



## Anthropogenic Nonverbal Information during Interrogation in Court Proceedings: Tactical Rules and Techniques

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**Abstract:** *The nonverbal means of communication of the interrogated person are significant object of observation, an important source of information that provides various data for reflection. There are several studies that look at the impact of a defender's speech style on trust and sentences. As for the general external attractiveness, the hypothesis "nice means good" is confirmed - people, as a rule, assign positive attributes to people who look nice. Attractive defendants are seen as less guilty of committing a crime than their unattractive colleagues, and judges may prefer lighter sentences. Recommendations on the perception and use of anthropogenic non-verbal information during interrogation in court proceedings relate to the organization and tactics of considering its participants and the situation. The importance of using anthropogenic nonverbal information during interrogation in court proceedings is that such use will be effective, reliable, and meaningful among other actions in criminal proceedings and will significantly supplement the content of the data obtained.*

*The special differences that distinguish the manifestations of anthropogenic nonverbal information during the court interrogation from other information communications are its conduct in a special procedural form and an authorized special entity in criminal proceedings in accordance with applicable law.*

*Thus, communication between interrogators in court proceedings has a psychophysiological nature and includes several psychological and physiological patterns that determine the complex structure of interaction, a set of tactical tools (techniques, combinations) to establish the circumstances to be proved in criminal proceedings. Effective perception and use of anthropogenic nonverbal information in court proceedings is facilitated by compliance with certain tactical rules.*

**Keywords:** *nonverbal information; anthropogenic nonverbal information; interrogation; court proceedings; criminal proceedings*

**JEL classification:** K4

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## **1. Introduction**

The process of establishing new, previously unknown information on the circumstances of a criminally relevant event and confirming / refuting an already known one is ensured by careful preparation for the relevant interrogation, application of forensic recommendations (tactics, rules). Thus, communicating during the interrogation, all its participants receive not only verbal but also anthropogenic non-verbal information, perceive it and have the opportunity to decipher it. Sometimes such anthropogenetic nonverbal information, which is manifested in facial expressions, gestures, posture, gait, gives more information for reasoning than what is said aloud by the interrogated.

The purpose of the study is to formulate tactical rules and identify techniques, compliance and application of which will promote the effective use of anthropogenic non-verbal information during court interrogation in court proceedings.

The objectives of the study are the formation of tactical rules, compliance with which will promote the effective use of anthropogenic non-verbal information during court interrogation in trial and determine the most successful tactics.

The issue of nonverbal communication has attracted considerable attention from researchers<sup>1</sup>. The non-verbal means (non-verbal component) of the interrogated person's communication are an extremely important object of observation (more than a thousand non-verbal signs transmitting certain signals are known), an important source of information that provides various data for reflection<sup>2</sup>. There are several studies that look at the impact of a defender's speech style on trust ratings and sentences. One study<sup>3</sup> found that the style of "aggressive" defenders (high speed speech, eye contact, noticeable emotional gestures, hostile tones, and high volume of speech) was judged by jurors to be more effective than passive style.

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<sup>1</sup> Ekman P., Friesen W.V. Nonverbal leakage and clues to Psychiatry. 1969. Vol. 32. No2. P. 88-106.; Rapoport A. The meaning of the built environment: A nonverbal communication approach. University of Arizona Press, 1990; Remland M.S. The importance of nonverbal communication in the courtroom. *Atlantic Journal of Communication*. 1994. Iss. 2. No2. P. 124-145.; Matlon R.J. Communication in the legal process. New York: Holt, Rinehart and Winston, Inc., 1988. 384 p.; Sherer K.R., Ekman P. Handbook of methods in Nonverbal behavior research. New York: Cambridge University Press, 1982. 608 p.

<sup>2</sup> Sledstvennyye deystviya. Kriminalisticheskiye rekomendatsii. Tipovyye obraztsy dokumentov / pod red. V.A. Obraztsova. Moskva: Yurist, 1999. p. 48.

<sup>3</sup> Rieke R.D. Communication in legal advocacy. Columbia, SC: University of South Carolina Press, 2008. 245 p.

