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“A Psychological Investigation of Consumer Vulnerability to Fraud: Legal and Policy Implications”

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I. Introduction

Despite the high incidence of consumer fraud in the United Statesⁱ and the dire consequences from it, such as in the home loan context,ⁱⁱ very little research has been conducted on the psychological factors that leave consumers vulnerable to fraud and deceptive sales practices. In particular, few experiments have been run to test various explanations for consumer vulnerability to various types of fraud and to analyze the legal and policy implications in terms of creating better laws to protect consumers.ⁱⁱⁱ This article focuses on the problem of consumer susceptibility to deception when a consumer notices a problematic term in a contract but is persuaded to proceed with the deal anyhow. To convince the consumer to proceed, sales representatives may use a number of techniques including providing various types of reassurances either telling consumers that the problematic term will not apply or that it is actually in the consumers' interest and deceptive explanations of the problematic term. Such explanations can be effective even when the explanation proffered makes no sense.^{iv} As discussed in the legal and policy implications of this article, the ability of salespeople to deceive consumers in this manner is particularly harmful because these techniques may not be actionable in some jurisdictions.^v

We hypothesize in this paper that when unscrupulous salespeople (including mortgage brokers and lenders) reassure consumers and explain away “problematic” contract terms (i.e. a term that is inconsistent with what was previously promised and against the consumer's interest), this will cause many consumers to acquiesce to the problematic terms even when the explanation offered does not make sense. For example, Hill and Kozup interviewed victims of predatory loans who discussed how predatory lenders dismissed their concerns by providing after-the-fact rationales and explanations claiming that the terms that were contrary to promises made early in discussions (such as a promise that the loan would accrue interest at 4.5% but in fact this rate is just for the first year and then adjusts) were legitimate or in the borrowers' best interests.^{vi} We conducted two fraud simulation studies to test our hypothesis that consumers are vulnerable to deception through reassurances and explanations even if the proffered explanations make no sense. We also conducted a follow up survey that the participants from Fraud Simulation Study 1 and a replication of Fraud Simulation Study 1 were given

asking them to self report on what factors motivated them to read, sign, or object to problematic terms in a contract to attempt to determine what factors make some consumers more vulnerable to fraud through deception than others. Fraud Simulation Study 2 investigated whether demographic and other characteristics of the consumers surveyed (e.g., gender, race and ethnicity, age, education, income, belief in God, and political affiliation) affected their vulnerability to fraud.

In Section II of this article we describe the prevalence of the problem of consumer fraud, the most common contract scenarios where it arises, and the findings from our prior studies that investigated consumer fraud in order to contextualize the focus of this paper. In Section III we discuss 5 psychological explanations as to why consumers might be vulnerable to deception that we then empirically test in the two fraud simulation studies and follow up survey, including, the phenomena of following explanation scripts^{vii} which cause consumers to acquiesce to problematic contract terms when they question terms in contracts or in home loan disclosures. Section IV reports the methods and results of Fraud Simulation Study 1 and analyzes those results. Section V describes the results from a follow-up survey given to the participants from Fraud Simulation Study 1 and a replication of Fraud Simulation Study 1. Section VI reports the methods and results of Fraud Simulation Study 2, which was designed to generalize the results of Fraud Simulation Study 1 to realistic consumer fraud situations and to investigate how demographic and other factors affect consumers' vulnerability to fraud. Finally, section VII analyzes the policy and legal implications from the findings of the two fraud simulation studies and the follow up survey, including, how to modify existing laws or create new rules to better protect consumers in light of our findings.

