



TRIAL TECHNIQUES COMMITTEE

SPOTTING LIARS

By Cynthia R. Cohen, Ph.D.

"Liar, Liar, Your pants are on fire!" children often shout as if lying created effects that were immediately obvious to the onlooker. As we grow older, we sometimes rely on more subtle signs in deciding whether to trust someone. We refer to people as "shifty eyed" or imagine someone has an "honest face."

Often, we are convinced we can judge others' characters on the basis of how they look and behave. Despite what we believe, however, reliance on this kind of common sense often leads to errors. In conducting litigation, it can cost the lawyer -- and the client -- the case. Indeed, studies show that few of us are good judges of character in the absence of experience because the way people look and behave seldom reveals their true motivations.

Who Lies? We know that some people lie more successfully than others. Good liars, like professional actors, have the ability to become the role they are playing. They do not

believe they are lying; they believe the events they describe are actually happening. Pathological liars, on the other hand, cannot choose to be truthful. They know they are lying but cannot stop themselves. They fool people sometimes -- usually in brief encounters. Whether an individual lies under oath depends on whether he or she has gotten away with lying in the past.

Who is perceived as lying? In the courtroom, stereotypes can be hazardous for lawyers and their clients. Some common myths about nonverbal behavior produce misleading clues and lead juries to think witnesses are lying when they're not. These clues include avoiding eye contact and movements such as scratching, picking, crossing one's arms, or tapping the foot. Jurors seldom understand body language that is culturally different from their own.

Similarly, there are groups of people who are likely to be believed or disbelieved. Jurors usually believe experts who have prepared carefully, celebrities, presidents, professors, and doctors. However, they usually do not believe the mother of the defendant, employees of the corporation, eyewitnesses, rape victims, children, the FBI, and -- in Los Angeles, at least -- the police!

Who is really lying? As a litigator, can you detect a liar? Researchers have sought to identify which people are likely to recognize a liar when they meet one. Contrary to popular belief, women do not do

better than men in recognizing someone who is lying. Certain occupational groups seem to be better at detecting liars, however. When members of the Secret Service, FBI, CIA, federal polygraphers, police, psychiatrists, psychologists, judges and attorneys were tested, the results were unsettling. Secret Service members were better at detecting liars than members of the FBI and CIA. Psychiatrists and psychologists did no better than chance. Interestingly, judges and psychiatrists rated their ability to detect lies lower than the Secret Service members, federal polygraphers, and the police. On the whole, those who were good at recognizing emotions were more accurate in judging who was lying.

Learning who's a liar. In the courtroom, lies succeed or fail depending on the liar's motivations and the ability of the observer to detect lies. The most significant body of scientific psychological work on lying has focused on methods for detecting deceptiveness by observing nonverbal behavior. Unfortunately, both for psychologists and lawyers, results suggest there is no infallible lie detection tool -- human or mechanical. Individuals are so complex that there are no certain, universal signs of lying.

While there is no sign of lying that characterizes lying itself, lawyers who want to be more aware of an individual's potential for lying can learn skills which will help detect deceit. To the extent that lawyers

can understand and interpret nonverbal clues correctly, they can advance their advocacy and improve their discovery procedures. Similarly, they can help prepare witnesses to be more effective in front of juries not by making them better liars but by helping them become aware of their behaviors and of jurors' perceptions of them.

Although space does not permit me to give a detailed account of what lawyers can learn about the behavior of people who are lying, some examples may illustrate areas that litigators can study. It is not secret that people frequently make mistakes when they are lying. Most liars don't plan their lies and, because most lies are about facts rather than emotions, a liar's emotions often reveal deception. Frequently, it is his or her feelings about lying that betray the liar.

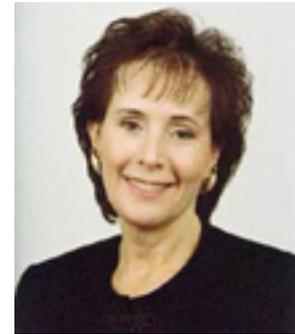
If a lawyer's job is to detect a lie, he or she can take advantage of how poorly people prepare and of the fact that their emotions become involved in the process of their lying. The liar is often vulnerable because he or she is in the position of trying to hold onto a thought without revealing it. The pressure of this struggle makes revelation more urgent, especially if the lie is about feelings. The conflicting emotions usually slip out, if not verbally than nonverbally via involuntary muscle movements (e.g., covering one's mouth or quivering lips). Guilt increases this kind of "leakage" of the emotions. Attorneys can learn to catch these signals and to pursue those they suspect of lying more aggressively.

Attorneys can also learn to

understand nonverbal signs and their meanings more accurately. For example, it is often easy to recognize signs of fear in a witness but one must know what is behind such signs. Is this person afraid of being caught lying or merely afraid of being disbelieved? What motivates the witness? What differences between the person being questioned and the questioner affect perceptions about what is said? These kinds of psychological insights require understanding of how others think and are among the skills that can be learned.

Accurate interpretation of nonverbal clues not only helps in identifying witnesses who are lying or possibly jurors who have biases to hide. Further, an understanding of jurors' methods of comprehension can help litigators fashion arguments that jurors will interpret correctly. In my own research, for example, I have found jurors can understand underwriting, total loss v. partial loss, and complex insurance practices when the concepts are translated into meaningful issues that relate to their daily lives.

Litigation research, which is an outgrowth of applied psychology and the communication research that I have described in this article, has much to offer the litigator. Learning to read people better clearly has advantages in both pretrial and courtroom proceedings. By making use of communication theory combined with in-depth pretrial research, litigators may not control the outcome of a case, but they can certainly improve the odds for a favorable verdict.



Cynthia R. Cohen, Ph.D., is the founder of Verdict Success, a Los Angeles-based litigation consulting firm specializing in jury research and juror comprehension. Dr. Cohen has blended psychological and communication research experience at UCLA and the University of Southern California with trial advocacy. In addition to conducting jury research throughout the nation, she teaches MCLE seminars in communication, and supervises doctoral research in juror perceptions of expert witnesses. She lectures frequently before professional audiences.

Note: This article originally published in 1992 by the ABA Torts and Insurance Practice Section's Trial Techniques Committee reflects Dr. Cohen's application of Dr. Paul Ekman's research on emotion and detecting deception to legal settings. Dr. Cohen and Dr. Ekman collaborated in developing materials for trial lawyers over several years.