As for the general external attractiveness, the hypothesis "nice means good" is confirmed - people, as a rule, assign positive attributes to people who look good. Attractive defendants are seen as less guilty of committing a crime than their unattractive colleagues, and judges may resort to lighter sentences<sup>1</sup>. Thus, in their study, E. Hatfield and S. Sprecher identify the following factors: 1. the impact of attractiveness depends on the type of crime committed; 2. the more serious the crime, the less likely it is that the defendant will be attractive; 3. the advantage of attractiveness is significantly reduced by the process of discussion in court proceedings<sup>2</sup>.

Some researchers have studied the significant effect of the defendant's facial expression and found that it affects the perception of guilt, seriousness of the crime and severity of punishment. J. Savitsky and M. Sim changed the facial expressions of the defendant who testified to evil, happy, sad or neutral. The results showed that the crime (theft and vandalism) was considered less serious, the accused was considered less likely to commit the crime and received a milder punishment with a sad or neutral expression than with a happy or evil face. The expression on the angry person's face caused the most adverse reaction<sup>3</sup>. As P. Blanck, R. Rosenthal, and L. Cordell note: "It is possible that when judges expect or predict a certain trial outcome, they intentionally or unintentionally 'appear' to behave toward jurors in a way that indicates what they think the outcome should be, thereby setting into motion behaviors and trial processes that increase the likelihood of the occurrence of a certain trial outcome"<sup>4</sup>. In some cases, a documented bias in the form of a non-verbal act by a judge may be sufficient grounds for appeal<sup>5</sup>.

## **2. Preparation for Interrogation in Court Proceedings**

Recommendations on the perception and use of anthropogenic nonverbal information during interrogation in court proceedings relate to the organization and tactics of considering its participants and the situation. The

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<sup>1</sup> Barge K.J., Schlueter D.W., Pritchard A. The effects of nonverbal communication and gender on impression formation in opening statements. *The Southern Communication Journal*. 1989. Iss. 54. P. 330-349.

<sup>2</sup> Hatfield E., Sprecher S. Measuring Passionate Love in Intimate Relationships. *Journal of Adolescence*. 1986. Iss. 9. P. 383-410.

<sup>3</sup> Savitsky J.C., Sim M.E. Trading Emotions Equity Theory of Reward and Punishment. *Journal of Communication*. 1974. Iss. 24. P. 140-147.

<sup>4</sup> Blanck P.D., Rosenthal R., Cordell L.H. The appearance of justice: Judge's verbal and nonverbal behavior in criminal jury trials. *Stanford Law Review*. 1985. Iss. 38. P. 89-164. P. 91

<sup>5</sup> Blanck P.D., Rosenthal R. Nonverbal behavior in the courtroom. In: R.S. Feldman (Ed.), *Applications of nonverbal behavioral theories and research*. Hillsdale, NJ: Lawrence Erlbaum Associates, 1992. P. 89-115. LeVan E.A. Nonverbal Communication in the Courtroom: Attorney Beware. *Law & Psychology Review*. 1984. Iss. 8. P. 83-104.

significance of the use of anthropogenic non-verbal information during interrogation in court proceedings will be that such use will be effective, reliable and weighty among other actions in criminal proceedings and such use of anthropogenic non-verbal information will significantly supplement the content of the obtained data.

Interrogation in court proceedings is a key tool for gathering, verifying and evaluating information. The essence of the interrogation is realized in the way of obtaining in the course of court proceedings testimony from the participants in the criminal proceedings regarding the circumstances of the criminally relevant event. This method consists in oral presentation of the testimony of the interrogated person in court and his interrogation by the parties to the court and the court. During interrogation in court proceedings, it is recommended to use a system of techniques aimed at obtaining truthful and complete testimony. The choice of technics is influenced by the situation, psychophysiological signs and properties of the interrogated, the nature of the testimony, the intention to change the testimony, to obtain new data.

Preparation for interrogation in court proceedings involves the need to study the socio-psychological characteristics of the interrogated, which consists of information about his character, temperament, level of intelligence, way of thinking, inclination to the reference group, lifestyle, family upbringing, etc<sup>1</sup>. Such acquaintance with the data on the identity of the interrogated allows the parties to the proceedings at the preparatory stage to determine the tactics of interrogation, manner of communication and style of behavior, to predict the situation that will develop during the interrogation in court proceedings. When studying the personality of the interrogated, it is important to understand that it is not just a participant endowed with the appropriate procedural status, but a specific person who has certain traits of character, temperament, with a certain worldview, mood and health<sup>2</sup>.

