

## Who's Lying: Detecting Deception in Internal Investigations

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## About Michael Johnson

Michael W. Johnson is CEO of Clear Law Institute, which provides training on conducting investigations, employment law for supervisors, harassment prevention, and ethics and compliance topics to employers around the country.

As a former attorney in the United States Department of Justice, Mr. Johnson investigated and litigated cases against employers around the country. He was the lead attorney on one of DOJ's first "pattern or practice" sexual harassment cases.

The United Nations selected Mr. Johnson to consult on revisions to its harassment policies and to provide investigative training to its staff in New York and its peacekeeping missions in the Congo and Sierra Leone. Mr. Johnson has served as an expert witness testifying to the adequacy of employers' internal investigations of alleged employee misconduct.

Mr. Johnson was co-founder and co-CEO of Brightline Compliance, which provided online training on ethics and compliance topics to more than 1.5 million employees of more than 600 companies. Mr. Johnson and his business partner sold Brightline Compliance in 2007.

Mr. Johnson is a graduate of Duke University and Harvard Law School. He can be reached at (202) 550-1460 or at [mjohnson@ClearLawInstitute.com](mailto:mjohnson@ClearLawInstitute.com).



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## Overview

- Dealing with "he said/she said" cases or cases where there are no eyewitnesses
- Spotting signs of deception
- Police interview of a murder suspect
- Common errors in lie detection
- Robles v. Autozone
- Guidelines for examining cues to deception
- Interview of Drew Peterson
- Guidelines for investigative interviewing

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**How Do I Deal with “He Said/She Said” Situations?**

Jennifer’s assistant, Tony, complains that Jennifer frequently makes sexual comments to him at work. Tony also alleges that last week Jennifer tried to kiss him in her office. Jennifer denies the allegations completely. You investigate the matter and you believe that Tony is being truthful. However, you can find no eyewitnesses to support Tony’s allegations. Could the employer legitimately conclude that Jennifer is guilty and discipline her?

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**Credibility Determination Factors**

- Inherent plausibility of the story
- Past record
- Motive to lie
- Corroboration
- Demeanor

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**Is anything suspicious about these responses?**

Q: Governor Clinton, have you ever smoked marijuana?  
A: I have never violated the drug laws of my country.

Q: Governor Bush, have you ever used cocaine?  
A: The White House security check asks about prior drug use, and I could pass that security check.

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**Is anything suspicious about these responses?**

Q: Alice, have you ever run your fingers through Ronald's hair?

A: Not that I recall.

Q: Henry, have you ever told an ethnic joke in the workplace?

A: Not really. Speaking of jokes, you should hear the ethnic jokes that Todd and Mark tell around here.

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**Question: Are you good at detecting lies?**

I believe I can correctly identify if a person is lying the following percentage of time:

- a. 25%
- b. 50%
- c. 75%
- d. 90%
- e. 100%

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**Police interview of a murder suspect**

- Kevin comes home from college for the Christmas holidays and sees his girlfriend in her apartment that night. According to Kevin, the next day, she doesn't respond to his calls or text messages, which was unusual. Kevin, his mom, and a friend go to his girlfriend's apartment to check on her.
- They find her lying on the floor nude. Kevin lays on top of her and tries to give her mouth-to-mouth resuscitation but she is dead. Police believe this was Kevin's attempt to contaminate the crime scene.
- She has cuts on her neck and appears to have been bludgeoned to death with a lamp. Kevin's fingerprints are found on the light bulb.

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**Video of Kevin's Interview**



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**Kevin's behavior**

- Rubs hand across mouth
- Hands become fidgety
- "I did not do this"
- "I swear to God"
- Rubs hands through hair
- Defeated position
- Puts hand over face
- Feet crossed underneath chair
- "Some scumbag did this to my girlfriend and I'm going to get put in jail for it."

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**Question: Which are reliable predictors of deception?**

- a. Gaze aversion (person stops looking you in the eye)
- b. Person is fidgety
- c. Places hand over mouth when speaking
- d. All of the above
- e. None of the above

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**Kevin**

- Found innocent by a jury
  - Defense said Kevin must have touched the light bulb when he was trying to resuscitate her. The lamp was found a foot from her body.
- Special prosecutor was later appointed, and he concluded that Kevin was innocent.
- Gary
  - Lived in the same apartment complex and knew the victim
  - Was on parole because he had been convicted of assaulting a female jogger in a park two years before.
  - His DNA was found on the condom wrapper that was in Nona's apartment

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**Examining "cues to deception"**

- We tend to pay attention to "cues to deception" that have not been scientifically validated and are not reliable predictors of lying
- Three factors that impact cues to deception
  - Emotion
  - Cognitive Effort
  - Attempted Behavioral Control
- Examples: Gaze aversion, fidgety movements

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**Forgetting about interpersonal differences**

- One person's ordinary body language, speech, and physiological responses may vary greatly from another person's
- Cultural differences
- People of different ethnic backgrounds than the investigator
- Personality differences

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**Forgetting about intrapersonal differences**

- Same person may react differently in different situations
- Hard to set baseline
- Person may behave very differently during the small talk portion of the interview than during the substantive part of the interview

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**Relying on general decision rules**

- Heuristics, general decision rules, can lead to errors and biases
- Fundamental attribution error
- Facial appearance heuristic
- Confirmation bias

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**"Othello" error**

- Mistakenly interpreting signs of nervousness as indicative of deception
- Two of the most popular lie detecting techniques are susceptible to the "Othello" error
  - Polygraph exam
  - Behavior Analysis Interview

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**Poor Interviewing Style**

- Accusatory style
  - Can result in the "Othello" error
  - Doesn't gather much information
  - Allows person to say I'm not talking because you're just going to use whatever I say against me anyway
  - Can lead to false confessions

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**Robles v. AutoZone**

- Approximately \$800 is found missing from a bank deposit bag. Robles had signed for the cash in the deposit bag that he gave to the armored car driver.

