



Jeffrey Krivis



Mariam Zadeh

Hunting for deception in mediation – winning cases by understanding body language

Deception... A reality of mediation

Although few will admit to it, there is no doubt that deception plays an active role in mediation between both sides and their communications with the mediator. This is because every negotiator wants to leave the negotiating table believing that he or she obtained the best possible result for his or her client. Most believe that to accomplish this goal, some form of deceit is required. Some may give deceit in this context a more politically correct name, such as “aggressive bargaining” or “zealous advocating.” We, on the other hand, will refrain from sugarcoating what transpires in mediation every day, and will call it as it is: *deception*. Yes, we said it. The “D” word. We have all used it as negotiators, and we are here to highlight ways of detecting it when it is used against you.

If you find our position cynical, our research has revealed the following facts: 1) 61.5 percent of subjects’ natural conversation involved some form of deception¹; 2) individuals reported that they averaged 16 white lies over a two-week period²; 3) the typical person lies approximately 13 times per week³; and 4) 28 percent of negotiators lied about a common interest issue during negotiations while 100 percent of negotiators either failed to reveal a problem or actively lied about same if they were not questioned directly on the issue.⁴

Deception in negotiation takes many forms which range the spectrum from bluffing, posturing, evading, concealing and misrepresenting, to outright lying. At every juncture, the deceiver must decide whether to create false information (lying or misrepresenting), deliver vague and ambiguous information that contains part truth and part deception (bluffing and posturing) or avoid providing relevant information (evading).⁵ For purposes of this discussion, we will rely on a definition that views deception as “a deliberate act that is intended to foster in another person a belief or understanding

which the deceiver considers false ... Specifically, the deceiver transmits a false message (while hiding the true information) and also attempts to convince the receiver of his or her sincerity.”⁶

There are many reasons why people are motivated to deceive. The five primary motivations are: 1) to save face; 2) to guide social interaction; 3) to avoid tension or conflict; 4) to affect interpersonal relationships; and 5) to achieve interpersonal power.⁷ A follow up study concluded that lies are motivated by a need to defend oneself socially or economically in a disadvantaged situation, supporting the notion that deceivers act with purpose and specific motivation.⁸ Within the negotiation context, some practitioners would argue that deception and lies are commonplace because negotiations are based on information dependence.⁹ In other words, negotiators have little choice but to rely on the data and claims that their counterparts provide in order to reach agreement. To do otherwise would require verification of each and every statement made and position proffered, which would be both highly time-consuming and likely cost-prohibitive.¹⁰

Now that we have established that deception takes place practically all around us – and most certainly across the negotiating table – the question remains as to how best to deal with this predicament in your negotiations. You may be thinking to yourself that with all the trial and negotiation experience you have, it is pretty unlikely that an adversary could successfully pull a fast one on you. Although you may be the exception to the rule, there is substantial evidence that most people have poor ability to recognize deception.¹¹ The reason for this is that most of us harbor a belief that truthful statements are preferable to lies.¹² As a result of this bias, we will often unwittingly assume that the information we are being provided is accurate, relevant and truthful.¹³ If, however, we learn to identify the verbal and non-verbal cues that

often accompany deceptive messages, rather than merely relying on hunches or our experience as practitioners in the field, we can significantly improve our ability to detect deception.¹⁴

Introduction to Interpersonal Deception Theory

Interpersonal Deception Theory (IDT), proposed by researchers Buller and Burgoon in the 1980s, deals with deception as it occurs in interpersonal situations.¹⁵ IDT presumes that deceivers strategically control their behaviors to maximize their deception success and credibility with others.¹⁶ Evidence suggests that during the course of a conversation, deceivers adjust to the reactions of others so that their communication style appears truthful.¹⁷ Examining the interaction from this perspective, the deception volley goes something like this: Deceivers choose from an array of verbal and non-verbal behaviors designed in their mind to increase the chance of succeeding at the deception; in return, those on the receiving end react to the deceptive message, whether consciously or subconsciously, sending signals of suspicion. As deceivers perceive this suspicion, they in turn, refine their performances to suppress such cues, working on allaying suspicion and enhancing their credibility.¹⁸

Despite popular belief, deception is not easy and actually requires a great deal of emotional, cognitive and psychological effort believed by researchers to be triggered by feelings of guilt, discomfort or fear of detection that often accompanies the lie or deceit.¹⁹ Consider the last time you told a fib (if you cannot think of one, check your pulse). Thinking back to that time, it is likely that you became somewhat nervous, had to think hard before stating the lie, considered the consequences of being discovered, and tried at the same time to come across as sincere and believable to your counterpart. All of

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this requires considerable cognitive complexity. If you are someone who can repress signs of nervousness and stress and look natural under even the most difficult of circumstances, then you are more apt to be a successful liar.²⁰ Individuals who have larger behavioral repertoires, greater social skills and communicative competence will generally be more proficient, alert, confident, and expressive, and less fidgety, nervous and rigid, making them more skilled at deception than others.²¹

Since truth-telling is considered preferable to telling lies²², most people are not well-practiced liars and as such will need to work hard to control the undesirable feelings associated with deceiving another. In their strained attempt to look credible, they cannot help but reveal cues that reflect their deceptive behavior, commonly referred to in IDT literature as “leakage.”²³ The term *leakage* refers to the unintentional outward display of the psychological processes experienced by the deceiver while telling the lie.²⁴

A key principle of IDT is that deceptive performances are comprised of both non-strategic (unintentional “leakage”) displays and strategic (deliberate) displays categorized into three management classes as follows: information, behavior and image.²⁵ Information management deals with regulating the amount of information conveyed by the deceiver.²⁶ Behavior management addresses the deceiver’s attempt to control his or her nonverbal behaviors to minimize suspicion.²⁷ Lastly, image management refers to the efforts of the deceiver to continually project a “positive face.”²⁸ Although it is expected that deceivers will try not to let these strategies show, overdoing it by trying too hard will likely backfire, causing the deceiver to look overly restrained, uninvolved and unnatural.²⁹

Reducing the odds of being deceived

Consistent with the views of deception promulgated by IDT, outlined below you will find the various verbal and non-verbal cues categorized either as strategic or non-strategic, equipping you with a handy arsenal that should assist in ferreting out the deceivers from the truth-tellers at the negotiating table.