It should be emphasized that the actual essence of interrogation in court proceedings, among other things, already voiced, is the reflection during its conduct of such manifestations of anthropogenic nonverbal information, which are inherent in many information communications and the presence of differences due to criminal proceedings. The special differences that distinguish the manifestations of anthropogenic non-verbal information during the court interrogation from other information communications are

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<sup>1</sup> Shepit'ko V.YU. Kryminalistychna taktyka: systemno-strukturnyy analiz: monohr. Kharkiv, 2007. P. 61.

<sup>2</sup> Maksimishin N. M. Judicial interrogation: procedural and forensic research: dis. ... cand. jurid. sciences: 12.00.09. Lviv, 2016. P. 82.

its conduct in a special procedural form and authorized by a special entity in criminal proceedings in accordance with applicable law.

The court, as a result of the received testimonies and their assessment, establishes the circumstances of the criminally relevant event that took place, i.e. the circumstances that are subject to proof in criminal proceedings. To prove such circumstances, the interrogation in court proceedings must be conducted in such a way as to obtain the most comprehensive information about the event under investigation. Success is achieved when, based on the achievements of criminology, the interrogation is conducted in accordance with current legislation. With the help of logically posed questions, it is possible to conduct a tactically correct interrogation in court proceedings.

Psychological contact during interrogation is important. Timely perception and use of anthropogenic nonverbal manifestations also contributes to ensuring the establishment of psychological contact and its maintenance. Psychological contact as a particularly favorable state of relations during the interrogation is facilitated by techniques that create special conditions, support them and provide an opportunity to use such psychological contact. The choice of specific methods for establishing psychological contact will depend on the person of the interrogated, the subject of interrogation and the data that he plans to provide during the interrogation. The removal of obstacles in establishing psychological contact is achieved by analyzing the manifestations of anthropogenic nonverbal information of the interrogated and subsequent appropriate feedback of clear questions to the interrogated, explaining their content and meaning.

### **3. Tactics of Perception and use of anthropogenic nonverbal Information**

The choice of tactics of perception and use of anthropogenic nonverbal information is based on psychophysiological features and properties of the interrogated, so sometimes it is possible to use universal techniques, and sometimes situational depending on the interrogated, the situation of interrogation, the presence of other participants, the category of criminal proceedings and the subject of interrogation. Tactics are based, as noted by M.Y. Vilhushinsky, both verbal and nonverbal information<sup>1</sup>. We have researched and singled out the following techniques for the perception and use of anthropogenic nonverbal information during interrogation in court proceedings:

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<sup>1</sup> Vil'hushyns'kyi M.Y. Taktyka sudovoho slidstva v systemi kryminalistyky /za red. V.Yu. Shepit'ko. Kharkiv: Pravo, 2010. p. 98.

1. Interrogation of the interrogated about the circumstances of a criminally relevant event with fixation of the congruence of the verbal and nonverbal components of his testimony;
2. Identification of emotional moments of arousal in the state of the interrogated during the testimony and directing the interrogation channel in this direction in order to determine the causes of increased emotional arousal of the interrogated;
3. Identification of emotional moments of oppression in the state of the interrogated during the testimony and directing the interrogation in this direction in order to determine the causes of such oppression;
4. Observation of the manifestations of anthropogenic non-verbal information in order to identify the inconsistency of the verbal and non-verbal components in the testimony of the interrogated during his testimony on the specific circumstances of the criminally relevant event;
5. Initiation of certain manifestations of anthropogenic nonverbal information in order to identify the true emotional state and information awareness of the interrogated;
6. Stimulation of manifestations of anthropogenic non-verbal information at the moment when the most sensitive moments are revealed in the testimony of the interrogated in order to identify his real emotional state and information awareness;
7. Maintenance of manifestations of anthropogenic non-verbal information at the moment when the most sensitive moments are revealed in the testimony of the interrogated in order to identify his real emotional state and information awareness;
8. Contact formation. Establishment and severance of psychological contact between the interrogated and other participants in the proceedings (single, multi-moment, long, short);
9. Evaluation. Facilitating the provision of an independent assessment by the interrogated of the circumstances of a criminally relevant event with the recording of manifestations of anthropogenic nonverbal information;
10. Focusing the interrogated's attention on the proven circumstances of the criminal proceedings with a request to provide his own explanation of what happened;
11. Focusing the attention of the interrogated on the technical equipment of the court session and the possibility of viewing audio and video materials after the interrogation;
12. Advance. Obtaining an explanation of the specific circumstances of the criminally relevant event that causes the greatest contradiction to other evidence available in the criminal proceedings;

