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Research Report

Honesty Among Lawyers: Moral Character, Game Framing, and Honest Disclosures in Negotiations

*Taya R. Cohen**, *Erik G. Helzer* and *Robert A. Creo*

Lawyers have broad discretion in deciding how honestly to behave when negotiating. We propose that lawyers' choices about whether to disclose information to correct misimpressions by opposing counsel are guided by their moral character and their cognitive framing of negotiation. To investigate this possibility, we surveyed 215 lawyers from across the United States, examining the degree to which honest disclosure is associated with lawyers' moral character and their tendency to frame negotiation in game-like terms—a construal of negotiation that we label game framing. We hypothesize that the more that lawyers view negotiation through a game frame—that is, the more they view negotiation as an adversarial context with arbitrary and artificial rules—the less honest they will be in situations in which honest disclosure is not mandated by

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professional rules of conduct. We further hypothesize that lawyers with higher levels of moral character will apply a game frame to negotiation to a lesser degree than will lawyers with lower levels of moral character, and that honesty when negotiating will be higher when lawyers have higher versus lower levels of moral character. Our study results support these hypotheses. This work suggests that focusing on game-like aspects of negotiation can induce a less moral and ethical mindset. To the extent that teaching law students to “think like a lawyer” encourages them to adopt a game frame of negotiation, we can expect such training to reduce the likelihood of honest disclosure.

Keywords: negotiation, law, lawyers, honesty, moral character, ethics, game framing

Introduction

Lawyers have broad discretion in deciding how to behave when negotiating. Professional rules of conduct generally prohibit outright lying concerning material facts or statements of the law, though misdirection is expected on negotiation goals and bottom lines (Shell 1991, 2018; Hinshaw 2019; American Bar Association 2020). The professional rules governing honest disclosure of information to opposing counsel provide lawyers with wide latitude in deciding whether or how to disclose information, for example, to correct an opposing counsel’s misimpressions or mistakes (American Bar Association 2020). In situations in which honest disclosure is not expressly mandated by professional rules of conduct, we suggest that lawyers’ choices about whether to honestly disclose information will be guided by factors such as their personal beliefs and values, and their cognitive framing of the decision they face.

In this study, we surveyed 215 lawyers in the United States, examining the degree to which honest disclosure is associated with lawyers’ moral character and their tendency to frame negotiation in game-like terms—a construal of negotiation that we label *game framing*. Prior studies have provided evidence of considerable variability in lawyers’ negotiation ethics (Hinshaw and Alberts 2011; Kammeyer-Mueller, Simon, and Rich 2012; Hinshaw, Reilly, and Schneider 2013). We extend prior work on lawyers’ negotiation ethics by integrating psychology research on moral character with management research on negotiators’ decision frames to investigate factors that influence lawyers’ intentions to honestly disclose information to correct opposing counsels’ misimpressions.

Moral Character in Negotiation

With some exceptions (e.g., Barry and Friedman 1998), early research on negotiation largely discounted the role of personality, moral values, and other individual differences and instead focused on understanding how contextual factors influence negotiation processes and outcomes (for reviews, see Thompson 1990; Bazerman et al. 2000). The past decade, however, has seen a growing focus on understanding how negotiators' personalities affect their beliefs, behaviors, experiences, and outcomes (for reviews, see Elfenbein 2015, 2021). This body of work establishes that negotiators' individual differences can influence all stages of the negotiation process and the agreements that are ultimately reached (e.g., Elfenbein et al. 2008; Cohen 2010, 2017, in press; Cohen et al. 2011; Dimotakis, Conlon, and Ilies 2012; Sharma, Bottom, and Elfenbein 2013; Cohen et al. 2014b; Wilson et al. 2016; Elfenbein et al. 2018; Morse and Cohen 2019).

One specific aspect of personality that helps to explain and predict negotiation processes and outcomes is moral character (Morse and Cohen 2019). Moral character is the aspect of personality that describes an individual's tendency to think, feel, and behave in ways associated with moral or ethical behavior (Cohen and Morse 2014; Miller et al. 2015; Rhode 2019). Negotiators' moral character can affect negotiation in myriad ways and across all stages of a negotiation, including pre-negotiation planning and strategizing, bargaining and problem-solving in the negotiation itself, and post-negotiation implementation, reputations, and relationships. Negotiators with lower levels of moral character are more willing than those with higher levels to use morally questionable tactics, which has downstream implications for their reputations and relationships (Volkema and Rivers 2012; Cohen et al. 2014b; Cohen 2017, in press; Morse and Cohen 2019).

Helzer, Cohen, and Kim (2022) introduced the term "the character lens" to capture the idea that moral character shapes the way people view and make sense of the world. Individuals higher (versus lower) in moral character tend to be more attuned to moral issues in the situations they face (i.e., they have greater moral awareness) and are more likely than those lower in moral character to view decisions through an ethical framework. Applied to the negotiation context, this suggests that individuals with higher levels of moral character, relative to those with lower levels, would be more likely to attend to the moral implications of their and others' behavior in negotiation, which would, on average, encourage more moral choices when negotiating.

For lawyers, there is a lack of clear guidance in the professional rules about the necessity of honest disclosure when negotiating. An implication of this is that lawyers have wide latitude to decide whether or

how to correct a misimpression or mistake, as opposed to simply staying silent and letting the false information stand (Hinshaw and Alberts 2011). As discussed in classic psychology work on “weak versus strong situations” (Mischel 1977), when situations allow individuals broad discretion in their decision-making, there will be variability in the decisions that are made, and this variability can be explained, at least in part, by looking at decision makers’ personalities. As such, there is ample room for moral character to influence lawyers’ behavior in negotiations.

State judiciaries insist that successful applicants must possess good moral character as a prerequisite for bar admission (Rhode 1985, 2019; Green and Moriarty 2012). Courts envision good character to be an essential element in regulating the profession and protecting the public, though thorny questions remain as to how to accurately judge a lawyer’s character in the admissions and disciplinary process (Rhode 1985, 2019; Green and Moriarty 2012). As discussed by Rhode (2019), the requirement for lawyers to have good moral character can be traced back sixteen centuries to a Roman code mandating that legal advocates live praiseworthy lives and be of “suitable moral character.” Today, that sentiment is reflected in the observation that “good moral character is a cornerstone in American law” (Rhode 2019: 64).

Lawyers’ Rules of Professional Conduct

Each legal jurisdiction bears responsibility for creating rules of professional conduct to guide lawyers’ behaviors and to discipline lawyers for misconduct. The American Bar Association (ABA) has promulgated Model Rules of Professional Conduct (American Bar Association 2020). Nearly all jurisdictions have adopted identical or comparable language to the ABA Model Rules. These regulations are broad in scope and serve both as prescriptive rules and guiding principles. Lawyers can be disciplined and have their law license revoked or suspended for violations. These rules address issues of lawyer dishonesty, fraud, deceit, misrepresentation, misimpressions, and mistakes of material fact or law, among other issues.

The key rules regulating dishonesty in negotiations are Rule 4.1 and Rule 8.4(c). Rule 4.1: Truthfulness in Statements to Others (American Bar Association 2020) prohibits a lawyer from knowingly making a “false statement of material fact or law to a third person” and from failing to disclose a material fact to a third person “when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client,” unless disclosure is prohibited by confidentiality limitations in Rule 1.6 or protected by the attorney-client privilege. Rule 8.4(c) states it is “professional misconduct” for a lawyer to “engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” These two Rules have been adopted in each of the

jurisdictions where respondents to our survey practiced, with only minor clarifications in a few jurisdictions.¹

The Rules of Professional Conduct acknowledge the role of moral choice in legal representation and discuss the importance of lawyers' professional discretion in their decision-making. As an example, consider the following statements about sensitive professional discretion and moral judgment in the Preamble of The Rules of Professional Conduct.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system. (Preamble [9], American Bar Association 2020)

Other rules likewise emphasize the importance of professional judgment and moral considerations. For example, consider Rule 2.1: Advisor.

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. (Rule 2.1: Advisor, American Bar Association 2020)

The acknowledgment of the importance of lawyers' moral judgment in the rules governing lawyers' conduct may come as a surprise. Contrary to popular perception, lawyers need not put aside their own moral values in blind pursuit of a client's goals. Rather, they are tasked with striking what at times can be a difficult balance between client advocacy and honesty. This point is made explicitly in the Preamble to The Rules of Professional Conduct: "As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others" (Preamble [2], American Bar Association 2020).

