



AMERICAN  
BANKRUPTCY  
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## 2017 Northeast Bankruptcy Conference

# Detecting Lies: Strategies for Exposing a Deceitful Witness

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**American Bankruptcy Institute  
Northeast Bankruptcy Conference  
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**Detecting Lies:  
Strategies for Exposing a Deceitful Witness**

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## OUTLINE OF PRESENTATION

### I. Introductions and Historical Commentary

### II. Video Presentation

Compare and contrast lies and truthful statements.

### III. Overview of the State of the Art and Science of Detecting Lies

Motivations and reasons for lying;  
Lie detection as science or art;  
Split of authority among academics and psychologists on lie detection;  
Myths about lie detection;  
Non-verbal cues – fact or fiction;  
Clues in speech;  
Approaches to lie detection;  
Neurological evidence of lying;  
Self-deception; and  
Interviewing techniques for exposing lies

### IV. Discussion of Phases Of Lie Detection

#### A. Client and Witness Interviews

Level of preparation needed to minimize chance of having client or witness lie;  
Approach to interview: whether alone, with or without taking notes, and/or making a record of the interview;  
Difference, if any, between a client and witness interview;  
Most important factors and goals in any interview;  
Reliability of non-verbal or verbal tells at this stage;  
Importance, if any, of witness characteristics (e.g., age, race, ethnicity, educational background);  
Different approaches between a witness and a client; and  
Strategies and techniques for extracting the truth and exposing lies

## **B. Depositions and Trials**

Are there identifiable characteristics of a witness lying under oath at a deposition or trial?

Verbal and non-verbal “tells” during testimony;  
How do cues influence the approach to a witness?

When dealing with a potential lying witness, what are the differences between deposition and trial?

Differences in goals?  
Differences in approach?

How do you make sure the judge or jury knows that a witness has lied?

Attacking the witness?  
Direct accusation of lies?  
Repetitive questioning?  
Closing argument?

## **C. Judge’s Findings of Fact**

Fact finder’s focus and strategies;  
Role of behavioral or non-verbal cues;  
Characteristics of lies and liars;  
Characteristics of honest witnesses and truthful testimony;  
Judicial reaction – questioning and intervention;

Role of prior inconsistent statements;  
Biases and prejudices; and  
Tips and traps.

#### **D. Closing Panel Discussion: Questions and Answers**

##### **Sources**

There are numerous books in your local library purporting to deal with the detection of liars and lies through micro expressions and/or verbal tells, as well as, of course, the historical development of more formalized techniques of lie detection, ranging from trial by ordeal to the lie detector machine. See, for example, the following:

- Dr. Paul Ekman, *Telling Lies: Clues to Deceit in the Marketplace, Politics, and Marriage* (W W Norton 1985).
- Philip Houston et al., *Spy the Lie* (St. Martin's Press 2013)
- Pamela Meyer, *Liespotting: Proven Techniques to Detect Deception* (St. Martin's Press 2010)
- Dr. Lillian Glass, *The Body Language of Liars* (Career Press 2013)

The Panel found the following articles, among others, of interest to them in the preparation of this plenary session:

- M. Vicianova, "Historical Techniques of Lie Detection," *Eur. J. Psychol.*, Aug. (2015) 11(3): 522-534
- E. Meijer et al., "Review: Deception detection with behavioral, autonomic, and neural measures: Conceptual and methodological considerations that warrant modesty," *Psychophysiology*, 53 (2016) 593-604
- T. Luke et al., "Training in the Strategic Use of Evidence technique: Improving deception detection accuracy of

American law enforcement officers.” J. Police Crim. Psych (2016), 31:270-278

- M. Hartwig and C. Bond, “Why Do Lie-Catchers Fail? A Lens Model Meta-Analysis of Human Lie Judgments,” Psychological Bulletin (2011), vol. 137, No. 4, 643-659
- T. Levine et al., “The Impact of Lie to Me on Viewers’ Actual Ability to Detect Deception” (2010), Communication Research 37(6) 847-856
- The MacArthur Foundation Research Network on Law and Neuroscience, “fMRI and Lie Detection” (Feb. 23, 2016)
- C. Shea, “‘The Liar’s Tell’: Is Paul Ekman stretching the truth?” Chronicle of Higher Education (Oct. 10, 2014)

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