13. Background during interrogation. When the interrogees are explicitly provided with unreliable information, additional non-verbal obstacles are created to return them to the state of what happened, and not to what the interrogated was prepared for in advance;
14. Gestures. The use of various types of gestures aimed at supporting or refuting the indications;
15. Facial expressions. Use of various types of facial expressions (movement of facial muscles), aimed at supporting or refuting the indications;
16. Zoning. Division of the place of interrogation into conditional zones and emphasis on placement of interrogation participants in them;
17. Spatiality. Making changes to the initial placement of interrogators in order to identify the most acute moments in the testimony and changes in the manifestations of anthropogenic nonverbal information;
18. Mobility. Performing movements of individual parts of the body or the whole body in order to focus or distract the attention of the interrogated during the testimony
19. Subjectivity. Focusing the interrogated's attention on certain subjects related to the criminally relevant event.
20. Sound saturation. Increase/decrease or add sound color when giving testimony to interrogated.

Thus, communication between interrogators in court proceedings has a psychophysiological nature and includes a number of psychological and physiological patterns that determine the complex structure of interaction, a set of tactical tools (techniques, combinations) to establish the circumstances to be proved in criminal proceedings.

Given that interrogation in court proceedings is a cognitive process, its conduct requires from the person conducting the interrogation, significant intellectual, organizational, volitional efforts. According to VG Lukashovich, the interrogation performs a cognitive and certifying function<sup>1</sup>. V.K. Veselsky notes that from a psychological point of view, interrogation is communication between its participants, but takes place in procedural forms, with mandatory elements provided by law, and the main feature of

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<sup>1</sup> Lukashovich V.G. Taktika obshcheniya sledovatelya s uchastnikami ot del'nykh sledstvennykh deystviy (dopros, ochnaya stavka, pred "yavleniya dlya opoznaniya, proverka pokazaniy na meste): ucheb. posob. Kyiv, 1989. p. 23.

interrogation is the interrogator's psychological influence on the interrogated<sup>1</sup>.

In any case, in the content of the interrogated's oral speech it is necessary to perceive, record and investigate the manifestations of anthropogenic nonverbal information (features (scars, spots on the skin, freckles, tattoos), gestures, facial expressions, postures, tactility, emotional and psychological color). The interrogated's behavior, his clothes (what exactly is about the clothes and the condition of the clothes) and related things (what exactly, their number, their condition) also signal certain information that should be perceived, researched and used.

Judicial discourse in the part of interrogation of witnesses is a conversation according to a pre-thought-out plan, the main components of which are: question - answer - analysis and commenting on the answers. The task of the participants in this process is to obtain answers from the interrogated that confirm their own arguments and consolidate their positions. Prosecution and defense parties often create interrogation plans, rehearse, and discuss with their interrogees the course of their conduct in court, as well as possible questions and answers. Therefore, when the opposite party tries to upset the subject, make him nervous and anxious, anthropogenic nonverbal manifestations will be manifested primarily in the form of raising or lowering the voice, muscle tension, anxious and running gaze, blinking, frequent changes in body position, twisting items of clothing or jewelry, finding support by looking at your side.