II. The problem of consumer fraud and results from our prior research

Consumer fraud is a pervasive and destructive problem in the United States. For example, it has been estimated that in 2004 twenty-five million Americans became victims of ten types of consumer fraud tracked by the Federal Trade Commission.^{viii} Currently, the most infamous and widespread example of consumer fraud involves mortgage loans. One report calculated that homeowners lost as much as 164 billion dollars between 1998 and the third quarter of 2006 due to predatory loan practices.^{ix} In addition, a large number of adjustable rate loans that were set to adjust in 2008 were projected to cause an increase to a typical borrower's monthly payment by \$350 with many such loans expected to go into default.^x The Center for Responsible Lending estimated that foreclosures cost neighbors \$502 Billion in decline in property values in 2009 alone.^{xi} Many of these homeowners may have been deceived into thinking that they had entered into an affordable fixed rate loan, but were actually being given floating rate loans.^{xii} Borrowers were also fraudulently induced to enter into overpriced loans (i.e. loans at a higher interest rate or costs than the borrower could have otherwise qualified for) by brokers who deceived them into thinking that no better loans were available. Warren and Tyagi estimated that approximately 40% of homeowners would have qualified for lower cost loans than they were induced to take by unscrupulous mortgage brokers and lenders.^{xiii} This type of deception leads to thousands of dollars of losses for individual consumers. As an illustration, if a homeowner took out a \$300,000 loan at an interest rate that is 1.5% higher than the homeowner would have qualified for, the

consumer would pay approximately \$300 more each month during the term of the loan, which over five years equals \$18,000 and over a thirty year term would equal \$108,000 in losses.

There are several different types of fraud that commonly arise that we have simulated in studies we have run. The first type of fraud happens when a salesperson lies to the consumer about the good or service, but includes the truth in the contract (or includes a general exculpatory provision that states that the consumer has not received or relied upon any representation prior to entering into the contract, that the consumer will not raise any such representations, and the company will have no liability for any such alleged representations). The exculpatory clause or term that conflicts with what the salesperson originally told the consumer is usually buried in a long form contract that is not intended to truly be read and negotiated (i.e. a “contract of adhesion”). Stark and Choplin (2009)^{xiv} simulated this type of fraud in a study in which participants were asked to sign a consent form to participate in research. The consent form was three-pages long and it was opened to the third page for them to sign. Immediately above the line where they were asked to sign there were three sentences that read: “I have read the above information. I have all my questions answered. I consent to be in this study.” Of the 91 participants in the study, 87 signed the form without reading. Unbeknownst to these 87 participants, the form they signed committed them to participating in any future studies that the researchers might wish to conduct with or without credit in their undergraduate courses for doing so, and with or without any compensation for their time, contrary to promises made to them when they first signed up for the experiment and to what they were told immediately before they were given the consent form that they would receive one credit for one hour’s participation time. It also committed them to administer electric shocks to fellow participants, if instructed to do so, even if that participant screamed, cried, and asked for medical assistance and to do push-ups, if the experimenter instructed them to do so. Contrary to human-subject protection guidelines, the form required them to remain in the laboratory until and unless the experimenter allowed them to leave.

Stark and Choplin (2009) also investigated whether the finding that people fail to read contracts generalizes to important consumer transactions such as mortgage loan documents and home purchase agreements by surveying consumers about whether they read contracts. Twenty-seven percent of participants who had purchased a home admitted that they did not read the entire mortgage contract (a surprisingly low percentage considering it takes at least three hours to read all of the terms of a standard set of mortgage loan documents and indicative that while they may have believed that they had read all of the loan documents, in fact they probably read only what was called to their attention by the mortgage broker for the transaction).^{xv} Forty-three percent admitted that they did not read the entire home purchase agreement; seventy-one percent admitted that they did not read car rental contracts and ninety-five percent admitted that they did not read end-user license agreements when they downloaded software from the internet. Some of the psychological causes of people’s failure to read contracts that we discussed in Stark and Choplin (2009) include: participants’ assessment that the form was long and boring, their own attribution of themselves that they were lazy, information overload^{xvi}, social norms not to read contracts^{xvii}, and most importantly trust in what the researcher told them as well as trust in DePaul University’s Institutional Review Board. There is also a phenomenon called “reciprocity of trust” wherein signees may act as if they trust

others (e.g., salespeople such as mortgage brokers and lenders), so that others will trust them in return (and “give” them loans, etc.).^{xviii}