Negotiators' Decision Frames

What factors might lead a lawyer to be more (versus less) honest in their dealings with others? To answer this question, we turn to

research on decision frames, and specifically, ethical decision frames. Research on decision framing in conflict and negotiation has a long history (e.g., Bazerman, Magliozzi, and Neale 1985; Pinkley 1990; Neale and Bazerman 1992; Pinkley and Northcraft 1994; Schweitzer, DeChurch, and Gibson 2005; Shmueli, Elliott, and Kaufman 2006; Kern and Chugh 2009; Bazerman 2011; Halevy and Katz 2013; Druckman and Wagner 2021). This work investigates how people's understanding and sensemaking in situations involving conflict and negotiation affect their thoughts, feelings, behaviors, and outcomes. One way in which decisions can be framed is through an ethical frame. Work in this area shows that people act more in accordance with moral values when they apply an ethical frame to the decisions they face (e.g., Tenbrunsel and Smith-Crowe 2008; Jordan 2009; Reynolds and Miller 2015; Chen, Treviño, and Humphrey 2020). We note here that in the social sciences, the term *ethics* is often used interchangeably with the term *morality*, to broadly encompass moral decisions and actions, which may or may not be regulated by legal or professional rules, whereas among lawyers, the term *ethics* is typically used more narrowly to refer to rules that govern lawyers' conduct, as prescribed by each jurisdiction's Rules of Professional Conduct.

An ethical frame "is defined as seeing an issue or decision in terms of ethical values and principles (e.g., caring, fairness) that go beyond self-interest of organizations or individuals" (Chen, Treviño, and Humphrey 2020: 247). As described by Tenbrunsel and Smith-Crowe (2008: 553) in a seminal review of ethical decision-making: "Under the influence of an ethics frame, decision makers are morally aware. Under the influence of other frames (e.g., a business frame or a legal frame), however, decision makers are not morally aware." Recent work on moral character has shown that those with higher levels of moral character are more likely than those with lower levels to apply an ethical frame to their decisions (Helzer, Cohen, and Kim 2022). That is, individuals with higher levels of moral character tend to have greater moral recognition in their daily life, and this helps to explain why such individuals act in more moral and ethical ways.

In past work, ethical decision frames have almost exclusively been contrasted with business and legal decision frames (e.g., Tenbrunsel and Messick 1999; Tenbrunsel and Smith-Crowe 2008; Chen, Treviño, and Humphrey 2020). Such a contrast implies that business and legal thinking are inherently at odds with moral or ethical thinking. From this perspective, business or legal framing of an issue results in less ethical or moral decision-making because concerns about morality and ethics are crowded out by "bottom line" financial or strategic thinking or thinking that focuses on upholding the "letter of the law" rather than the spirit of it.

We disagree with this dichotomy between ethical frames versus business or legal frames and instead propose an alternative perspective. In our view, the opposite of an ethical frame is not a business or legal frame but rather a *game frame*. Game framing and ethical framing represent contrasting ways of understanding the relevant norms that apply to a situation and individuals' decisions are a function of which frame they apply.

Game Framing

Games have many elements and have been notoriously difficult to define precisely (Carse 1986; Suits 2014; Nguyen 2020; Werbach and Hunter 2020). We focus here on two key features of games to make the argument that game framing of negotiation is associated with less honesty. First, prototypical games are *adversarial*; they have winners and losers, and the goal is to win. It is not necessary that a game be adversarial, but typically they are experienced as such. That is, though there can be “infinite games” where the game is played “for the purpose of continuing to play,” we assume that the prototypical game is not an “infinite game” but rather a “finite game,” which is played for the purpose of winning (Carse 1986: 11). An implication of prototypical games being adversarial is a strategic, competitive motivation to achieve one’s goals and beat opponents. We know from prior work that people who approach negotiation as a chance to win or compete versus collaborate are more likely to engage in competitive negotiation behavior, both ethical and unethical (Williams 1983; Schneider 2000, 2002; Schweitzer, DeChurch, and Gibson 2005; Olekalns and Smith 2007).

An adversarial mindset is likely to be particularly prevalent among lawyers in the United States because the U.S. legal system is an adversary system, and law schools train students accordingly. However, just because a system is adversarial in structure does not necessarily imply that behavior within that system will be unethical or dishonest. Rather, an adversarial system can be set up to encourage fair competition. This view is highlighted in the Comment to Rule 3.4, Fairness to Opposing Party and Counsel:

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshalled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like. (Rule 3.4, American Bar Association 2020)

Note that the limited application of “fair competition” in this Rule only prohibits dishonest misconduct related to improper tactics to conceal facts; it does not necessarily require promotion of mutual understanding and affirmative disclosure of all the factual elements underlying the matter.

While competitive beliefs about negotiation on their own might not be sufficient to elicit unethical or dishonest behavior, we propose that when such beliefs are combined with a perspective that the rules governing negotiation are arbitrary and artificial, and by implication that one’s behavior when negotiating does not carry implications for one’s character outside of the negotiation, they create a mindset that allows for dishonesty and other morally questionable negotiation tactics. This brings us to a second key feature of games. Game rules are *arbitrary* and *artificial* in that they do not carry over outside the specific game and could easily be different. As described by Suits (2014) in his seminal philosophical treatise on the nature of games, moral rules are experienced as “ultimate rules,” whereas game rules are not. This idea that game rules are not “ultimates” may be part of why games are fun. The expression “it’s just a game” captures this sentiment. Situations that are viewed as game-like are perceived to be artificial, with rules for behavior that are arbitrary and constrained narrowly to the specific game setting, rather than broadly applicable or generalizable outside that setting. The perceived arbitrariness of the rules governing “games” can allow for psychological bracketing of the meaning of choices in the game—behaviors that test or cross moral boundaries can be cordoned off from negotiators’ beliefs about character and values. Accordingly, viewing a negotiation through a game frame allows a negotiator to believe, “How I behave when negotiating is not a reflection of who I am, it is just how the ‘game’ is played.” While this construal in and of itself may not necessarily give rise to dishonest behavior, we expect it will indeed be associated with dishonesty when it is combined with a competitive motivation to win. In this way, our conceptualization of game framing of negotiation bears similarities to what Shell (2018) has labeled the “Poker School” of bargaining ethics.

To summarize, we argue that the opposite of an ethical decision frame is a game frame. A game frame of negotiation holds that negotiation is an adversarial context with arbitrary and artificial rules. We hypothesize that game framing will be inversely associated with moral character and also inversely associated with honest disclosure. That is, the more that lawyers view negotiation through a game frame, the less forthcoming they will be in situations in which honest disclosure is not mandated by law or professional rules of conduct.

Hypotheses

In the current study, we surveyed 215 lawyers in the United States to test hypotheses about moral character, game framing of negotiation, and honest disclosure in negotiations. Our theoretical model that depicts these hypotheses is shown in Figure One.

Hypothesis One: Lawyers with higher levels of moral character will apply a game frame to negotiation to a lesser degree than will lawyers with lower levels of moral character.

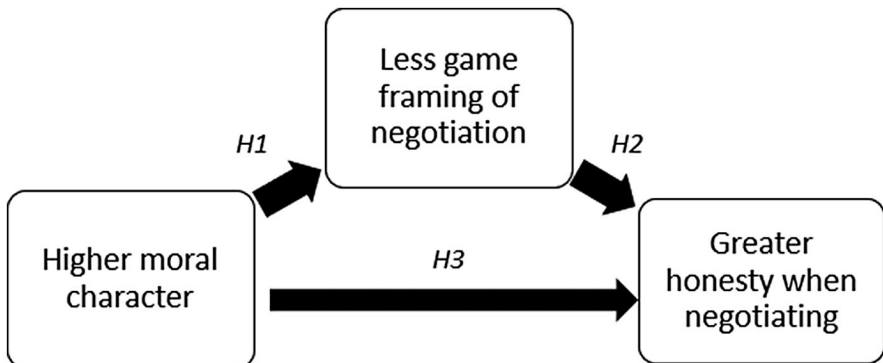
Hypothesis Two: Honesty among lawyers when negotiating will be inversely related to the degree to which they view negotiation through a game frame.

