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A close-up portrait of Michael Johnson, CEO of Clear Law Institute. He is a middle-aged man with short brown hair, smiling warmly at the camera. He is wearing a dark grey suit jacket, a light blue checkered dress shirt, and a red tie. The background is a soft-focus green, suggesting an outdoor setting with trees.

Getting to the truth in internal investigations

an interview with **Michael Johnson**
CEO, Clear Law Institute

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Michael Johnson, JD
 CEO
 Clear Law Institute
 Arlington, VA

an interview by Adam Turteltaub

Meet Michael Johnson

*This interview with **Michael Johnson** (mjohnson@clearlawinstitute.com) was conducted by HCCA/SCCE Vice President of Membership Development **Adam Turteltaub** (adam.turteltaub@corporatecompliance.org) in July 2016.*

AT: Thanks for spending some time with us. Let's start at the beginning, or really before the beginning. Before you got into Compliance, you were at the Department of Justice. What kind of cases did you work on there?

MJ: I mainly litigated sexual harassment cases and discrimination cases against employers around the country. I brought one of DOJ's first "pattern or practice" sexual harassment cases, which was against a police department. The case included multiple sexual harassment allegations, including alleged sexual assaults of an employee and a citizen.

AT: What were some of the biggest mistakes made by organizations you sued?

MJ: I found that many organizations were wholly unprepared to investigate alleged misconduct. In many cases, the person assigned to conduct an investigation had very little training or experience in conducting investigations. When the case involved a "he said/she said" allegation, the investigator often relied on his or her "gut instinct" to make a determination on who was telling the truth or lying. The investigator's "gut instinct" was frequently based on stereotypical, but incorrect, notions about how you tell if someone is lying.

AT: You then left the DOJ and since then have served compliance programs in a lot of different ways. Let me try and take these

one at a time. First, you've become very well known for your expertise in the area of understanding who is and who isn't lying. I've seen your talk, and what's surprising about it is you show us how wrong we tend to be. How did we get it so wrong?

MJ: There's been a lot of research that shows that people are very poor at determining who's telling the truth and who's lying. In research studies, on average, people can correctly determine who is telling the truth and who is lying only 54% of the time. Given that we'd expect people to get 50% correct if they just guessed, that's not very good.

When trying to determine who is telling the truth and who is lying, people often mistakenly look for non-verbal, body language cues. For example, if a witness is fidgety, the investigator may assume that the person is lying. The witness, though, may be telling the truth, but simply be nervous about being interviewed. Researchers have found that, on average, liars are *less* fidgety. Because liars have heard the stereotype that liars are fidgety, they make a concerted effort to control their body movements.

AT: What should compliance officers be doing to better determine who is telling the truth and who isn't?

MJ: Listen instead of look. People who are looking for non-verbal signs of deception often are looking for cues that are not actually predictive of deception. For example, liars aren't more likely than truth tellers to avoid eye contact.

Instead of looking at body language, compliance officers should focus on getting the person to talk. Instead of going through a series of scripted questions, the compliance

officer should ask the witness to tell them everything about the alleged incident, giving as much detail as possible.

In an ideal world, people would tell the truth. But if someone is going to lie, you want him to lie as much as possible. That is, you want him to commit to a story with as many details as possible. You can then look for evidence or other witnesses to confirm or contradict those details.

In some cases, you can use more advanced questioning techniques after asking the person to tell you what happened. For example, there's interesting research showing that asking the person to tell you

the story in reverse order, asking the person to draw the event as they describe it, and asking questions related to time or space help to better differentiate between who is telling the truth and who is lying. Basically, these types of questions make it more difficult for liars to maintain their deception. Of course, these questions won't be applicable in some investigations, but they can be helpful in others.

AT: Now that I think of it, how do I know that you're telling the truth right now?

MJ: Good point.

AT: In addition to providing organizations with training on how to conduct internal investigations, your company also is involved in online training courses and learning games on ethics and compliance topics. It's a segment of the solutions market that has grown considerably through the years. How have you seen it evolve?

MJ: The technology has advanced so that it's now possible to offer custom courses much more inexpensively. We started offering

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online ethics and compliance training in 2000. Back then, it was very expensive to produce an online course, so you would produce an off-the-shelf course and then customize it slightly for each client. The problem with that approach was that it never really directly addressed the specific issues that a particular client was facing.

Now, newer e-learning development software allows for development of a custom course for each client for less than what we used to charge for off-the-shelf courses. Thus, clients can get training that directly addresses their employees' specific learning needs.

AT: What's always struck me is that there's really no good alternative to online training when training an entire workforce, and there's always a certain amount of dissatisfaction with it, too. How do you think we get satisfaction up, both from the perspective of the compliance team as well as from end-users?

MJ: While employees dread taking generic, check-the-box training that doesn't really apply to them, I think employees actually appreciate compliance courses that provide them relevant information. To be relevant, the training has to address the specific issues that employees actually encounter in their workplace. Also, the training needs to focus on exploring the nuances of complex, ethical dilemmas instead of preaching obvious ethical principles.

AT: You've gotten involved in using online games to teach. Some worry that games may trivialize the issue. Obviously, you disagree. What would you say to those who are concerned?

MJ: When we came up with the idea of using learning games for ethics and compliance topics, I thought of the Winston Churchill quote, "I am always ready to learn, although I do not always like being taught." I think many employees are tired of taking courses—live

or online—that lecture to them. Games allow people to learn about a topic in a more interactive way and become more engaged in the learning process.

Also, games allow for short, bite-sized learning. So instead of rolling out an hour-long course once a year, you can have people play a 10–15 minute game on a different topic three or four times per year.

AT: Let's go back to the topic of investigations. You've got a great deal of expertise in that area, and it's a topic that causes a great deal of anxiety for compliance officers. I know that every time we offer sessions on the topic, they are always full. Where do you see investigations most commonly go wrong?

MJ: Even if the compliance officer has been trained on the most up-to-date research on how to conduct investigations, sometimes the compliance officer is relying on HR, Security, or someone else to conduct compliance investigations. Many times those people have not been trained and often don't do enough investigations to gain much investigative experience.

Without training, investigators will not be able to substantiate many allegations that a well-trained investigator could substantiate. If very few true allegations are substantiated, employees will quickly learn that it's not fruitful to come forward with concerns, because nothing will happen anyway.

AT: Finally, what do you see as coming next for compliance programs?

MJ: I think it's not going to be enough to just have the components of a compliance program in place. There's going to be more scrutiny on whether compliance programs are actually effective.

AT: Thank you, Michael, for sharing your insights with us. 📧