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Negotiating With Liars

One of the enduring truths about human beings is that we lie — frequently and often quite casually. In fact, if one believes the recent claims of many psychologists, the impulse to deceive resides deep within our genes, a central feature of our common humanity. As one scholar of deception puts it, "Lying is not exceptional; it is normal, and more often spontaneous and unconscious than cynical and coldly analytical. Our minds and bodies secrete deceit."[1]

Numerous studies confirm that few people can make it through a typical day without lying.[2] In one, subjects asked to keep diaries of their conversations reported that they told lies anywhere from 30% to 50% of the time on topics including their feelings, their actions and their plans and whereabouts.[3] Some 60% of newly introduced individuals lie to one another within minutes simply to create a favorable impression,[4] and dating couples apparently lie to each other even more.[5] According to the most conservative estimates of human resource managers, 25% of all résumés contain significant lies.[6] Moreover, lying behaviors start early — typically at age three or four.[7]

It should not be surprising, then, that when it comes to negotiation, the process is often strewn with falsehoods and deception. In fact, many observers find it difficult to imagine negotiating without some element of deception. Professor James White, an expert in the field, writes:

On one hand the negotiator must be fair and truthful; on the other he must mislead his opponent. Like the poker player, a negotiator hopes that his opponent will overestimate the value of his hand. … The critical difference between those who are successful negotiators and those who are not lies in this capacity both to mislead and not to be misled.[8]

The Morality and Legality of Lying

The pervasiveness of lying may cause some negotiators to become overly casual about the truth. The unspoken, and perhaps unconscious, thought is that if everyone lies, why is it so bad? In a widely read and frequently cited 1991 article in *Sloan Management Review,* Richard Shell, a legal studies and business ethics professor at the Wharton School of the University of Pennsylvania, voiced a spirited objection to the notion that we should adopt a relaxed attitude toward lying in negotiation settings: "[W]hat moralists would often consider merely 'unethical' behavior in negotiations turns out to be precisely what the courts consider illegal behavior."[9] To illustrate the point, Shell reviews numerous legal precedents to make the case that law and morality overlap substantially in outlawing false representations in bargaining situa-

Lying is a central aspect of human behavior. Negotiators need to learn about every tool that will protect their interests.

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tions. Common law fraud requires five simple elements: (1) a false representation of a material fact, (2) knowledge or belief as to its falsity, (3) an intent to induce the other party to rely on the representation, (4) justifiable reliance by the injured party, and (5) damage or injury to the innocent party.[10] Based on these elements, Shell concludes that "unethical bargaining practices are, as often as not, illegal or become so after they are brought to light."[11] In other words, it's not just wrong; it's usually illegal to lie when bargaining.

Not All Deceptions Are Lies

To be sure, one should note that Shell's argument has limits. Notwithstanding his objections to negotiators' lies, he acknowledges that attempts to mislead are a fairly standard part of negotiations — something all negotiators need to be cognizant of.[12] No one should expect full disclosure at a flea market or used-car lot.

In fact, Shell does not argue that people who make misleading statements have necessarily committed an immoral or illegal act. That would mean that negotiators have a fiduciary relationship, imposing the highest duty of honesty and disclosure. At some point, the courts require people to mind the principle of caveat auditor ("let the listener beware").[13] Sales talk, for example, notoriously walks a fine line between legally binding factual statements and mere gratuitous praise, commonly known as "puffing."[14] Technically, the courts hold parties to the truth of their representations, yet they forgive puffs. The challenge is distinguishing legally binding statements from nonbinding ones. Consider, for example, one court's determination that when a sales agent referred to a building as "superb," "super fine" and "one of the finest little properties" in the city, he was simply puffing and not saying anything meaningful about the property's condition.[15] Contrast this with another court's ruling that a salesperson who described a computer as "first class" did make a representation that constituted a legally binding warranty,[16] or another court requiring a car dealer to stand behind an auto he said was in "good running condition."[17] How one is supposed to tease out a consistent "bright line" distinction from these rulings lies beyond the skill of our finest legal minds.[18]