Hypothesis Three: Honesty among lawyers when negotiating will be higher when they have higher versus lower levels of moral character.

Method

This study was pre-registered at AsPredicted.org (#47645): <https://aspredicted.org/jx7ny.pdf>, and was approved by the Institutional Review Board (IRB) at each author's institution. All study materials and data are available on the Open Science Framework (<https://doi.org/10.17605/OSF.IO/R2JVD>) and in the Negotiation Data Repository (<https://doi.org/10.7910/DVN/ZZG2FE>). From September through October 2020, two members of the study team invited lawyers in the United States to participate in a research study investigating "how lawyers think about negotiation practices." Recruitment involved the research team emailing a study announcement with a link

Figure One
Honesty when Negotiating via Higher Moral Character and Less Game Framing



to a ten-minute online survey to personal and professional contacts, LinkedIn connections, and industry listservs, and was supplemented by snowball sampling in which lawyers who completed the survey forwarded the study announcement to others in their firms and professional networks. Participation in the study was restricted to lawyers who were in good standing of any bar in any jurisdiction of the United States. We ended recruitment when we surpassed our predetermined sample size of 200 lawyers. Usable data was obtained from 215 lawyers who answered questions about the extent to which they viewed negotiations through a game frame, their intentions to be honest when negotiating, and their moral character. This represented 88 percent of the 244 lawyers who completed the consent form.

The final sample of 215 lawyers included 105 women and 108 men (2 undisclosed), who practiced law in 24 states and the District of Columbia (i.e., 25 jurisdictions). The largest representation was from Pennsylvania (117 lawyers, 54.7 percent of the sample), California (22 lawyers, 10.3 percent of the sample), and West Virginia (19 lawyers, 8.9 percent of the sample), with representation from other states being limited to 7 respondents (Ohio, 3 percent of the sample) or fewer. Regarding race/ethnicity, 82.6 percent of the respondents were White/Caucasian, 5.2 percent were Black/African American, 4.7 percent were Asian/Asian American, 0.5 percent were Hispanic/Latino, and 7.0 percent were another race or multiracial. The average age in our sample was 52 years (*Standard Deviation* = 13 years), with a range of 27 years to 79 years old. Some respondents were admitted to the bar as early as the 1960s, whereas others had been admitted less than one year prior to taking the survey (average number of years practiced = 25, *Standard Deviation* = 13 years). Approximately half the sample was employed in large or mid-size law firms, 35 percent were employed in small firms or solo practice, and the remainder held other types of employment (e.g., corporate, government, judicial, ADR, academic). Many practice areas were represented in the sample, including (but not limited to): labor and employment law, business law, insurance law, tort/personal injury/workers compensation, dispute resolution/ADR, intellectual property law, real estate law, construction law, and family law. Approximately half the lawyers in the sample (54 percent) indicated they did litigation as part of their work.

After providing demographic and employment information, participants responded to eight questions about the extent to which they applied a game frame to negotiation using the newly developed Negotiation Game Frame scale (Cohen and Helzer 2020). Appendix A lists the items in the negotiation game frame scale, along with the distribution of responses from the lawyers in our sample. We did not use the word “game” in any of the items. Rather, we asked respondents

about the extent to which they believe negotiation is adversarial with arbitrary and artificial rules and standards. Items included: *Success in negotiation is a matter of who can outsmart the opposing party*; *Negotiation counterparties should be treated as adversaries rather than partners*; *The ethical standards in negotiation are no more binding or “real” than any other social custom*; *How a person behaves in a negotiation does not reflect anything about their true character*. Participants rated each item from 1 (*not at all true*) to 5 (*completely true*) and we averaged the scores on the eight items to form a composite indicator of *game framing of negotiation*. Though each of the eight items in the scale captures a different aspect of game framing, they nonetheless were all positively correlated with one another and had sufficiently high internal consistency to justify aggregating them into a single measure ($\alpha = 0.71$). Furthermore, the four items that reflect an adversarial view of negotiation (items 1 through 4) correlated positively and significantly with the four items that reflect a view that negotiation has artificial and arbitrary rules (items five through eight), $r = 0.40, p < 0.001$, supporting our contention that such beliefs often, but not perfectly, covary. Because our conceptual model holds that game framing of negotiation entails both viewing negotiation as adversarial and as a context with arbitrary and artificial rules and standards, we focus our analyses on the composite indicator of game framing (i.e., the average of the eight items). An inspection of the distribution of responses to the negotiation game frame scale indicates that lawyers’ game framing of negotiation varied, with some being relatively more likely than others to view negotiation through a game frame (see Figure A1). The average level of endorsement in our sample was 1.95 out of 5 (*Standard Deviation* = 0.56).

Next, participants read three vignettes based on real events written by a member of the research team who has been a practicing lawyer, arbitrator, and mediator for many years. Each vignette described a situation in which there is an opportunity for honest disclosure during negotiation. These vignettes and the questions that followed are provided in Appendix B, along with the response distributions of the focal honesty items (see Figures B1–B3). The vignettes were written such that there was no clear, bright-line obligation to disclose information to correct the counterparty’s mistaken beliefs. Participants were asked to imagine themselves in each situation and indicate the likelihood that they would react in the way described, using the following response options: 1 = *Extremely Unlikely*, 2 = *Unlikely*, 3 = *About 50 percent Likely*, 4 = *Likely*, 5 = *Extremely Likely*. After reading each vignette, participants were presented with four questions describing possible courses of action, with responses to one question

in each vignette selected by the research team as a focal indicator of honest disclosure or lack thereof. The other questions were included to provide survey respondents an opportunity to clarify their beliefs and consider various ways in which they could disclose information. For example, the first vignette (“Client Can Work”) and focal question about honest disclosure—or in this case a lack thereof—was as follows:

During settlement talks the opposing counsel’s comments make it clear that he thinks your client (plaintiff) has no ability to work, although you didn’t make that claim in any pleadings or communications. On the contrary, plaintiff can work.

How likely are you to continue to settlement without correcting opposing counsel’s misimpression?

As shown in Figures B1–B3, the response distributions of the focal honest disclosure question in each of the three vignettes show variability among lawyers in their willingness to honestly disclose information when negotiating. For example, in the Client Can Work vignette (Figure B1), roughly half of the lawyers in our sample (56 percent) indicated they were unlikely or extremely unlikely to correct the misimpression, while roughly a quarter of the lawyers in our sample (24 percent) indicated they were likely or extremely likely to do so. These response distributions suggest that the vignettes we wrote succeeded in capturing decisions in which lawyers have discretion in their decision-making. If there were unambiguous rules or accepted best practices governing these decisions, then it would be unlikely that we would have observed such variability in lawyers’ responses to these questions.

Last, participants completed three personality scales that provide insight into their moral character: The Brief HEXACO Inventory, which contains four items that measure the broad moral character trait of “honesty-humility” (DeVries 2013); the five-item Moral Identity Internalization scale (Aquino and Reed 2002); and the five-item Guilt Proneness scale (Cohen et al. 2014a). Prior research in psychology and business ethics has established that these three scales provide reliable and valid information about respondents’ moral character and are complementary to one another (Cohen et al. 2014b; Helzer, Cohen, and Kim 2022). The fourteen items from the three scales were each standardized to have a mean score of 0 and standard deviation of 1, and then these items were averaged to form a composite indicator of lawyers’ moral character. Appendix C contains sample items and descriptive statistics. Though each of the fourteen items captures

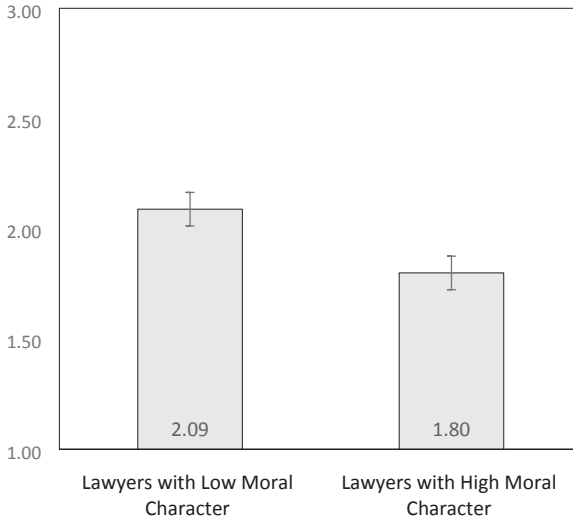
a different facet of moral character, they nonetheless had sufficiently high internal consistency to justify aggregating them into a single indicator of moral character ($\alpha = 0.82$). Relative to their peers, those with higher scores on this measure of moral character indicate that they are committed to fairness, sincerity, and modesty, and resistant to greed (i.e., higher in honesty-humility), that they strive to be moral in their everyday thoughts and actions (i.e., higher in moral identity), and that they have a strong conscience and heightened sense of responsibility to others (i.e., higher in guilt proneness). Prior empirical work by Helzer, Cohen, and Kim (2022) found that individuals with higher scores on these three moral character measures (i.e., honesty-humility, moral identity, and guilt proneness) had greater moral recognition in decisions they faced and made more trustworthy decisions in interpersonal interactions with peers.