Anthropogenic nonverbal manifestations as external signs of testimony by a person in court are not expressed in words. Perception and use of anthropogenic nonverbal information allows to identify a number of signs that indicate the truth or falsity of the testimony of the interrogated. Such signs appear during the free narrative as a reaction to clarifying / control / affirmative/expectant/assuming/excluding questions, to the presentation of evidence, etc. The most common of these are speech pauses, speech stops, tremors of the extremities, tremors of the voice, sweating of various parts of the body, jerky eyes, flushed skin, and others. Such non-verbal information has no probative value. It is indicative information (information for reflection), which has organizational and tactical significance<sup>2</sup>.

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<sup>1</sup> Veselskyi V.K. Kontseptual'ni osnovy taktyky slidchych dii (slidchyyi ohlyad, dopyt, pryznachennya i provedennya sudovykh ekspertyz). *Borot'ba z orhanizovanoyu zlochynnisty i koruptsiyeyu (teoriya i praktyka)*. 2012. No2. P. 155.

<sup>2</sup> *Sledstvennyye deistviya. Kriminalisticheskiye rekomendatsii. Tipovyye obraztsy dokumentov / pod red. V.A. Obratsova*. Moskva: Yurist, 1999. P. 46-47.



In general, the behavior of the interrogated in court proceedings is determined by his individual psychophysiological characteristics and properties, and his activities depend on his procedural role and interest in the results of the trial.

#### **4. Anthropogenic nonverbal Manifestations of the Court**

Judges, prosecutors and defendants are obligatory participants in a court hearing in criminal proceedings, except in cases of special court proceedings. The key interaction in the court session, both verbally and non-verbally, takes place: between the judge and the accused; between the judge and the victim; between a judge and a witness; between the judge and the defense counsel; between a judge and a prosecutor; between a judge and an expert; between the prosecutor and the accused; between the prosecutor and the witness; between the prosecutor and the victim; between the prosecutor and the defense counsel; between the prosecutor and the expert; between the defense counsel and the accused; between defense counsel and witness; between the defender and the victim; between counsel and expert. Also, non-verbal communication in any form can take place between the accused and the witness and the victim (intimidation, conspiracy, bribery, etc.). From the above it is clear that the judge, despite the fact that he is the central figure of the process, takes a more observer position, only occasionally interfering in the process. But, even without showing an active position, the judge acts as the only source of assessment of information (verbal and nonverbal) that comes in court proceedings.

During the trial, in particular during the interrogation, anthropogenic nonverbal manifestations are actively used by the parties to persuade those present and manipulate them in order to direct their behavior in the right direction and achieve the desired actions. However, manifestations of anthropogenic non-verbal information can serve not only as a tool to influence other participants in court proceedings, but also to reflect their reaction to the actions of such participants. For example, if we consider the manifestations of anthropogenic non-verbal information of the prosecutor and defense counsel on each other's actions, in general it is a protest, which is expressed by emotional tones of voice, change of body position, indignant or unfriendly look, facial expressions, and general physical and emotional stress.

Most often, the reaction of trial participants to each other's behavior is manifested in facial expressions and looks, less often - in gestures. This indicates that, in contrast to gestures, facial expressions and looks are less controllable and reveal the internal state of the party to the proceedings,

regardless of his will. The reaction of witnesses, expressed by anthropogenic nonverbal manifestations, reflects their character, inner state, attitude to the participants in criminal proceedings and their actions in the past and present.

During the court interrogation, an asymmetric (and often conflicting) communication situation is created. The prosecutor and defense counsel, who ask questions to witnesses, victims, accused, have rhetorical techniques, they consciously use the skills and abilities to influence the audience. Witnesses and others usually do not have such skills, so they take a back seat. However, their anthropogenic nonverbal manifestations continue to be a component of communication in court. Therefore, the most common reaction of witnesses - tension, nervousness, frustration, and the victims - anxiety, indignation, depression.

The accused in the judicial interrogation of others is not the center. Its main task is only to observe what is happening in court. The main channel through which he responds to perceived information is nonverbal. Unlike the prosecutor, defense counsel and judge, the accused does not have to draw conclusions and react to what is happening.

