

# Unconscious Bias, Cognitive Errors, and the Compliance Professional

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## About Michael Johnson

- CEO of Clear Law Institute, which provides online and on-site training on hundreds of ethics, compliance, and investigations topics
- Former attorney in the US Department of Justice
- Has trained numerous organizations on investigations and deception topics, including the UN and World Bank
- Graduate of Duke University and Harvard Law School



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## Your role as an E&C officer

- When you make decisions, are you always:
  - Impartial?
  - Unbiased?
  - Logical?
- Would you know if you're not?
- This session
  - Unconscious cognitive errors
  - Unconscious bias against social groups

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Cognitive Errors in Investigations

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Interview of a murder suspect



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Kevin is:

- a. Innocent
- b. Guilty

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## Deception biases

- Inaccurate beliefs about which deception cues are valid
- "Lie bias": Reliance on inaccurate and stereotypical demeanor "cues"
- Belief in "Pinocchio's nose"
- Tip: Focus on listening not looking
  - Niqab case

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## "Expectancy effect"

- Developed a "theory of the case"
- Aggressive questioning style led to nervousness
- Misinterpreted cues ("Othello" error)

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## Confirmation Bias

- Often too much evidence to easily process
- Easier to create an initial hypothesis
- But we then tend to draw selectively from evidence that confirms that hypothesis
- Fail to examine alternative explanations or contradictory information

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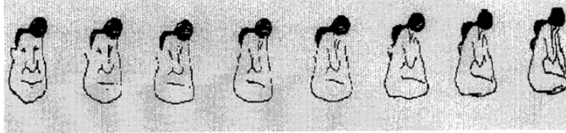
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## Initial impressions matter



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## Confirmation bias: What can make it worse?

- Forming a working hypothesis early on
- The naming of a suspect (Investigator Bias)
- When investigator is provided a description of the witness' qualities before interviewing him or her
- "Fundamental attribution error"

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## Avoiding Confirmation and Other Biases in Investigations

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## Avoiding cognitive errors

- Delay judgment
- Limit your knowledge of background information on parties
- Prime yourself
- Avoid “memory bias”
- Avoid “conformity effects”
- Peer review
- Consider external investigator

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## Credibility heuristics for which people often have mistaken assumptions

- Delay in complaining
- How emphatically the person denies it
- Level of detail
- Saying “I don’t remember”
- Introducing an inconvenient witness
- Corroboration

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## Unconscious Bias Against Social Groups

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## Overview

- Bias is a tendency or an inclination
- Conscious bias
- Unconscious bias (implicit preferences)

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## Examples of Unconscious Bias

- Résumé study
- Hiring of orchestra members
- Judging performance of law firm associates' memo writing abilities
  - 43% more errors found when law firm partners believed the associate was black
- Identifying whether the suspect has a weapon or a harmless object

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## Dangerous Decisions Theory (Trustworthiness Bias)

- People often make snap, intuitive judgments about a person's general trustworthiness upon first seeing the person's face.
- Judgments often based on inaccurate facial appearance heuristics
  - Ethnicity
  - Attractiveness
  - Symmetry
  - "Baby-faced" (Porter & ten Brinke 2009)

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## Why do we exhibit biases?

- Brain takes mental shortcuts
  - Biases create schemas that help us navigate the world without having to relearn something all the time
  - Us vs. them
- Biases are greatly influenced by culture
- People are often not consciously aware of their biases

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## Fast brain vs. slow brain

- Fast brain = emotional, gut instinct
- Slow brain = thinking brain

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## How to measure bias

- Implicit Association Test
- Sorting
  - Deck of playing cards
  - White faces with positive words, black faces with negative words, and vice-versa
  - Order doesn't matter. Bias still shown regardless of order.

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## Examples of types of biases measured by IAT

- Race (white-black)
- Skin tone
- Age
- Gender (Science) Gender (Career)
- Weight
- Disability
- Sexuality

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## Who shows bias

- Almost everyone
- Members of disfavored groups tend to be biased against their own group

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## How to reduce the impact of unconscious bias

- Studies have shown it's not easy to reduce your unconscious biases
- Be aware of your implicit preferences
  - Take IAT
    - Research study showed that just taking the IAT could assist in addressing implicit biases
- Look for ways to challenge your learned stereotypes
- Compensate for your implicit preferences

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## Consider "blinding" yourself when making decisions

- In hiring context?
- In investigations?
- In disciplinary decisions?

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## Closing Quote

- "One must not equate ignorance of error with the lack of error. The lack of demonstration of error in certain fields of inquiry often derives from the nonexistence of methodological research into the problem and merely denotes a less advanced stage of that profession."
  - Herbert Hyman et al., *Interviewing in Social Research* 4 (1954)

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## Questions?

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