Results

We used several statistical approaches to test our three hypotheses. We tested Hypothesis One by examining the relationship between moral character and game framing of negotiation. Consistent with our hypothesis, moral character was inversely associated with game framing of negotiation, as indicated by a significant negative correlation between our measure of moral character and the negotiation game frame scale ($r = -0.17, p = 0.01$). Lawyers with lower levels of moral character applied a game frame to negotiation to a greater degree than did lawyers with higher levels of moral character. Figure Two illustrates this relationship by showing the average negotiation game frame score for the 54 lawyers in the sample with the lowest moral character scores (the bottom quartile) and for the 53 lawyers in the sample with the highest moral character scores (the top quartile).

To test the viability of Hypothesis Two, we examined the relationship between responses to the negotiation game frame scale and responses to the focal honest disclosure item in each of the three vignettes. In support of our hypothesis, lawyers with higher scores on the negotiation game frame scale reported less willingness to honestly disclose information when negotiating. We observed this pattern in each of the three vignettes (see Tables B1–B3). The more that lawyers viewed negotiation through a game frame, the more willing they were to continue to resolution without correcting misimpressions held by opposing counsel in the Client Can Work and Noncompete Clause vignettes, and the less willing they were to disclose honest information directly to the opposition team in the Twin Brother vignette. We conducted a similar analysis to test the viability of Hypothesis Three, examining the relationship between responses to the moral character

Figure Two
Negotiation Game Framing by Lawyers with Relatively Low Moral Character (Bottom Quartile of the Sample, $n = 54$ Lawyers) Versus Relatively High Moral Character (Top Quartile of the Sample, $n = 53$ Lawyers). Error Bars Represent 1 Standard Error Above and Below the Sample Mean.



measure and responses to the focal honest disclosure item in each of the three vignettes. We observed that higher levels of moral character were associated with greater willingness to honestly disclose information (see Tables B1–B3), though the relationship was statistically significant in only two of the three vignettes (the correlation was directionally consistent but not statistically significant in the Client Can Work scenario).

A multivariate general linear model (GLM) allows us to examine the three honest disclosure items as a set, as opposed to examining honest disclosure through separate analyses of each vignette. A multivariate GLM testing the effect of game framing on honest disclosure in the three vignettes yielded a statistically significant relationship, $F(3, 209) = 6.31$, $p < 0.001$. This result supports our theorizing by showing that lawyers' willingness to honestly disclose information in the three vignettes we presented them with is predicted by less (versus more) game framing (Hypothesis Two). We ran a second Multivariate GLM to examine the association between honest disclosure in the three vignettes and moral character, and this too yielded a significant relationship, $F(3, 209) = 3.27$, $p = 0.02$. This result supports our theorizing by showing that

lawyers' willingness to honestly disclose information is predicted by higher (versus lower) moral character (Hypothesis Three).

To illustrate these relationships, we created an honest disclosure composite variable, calculated by averaging the focal honest disclosure item from each of the three vignettes, after reverse coding the item from the Client Can Work vignette and the item from the Noncompete Clause Omission vignette. The honest disclosure composite variable ranged from 1.33 to 5.00, with higher scores indicating more willingness to honestly disclose information (*Mean = 3.52, Standard Deviation = 0.80*). In Figure Three, we show the average honest disclosure score for the 54 lawyers with the lowest moral character scores in our sample (the bottom quartile) and for the 53 lawyers with the highest moral character scores in our sample (the top quartile). In Figure Four, we show the average honest disclosure score for the 53 lawyers with the lowest game framing of negotiation scores in our sample (the bottom quartile) and for the 50 lawyers with the highest game framing of negotiation scores in our sample (the top quartile).

We conducted a mediation analysis to provide a test of the full theoretical model shown in Figure One. This analysis simultaneously tests

Figure Three
Willingness to Honestly Disclose Information by Lawyers with Relatively Low Moral Character (Bottom Quartile of the Sample, $n = 54$ Lawyers) Versus Relatively High Moral Character (Top Quartile of the Sample, $n = 53$ Lawyers). Error Bars Represent 1 Standard Error Above and Below the Sample Mean.

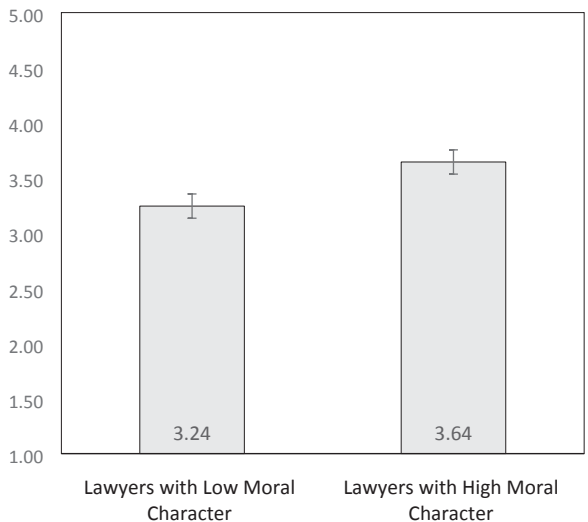
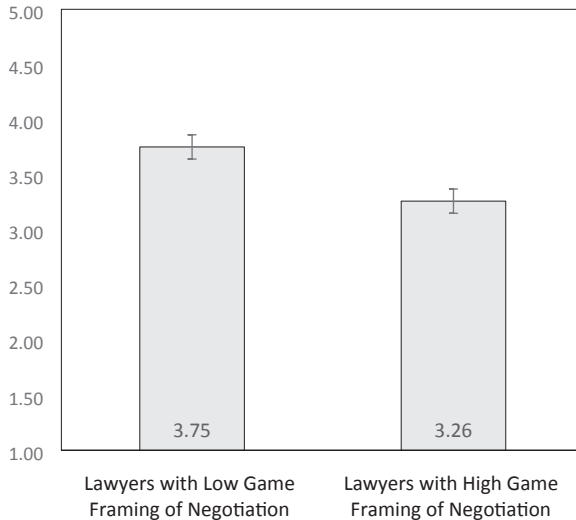


Figure Four
Willingness to Honestly Disclose Information by Lawyers with Relatively Low Game Framing of Negotiation (Bottom Quartile of the Sample, $n = 53$ Lawyers) Versus Relatively High Game Framing of Negotiation (Top Quartile of the Sample, $n = 50$ Lawyers). Error Bars Represent 1 Standard Error Above and Below the Sample Mean.



whether lawyers' standing on moral character is associated with their game framing of negotiation, as well as their willingness to honestly disclose information in the specific negotiation vignettes we presented them with. Though directional arrows are depicted in Figure One, our data were collected at the same point in time via a survey; thus, our analyses cannot confirm the causal direction per se. This is important to keep in mind when interpreting the results below, which are consistent with the model shown in Figure One, but do not rule out other possible causal directions.