It is also possible to gain advantage over an opponent (and without legal consequence) by not disclosing information that the other party ideally would like to know. For example, a farmer would be thrilled to hear that the party seeking to buy his land represented an oil company that wanted to exploit the mineral reserves. Similarly, a property owner would want to know that the person negotiating to buy his property represented one of the world's largest resort and entertainment companies.[19] Yet, for a variety of public policy reasons, the courts do not typically require companies to volunteer this kind of information.[20] Only if the nondisclosure strikes a court as particularly oppressive or unfair have courts required affirmative disclosure.[21]

Further, the courts rarely punish parties simply for being evasive. As viewers who watch politicians and public officials on Sunday morning interview shows can attest, there is a real art to responding to questions by changing the subject or answering questions that have not been asked.[22] Finally, it is often possible to avoid liability by using misleading behaviors that make no representations, but which seem to. Immanuel Kant famously offered the example of A deceiving B into believing that he is headed on a journey by conspicuously packing a suitcase, hoping that B would draw the intended conclusion.[23]

In light of the moral and legal ambiguity of lying, negotiators need to brace themselves for bargaining deception. They need to understand how they can detect lies and establish safeguards. As critical as this area is, few academic scholars have explored them beyond noting the importance of taking care when one bargains. This article examines the next steps to determine whether one can know when his or her opponent is lying and, if so, what one can do for protection.

Can We Detect Lies?

Everyone seems to have a favorite method for determining when someone is lying. Among the presumed "giveaways" are averting eye contact, pulling on one's ear, sweating, changing vocal pitch, increased (or decreased) smiling, long pauses between answers, rubbing one's arm or fingers, and heavy breathing. The list is long and often inconsistent: Someone blinks — or doesn't blink — and people insist that that person is lying. Many people claim that their test is reliable, and they recount personal experiences as evidence.

However, research shows that most people are quite incompetent as lie detectors. Liars are not easy to spot.[24] Indeed, according to most experiments, the odds of detecting whether someone is lying rarely exceed random chance.[25] For example, the popular notion that liars avert their gaze has been debunked.[26] Other indicators have been similarly discredited: that liars shift posture, move their heads in particular ways, smile inappropriately, make incriminating gestures and reveal falsehoods through specific foot or leg movements.[27] In fact, accomplished liars, knowing what observers look for as signals of deceit, can do an excellent job of controlling those behaviors. If anything, looking for such cues can interfere with an accurate assessment of truth telling. In one study, students were better able to detect lies by reading a transcript than by watching a videotape.[28]

Further evidence of how difficult it is to identify liars comes from a field study of suspects interrogated by the British police. In contrast to laboratory studies (where the only negative fallout from having one's lies detected might be the loss of a cash bonus), this study focused on individuals who faced lengthy incarceration if they lied unsuccessfully.[29] Through a careful winnowing process, the researchers obtained a number of taped interviews in which the suspects both told the truth and lied during an interrogation. (For

confirmation that the suspects actually lied, the authors insisted on irrefutable evidence, such as verifiable confessions, after initial denials of wrongdoing.) The authors then asked independent observers to view the tapes and track a broad variety of behaviors, such as gaze aversion, head movement, blinking, head shaking, body scratching, speech disturbances, frequency of saying "ah" or "um," and verbal pauses. The authors then compared these behaviors to the known instances of lying in the tapes. Based on these observations, the authors reached several important conclusions. First, they debunked the notion that there is a typical indicator of deceptive behavior.[30] Second, the most reliable indicators of deception were stunningly minor: Most suspects paused longer and blinked less when lying.[31] Given how subtle these indicators are, it is fair to conclude that there is no universal — or easily readable — telltale sign of lying.

One can minimize the risk of lies in bargaining through a series of steps designed either to expose liars before negotiations begin or to provide protection from lies.