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**Robles v. AutoZone (continued)**

- Loss prevention officer interviews Robles, who denies taking the money. Officer accuses Robles of taking the money.
  - Tells Robles if he leaves he will be arrested
  - Suggests to Robles that he can keep his job if he confesses and agrees to pay the money back in monthly installments
  - Robles writes out a confession
  - Robles is fired

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**Robles v. AutoZone  
(continued)**

- A few weeks later, the Bank finds the money. Autozone doesn't tell Robles about its mistake. Robles sues for false imprisonment
- Jury awards \$7.5 million in punitive damages (judge reduced the punitive damages to \$438,900 so that they would not be more than six times the compensatory damages awarded.)
- Court of Appeals, in examining the punitive damages award, focused on Autozone's investigation manual and the policies and training provided to its investigators
  - Investigations Manual and training based on Reid technique
    - Behavior Analysis Interview
    - Accusatory Interview
- Court of Appeals upheld the award

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**Non-Verbal Cues That Liars More Often Exhibit than Truth Tellers**

- Fewer illustrators (arm, hand, finger movements) to illustrate what they are saying
- Fewer leg and foot movements
- Pupil size is greater (dilated)
- Appear more tense and have a more tense voice

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**Non-Verbal Cues That Liars More Often Exhibit than Truth Tellers**

- Have their chin more raised
- Press their lips together more
- Appear somewhat less friendly, and have less pleasant looking faces
- No differences in frequency of smiling

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**Verbal Content Cues That Liars More Often Exhibit than Truth Tellers**

- Stories don't make as much sense as true stories. Sound less logical and less plausible.
- Speak more quickly (when lying about transgressions)
- Provide shorter responses
- Provide fewer details and answers seem less complete
- Sound less cooperative
- Less engaging and less involved in what they are saying

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**Verbal Content Cues That Liars More Often Exhibit than Truth Tellers**

- Less immediacy
  - Answers are more distant, impersonal, indirect, not relevant, and evasive
  - Passive vs. Active Voice
- Seem more uncertain in the impression they convey with their words and tone of voice
- More likely to repeat words and phrases
  - But not more likely to use "um," "er", "you know", etc.
- Longer pauses before answering question and while speaking

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**Verbal Content Cues That Liars More Often Exhibit than Truth Tellers**

- Less likely than truth tellers to admit that they do not remember something
- Less likely than truth tellers to correct something that they said before
- Voices sound more tense
- Higher pitched voice

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**Guidelines for examining verbal and non-verbal behaviors**

- Look for clusters of cues to deception
  - No such thing as Pinocchio's nose
  - In one study looked at combination of 4 cues: illustrators, hesitations, latency period, hand/finger movements. Able to correctly classify 70.6% of truth-tellers and 84.6% of liars.
  - But be cautious about jumping to conclusions even when you spot clusters
- Examine verbal and non-verbal clusters at the same time
- Examine changes in speech or behavior

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**Guidelines for examining verbal and non-verbal behaviors**

- Let the person talk. The more time liars have to talk, the more obvious the cues become.
- Don't make up your mind too quickly.
  - Avoid "confirmation bias."
  - Remember that high-stakes interviews can cause truth-teller to be nervous as well.

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**Drew Peterson**



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### Guidelines for interviewers

- Accusatory vs. Information-Gathering Style
- The "Funnel Method"
  - Broad, open-ended questions
  - Exhaust the topics
  - Follow up
  - Recap

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### Scenario: Theft of a purse

Pam put \$100 in cash inside of her purse and placed her purse in an unlocked drawer in her desk. When she left her cubicle to go to the gym over lunch at noon the money was there. When she returned at 1 pm it was gone.

You suspect that Allen and/or Bob may have taken the money. However, Allen and Bob present an alibi; they say that they went to lunch together at 11:45 am and didn't return until 1:15 pm. If you were Allen and Bob, how would you prepare for the interview? If you were the investigator, what questions would you ask each about their alibi?

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### Advanced Interviewing Techniques

- Reverse order storytelling
- Use of unexpected questions and requests for drawings
  - Between witnesses and within the same interview
- Temporal questions
- Strategic use of evidence

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### Content Analysis

- Statement Validity Assessment
- Theory that the inclusion of certain factors indicate truthfulness and are unlikely to occur if someone is lying
- 19 factors, including
  - Unstructured production
  - Rich quantity of details
  - Reproduction of conversations

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### Questions or sign up for investigations newsletter

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