For the mediation analysis,² we used the honest disclosure composite variable described above. This analysis revealed a significant negative relationship between moral character and game framing of negotiation ($B = -0.18$, $SE = 0.07$, $p = 0.01$), further establishing that higher levels of moral character are associated with less game framing of negotiation (consistent with Hypothesis One). The analysis also revealed a significant negative relationship between game framing of negotiation and honest disclosure ($B = -0.35$, $SE = 0.09$, $p < 0.001$), further establishing that less game framing of negotiation is associated with more honest disclosure,

or put differently, that more game framing of negotiation is associated with less honest disclosure (consistent with Hypothesis Two). Finally, the “direct effect” of moral character on honest disclosure was statistically significant (95 percent Confidence Interval = 0.04: 0.42), as was the “indirect effect” of moral character on honest disclosure via game framing of negotiation (95 percent Confidence Interval = 0.01: 0.14), both of which were indicated by confidence intervals that did not include 0 (consistent with Hypothesis Three). Again, our data are correlational, and thus cannot provide definitive evidence regarding causality. Therefore, we interpret the results of the mediation analysis as supportive (but not definitive) evidence that honest disclosures in negotiations are associated with higher moral character and less game framing.

Finally, though not central to our study, we explored whether lawyers’ demographic and/or employment characteristics were associated with moral character, game framing of negotiation, and/or honest disclosure. The most critical finding from our analyses of demographic and employment characteristics is that the relationships we documented above showing associations between moral character, game framing of negotiation, and honest disclosures are robust after accounting for lawyers’ demographic and employment characteristics.

With regard to potential gender differences (Hinshaw and Alberts 2012; Schneider 2019), female lawyers reported higher levels of moral character than did male lawyers ($r = 0.19$, $p = 0.006$), which replicates existing research documenting gender differences in moral character (e.g., Cohen et al. 2014b). Female lawyers did not, however, significantly differ from male lawyers in their willingness to disclose honest information in any of the three vignettes ($ps > 0.15$). Female lawyers were marginally less likely than male lawyers to construe negotiations through a game frame ($r = -0.12$, $p = 0.07$), which is an intriguing finding that merits further investigation. The relationship between gender and game framing seems to be accounted for by female lawyers’ higher levels of moral character. When both gender and moral character are included in a regression analysis predicting game framing of negotiation, only moral character is statistically significant. This suggests that the marginal gender difference in game framing of negotiation is likely attributable to a corresponding gender difference in moral character.

We also explored whether a lawyer’s age or years of practicing law were significantly correlated with moral character, game framing of negotiation, or honest disclosure. Though prior research has linked older age with higher levels of moral character (e.g., Cohen et al. 2014b), no significant relationships emerged in this study for either of these variables.

With regard to employment characteristics, no significant differences emerged in moral character, game framing of negotiation, or honest disclosure according to whether the respondent practiced in a large or midsize firm versus a small firm or solo practice versus other types of employment. Approximately half the sample (54 percent) indicated that their work involved litigation and half did not. As such, we had sufficient statistical power to examine how litigation might relate to our focal variables. Litigation practice was marginally correlated with game framing of negotiation ($r = 0.12, p = 0.09$), suggesting that litigators may be slightly more likely to construe negotiation through a game frame as compared to lawyers who do not litigate. However, litigation practice was not significantly related to moral character ($r = 0.01, p = 0.89$) and litigation was not consistently associated with honest disclosure. Specifically, litigation was associated with marginally less honest disclosure in the Client Can Work vignette ($r = -0.13, p = 0.06$), but litigation practice was uncorrelated (and statistically in the opposite direction) with honest disclosure in the Noncompete Clause Omission vignette ($r = 0.08, p = 0.28$), and also uncorrelated with honest disclosure in the Twin Brother vignette ($r = -0.02, p = 0.81$). Overall, these results are inconclusive and would benefit from future research examining how doing litigation as part of one's practice may (or may not) influence lawyers' honesty, moral character, and the extent to which they apply a game frame to negotiation.

Though our survey had representation from lawyers in many different practice areas and jurisdictions, and from lawyers of different races and ethnicities, it was by no means representative of the population of U.S. attorneys, nor a large enough sample to systematically explore these variables. Future work is needed to investigate potential relationships between moral character, game framing of negotiation, and honest disclosure with practice area and jurisdiction in which a lawyer practices. For example, prior work suggests that family lawyers are (or are perceived to be) more adversarial and less interested in problem-solving than other types of attorneys (Schneider and Mills 2006). As such, it stands to reason that they might be higher in game framing of negotiation as well. However, with only seven respondents to our survey indicating that they practiced family law (<4 percent of the sample), we could not test this possibility with the current data.

Conclusion

When professional codes of conduct do not provide bright lines, lawyers, like many professionals, must determine for themselves what is the course of action that promotes the ideals and goals of the profession. In the context of negotiations by a lawyer, individual discretion of this sort can matter greatly because professional standards only mandate

proactive, honest disclosure of information to tribunals (e.g., courts) and not in negotiations with opposing counsel. Moreover, attorneys are faced with conflicting advice from settlement guidelines and existing regulatory frameworks regarding what constitutes acceptable behavior. For example, the Client Can Work and Noncompete Clause Omission vignettes we created for this study were inspired by American Bar Association Settlement Guideline 4.3.5, Exploiting Opponent's Mistake (American Bar Association 2002), which states:

In the settlement context, a lawyer should not exploit an opposing party's material mistake of fact that was induced by the lawyer or the lawyer's client and, in such circumstances, may need to disclose information to the extent necessary to prevent the opposing party's reliance on the material mistake of fact.

Though this advisory guideline suggests that a lawyer should honestly disclose information to correct an opposing party's mistaken beliefs in some circumstances, Rules of Professional Conduct condone or allow silence in many circumstances, suggesting that behavior must rise to a higher level of misconduct to violate professional norms. As summarized by Shell (1991), "In general, the law requires the speaker to make a positive misstatement before it will attach liability for fraud." For example, Rule 4.1: Truthfulness in Statements to Others (American Bar Association 2020) contains a Comment³ on Misrepresentation that states:

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Neither Rule 4.1 nor the Comment quoted above provide clear-cut direction or guidance as to when silence or failure to proactively disclose information constitutes misconduct. Accordingly, lawyers are permitted to view silence (versus forthcoming, honest disclosure to opposing counsel) as acceptable because with silence they are not making a false statement and there rarely is a duty to educate opposing counsel of relevant facts.

In the current study, we examined lawyers' personality characteristics that are indicative of their moral character—honesty-humility (Lee and Ashton 2012), moral identity internalization (Aquino and Reed 2002), and guilt proneness (Cohen, Panter, and Turan 2012)—which we assessed using standard measures from the psychology literature (Cohen et al. 2014b; Helzer, Cohen, and Kim 2022). Our results are consistent with the possibility that lawyers' choices about whether to disclose honest information to correct misimpressions by opposing counsel are guided by their moral character, as well as their cognitive framing of negotiation—specifically their *game framing* of negotiation. Survey responses from 215 lawyers in the United States indicated that when lawyers applied more of a game frame to negotiation—seeing negotiation as an adversarial context governed by artificial and arbitrary rules—they reported less willingness to disclose honest information to correct counterparties' misimpressions. Furthermore, both honest disclosure intentions and game framing were associated with lawyers' standing on moral character. Lawyers with higher levels of moral character applied a game frame to negotiation to a lesser degree than did lawyers with lower levels of moral character and reported more willingness to disclose honest information to correct misimpressions held by counterparties.

This study makes several contributions to negotiation theory and practice. First and foremost, we introduce the psychological concept of a *game frame*. Game framing of negotiation permits low levels of honesty by inducing a competitive orientation in which rules are regarded as arbitrary, artificial constructs rather than moral or ethical requirements. By introducing game framing into the negotiation literature and linking it with lower levels of moral character, our work integrates research on personality, moral psychology, decision-making, conflict, and negotiation, pointing to important person-level predictors of honest disclosure in negotiations. Our results suggest that moral character and game framing are both likely to play a critical role in determining a negotiator's likelihood of honestly sharing information with a counterparty.

Second, this research advances our understanding of honesty by providing insight into an overlooked element of honesty—attempts to foster true beliefs in others. Cooper et al. (in press) recently introduced a new conceptualization of honesty that encompasses three dimensions: (1) seeking out accurate information and incorporating that information into one's beliefs (*truth-seeking*); (2) communicating verbally or in written statements what one believes to be accurate information (*belief-speaking*); and (3) ensuring receivers develop an accurate understanding of the information (*fostering understanding*).