Another common fraud scenario is the “bait-and-switch” type of fraud.^{xix} This type of fraud happens when a consumer is lied to at the beginning to get the consumer interested in the good or service and then told the truth just before the transaction is concluded.^{xx} Perhaps because of sunk cost effects,^{xxi} consumers will often times decide to proceed with the transaction and sign contracts even if they would not have entered into the agreement had they known of the truth when they were first contemplating the transaction. One victim of predatory lending interviewed by Hill and Kozup described the experience with “bait-and-switch” type fraud this way: “When I talked to them they told me one [interest] rate, but they gave me a higher rate at closing. I noted it but didn’t press it with them. I had invested all this time and energy; I’m here so I might as well go through with it.”^{xxii} We investigate this type of fraud in the control condition of Fraud Simulation Study 1 and in Fraud Simulation Study 2 reported in this article.

Yet another type of fraud happens when consumers are lied to and realize before signing the contract that the contract contains contradictory terms, at which point the salesperson lies further to consumers, reassures them, and explains why the contract contains the problematic term and why it is not problematic after all. There are reported court decisions where consumers have still gone ahead and signed the agreement after being told a deceptive explanation for the problematic contractual term.^{xxiii} One purpose of the research reported here was to investigate people’s vulnerability to this type of fraud and to explore some of the psychological causes of this phenomenon. We investigated this form of fraud in the experimental conditions of Fraud Simulation Study 1 and in Fraud Simulation Study 2.

Two reported consumer fraud cases provide a sense of how unscrupulous salespersons have in fact persuaded consumers to enter into contracts with problematic terms even when the consumer notices the term. In the 1931 case *Ginsburg v. Frederick H. Bartlett as Trustee*,^{xxiv} a real estate broker lied to a prospective lot purchaser telling her that a railroad line was going to be built from Chicago to Highland Park, Illinois, where the lot was located, and that this railroad line would provide transportation to the site. The purchaser read the contract and found that it contained a disclaimer clause stating that no representations had been made regarding a railroad line being built. There was no other easy way to the site, so she was concerned about this disclaimer clause and questioned the broker. He told her not to worry, reassured her that the contract was old, and showed her a map indicating where the railroad would be built. Her concerns allayed, she signed the contract and closed. She then owned the lot and did not discover that he had lied to her until later. Luckily for Ginsburg, the court ruled in her favor. This ruling was not a foregone conclusion, however, since to prevail in a common law fraud action the plaintiff has to show that she “reasonably” relied upon the false statement and the court might have ruled that relying upon such an implausible explanation was not “reasonable.”^{xxv}

The consumer in *Bates v. William Chevrolet/Geo, Inc.*, experienced a similar deceptive explanation of a problematic contract term.^{xxvi} In this case, a consumer told the car salesperson that he could only afford a certain maximum amount each month to pay for the finance of the car. The car salesperson handed the consumer a contract that reflected a higher monthly payment figure. When the consumer saw this and said he

would not be able to afford that figure, the car salesman told the consumer the monthly payment figure in the form was not final or binding but that the consumer needed to sign this form in case the consumer was pulled over by the police while driving the car. After being told this, the consumer signed the document but the dealer later refused to change the monthly payment figure and sought to hold the consumer to the agreement he signed. The court, however, ruled in favor of the consumer. Although the consumer in this case prevailed, some courts might have ruled against the consumer based on the common law requirement of “reasonable reliance” for a fraud action.^{xxvii} These two consumer fraud cases illustrate that consumers are vulnerable to deception not only when they fail to read contracts, but also when they do read and notice problematic provisions but are provided deceptive explanations for the presence of these terms in the contracts.^{xxviii}