Equally sobering is the growing body of evidence showing that trained professionals — law enforcement officials, judges, psychiatrists, polygraph examiners, CIA agents or other skilled interrogators — rarely do better than lay observers in detecting lies under controlled experimental conditions.[32] Although they may exhibit high levels of confidence in their ability to detect lies, their certitude is not backed by data.[33]

Concerns Over Lie Detection Technologies

Over the years, scientists have developed a variety of technologies and techniques for detecting lies, most of which remain highly controversial. Topping the list are polygraph machines, often called lie detectors, which relate changes in heart rate, blood pressure and electro-dermal reactivity to a subject's truthfulness. Widely used by law enforcement agencies and businesses, lie detectors have increasingly come under critical scrutiny. The skepticism prompted Congress to enact legislation in 1988 banning the use of polygraph machines in most routine business settings and limiting their use to cases of national security.[34] In 2002, a National Academy of Sciences panel reviewed data from several decades of polygraphs and concluded that there was "little basis for the expectation that a polygraph test could have extremely high accuracy."[35] In fact, the panel estimated that if polygraphs were administered to a group of 10,000 people that included 10 spies, nearly 1,600 innocent people would fail the test — and two of the spies would pass.[36]

In recent years, other technologies have been proposed as alternatives to the polygraph. One of the most highly publicized methods has been described in a number of studies by Paul Ekman.[37] Ekman claims that when people lie, they involuntarily display fleeting facial expressions that give away their deception. He asserts that trained practitioners are able to use his method to detect lies with high degrees of accuracy.[38] However, a measure of skepticism is justified. Given the fleeting nature of microexpressions (and how minor and confusing many of the signals are), it is difficult to see how they can be interpreted with much accuracy in business negotiations.

There are similar doubts about other new technologies, including voice-stress analyzers, magnetic resonance imaging machines and advanced thermal-imaging technology. In recent years, as concerns about terrorism have spread, such tools have been touted for their accuracy in detecting lies. Yet sorting out claims about their effectiveness has become a challenge for law enforcement and defense experts. To date, most experts remain skeptical, and the likelihood that any of these techniques will be useful in the immediate future for businesspeople is remote.[39]

Protecting Against Deception

Given the challenges in detecting lies, one might be tempted to conclude that there are no realistic protections. However, this would be an overreaction. Indeed, one can greatly minimize the risk of lies in bargaining through a series of steps designed either to expose lies and liars before negotiations begin or to provide protection from lies.

Before the Bargaining Begins Every negotiation expert worth his or her salt offers the same advice: prepare, prepare, prepare. Preparation is particularly critical when facing opponents for the first time and the stakes are high. There are two parts: researching the other side's character and bona fides, and anticipating scenarios that might play out in the negotiation.

Research background and bona fides. At a minimum, one should check available sources of public information — the Better Business Bureau, the Federal Trade Commission, state and local consumer protection offices — to see whether the other side has run afoul of the law or good business practices.[40] Perhaps the quickest way to begin is to run a search through Google, Yahoo or one of the other Internet search engines. If suspicions arise about the other side's bona fides or good faith, asking that person to disclose credentials, credit record or personal history forces the individual to prove his or her legitimacy as a bargaining partner. Some negotiators are uneasy about asking for this information since it indicates that they

do not trust the other side. It depends on how you ask. Asking politely, with reassurances that you are trying to establish trust, will usually offset any negative reaction from an honest opponent.

Set special ground rules for bargaining. Under the law, most contracts are negotiated at "arm's length," meaning that the parties have no special duty of disclosure, and each side is acting in his or her own interest. Although the two sides are not free to lie to each other, they generally do not have any duty to disclose secret, material information. This means that an agent bargaining on behalf of the oil company or the amusement park builder to buy land has no obligation to share what they intend to do with the acquired property. However, some experts have argued that parties (especially lawyers) should consider entering into pre-negotiation agreements whereby they commit themselves to negotiate according to higher standards; specifically, they might agree to disclose all material information, abstain from unreasonable delays and abstain from imposing hardships on the other party to force favorable settlements.[41] At a minimum, this would provide reasonable guarantees that a negotiator was not withholding critical information (such as the existence of oil on one's property). Moreover, one side's refusal to enter into a "good faith in negotiation" agreement might act as a tip-off that he or she plans to withhold vital information.