This framework diverges from most other conceptions of honesty, which focus narrowly on belief-speaking (e.g., Levine and Cohen 2018), and from lawyers' disciplinary rules, which focus more so on the first two components (i.e., "truth-seeking" and "belief-speaking"), addressing the third (i.e., "fostering understanding") as largely discretionary. Proactive disclosure of truthful information in negotiation—the behavior we examined in each of the three vignettes in our survey—is interesting to consider in the context of negotiations by lawyers given that lawyers often dodge and deflect direct questions (Bitterly and Schweitzer 2020), and palter, defined as "the active use of truthful statements to create a false impression" (Rogers et al. 2017: 456). Such behaviors are intended to foster a lack of understanding in one's counterpart, and accordingly can be considered deviations from honesty even though they are not false statements or lies. Our study revealed that higher levels of moral character and lower levels of game framing are associated with greater willingness to proactively disclose truthful information to foster an accurate understanding in one's counterpart even when it would be legally permissible to stay silent.

With regard to practice, we believe the present findings invite caution and reflection about how negotiation is or should be discussed and taught. Educators, mentors, and negotiators themselves should be mindful of the various ways they can invite game framing of negotiation. Game norms can be reinforced informally through language that likens real-world, consequential decisions to games and game-playing. Carr (1968) famously compared business to a game of poker to argue bluffing is acceptable and that we should "discard the golden rule" in business dealings. Related to Carr's work, our study suggests that emphasis on game-like aspects of negotiation can induce a less moral mindset and less honesty. In contrast to Carr's (1968) position, we contend that ethical framing (rather than game framing) is overall beneficial for negotiations and other business dealings. Consistent with our argument, Schneider (2002) surveyed lawyers about the effectiveness of different negotiation styles and found that the single adjective (out of 89 included for study) most closely linked with lawyers' perceptions of effective problem solving was "ethical." Along similar lines, negotiation textbooks, reference books, and popular press books (e.g., Malhotra and Bazerman 2007; Fisher, Ury, and Patton 2011; Brett 2014; Honeyman and Schneider 2017; Shell 2018; Berkel 2020; Lewicki, Barry, and Saunders 2020; Thompson 2020; Rockmann, Langfred, and Cronin 2021) overwhelmingly encourage negotiators to honestly disclose information about their interests and priorities to create value, build trust, and enhance their reputations.⁴ Questions remain about what characteristics might make

negotiators more versus less willing to honestly share information. Our study suggests that moral character and game framing of negotiation are both likely to play a role. Given that we did not have any indicators of lawyers' effectiveness in the current study, investigating how moral character, game framing, and honest disclosure relate to effectiveness in negotiations is an important area for future study.

To the extent that teaching law students to “think like a lawyer” encourages them to adopt a game frame of negotiation, we can expect such training to reduce the likelihood of honest disclosure, which could temper their effectiveness at problem solving and may adversely impact their mental health as well. If students enter law school with high moral character and an ethical frame of negotiation but are later encouraged through their law school training to adopt a game frame and/or behave in ways that run counter to their own sense of right and wrong, it could lead to a Person X Situation mismatch resulting in ethical conflict, psychological distress, emotional exhaustion, and worse (Kammeyer-Mueller, Simon, and Rich 2012). The same case could be made for training business students to think of business as a game (Carr 1968)—doing so could adversely affect their ethics, effectiveness, and well-being. We encourage longitudinal studies of law students and business students that investigate how moral character, game framing, honesty, and well-being may change over the course of law school and business school, and as students' careers progress post-graduation.

A critical limitation of the current work is the correlational nature of our study design, which prevents us from drawing conclusions regarding the causal pathways of the relationships we observed. Our theoretical model (Figure One) is structured such that it moves from a general tendency that people exhibit (*moral character*) to a cognitive decision frame of a particular type of situation (*game framing of negotiation*) to specific behaviors in particular contexts (*honest disclosure* in different vignettes). However, our study design itself—a cross-sectional survey—cannot confirm that the causal directions are as theorized.

Future studies could productively build on this one by intervening on game framing of negotiation in a randomized experiment, for example by training negotiators to apply an ethical frame rather than a game frame to the decisions they face. Offsetting the effects of game framing may require reminders that most real-life negotiations are not one-shot exchanges, so achieving short-term wins through dishonesty or other morally questionable methods can, and often does, result in significant

longer-term costs to one's professional reputation and trust (Lewicki 2017a, 2017b), as well as one's psychological well-being (Kammeyer-Mueller, Simon, and Rich 2012).

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CONFLICT OF INTEREST

The authors have no conflicts of interest to disclose.

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DATA AVAILABILITY STATEMENT

Data and survey materials described in this research report are available on the Open Science Framework (<https://doi.org/10.17605/OSF.IO/R2JVD>) and in the Negotiation Data Repository of Harvard Dataverse (<https://doi.org/10.7910/DVN/ZZG2FE>). This study was pre-registered at AsPredicted.org (#47645, <https://aspredicted.org/jx7ny.pdf>).

NOTES

1. For example, in California, Rule 8.4(c) contains the phrase “reckless or intentional misrepresentation” as opposed to simply “misrepresentation” (The State Bar of California 2021). In North Carolina and Virginia, Rule 8.4(c) clarifies misrepresentation as “misrepresentation that reflects adversely on the lawyer’s fitness as a lawyer” (North Carolina State Bar 2021), and “misrepresentation which reflects adversely on the lawyer’s fitness to practice law” (The Virginia State Bar 2021), respectively. In Missouri and Florida, Rule 8.4(c) contains a clause granting exceptions for undercover investigations (Missouri Courts 2021; The Florida Bar 2021).

2. To conduct the mediation analysis, we used the SPSS PROCESS procedure with 5,000 bootstrap samples, developed by Hayes (2018).

3. Comments to the Rules of Professional Conduct “are intended as guides to interpretation, but the text of each Rule is authoritative” (Model Rules of Professional Conduct, Scope [21], American Bar Association 2020).

4. This is not to say that it is good practice to be forthcoming about all information when negotiating. For example, it is rarely a good idea to disclose information about one’s bottom line (i.e., reservation price). Still, even there, lying (i.e., making a false statement) is generally not recommended, as opposed to simply not disclosing.

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Appendix: A Negotiation Game Frame

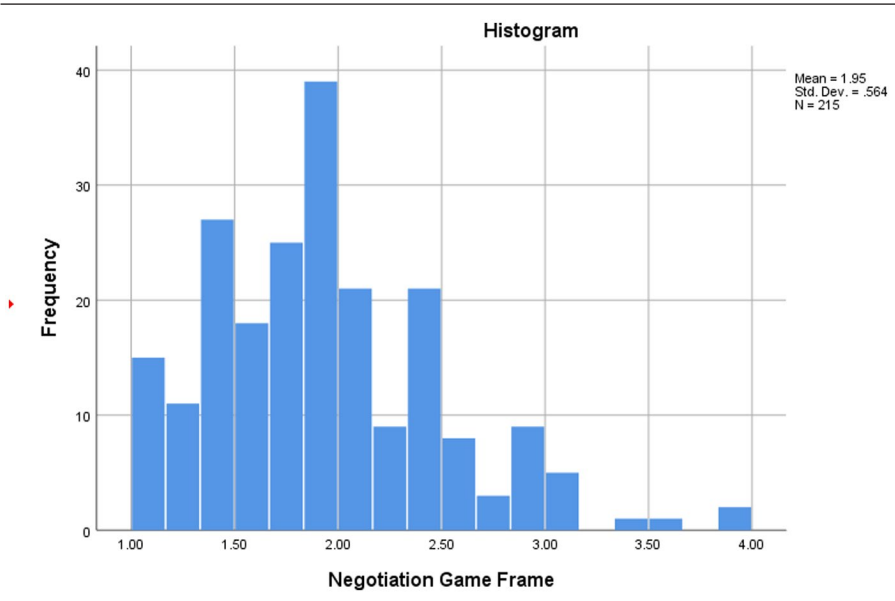
Cohen, T. R., and E. G. Helzer. 2020. *Negotiation Game Frame Scale*. Pittsburgh, PA: Carnegie Mellon University. Available from <https://doi.org/10.17605/OSF.IO/YJXAF>.