Indeed, even in the context of a business type transaction, people are vulnerable to deceptive explanations of problematic contract terms. In *Lucas v. Oxigene, Inc.*, an employee was helping the company he worked for to go public under a contract where his compensation was based not only upon a salary, but also stock options in the company going public.^{xxix} The employee, a recovering alcoholic, had a relapse, and the company he worked for insisted on renegotiating his contract. Under the new contract, the board of directors of the company could withdraw the stock option at their discretion. When the employee raised concerns about that term in the contract, he was told, “don’t worry” and that the clause “did not mean anything.” The employee relied upon those statements, signed the contract, and continued to work for the corporation to help it go public. Later, the board of directors withdrew the stock option as permitted under the contract language but contrary to what the employee had been assured prior to his signing the contract. The employee brought an action for fraud but the court ruled that the employee could not raise the alleged fraudulent statements made prior to his signing of the contract because the signed contract contained numerous disclaimer clauses that no representations were made and the employee had notice of those clauses and, being a sophisticated party, understood the terms in the contract, including the specific contradictory terms to the alleged fraudulent statements.

In *McEvoy v. Travel Bureau Inc. v. Norton Co.*, the contract contained a “kickout” clause that would allow one party to end the agreement between the parties after a short period of time, which concerned the other party, McEvoy, who would be expending significant funds to perform under what he hoped would be a longer term contract.^{xxx} McEvoy noticed the problematic contract term and objected to it, but was told the term was “inoperative,” just something technical their legal department required. McEvoy then signed relying on this explanation and assurance. When the company later exercised the “kickout” clause, McEvoy successfully sued them for fraud, but again, in some jurisdictions, McEvoy may have lost in a common law fraud action based on the argument that he had not reasonably relied on the false statements.^{xxxi}

III. Hypotheses on Why Consumers Might Proceed with a Problematic Deal

Why might consumers be susceptible to being persuaded to proceed with a deal even if they notice problematic terms in a contract? This section discusses five psychological phenomena that might help explain this: (i) communication rituals including mindlessly following explanation scripts, (ii) difficulty in detecting and

acknowledging lies, (iii) reciprocity of trust, (iv) social norms to sign contracts as presented, and (v) sunk cost effects. These explanations are tested in Fraud Simulation Study 1 (presented in Section IV of this article), a follow-up survey to Fraud Simulation Study 1 (presented in Section V), and in Fraud Simulation Study 2 (presented in Section VI).

The first psychological phenomenon involves communication rituals. Consumers might be vulnerable if they interpret the contract and the verbal communications involved in the contract signing procedure as a type of communication ritual or indirect communication. Under this type of communication, people do not process words literally. Barshi and Healy (1993) illustrated a communication ritual using the example of the American greeting ritual where one person will greet the other by saying, “How are you doing?” The other person will respond by saying either “fine” or “good” and then ask how the first person is doing, at which time the first person replies with either a “fine” or a “good.” The response is always “fine” or “good” no matter how miserable their lives might be, because what is actually being communicated is not the literal enquiry about the person’s state of well being, but rather that they are greeting each other. Likewise, people do not process the literal meaning of indirect requests such as “Do you know what time it is?” which is actually a request to be told the time, but if taken literally should be answered with either a yes or a no^{xxxii} or “Can you pass the salt?” which is actually a request that the salt be handed to the speaker, but again if taken literally should be answered with either a yes or a no.^{xxxiii} Likewise, if consumers raise concerns about contractual provisions, the directive not to worry may actually communicate that the provisions do not mean what the consumers are concerned that they might mean and that the consumers’ original beliefs are still correct. Notice, however, that the words “do not worry” do not literally mean any such thing. The provisions can certainly be against the consumer’s better interests at the same time that the salesperson wishes that the consumer would not worry.