The variety of anthropogenic nonverbal manifestations of a judge is very limited - mainly a change in facial expression and a change in body position. Anthropogenic nonverbal manifestations of a judge may be influenced by anthropogenic nonverbal manifestations of other participants in the trial. The study of anthropogenic nonverbal behavior of judges revealed four global styles (general behavior that determines the interaction and is verbal-nonverbal): judicial; indicatory; assured; benevolent. Judges who are prone to judicial style are seen as concerned with a sense of justice and fairness; pointing style is seen as focused on management and tasks. Judges in the style of "confidence" are considered patient, and the judges themselves note that patience is an important quality that helps to avoid tyranny in the courtroom. Finally, friendly judges are seen as a source of support for other participants in the proceedings<sup>1</sup>.

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<sup>1</sup> Collett M.E., Kovera M.B. The effects of British and American trial procedures on the quality of juror decision making. *Law and Human Behavior*. 2003. Iss. 27. No4. P. 403-422.

Blanck P.D. What empirical research tells us: Studying judges' and juries' behavior. *American University Law Review*. 1991. Iss. 40 (2). P. 775-804.

Halverson A.M., Hallahan M., Hart A.J., & Rosenthal R. Reducing the biasing effects of judges' nonverbal behavior with simplified jury instructions. *Journal of Applied Psychology*. 1997. Iss. 82. No4. P. 590-598.

Judges' nonverbal behavior // *Encyclopedia of Psychology & Law*. Volume 1 /Ed. by Brian L. Cutler. Sage publications, 2008. P. 388-391.

In terms of communication with the judge, some studies indicate the existence of anthropogenic nonverbal effects. That is, when judges find a defendant guilty, they can testify to that belief in a non-verbal manner through facial expressions, tone of voice, and various other actions. Studies show that these signals can affect the sentence<sup>1</sup>.

## **5. Conclusions**

Effective perception and use of anthropogenic non-verbal information in court proceedings is facilitated by compliance with the following tactical rules:

1. Visual inspection of all present participants in the proceedings with the identification of patterns that must take place in the proceedings;
2. Visual inspection of all present participants in the proceedings with the identification of features that do not take place in the proceedings;
3. Purposeful and systematic perception of all who speak and all who are addressed by the speaker (in general, also try to keep in sight other participants and visually record their reaction to what is being said);
4. Simultaneous complex perception of all manifestations of anthropogenic non-verbal information of the interrogated during the court interrogation;
5. In case of detection of incongruent manifestation of anthropogenic non-verbal information of the interrogated during the court interrogation, try to repeat the receipt of such manifestation for comparison;
6. Registration of moments when what is said affects the change of emotional behavior of the interrogated with further analysis and use of these informational moments;
7. Verbal statements of the interrogated purposefully synchronize with non-verbal;
8. Analyze the links between verbal and nonverbal manifestations of the interrogated (detect, establish, verify);
9. In the behavior of the interrogated to look not only for what is expected, but also for what is opposite to him, not congruent;

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Searcy M., Duck S., Blanck, P. Nonverbal behavior in the courtroom and the "Appearance of Justice." In R. Riggio & R. Feldman (Eds.), *Applications of nonverbal communication*. New York: Lawrence Erlbaum, 2005. P. 41-61.

<sup>1</sup> Hart J.A. On the sobriety of judges: Nonverbal influence in the courtroom. *Dissertation Abstracts International*, 52, 2820.

Blanck P.D., Rosenthal R., Cordell L.H. The appearance of justice: Judge's verbal and nonverbal behavior in criminal jury trials. *Stanford Law Review*. 1985. Iss. 38. P. 89-164.

10. Figuratively divide the body of the interrogated (head, upper and lower extremities, torso, arms, face) into parts and focus attention on them, without leaving other parts of the body without perception. That is, focusing on one manifestation, do not ignore others;
11. Highlighting a specific anthropogenic nonverbal manifestation, do not rely only on its decipherment, try to find others that justify the previously identified;
12. To compare the perceived anthropogenic nonverbal manifestations of the interrogated with each other and with verbal manifestations (similarities, differences, similarities, contradictions, etc.);
13. Critically treat any non-verbal anthropogenic manifestations. There may be staging of certain manifestations by the interrogated;
14. Compare the results of perception of manifestations of anthropogenic nonverbal information and their deciphering with similar results of perception of manifestations of anthropogenic nonverbal information of other participants.

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