Beliefs About Negotiations Questionnaire: We are interested in assessing your beliefs about negotiations. There are no right or wrong answers to the questions that follow; please answer according to your own experiences. Please indicate how true each of the following statements is as a description of negotiations, using the response options provided.

1 Not at all true, 2 Slightly true, 3 Moderately true, 4 Mostly true, 5 Completely true

1. In a negotiation, the goal is to beat your opponent.
2. In a negotiation, being cooperative is a liability.
3. Success in negotiation is a matter of who can outsmart the opposing party.
4. Negotiation counterparties should be treated as adversaries rather than partners.
5. The line between appropriate and inappropriate conduct in negotiation is actually fairly arbitrary.
6. The ethical standards in negotiation are no more binding or “real” than any other social custom.

Figure A1
Distribution of Responses to the Negotiation Game Frame Scale.
Responses could range from 1 to 5, with higher scores indicative of greater game framing.



-
7. The rules that govern negotiation are more like temporary agreements than moral absolutes.
 8. How a person behaves in a negotiation does not reflect anything about their true character.

[The scale was scored by averaging the 8 items.]

Descriptive Statistics of Negotiation Game Frame Scale

N = 215 lawyers, α = 0.71, *Mean* = 1.95, *Standard Deviation* = 0.56, *min* = 1.00, *max* = 3.88

Appendix B: Honesty Vignettes

Instructions: In the next section, you will read about several situations that lawyers could encounter in their work, followed by possible reactions to those situations. As you read each scenario, try to imagine yourself in that situation. Then indicate the likelihood that you would react in the way described, using the following response options: 1 = *Extremely Unlikely*, 2 = *Unlikely*, 3 = *About 50 percent Likely*, 4 = *Likely*, 5 = *Extremely Likely*

[For each vignette below, the item shown in bold was used to form an indicator of intentions to honestly disclose information in negotiations. Greater honesty was indicated by lower scores on the Client Can Work item and on the Noncompete Clause Omission item, and higher scores on the Twin Brother item.]

Client Can Work

During settlement talks the opposing counsel's comments make it clear that he thinks your client (plaintiff) has no ability to work, although you didn't make that claim in any pleadings or communications. On the contrary, plaintiff can work.

1. **How likely are you to continue to settlement without correcting opposing counsel's misimpression?** *[*focal indicator of honest disclosure, after reverse coding]*
2. How likely are you to take direction solely from your client about whether to correct opposing counsel's misimpression?
3. How likely are you to advise your client of your intent to disclose that plaintiff can work to opposing counsel and withdraw representation if your client refuses?
4. How likely are you to disclose plaintiff can work to opposing counsel and document the disclosure without asking your client first?

Noncompete Clause Omission

You represent an at-will executive terminated from a large company without explanation in negotiations over severance pay, stock options, disparagement prohibitions, and a noncompete clause. The executive had direct communications with the CEO and orally agreed with her on a list of companies he would not work for in the next two years in return for enhanced severance and other economic benefits. You met with your client and created a written list in your notes of these companies. The

Table B1
Descriptive Statistics and Correlations for the Client Can Work Vignette

Variable	<i>n</i>	<i>M</i>	<i>SD</i>	1	2	3	4	5	6
1. Moral Character	215	0.00	0.54	-					
2. Game Framing	215	1.95	0.56	-0.17*	-				
3. Client Can Work 1	213	2.54	1.21	-0.08	0.14*	-			
4. Client Can Work 2	213	2.39	1.14	-0.11	0.14*	0.22**	-		
5. Client Can Work 3	208	2.95	1.32	0.09	-0.09	-0.17*	-0.32***	-	
6. Client Can Work 4	211	1.77	1.00	-0.03	-0.07	-0.01	-0.16*	0.15*	-

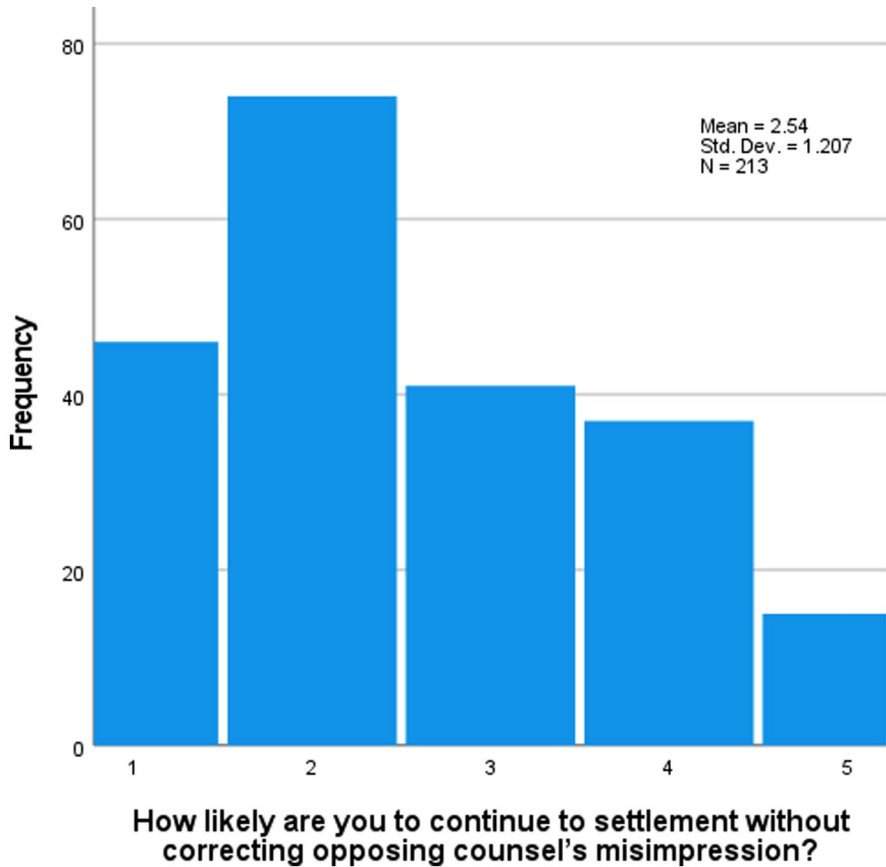
* $p < 0.05$

** $p < 0.01$

*** $p < 0.001$

Figure B1

Distribution of Responses to the Client Can Work 1 item. Responses could range from 1 to 5, with higher scores indicative of less willingness to honestly disclose information. This item was reverse coded to form an indicator of honest disclosure.



settlement document prepared by opposing counsel for Blue-ink signature omitted one of the companies on the list from the restrictive covenant.

- 1. How likely are you continue to signatures without informing opposing counsel of the omission?** [**focal indicator of honest disclosure, after reverse coding*]
- 2. How likely are you to take direction solely from your client about whether to inform opposing counsel of the omission?**
- 3. How likely are you to advise your client of your intent to inform opposing counsel of the omission and withdraw representation if your client refuses?**

Table B2
Descriptive Statistics and Correlations for the Noncompete Clause Omission Vignette