Of course, consumers might expect salespeople to provide explanations for seemingly problematic provisions. Oddly, however, consumers might still follow communication rituals and be satisfied that there is an explanation as long as the salesperson provides the syntax of an explanation even if the literal meaning of the salesperson’s words have, in fact, provided no explanation at all. This phenomenon, which we call “explanation scripts,” was demonstrated in an experiment by Langer, Blank, and Chanowitz.^{xxxiv} In their experiment, the researcher asked people who were about to make copies at a photocopy machine to go first. The experimenter either provided no reason for the request (i.e., “May I use the Xerox machine?”), provided the syntax of an explanation with a plausible explanation inserted inside (i.e., “May I use the Xerox machine, because I’m in a rush?”), or provided the syntax of an explanation with a senseless explanation inserted inside (i.e., “May I use the Xerox machine, because I have to make copies?”). The senseless explanation added no new information that was not known previously. The person making copies already knew that the researcher also needed to make copies. Nevertheless, Langer, Blank, and Chanowitz found that even senseless explanations were surprisingly effective at gaining compliance. It would appear that people mindlessly follow communication rituals and explanation scripts^{xxxv} when they make and grant requests. These explanation scripts require people to provide the syntax of explanations, but the literal content of the explanations may be less important.

A similar phenomenon could be at work in situations where people sign contracts or read through a home loan disclosure form. Even if people notice and raise concerns about problematic provisions, the contract signing script likely creates an expectation among consumers that salespeople will provide an explanation—or at least the syntax of an explanation. The content of the explanation may be less important. In the studies that we report here, we tested participants’ vulnerabilities to explanations of this type. In Fraud Simulation Study 1, we tested a plausible explanation, which stated that the form contained a provision contrary to what they had previously been promised because it was an old form. In Fraud Simulation Studies 1 and 2, we tested senseless explanations, which stated that the form contained this provision because it was drafted that way (Study 1) or because it was a standard form (Study 2). These senseless explanations added no new information that participants did not know previously. They already knew, because they had read the form, that it was drafted that way and already knew it was a standard form contract.

The second phenomenon is the difficulty to detect and acknowledge lies. Salespeople sometimes lie, but consumers may not be able to tell whether they are lying. A large psychological literature has documented the difficulties involved in detecting whether someone is lying^{xxxvi}, even the ability of professionals such as police officers to detect a lie is remarkably low.^{xxxvii} Furthermore, even if consumers suspect that salespeople are lying calling them on it without solid, concrete evidence of the lie will often times be considered socially inappropriate and even double-checking verbal statements will often be uncomfortable. Performing due diligence could be interpreted as calling the person a liar. People have difficulties calling liars on their lies even when the lies are known,^{xxxviii} doing so when there is no evidence of a lie could be considered socially inappropriate.^{xxxix} In Fraud Simulation Studies 1 and 2, lies were simulated by having verbal representations contradict the written contracts.

The third psychological phenomenon is reciprocity of trust. Consumers might be motivated to trust those with whom they enter into contracts, because there is a norm of reciprocity.^{xl} If someone places trust in them by offering them an apartment, a loan, or a job, it will be incumbent upon them to reciprocate by trusting in return.^{xli} This norm of reciprocity may have played a role in the *Lucas* case where the employee helped the company go public. The initial contract stipulated that his compensation would be based on salary and stock options, but then he had an alcoholic relapse and the company renegotiated his contract. The renegotiated contract stipulated that the stock options would be at the board of director’s discretion. He read the contract and was concerned about this change, but he was told not to worry, that the language did not mean anything, and that of course the board of director’s would grant him the stock option. Mr. Lucas was a sophisticated party, but he was in a vulnerable situation. He wanted the company to trust him after his relapse, and he could not afford to violate the norm of reciprocity by distrusting the company that was placing trust in him not to have another relapse. Unsophisticated parties applying for apartments, loans, jobs, or any other type of reciprocal relationships may be even more vulnerable^{xlii} especially if there is a status difference between the parties.^{xliii} In the experiments that we report here, we simulated a lie by telling participants that a certain provision in the consent they were asked to sign would not be enforced.