During the Bargaining Process Once bargaining is under way, there are a variety of tools to detect lies. Even when lies can't be detected, one can still build in safeguards against them.

Look for potential signs of deception. Despite evidence that there are no reliable behavioral "giveaways" of lying, the reality is that some individuals are incompetent liars. One should carefully observe the other party to determine if this is so, particularly by monitoring his or her baseline demeanor.[42] If an animated person suddenly becomes shy or a calm person begins to fidget, it is important to pay attention to what they are saying and take additional protective measures.

Ask questions in different ways. People who wish to deceive do not necessarily resort to outright lies, which can lead to charges of fraud. Instead, they dodge, duck, bob and weave around the truth, assuming that their statements will be misconstrued or not challenged. For example, if Tom is trying to contact Suzy and asks John for her phone number, John — who has her e-mail address but not her phone number — might be technically correct in saying that he doesn't have her number. To avoid such a narrow response, Tom should ask John whether he knows of any way to contact Suzy.

Similarly, if Mary asks Sam if he has ever been arrested or convicted of fraud or theft, Sam might respond indignantly: "I've never been convicted of anything like those crimes." The reply might gloss over the fact that he had been charged with fraud but never convicted. Without pushing him to respond to her question about previous arrests, Mary may be misled; whether a court would find that Sam led Mary astray is debatable. Some courts might, but many jurisdictions would probably rule in Sam's favor, believing that it was Mary's job to ask follow-up questions.[43]

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If the questioner isn't convinced that the complete story is forthcoming, he or she can try another approach. The questioner can try to summarize the point at issue in his or her own words and demand that the other side answer with a "yes" or "no." If the person responds with words other than yes or no, the negotiator would be well advised to continue grilling the opponent. Conversely, the negotiator might infer something negative from an opponent's refusal to answer questions about a hidden ownership in land and say, "Since I can't get you to answer the question directly, I am going to assume that you do have an undisclosed interest in the property."

Ask the opponent to "come clean." In any setting where one feels that the other side is not being forthcoming, one should push the other party to reveal all relevant information. To do that, one needs to ask whether there are any material facts that have not been disclosed — in effect, to come clean about knowledge. For example, Sherry strongly suspects that Brad has a hidden reason for wanting to buy her house, but she can't get him to go beyond saying that he sees "strong commercial possibilities." At some point, Sherry might try a different approach and ask, "Is there something important that you know about this deal that you haven't told me?" If Brad denies any knowledge and Sherry later discovers that Brad knows that a highway is slated to go through the area, Sherry might have a strong legal case based on Brad's false representation to her. Although Brad might not have a legal duty to volunteer this information, by denying that he is withholding anything, he exposes himself to possible legal damages for fraudulent nondisclosure.[44]

Ask questions to which you already know the answer. A well-known way to test veracity is to probe areas where you know the answer. If the other side responds with a lie, you know that there is an issue of trustworthiness. A famous example of this approach

can be found in the 1962 Cuban missile crisis. At a meeting with Soviet Foreign Minister Andrei Gromyko, President John F. Kennedy, armed with photographs, asked Gromyko to admit that the Russians had located the missiles in Cuba. Gromyko repeatedly denied that this was the case, whereupon Kennedy angrily ordered a blockade of Cuba and demanded that the missiles be removed.

Take notes during negotiations. When disputes arise after a deal has been struck, one of the difficulties of holding the other side accountable is establishing what was actually stated in the discussion leading up to the agreement. Expert negotiators typically take good notes on critical points to remove any potential ambiguity. Some read the other side's words back to them and ask them to confirm it for accuracy. Others go so far as to bring another party in as a witness to the discussion.

