



# HCCA's 12<sup>TH</sup> ANNUAL COMPLIANCE INSTITUTE

APRIL 13–16, 2008 | NEW ORLEANS, LA | HILTON RIVERSIDE NEW ORLEANS

## Who's Lying? How to Identify and Document Untruthfulness in Internal Investigative Interviews

By Michael Johnson, Esq.  
Brightline Learning Division,  
Global Compliance  
(202) 639-9500

[mjohnson@brightlinecompliance.com](mailto:mjohnson@brightlinecompliance.com)



[www.hcca-info.org](http://www.hcca-info.org) | 888-580-8373



# About the Presenter

---

Michael Johnson is Co-President of Global Compliance's Brightline Learning Division. Mr. Johnson is a former attorney in the United States Department of Justice, where he investigated and litigated cases against employers around the country.

Mr. Johnson has trained thousands of compliance and ethics officers, in-house counsel, and human resource professionals how to lawfully and effectively investigate allegations of employee misconduct. The United Nations selected Mr. Johnson to consult on revisions to its policies and to provide investigative training to its staff in New York and in 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. He is a graduate of Duke University and Harvard Law School.



# Overview of Presentation

---

- How to begin the interview
- The “Funnel Method”
- Making credibility determinations
- How much detail about the allegations should I give the accused?
- What if I mistakenly discipline an innocent person?

## 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 issue a warning to Jennifer about this type of behavior? Could the employer legitimately discipline Jennifer?

# Credibility Determination Factors

---

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

# Judge if the witness is being truthful (1 of 2)

---

## **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.

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

A: Not that I recall.

## Judge if the witness is being truthful (2 of 2)

---

Q: Susan, what did you do with the money when you emptied the cash register last Friday night?

A: My standard practice is to empty the cash register, take the money to the safe and count it there, and then put it in the safe.

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.

## John-Karen Scenario (1 of 3)

---

You receive a call from your CEO. She has learned that one of your employees, Karen, is upset with another employee, John, about something that happened last Thursday night. Without consulting you, the CEO asked both Karen and John to write down what happened last Thursday night. They have given the CEO their written statements, and neither John nor Karen saw the other's written statement.

## John-Karen Scenario (2 of 3)

---

According to Karen's written statement, last Thursday night, she and John went to a sales call, then went to a restaurant where they both had too much drink, and then went back to the office. According to Karen, at the office John grabbed her, slammed her against a wall, and grabbed her breast.

## John-Karen Scenario (3 of 3)

---

In John's written statement, he agreed that after the sales call that he and Karen went to a restaurant where they had way too much to drink and eventually went back to the office. According to John's statement, at the office he leaned in and tried to kiss Karen. He said that he only did this because he felt like Karen had been flirting with him the whole night. For example, according to John, she complimented him on his good looks, discussed concerns she had about her relationship with her boyfriend, asked him to buy her flowers, and repeatedly touched him throughout the night.

You are asked to investigate.

# Victor-Diane Scenario

---

Victor informs you that Susan, a project manager on a large government contract, is leaving work 2 hours early but billing the government client for the time. Victor says that both he and Diane have seen this occur. When you interview Diane, she confirms that Susan routinely leaves the office early. However, she asks that you keep her name out of the investigation. Susan denies ever leaving work early and demands to know who claims she did. Before you conclude your investigation, whose name should you provide Susan?

- a. Victor's
- b. Diane's
- c. Victor's and Diane's
- d. Neither

## Valerie-Doug Scenario (1 of 2)

---

Valerie files a complaint alleging that her supervisor, Doug, pressured her to go out with him, demoted her when she ended their relationship, and then continued to make unwelcome sexual comments to her at work. Doug denies Valerie's allegations and says that he, not Valerie, ended the relationship. You conduct a thorough investigation and conclude that Valerie is telling the truth. Based on your investigation, Doug is fired.

## Valerie-Doug Scenario (2 of 2)

---

Two months later, your organization's attorney calls and tells you that Doug is suing the organization. The attorney also says that Valerie has now admitted that she made up the allegations because she was angry that Doug ended their relationship. Which of the following do you tell the attorney?

- a. "Um...I'm sorry, but you've reached the wrong number."
- b. "Hey, I did a good job. Mistakes happen. We'll see them in court!"
- c. "Settle the case!"