

Credibility of Witnesses

As judges of the facts, you alone determine the truthfulness and accuracy of the testimony of each witness. You must decide whether a witness told the truth and was accurate, or instead, testified falsely or was mistaken. You must also decide what importance to give to the testimony you accept as truthful and accurate. It is the quality of the testimony that is controlling, not the number of witnesses who testify.¹

Accept in Whole or in Part (Falsus in Uno)

If you find that any witness has intentionally testified falsely as to any material fact, you may disregard that witness's entire testimony. Or, you may disregard so much of it as you find was untruthful, and accept so much of it as you find to have been truthful and accurate.²

Credibility factors

There is no particular formula for evaluating the truthfulness and accuracy of another person's statements or testimony. You bring to this process all of your varied experiences. In life, you frequently decide the truthfulness and accuracy of statements made to you by other people. The same factors used to make those decisions, should be used in this case when evaluating the testimony.

In General

Some of the factors that you may wish to consider in evaluating the testimony of a witness are as follows:

Did the witness have an opportunity to see or hear the events about which he or she testified?

Did the witness have the ability to recall those events accurately?

Was the testimony of the witness plausible and likely to be true, or was it implausible and not likely to be true?

Was the testimony of the witness consistent or inconsistent with other testimony or evidence in the case?

Did the manner in which the witness testified reflect upon the truthfulness of that witness's testimony?

To what extent, if any, did the witness's background, training, education, or experience affect the believability of that witness's testimony?

Did the witness have a bias, hostility or some other attitude that affected the truthfulness of the witness's testimony?³

Motive

You may consider whether a witness had, or did not have, a motive to lie.

If a witness had a motive to lie, you may consider whether and to what extent, if any, that motive affected the truthfulness of that witness's testimony.

If a witness did not have a motive to lie, you may consider that as well in evaluating the witness's truthfulness.⁴

[Add if appropriate:

Benefit

You may consider whether a witness hopes for or expects to receive a benefit for testifying. If so, you may consider

whether and to what extent it affected the truthfulness of the witness's testimony.⁵]

Interest/Lack of Interest⁶

You may consider whether a witness has any interest in the outcome of the case, or instead, whether the witness has no such interest.

[Note: Add if appropriate:

A defendant who testifies is a person who has an interest in the outcome of the case.]

You are not required to reject the testimony of an interested witness, or to accept the testimony of a witness who has no interest in the outcome of the case.

You may, however, consider whether an interest in the outcome, or the lack of such interest, affected the truthfulness of the witness's testimony.

Previous Criminal Conduct⁷

You may consider whether a witness has been convicted of a crime or has engaged in criminal conduct, and if so, whether and to what extent it affects the truthfulness of that witness's testimony.

You are not required to reject the testimony of a witness who has been convicted of a crime or has engaged in criminal conduct, or to accept the testimony of a witness who has not.

You may, however, consider whether a witness's criminal conviction or conduct has affected the truthfulness of the witness's testimony.

[Note: Add if appropriate:

With respect to the defendant, such prior convictions or criminal conduct are not evidence of defendant's guilt in this case, or evidence that defendant is a person who is disposed to commit crimes. You are permitted to consider such convictions or conduct only to evaluate the defendant's truthfulness.]

Inconsistent Statements⁸

You may consider whether a witness made statements at this trial that are inconsistent with each other.

You may also consider whether a witness made previous statements that are inconsistent with his or her testimony at trial.

[Add if appropriate:

You may consider whether a witness testified to a fact here at trial that the witness omitted to state, at a prior time, when it would have been reasonable and logical for the witness to have stated the fact. In determining whether it would have been reasonable and logical for the witness to have stated the omitted fact, you may consider whether the witness' attention was called to the matter and whether the witness was specifically asked about it. ^{9]}

If a witness has made such inconsistent statements [or omissions], you may consider whether and to what extent they affect the truthfulness or accuracy of that witness's testimony here at this trial.

