they will also hold it against the attorneys.

Lack of Trustworthiness

It is no secret that the public does not trust attorneys. In a recent Gallup poll, only 18 percent of people indicated that attorneys have high or very high honesty and ethical standards, while 28 percent indicated that attorneys have low or very low honesty and ethical standards (Brenan, 2017).

We have heard similar comments from jurors as well, such as these:

- “I didn’t believe much of what she said.”
- “She seemed like she was lying to us to help her client.”
- “She will tell us what they want us to know.”
- “Everything she said sounded like she was spinning the truth.”

Interpretation: A prominent intellectual property attorney once opined, “What is important is that jurors come to the conclusion that the attorney believes what he or she is saying, not necessarily that the jurors understand what the attorney is saying.” To do this, jurors must trust the attorney. What is not clear, however, is whether jurors immediately do not trust attorneys because of preconceived biases, or the attorneys gave jurors reasons not to believe them, or both. Based on our research, the last scenario is more likely because we have heard from many jurors who have commented that an attorney appeared “genuine” and “believable,” which is no small task. This is a positive finding in that it suggests that attorneys may begin with jurors not trusting the attorneys, but the attorneys could overcome these preconceived notions.

Lack of Humility

There is a fine line between confidence and cockiness in all facets of life, and the courtroom is no different. From the way attorneys interact with witnesses, to the way they dress, to their courtroom demeanor, jurors notice subtle (and sometimes not-so-subtle) behaviors that lead them to believe that the attorney is arrogant. On several occasions, jurors have made comments such as, “He seemed arrogant and more interested in criticizing the other lawyers.” Along similar lines, we have been told that an attorney should be “less cocky.”

Interpretation: Humility is one of the most underrated of all aspects of personal perception. Although attorneys may not necessarily worry whether jurors like them or think that they are a “nice person,” what they should remember is that

jurors view attorneys as the de facto representative of their client. Being perceived as arrogant has the real possibility of seeping over into jurors’ perceptions of an attorney’s client. As one juror noted about a male attorney, “He comes across as arrogant, at least as the face of his client, thus making the defendant seem arrogant.” Interestingly, the juror who made this comment was also asked, “If you were a jury of one, who would you blame most in this case?” (This was a case with multiple defendants.) This juror indicated that she would blame the attorney’s client more than the other defendants. Additionally, this juror awarded the highest apportionment of responsibility to this attorney’s client. While the attorney’s perceived arrogance was likely not the direct cause of the juror’s verdict, it likely provided a distorted lens with which to view the case evidence.



Not Persuasive

One of the primary jobs of an attorney is to convince jurors that the attorney’s position is more correct than opposing counsel’s. To be able to achieve this goal, attorneys must not only present jurors with evidence, but they must also be persuasive in their presentation. Based on responses from mock jurors and actual jurors in post-trial interviews, there are (at least) two ways that attorneys fail to be persuasive. First, jurors expect that the evidence will be persuasive. It is not enough just to have evidence in support of the attorney’s case. Rather, jurors are looking for evidence that persuades them to believe that the attorney’s position is “correct.” Second, jurors appear to expect that attorneys believe in their own arguments. Attorneys lose credibility with jurors when they believe that the attorneys are just “doing their job” or are “not convinced of their own arguments.”

In addition, jurors understand and expect that attorneys will zealously advocate for their clients. Television shows and movies’ portrayals of attorneys have likely set jurors’ expectations for how passionate and animated an attorney should be. When perception does not meet reality, however, attorneys will lose credibility with jurors.

For example, jurors have explained their low attorney credibility ratings by indicating that they held these views:

- “She didn’t show any emotion in anything she said at all... she sounded like a robot.”
- “He put me to sleep.”
- “He looked like he was bored being there.”
- “He didn’t seem too interested in his case.”



Attorneys lose credibility with jurors when they believe that the attorneys are just “doing their job” or are “not convinced of their own arguments.”



Interpretation: Jurors are extremely astute when it comes to recognizing when attorneys are “phoning it in.” This fact becomes increasingly important not only when counsel is preparing for trial, but when counsel is preparing for a mock trial as well. For example, if a member of the defense team is portraying the plaintiff attorney in a mock trial, this attorney must give the impression that he or she is as engaged and as passionate as the plaintiff attorney will be in the real case. The defense attorney should behave in a similar manner during a mock trial. When conducting mock trials, one of most important things

that we are attempting to do is to assist clients in having valid results (i.e., results that are as close to the real outcome as possible). If jurors do not truly believe that the attorneys are engaged and are passionate about their case during a mock trial, then the research design and subsequent findings can be flawed.