Include written claims as part of the final agreement. In cases where the other party's representations about facts are fundamental to making the deal acceptable, it makes sense to insist that the relevant representation be included in the written terms of the deal. For example, Acme Manufacturing Co. might be reluctant to purchase a widget supplier because it is nervous about future demand for widgets. To reassure Acme, the seller might provide a multiyear purchase commitment from a major customer. However, as a condition of the deal, Acme should insist on getting a reference to the commitment in writing.

Use contingent agreements for protection. Sometimes merely stating an intention to include the other party's statements in the written agreement triggers a more honest discussion. If, however, the other side insists that its original representation is correct, a skilled negotiator can take the next step: Insist on a "contingency" provision in the contract that provides specific protection should the representation turn out to be false. In contingency agreements, the parties agree in advance on consequences and remedies (including monetary damages) if and when certain events unfold.[45]

Trust but verify. Many people will remember President Ronald Reagan's negotiations with Soviet Premier Mikhail Gorbachev in 1987 over the Intermediate Nuclear Forces Treaty, where Reagan used a line attributed to Lenin: "Trust, but verify." The reality is that parties are more likely to trust each other when they have a means of determining whether the other party's representations are accurate. Society has developed a number of legal and regulatory tools (including performance bonds and escrow agents) to help provide protections against dishonesty and bad faith in bargaining. Depending on the circumstances, negotiators should always consider whether such mechanisms are appropriate for achieving their objectives.

Former U.S. Ambassador Clare Booth Luce once remarked, "Lying increases the creative faculties, expands the ego and lessens the frictions of social contacts." Because lying serves so many "useful" purposes, it is no surprise that it is so popular with humans. Knowing this, negotiators need to guard themselves against being exploited when they bargain. As H.L. Mencken noted, "It is hard to believe that a man is telling the truth when you know that you would lie if you were in his place." Fortunately, there are steps you can take to protect yourself against lies and lying liars.

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3. DePaulo, "Lying in Everyday Life," 990.

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6. T. Prater and S.B. Kiser, "Lies, Lies and More Lies," SAM Advanced Management Journal 67 (Spring 2002): 9-16.

7. See M. Lewis, "The Development of Deception" in "Lying and Deception in Everyday Life," eds. M. Lewis and C. Saarni (New York: Guilford Press, 1993), 90-105.

8. J.J. White, "Machiavelli and the Bar: Ethical Limitations On Lying in Negotiation," American Bar Foundation Research Journal 5, no. 4 (autumn 1980): 926-938, 928. Scholars have repeatedly noted the propensity of negotiators to lie. See, for example, M. Schweitzer, "Negotiators Lie," Negotiation 8, no. 12 (December 2005): 1.

9. G.R. Shell, "When Is It Legal to Lie in Negotiations?" Sloan Management Review 43, no. 1 (spring 1991): 93-101.

10. Ibid., 94-98. See also W. P. Keeton, D.B. Dobbs, R.E. Keeton and D.G. Owen, "Prosser and Keeton on the Law of Torts," 5th ed. (St. Paul, Minnesota: West Publishing, 1984), §§107-109, 737.

11. Shell, "When Is It Legal to Lie in Negotiations?" 99.

12. "Commercial negotiations seem to require a talent for deception." Ibid., 93.

13. S.P. Green, "Lying, Misleading and Falsely Denying: How Moral Concepts Inform the Law of Perjury, Fraud and False Statements," Hastings Law Journal 53 (2001): 157-212, 160.

14. Section 2-313 of the Uniform Commercial Code provides that an express warranty is created "by any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the 'basis of the bargain.' " Section 2-312(2) provides, however, that "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty." These latter affirmations are commonly referred to as "puffs."

15. Ed Miller & Sons Inc. v. Earl, 502 N.W. 2d 444 (Nebraska 1993).

16. Ellmer v. Delaware Mini-Computer Sys. Inc., 665 S.W. 2d 158 (Texas App. 1983).

17. Melotz v. Schecls, 801 P. 2d 593 (Montana 1990).

18. Two of the most well-known commentators in the law of sales have thrown in the towel. See J.J. White and R.S. Summers, "Uniform Commercial Code," 4th ed. (St. Paul, Minnesota: West Publishing, 1995),

§ 9.4, 335. They state that "anyone who says he can tell a 'puff' from a warranty is a fool or a liar."