The contents of a prior inconsistent statement are not proof of what happened. You may use evidence of a prior inconsistent statement only to evaluate the truthfulness or accuracy of the witness's testimony here at trial.¹⁰

Consistency

You may consider whether a witness's testimony is

consistent with the testimony of other witnesses or with other evidence in the case.

If there were inconsistencies by or among witnesses, you may consider whether they were significant inconsistencies related to important facts, or instead were the kind of minor inconsistencies that one might expect from multiple witnesses to the same event?

Police Testimony

In this case you have heard the testimony of (a) police officer(s). The testimony of a witness should not be believed solely and simply because the witness is a police officer. At the same time, a witness's testimony should not be disbelieved solely and simply because the witness is a police officer. You must evaluate a police officer's testimony in the same way you would evaluate the testimony of any other witness.¹¹

[Add if appropriate:

Witness Pre-trial Preparation

You have heard testimony about the prosecutor [*or a lawyer*] [*or an investigator*] speaking to a witness about the case before the witness testified at this trial. The law does not prohibit a prosecutor [*or a lawyer*] [*or an investigator*] from speaking to a witness about the case before the witness testifies, nor does it prohibit the prosecutor [*or a lawyer*] [*or an investigator*] from reviewing with the witness the questions that will be asked at trial.¹²

You have also heard testimony that a witness read certain materials pertaining to this case before the witness testified at trial. The law does not prohibit a witness from doing so.]

1. See generally *People v Ward*, 282 A.D.2d 819 (3d Dept. 2001); *People v Love*, 244 A.D.2d 431 (2d Dept. 1997); *People v Turton*, 221 A.D.2d 671, 671-672 (2d Dept. 1995); *People v Jansen*, 130 A.D.2d 764 (2d Dept. 1987).

2. This portion of the charge was revised in January, 2008 to make it clear that the jury may accept so much of testimony as they find to have been truthful “and accurate.”

See *People v Perry*, 277 N.Y. 460, 467-468 (1938); *People v Laudiero*, 192 N.Y. 304, 309 (1908); *Hoag v Wright*, 174 N.Y. 36, 43 (1903); *People v Petmecky*, 99 N.Y. 415, 422-423 (1885); *Moett v People*, 85 N.Y. 373 (1881); *People v Johnson*, 225 A.D.2d 464 (1st Dept. 1996).

3. See *People v Jackson*, 74 N.Y.2d 787, 789-790 (1989); *People v. Hudy*, 73 N.Y.2d 40, 56 (1988).

4. See *People v Jackson*, *supra*; *People v. Hudy*, *supra*.

5. See *People v Jackson*, *supra*.

6. See *People v. Agosto*, 73 N.Y.2d 963, 967 (1989).

7. See *People v Jackson*, *supra*; *People v Sherman*, 156 A.D.2d 889, 891 (3d Dept. 1989); *People v Smith*, 285 A.D. 590, 591 (4th Dept. 1955). Cf. *People v Coleman*, 70 A.D.2d 600 (2d Dept. 1979).

8. See *People v. Duncan*, 46 N.Y.2d 74, 80 (1978).

9. See *People v. Bornholdt*, 33 N.Y.2d 75, 88 (1973); *People v. Savage*, 50 N.Y.2d 673 (1980); *People v. Medina*, 249 A.D.2d 166 (1st Dept. 1998); *People v. Byrd*, 284 A.D.2d 201 (1st Dept. 2001).

10. CPL 60.35(2).

11. See *People v Freier*, 228 A.D.2d 520 (2d Dept. 1996); *People v Graham*, 196 A.D.2d 552, 552-53 (2d Dept. 1993); *People v Allan*, 192 A.D.2d 433, 435 (1st Dept. 1993); *People v McCain*, 177 A.D.2d 513, 514 (2d Dept. 1991). Cf. *People v Rawlins*, 166 A.D.2d 64, 67 [1st Dept. 1991].

12. See *People v Liverpool*, 262 A.D.2d 425 (2d Dept. 1999); *People v Fountain*, 170 A.D.2d 414, 415 (2d Dept. 1991).