

# Chicago Daily Law Bulletin

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## 4th District pulls plug on 'human lie detector'

Carnivals used to have sideshows where someone would bet they could guess your age or weight.

Sideshows may be fine for carnivals, but they have no place in courtrooms. The 4th District Appellate Court deserves credit for recently holding that a carnival act known as the "human lie detector" is all old Barnum and no Old Bailey. The decision in *People v. Michael D. Henderson*, 2009 Ill.App. LEXIS 919 (Sept. 23), merits your attention.

Henderson was tried for aggravated criminal sexual assault. The state introduced a videotape of Henderson being interrogated by police officers. One of the officers who conducted the interrogation testified at trial that he had been schooled in several interrogation techniques that enabled him to determine whether or not a suspect was lying. His training identified certain behavior that might indicate deception: vague responses; non-verbal cues; and "stress defense mechanisms" such as a suspect's scratching his nose or rubbing his hands.

The prosecutor conducted part of the direct examination of the officer while playing a video of Henderson's interrogation for the jury. At various points, the officer commented on what the jury should notice about Henderson's behavior during the interrogation. The officer tells the jury to note that when Henderson is shown a picture of the victim he begins to "sweat profusely." He then offered this commentary to the jury on Henderson's behavior: "[You can see] [h]e's also moved to a defensive position here with his arms crossed. At the beginning of the interview, he had open posture and was leaning forward into me. Now he's leaning way back and arms crossed, avoiding eye contact. In a little bit here, he'll actually even pick the shirt up and hold it in his lap to act as another barrier."

If the sophistication of this analysis strikes you as falling somewhere between Dr. Phil and The Amazing Kreskin, that is no reason why lawyers and judges should not take it seriously. Pop culture has recently exhibited a fascination with the ability to spot liars.

For example, a TV series called "Lie to Me" just started its second season on Fox. The show's Web site describes it thusly: "Dr. Cal Lightman (Tim Roth) is the world's leading deception expert. If you lie to Lightman, he'll see it in your face and your posture or hear it in your voice. If you shrug your shoulder, rotate your hand, or even just slightly raise your lower lip, Lightman will spot the lie. By analyzing facial expressions and involuntary body language, he can read



### Criminal Procedure

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feelings ranging from hidden resentment to sexual attraction to jealousy." (See [www.fox.com/lietome/about](http://www.fox.com/lietome/about).)

Here's a frightening thought: How many members of *your* last jury were fans of the show and brought these "insights" into the jury room?

And it's not just television. A quick check of Amazon revealed these titles: "How To Spot a Liar"; "Never Be Lied To Again: How To Get the Truth in 5 Minutes Or Less in Any Conversation or Situation"; "Telling Lies: Clues to Deceit in the Marketplace, Politics, and Marriage."

And so on.

In its opinion in *Henderson*, the 4th District cites a 7th U.S. Circuit Court of Appeals case in which the government had a special agent testify about how the defendant's body language indicated deception.

The 7th Circuit pointedly rejected the validity of this testimony: "After [an agent] has just informed a person in custody that he has been identified as a suspect ... and explained to him that the police have no doubt [he is guilty], what person would not be nervous, agitated, and unwilling to make eye contact with his investigator? Williams denied that he participated in the robbery, yet [the special agent] purports to be a human lie detector in observing Williams' demeanor. These observations are improper characterizations of the defendant and useless in determining guilt or innocence." *U.S. v Williams*, 133 F.3d 1048 (1998).

The 4th District added: "We agree with the Seventh Circuit, particularly about the uselessness of this testimony, given that it amounts to nothing more than inadmissible opinion testimony by the officer that [Henderson's] story was not true."

It added that this type of testimony violated the fundamental rule that a witness should not be allowed to express his opinion as to another witness's credibility. Although the court did not find the introduction of this evidence to be prejudicial enough in this case to merit a reversal, it concluded by stating that it did not expect to see the use of "human lie detectors" at future trials.

Illinois courts are not alone in condemning this phenomenon of the "human lie detector." A recent law review article critical of the concept cites research indicating that law enforcement professionals who have been trained to detect deception in interrogations perform no better than chance at identifying deceptive persons. It concludes that it is unrealistic to think that officers can become "human lie detectors." Danielle E. Chojnacki, Michael D. Cicchini, and Lawrence T. White, An Empirical Basis for the Admission of Expert Testimony on False Confessions, 40 *Arizona State Law Journal* 1 (2008).

The increased use of videotaping police interrogations is certainly a welcome reform. See, e.g., 725 ILCS 5/103-2.1 (mandating electronic recording of interrogations in homicide cases). And that is why the 4th District has provided a great service in confronting the "human lie detector" idea and nipping it in the bud.

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