Non-Strategic Cues

Individuals engaged in deception can be expected to display the following invol-

untary leakage cues resulting from their agitation, emotions and cognitive effort:

- *Increased pupil dilation* – deceivers’ pupils tend to widen as they would in dim lighting³⁰
- *Blinking* – deceivers tend to blink more frequently when compared to individuals telling the truth³¹
- *Eye shifting* – deceivers will tend to look away, up, down, or to the side, rather than at the person they are speaking to³²
- *Self-adaptors* – deceivers tend to use their hands to fondle or manipulate objects or parts of their body³³
- *Elevated speaking pitch* – deceivers tend to speak at a higher pitch as compared to someone telling the truth³⁴
- *Speech errors* – deceivers tend to use nonfluencies such as “uh,” “ah,” “um,” or “mm.”³⁵
- *Speech pauses* – deceivers tend to allow greater periods of silence in between utterances while engaged in a conversation³⁶
- *Negative statements* – deceivers tend to use words like “no,” “not,” “can’t,” and “won’t”³⁷
- *Leg gesturing and swiveling in chairs* – deceivers tend to have more leg twitches, tapping feet, and will either swivel or rock when sitting³⁸
- *Less hand and head gesturing* – deceivers “speak” less with their hands and tend to keep their head still³⁹

Strategic Cues

Deceivers can be expected to display the following behavioral, image and/or information management cues intended on improving their chances of deception success:

- Intentional communication of vagueness⁴⁰
- Withdrawal from the conversation⁴¹
- Attempts to maintain a positive image to avoid detection⁴²
- Speaking in a less immediate or more distancing manner⁴³
- Use of irrelevant information in their messages by making statements that are unrelated to the theme of the message⁴⁴
- Use more generalities and “allness” terms (e.g. “all,” “none,” “nobody,” “everyone,” “always,” “never”)⁴⁵
- Speaking for shorter lengths of time, allowing the deceiver to disclose less information⁴⁶
- Frequent use of modifiers (e.g., “some of the time” and “usually”)⁴⁷
- More group references and fewer self-references (e.g. “we” and “us” vs. “me” and “I”)⁴⁸

- Use longer response latencies allowing deceiver additional time to prepare successful deceptive answers.⁴⁹

The bottom line

Deception is a reality at the negotiating table, whether we like it or not. It is unlikely that participants to a negotiation will ever come to the table willing to openly share the weaknesses of their position or candidly disclose their bottom line. Becoming familiar with the signs (strategic and non-strategic) that are displayed by deceivers will undoubtedly improve your ability to discern the truth, or lack thereof. These cues will provide you with a roadmap when faced with the situation where your adversary claims that they will leave the negotiation unless you pay more or take less, or conceals facts that help your case and hurt theirs, or misrepresents whether they have the authority to reach a deal.

A word of caution while deception hunting: If you approach your negotiations with a heightened sense of vigilance and motivation to detect the truth, your state of doubt and distrust is likely to be quickly identified by the sophisticated deceiver. Once he or she picks up on your suspicions, the deceiver will attempt to manage his or her behavior in order to reduce and mask the cues that might reveal the deception.⁵⁰ To remain ahead of the deceiver, continue your vigilance toward their deceptive tactics but conceal your suspicions as much as possible.

Deciphering deceit, much like the game of chess, is about assessing your opponent and the strategy they’re implementing to achieve their goals. With the tools we have outlined in this article, you are sure to increase your chances of detecting deception... using the deceiver’s body language to stay one move ahead of your opponent at all times.

Jeffrey Krivis and Mariam Zadeh are full-time mediators with First Mediation Corporation in Los Angeles specializing in complex litigated disputes. Krivis is the author of Improvisational Negotiation (Jossey-Bass, 2006) and adjunct professor at the Straus Institute for Dispute Resolution at Pepperdine Law School. Zadeh is completing an LL.M. in ADR from Pepperdine Law School and joined Krivis’ mediation practice in 2005.

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Endnotes:

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- ³ Hample, D. (1980). *Purposes and effects of lying*. The Southern Speech Communication Journal, 46, 33 – 47.
- ⁴ Houch, S. & Kunreuther, H. (2001). *Deception in Negotiation*. Wharton on Making Decisions, John Wiley and Sons, Inc.
- ⁵ Burgoon, J. K., & Buller, D. B. (1994). *Interpersonal deception: III. Effects of deceit on perceived communication and nonverbal behavior dynamics*. Journal of Nonverbal Behavior, 18, 155-184.
- ⁶ Zuckerman, M., DePaulo, B. M., & Rosenthal, R. (1981). *Verbal and nonverbal communication of deception*. In L. Berkowitz (Ed.) *Advances in experimental social psychology* (Vol. 14, p. 3). New York: Academic Press. Buller & Burgoon maintain a less restrictive definition of deception characterizing the act “as the intent to deceive a target by controlling information (e.g., transmitting verbal and nonverbal messages and/or manipulating situational cues) to alter the target’s beliefs or understandings in a way that the deceiver knows is false.” Burgoon, *Supra* note 6, at 192.
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