The fourth psychological phenomenon involves social norms to sign contracts as

presented. Consumers often receive social signals that they are expected to sign. Research in social psychology has documented many ways in which expectations shape behavior and cause people to conform to expectations.^{xliiv} The expectation that a person should sign is signaled in many ways. For example, Hill and Kozup qualitatively interviewed victims of predatory lending and documented how predatory lenders established rules of engagement wherein borrowers were not allowed to ask questions.^{xlv} They establish these rules of engagement by first presenting a friendly veneer to desperate would-be borrowers creating a “honeymoon” period after which predatory lenders reacted aggressively to borrowers who violated the rules of engagement by providing dismissive rationales and explanations and blaming the borrowers for any supposed misunderstandings. In Fraud Simulation Study 1, the social norm that the participants were expected to sign was established by the DePaul University Department of Psychology’s subject pool in which participant know that they need to enroll in studies to receive class credit and that enrolling in studies often involves signing consent forms.

The fifth psychological phenomenon that makes consumers susceptible to signing a contract even if they notice problematic terms is sunk cost effects, which as discussed in Section II is thought to be the phenomenon that is responsible for bait-and-switch type fraud. Sunk costs are the time, effort, and other expenses that consumers have already spent pursuing a transaction or goal. Research has found that once consumers have sunk these costs, the amount they are willing to continue spending toward that transaction or goal will often exceed what they would have originally been willing to spend even if the additional expenses exclude the original sunk costs.^{xlvi} Due to these sunk-cost effects, consumers might agree to problematic provisions even if no other type of deception is involved. In Fraud Simulation Study 1, we tested this phenomenon by simulating bait-and-switch type fraud in the control condition. In Fraud Simulation Study 2, we tested this phenomenon by asking participants whether they would have agreed to sign even if they knew the contract read that way when they first started to pursue the deal.

IV. Fraud Simulation Study 1

The purpose of Fraud Simulation Study 1 was to investigate people’s vulnerabilities to fraud even when they read contracts or disclosure forms and find problematic provisions. This study also provided an opportunity to extend previous research^{xlvii} by exploring the degree to which people read contracts when contracts are short, user-friendly, and problematic provisions are highlighted. The purpose of Fraud Simulation Study 2 was to generalize the results of Fraud Simulation Study 1 to realistic consumer fraud situations and to investigate how demographic factors affect consumers’ vulnerability to fraud.

Participants were asked to sign a bogus consent form which contrary to verbal assurances by the experimenter, their instructor, and the internet-based experiment registration system that they would receive one credit for one hour’s work, required them to participate for three hours and receive only one hour’s credit (we call this provision the “problematic provision,” because it contradicts prior assurances). Unlike the fraud simulation study reported by Stark and Choplin (2009)^{xlviii} where the problematic provisions were buried in the middle of a long consent form, this fraud simulation study maximized the likelihood that participants would discover the fraud by presenting the

entire bogus consent form on a single page and printing the problematic provision in a large, red, and bolded font. We expected that even in this case some participants would sign the bogus consent form without discovering and expressing concerns about the problematic provision, but expected that the vast majority would notice the problematic provision and at least ask the researcher why the consent form contained that provision which would allow us to investigate how vulnerable participants would be to explanation scripts and deception.

Method

Participants

Eighty undergraduate students participated to fulfill a course requirement. Of these, 35 (43.8%) did not raise concerns about the problematic provision. Of the remaining 45, 15 were randomly assigned to each of the control, plausible, and senseless conditions.