19. To avoid speculators driving up the cost of land for Disney World, the Disney Corp., in 1964, purchased 27,400 acres in Orange and Osceola Counties in Florida through the use of dummy corporations and confidential agents operating under such names as the Latin-America Development and Management Corp. and the Reedy Creek Ranch Corp. See http://en.wikipedia.org/wiki/Disney World.

20. The most frequently cited reason is that forcing parties with superior knowledge to share information that they have painstakingly and expensively acquired would undermine their incentive to seek and gather such information, thus imposing serious efficiency costs on the public. As Professor Donald Langevoort states: "Though the law of nondisclosure is fluid and fuzzy, there is widespread recognition that parties to a negotiation are privileged to withhold at least some crucial information from the other, lest there be a disincentive to the socially beneficial production or discovery of that sort of information." See D.C. Longevoort, "Half-Truths: Protecting Mistaken Inferences By Investors and Others," Stanford Law Review 52 (1999): 87-125, 89-90.

21. The courts have required affirmative disclosure in at least four circumstances: (1) when the nondisclosing party makes a partial disclosure that is or becomes misleading in light of all the facts, (2) when the parties stand in a fiduciary relationship to one another, (3) when the nondisclosing party has "superior information" vital to the transaction that is not accessible to the other side and (4) when special transactions are at issue, such as insurance contracts. Shell, "When Is It Legal To Lie in Negotiations?" 95.

22. On this point, Shell states, "there is no commandment in negotiation that says 'Thou shalt answer every question that is asked.' And as an aspiring idealist, I have found it useful to follow this rule: Whenever you are tempted to lie about something, stop, think for a moment, and then find something — anything — to tell the truth about." See G.R. Shell, "Bargaining For Advantage: Negotiation Strategies For Reasonable People" (New York: Penguin Books, 1999), 228.

23. I. Kant, "Lectures on Ethics 226," trans. L. Infield (1963), in Green, "Lying , Misleading and Falsely Denying," 159.

24. See, for example, G.S. Goodman, T.L. Luten, R. S. Edelstein and P. Ekman, "Detecting Lies in Children and Adults," Law and Human Behavior 30, no. 1 (May 2006): 1-10 (noting that, on average, people's accuracy in detecting adults' lies rarely exceeds chance guesses); P. Ekman and M. O'Sullivan, "Who Can Catch a Liar?" American Psychologist 46, no. 9 (1991): 913-920; C. Lock, "Deception Detection: Psychologists Try to Learn How to Spot a Liar," Science News 166, no. 5 (July 31, 2004): 72-73; and R.M. Henig, "Looking For the Lie," New York Times Sunday Magazine, February 5, 2006, sec. 6, p. 47.

25. That is, one choosing randomly between "truth" or "falsity" would have a 50-50 chance of getting the correct answer. Few test subjects get more than 50% of their guesses right when they seek to determine whether a person is telling the truth in a controlled experiment. See S. Kassin, "On the Psychology of Confessions: Does Innocence Put Innocents At Risk?" American Psychologist 60, no. 3 (April 2005): 215-228, 217.

26. S. Mann, A. Vrij and R. Bull, "Suspects, Lies and Videotape: An Analysis of Authentic High-Stake Liars," Law and Human Behavior 26, no. 3 (June 2002): 365-376; B.M. DePaulo, J.I. Stone and G.D. Lassiter, "Deceiving and Detecting Deceit," in "The Self and Social Life," ed. B.R. Schlenker (New York: McGraw Hill,1985), 323-370; and A. Vrij, "Detecting Lies and Deceit: The Psychology of Lying and Its Implications For Professional Practice" (Chichester, United Kingdom: Wiley, 2000). Vrij reviews more than 40 studies about liars' behavior.