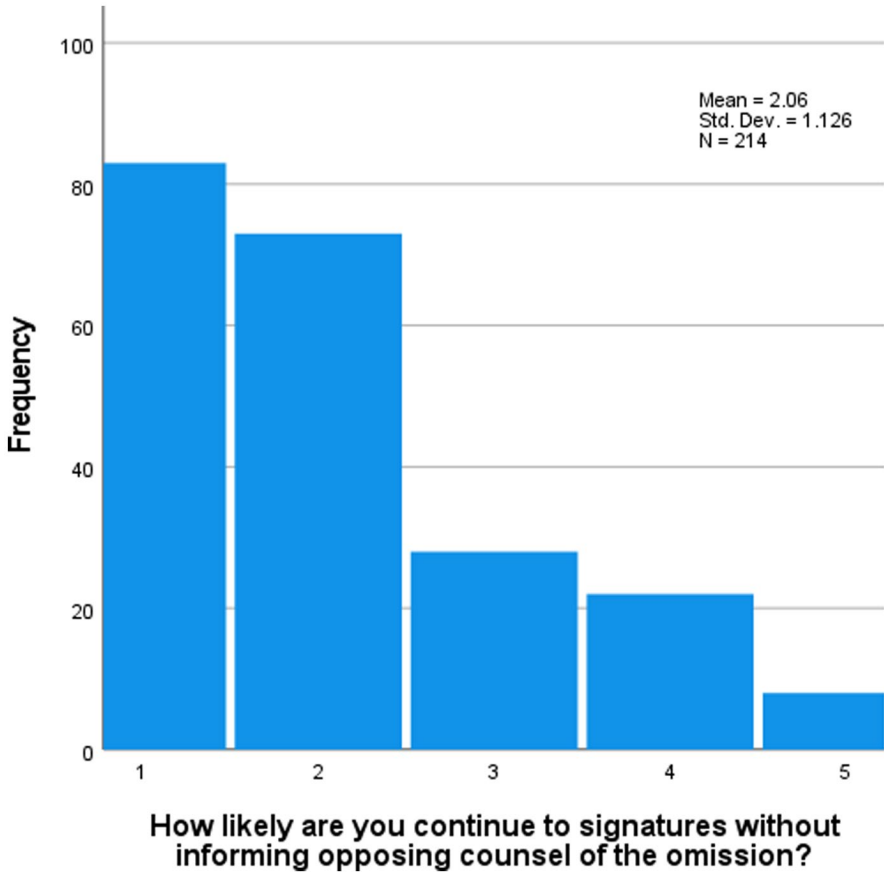
Variable	<i>n</i>	<i>M</i>	<i>SD</i>	1	2	3	4	5	6
1. Moral Character	215	0.00	0.54	–					
2. Game Framing	215	1.95	0.56	–0.17*	–				
3. Noncompete 1	214	2.06	1.13	–0.15*	0.25***	–			
4. Noncompete 2	214	2.31	1.31	–0.16*	0.22**	0.45***	–		
5. Noncompete 3	214	3.16	1.35	0.07	–0.14*	–0.38***	–0.50***	–	
6. Noncompete 4	214	1.86	1.20	–0.05	–0.08	–0.17*	–0.22**	0.07	–

* $p < 0.05$ ** $p < 0.01$ *** $p < 0.001$

Figure B2

Distribution of Responses to the Noncompete Clause Omission 1 item. Responses could range from 1 to 5, with higher scores indicative of less willingness to honestly disclose information.

This item was reverse coded to form an indicator of honest disclosure.



4. How likely are you to inform opposing counsel of the omission without first asking your client?

Twin Brother

You are representing a client (plaintiff) in a mediation process involving a disability claim. Following a confidential caucus the mediator has with the opposition team, the mediator has a caucus with you and your client and states that the defendant has “absolute proof that your client is not disabled” based upon a video she has just seen. You ask the mediator to leave so you can have a private caucus

Table B3
Descriptive Statistics and Correlations for the Twin Brother Vignette

Variable	<i>n</i>	<i>M</i>	<i>SD</i>	1	2	3	4	5	6
1. Moral Character	215	0.00	0.54	–					
2. Game Framing	215	1.95	0.56	–0.17*	–				
3. Twin 1	214	1.75	0.95	–0.18*	0.20**	–			
4. Twin 2	214	2.58	1.30	–0.04	0.16*	0.57***	–		
5. Twin 3	213	3.20	1.17	–0.02	–0.04	–0.33***	–0.24***	–	
6. Twin 4	214	3.14	1.23	0.17*	–0.17*	–0.50***	–0.52***	0.29***	–

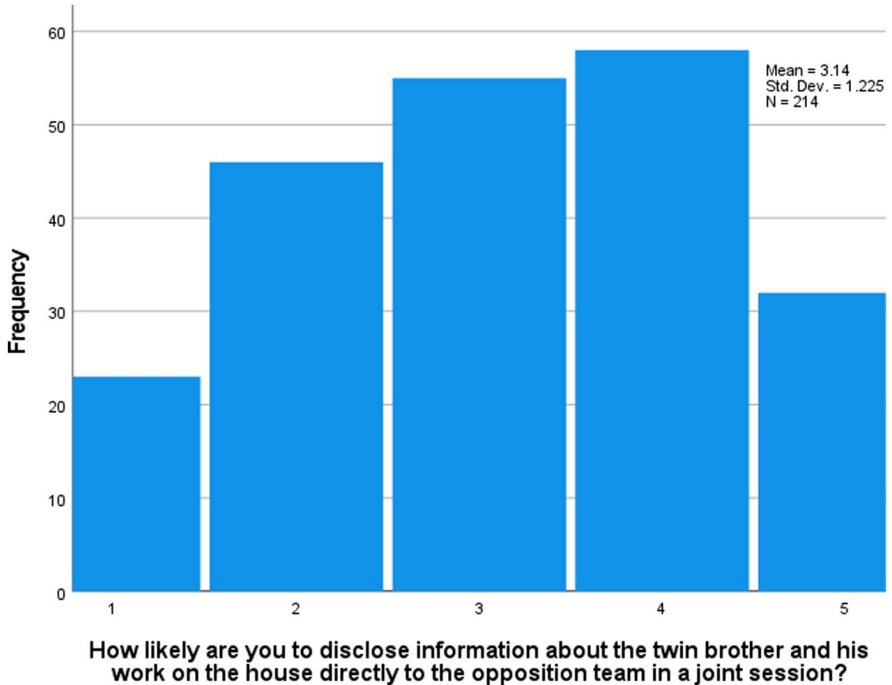
* $p < 0.05$

** $p < 0.01$

*** $p < 0.001$

Figure B3

Distribution of Responses to the Twin Brother 4 Item. Responses could range from 1 to 5, with higher scores indicative of more willingness to honestly disclose information. This item was reverse coded to form an indicator of honest disclosure.



with your client. You find out from your client that he has a twin brother who had come to the house to help with physical chores like landscaping, roof repair, car mechanics, and moving furniture during the time plaintiff was confined to a chair or bed, and unable to do manual labor. You see photos on your client's phone and talk to his brother to learn that once when he was working on the roof he thought there may have been someone in a car watching him and photographing him.

1. How likely are you to keep the existence of the twin brother hidden from both the mediator and the opposition team, and go to trial with the plan to turn the "smoking gun" evidence of the defense into a dramatic "gotcha" moment in court?
2. How likely are you to keep the existence of the twin brother hidden from both the mediator and the opposition team, but ask the mediator to determine if the defense will meet a specific demand amount if your client is able to discredit the defense's video?

-
3. How likely are you to disclose information about the twin brother and his work on the house to the mediator and allow the mediator discretion about whether to disclose this information to the opposition team?
 4. **How likely are you to disclose information about the twin brother and his work on the house directly to the opposition team in a joint session?** [**focal indicator of honest disclosure*]

Appendix C: Moral Character Scales and Sample Items

Trait	Scale	Sample items
Honesty-Humility	De Vries's (2013) 4-item Honesty-Humility scale from the Brief HEXACO Inventory (BHI)	<ul style="list-style-type: none"> • <i>I find it difficult to lie.</i> • <i>I would like to know how to make lots of money in a dishonest manner. (reversed)</i> • <i>I want to be famous. (reversed)</i> • <i>I am entitled to special treatment. (reversed)</i>
Moral Identity	Aquino and Reed's (2002) 5-item Moral Identity Internalization scale	<ul style="list-style-type: none"> • <i>Being someone who has [moral] characteristics is an important part of who I am.</i> • <i>It would make me feel good to be a person who has [moral] characteristics.</i>

Trait	Scale	Sample items
Guilt Proneness	Cohen, Kim, & Panter's (2014a) 5-item Guilt Proneness scale	<ul style="list-style-type: none"> • <i>After realizing you have received too much change at a store, you decide to keep it because the salesclerk doesn't notice. What is the likelihood that you would feel uncomfortable about keeping the money?</i> • <i>Out of frustration, you break the photocopier at work. Nobody is around and you leave without telling anyone. What is the likelihood you would feel bad about the way you acted?</i>

Descriptive Statistics of 14-item Moral Character Composite Measure

$N = 215$ lawyers, $\alpha = 0.82$, $Mean = 0.00$, $Standard\ Deviation = 0.54$, $min = -2.62$, $max = 0.82$