Lack of Remorse or Sympathy

Depending on the case type and facts, an attorney may be dealing with a case in which an individual, or individuals, have been severely injured or killed. In these types of cases, jurors have a heightened sensitivity to whether defense counsel displays remorse or sympathy on behalf of their client. Defense counsel that does not show remorse or sympathy will lose credibility with jurors.

For example, we have heard jurors state the following:

- “She came off as if she were trying to explain a very horrific situation as insignificant and minor.”
- “She came off 100% corporate and 100% insincere.”
- “Her presentation was rather cold and calculated.”
- “She didn’t seem to care for the family and had no real feeling.”

Interpretation: Many jurors are also cognizant that they cannot let sympathy and emotion play any part in their deliberation process. However, this is not to say that jurors expect themselves to be completely devoid of emotion. This expectation is also carried over onto the attorneys representing the different parties. While jurors may not expect defense counsel to concede liability, what they do expect is some acknowledgement that a human being has been injured or killed. Some jurors will have a higher expectation of this than others. We do not suggest that defense attorneys feign emotion; rather, defense attorneys should be aware that jurors are looking for (and expecting) these attorneys to provide some genuine outward appearance of remorse or sympathy.

Unprepared

Jurors in real trials have been ripped from the fabric of their lives. They are asked to take hours, sometimes days, out of their normal routine to come and perform their civic duty. Those that are ultimately selected are likely not excited about serving on the jury and most prefer to be anywhere else besides the courtroom. Therefore, one of their primary goals is to get their jury service over and return to their daily routine. Standing in the way of this goal are attorneys who exhibit behaviors that indicate they have not thoroughly prepared for their presentation.

As a result, the attorneys are wasting the court’s time and, more importantly, jurors’ time.

- “He seemed like he didn’t know what he was going to say next.”
- “He appeared to not be very well prepared, [glossing over visual aids, taking them down too quickly, fumbling through documents].”

- “While he did present some good points, he also bounced around and was a little confusing.”
- “She stumbled over her words a lot, misspoke.”

Interpretation: Although mock trials are not “real” in the sense that the verdict decisions are not legally binding, jurors still hold the attorneys to a level of preparedness on par with attorneys in actual trials. Mock jurors are told that their participation can be helpful in resolving the dispute at hand. Therefore, the jurors come to expect that the attorneys will be “putting their best foot forward.” When an attorney exhibits behaviors that suggest he or she has not fully prepared a presentation, jurors begin to question the attorney’s credibility. As we previously mentioned, one of the goals of a mock trial is to achieve valid results. Attorneys that appear unprepared to mock jurors run the risk of invalidating the findings. Even worse, an unprepared attorney may receive an unfavorable verdict at trial.

Putting This Information into Practice

Attending to their courtroom behaviors may not be something that all attorneys concern themselves with because they may believe that they have a good understanding of their perceived credibility. However, research has shown that defense attorneys rate their own performance more favorably than jurors (Linz, Penrod, & McDonald, 1986). Similarly, we have heard attorneys make comments about how they believe a juror is “on their side” based on how the juror was responding nonverbally (e.g., smiling) to the attorney’s presentation. But on seeing the juror’s verdict orientation, it becomes clear that the juror was not on the attorney’s side, and the nonverbal behaviors were suggesting that the juror did not believe the attorney. As a result of misunderstanding jurors’ perceptions of them, some attorneys may be unknowingly engaging in the behaviors mentioned above.

Some attorneys may also be in the camp that believe that “the evidence will carry the day,” and their perceived credibility provides little to no influence on the verdict outcome. Historic and current civil litigation data on attorney credibility shows that this is not true. Of course, evidence is an integral part of any case; however, attorneys who overlook how jurors perceive their credibility do so at their own peril. Similarly, attorneys risk

impugning the credibility of their expert and fact witnesses, thereby inadvertently decreasing the strength of their own case. This latter point is extremely important when considering that the credibility and performance of fact witnesses is pivotal to case outcomes.

In closing, the comments that we have received from jurors about the things that decreased an attorney’s

credibility were about highly skilled, highly successful attorneys who were involved in high-exposure litigation. If these comments are being made about them, we must wonder what is being said about less-experienced attorneys. Our research demonstrates that attorneys must make a concerted effort to understand how jurors perceive their credibility. This means working with researchers who have extensive knowledge to help prepare attorneys to avoid the pitfalls that lead jurors to blame the messenger. This also means that attorneys must be open to receiving feedback from jurors. Rather than running from it, attorneys must embrace

the comments that jurors are making during mock trials and post-trial interviews. In the long run, what may be a temporary discomfort (it is human nature to have evaluation apprehension) may very well pay dividends in helping attorneys become more successful in the courtroom.

Our research demonstrates that attorneys must make a concerted effort to understand how jurors perceive their credibility.



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