27. DePaulo, "Deceiving and Detecting Deceit," 340, Table 12-4.

28. J.E. Hocking et al., "Detecting Deceptive Communication From Verbal, Visual and Paralinguistic Cues," Human Communication Research 6, no. 1 (fall 1979): 33-46.

29. Mann "Suspects, Lies and Videotape," 366.

30. Ibid, 371.

31. Ibid.

32. For a review of studies that have examined skilled professionals' accuracy in controlled experiments and have demonstrated no greater skill in detecting lies than untrained laypeople, see Ekman, "Who Can Catch a Liar?" 913; and Kassin, "On the Psychology of Confessions," 217.

33. B.M. DePaulo and R.L. Pfeifer, "On-the-Job Experience and Skill at Detecting Deception," Journal of Applied Social Psychology 16, no. 3 (1986): 249-267; and Ekman, "Who Can Catch a Liar?" 919.

34. Employee Polygraph Protection Act of 1988, P.L. 100-347, 29 U.S.C. §§ 2001-09 (1988).

35. Board on Behavioral, Cognitive and Sensory Sciences and Education, National Academy of Sciences, "The Polygraph and Lie Detection," www.nap.edu/books/0309084369/html.

36. D. Eggen and S. Vedantam, "Polygraph Results Often in Question," Washington Post, May 1, 2006, sec. A, p. 1.

37. Ekman, "Who Can Catch a Liar?" 914. See also P. Ekman and W.V. Friesen, "Detecting Deception From the Body or Face," Journal of Personality and Social Psychology 29, no. 3 (1974): 288-298; and P. Ekman, W.V. Friesen and M. O'Sullivan, "Smiles When Lying," Journal of Personality and Social Psychology 54, no. 3 (1988): 414-420.

38. Ibid.

39. See P.R. Wolpe, K.R. Foster and D.D. Langeleben, "Emerging Neurotechnologies For Lie-Detection: Promises and Perils," American Journal of Bioethics 5, no. 2 (2005): 39-49; R. Willing, "Terrorism Lends Urgency to Hunt For Better Lie Detector," USA Today, Nov. 4, 2003; D. Wagner, "Arguments Rage Over Voice-Stress Lie Detector," The Arizona Republic, Oct. 10, 2005; and M. Hansen, "Truth Sleuth or Faulty Detector?" ABA Journal 85 (May 1999): 16.

40. P.C. Cramton and J.G. Dees, "Promoting Honesty in Negotiation: An Exercise in Practical Ethics," Business Ethics Quarterly 3, no. 4 (1993): 359-394.

41. S.R. Peppett, "Lawyers' Bargaining Ethics, Contract and Collaboration: The End of the Legal Profession and the Beginning of Professional Pluralism," Iowa Law Review 90 (2005): 475-538.

42. Mann, "Suspects, Lies and Videotape," 372.

43. Langevoort cites a variety of circumstances that affect court rulings in this area of fraud law: the precise words used, the relative sophistication of the parties, whether the parties are bargaining face to face and so on. Langevoort, "Half-Truths," 102-109.

44. The elements of common law fraud for omission or failure to disclose facts are: (1) an omission to state or disclose, (2) material facts, (3) when there is a duty to do so, (4) with intent to deceive or mislead, (5) causing justifiable reliance on the part of the victim and (6) which is the proximate cause of injury. See N.W. Palmieri, "Good Faith Disclosures Required During Precontractual Negotiations," Seton Hall Law Review 24 (1993): 70-213, 142. See also, Henry v. Office of Thrift Supervision, 43 F. 3d 507 (10th Cir. 1994).

45. Contingent agreements are often used in circumstances in which the parties have different and irreconcilable visions of the future. Rather than argue endlessly about what the future holds, the parties can simply put a contingency in the agreement that provides different outcomes depending on which version of the future proves accurate. See M.H. Bazerman and J.J. Gillespie, "Betting On the Future: The Virtues of Contingent Agreements," Harvard Business Review 77, no. 5 (September-October 1999): 155-160.

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