Materials

This experiment used a bogus consent form, a real consent form, and a follow-up survey. To make the consent forms as user-friendly as possible, both forms were very brief. The bogus consent form was 276 words long including the title and the signature line. The title of the bogus form read “**CONSENT TO PARTICIPATE IN RESEARCH**” in all capital letters, bolded, and underlined. Below the title the subtitle read “Protecting Consumers Against Fraud” in both capital and lower case letters, bolded, but not underlined. The bogus consent form itself was subdivided into seven sections. The section entitled “What is the purpose of this research?” informed participants that the research was designed to learn more about how to protect consumers from fraud. Contrary to verbal assurances that the experiment was only going to take five more minutes of their time, the section entitled “What will I be asked to do?” obligated those who signed the form to participate in three additional hours of research: One hour at that time, one hour the following week, and one additional hour the week after that. Also contradicting verbal assurances, the section entitled “How much time will this take?” obligated those who signed the form to spend three hours of their time as research participants. The section entitled “What are the risks involved in participating in this study?” explained that the study did not involve risks other than what participants would encounter in daily life. The section entitled “Can I decide not to participate?” informed participants that they could choose not to participate. The section entitled “Whom can I contact for more information?” provided contact information for the first author and DePaul University’s director of research protections. The section directly in the middle of the form entitled “What are the benefits of my participation in this study?” was the section designed to give participants the most pause. Unlike the rest of the form, which was printed in black 11-point font, this section was printed in bright red, bolded, 16-point font and it read “You will receive 1 hour’s credit for your 3 hours of participation.” At the bottom of the form was the statement of consent, declaring, “I have read the above information. I have had all my questions answered. I agree to participate.” And provided a place for participants to sign and date the form.

The actual consent form entitled “**CONSENT TO USE DATA IN RESEARCH**” was 415 words long including the title and the signature line. This form described the

purpose of the research, what they were actually being asked to do, the actual time it would take to complete the rest of the experiment including time to complete the follow-up survey, the risks and the steps we would take to protect their confidentiality, and repeated the contact information for the first author and the director of research protections from the bogus consent form. At the bottom of the form was the statement of consent, allowing the researchers to use their data and consenting to complete the survey.

The follow-up survey asked participants whether in their perception they had read the bogus consent form and if they read part of it whether the only part they read was the portion highlighted in red. The portion highlighted in red was problematic in that it contradicted prior assurances. However, since some participants enjoy being in experiments and might have signed just for the opportunity to provide three hours of additional service, the follow-up survey asked participants whether they found the provision highlighted in red problematic. Participants who signed the bogus consent were asked whether they would have still signed it if they believed that the highlighted red portions were going to be enforced. Participants who did not sign it were asked whether they did not sign it because they believed that the provisions might be enforced. The follow-up survey also attempted to gauge some of the factors that could have affected participants' decisions to read the form and some factors that could have affected their decisions to sign the form. As presented in Table 2: Trust and Cooperation, the follow-up survey asked them about their degree of trust in the researcher, whether they believed what the researcher told them, whether they felt free to question the researcher and negotiate. It asked them how important it was for them to be perceived as cooperative and trustworthy and to be treated with respect by the researcher. It asked them how important they thought it was for the consent form to be consistent with their previous understanding. As presented in Table 3: Social Norms and Signing Scripts, the follow-up survey asked participants whether they know what information to look for when reading, whether they feel as if they are expected to read, expected to sign, whether they relied upon what they had previously been told and their prior experiences, and whether the length of the form or the provision highlighted in red affected their decision. As presented in Table 4: Reasons Not To Read, participants who did not read and express concerns about the bogus consent form were asked whether they did not read because they were lazy, found the consent form boring, long, presumed all consent forms read the same way, did not contain important information, assumed the Institutional Review Board would protect them, and had never before heard of anyone having problems with consent forms. As presented in Table 5: Beliefs Regarding Standards for Enforcement of Unfair Contractual Terms, the follow-up survey asked participants about their beliefs of whether a contractual term ought to be enforced under different articulated standards relating to the "fairness" of a term in a contract. We included these questions for two reasons. First, we sought to investigate the extent to which consumers desire protection from unfair contract terms since our earlier studies found that oftentimes consumers fail to read and understand the contracts they sign causing them to be vulnerable to agreeing to highly unfair contract terms as well as the form of protection they desired. Second, we sought to investigate whether those who were vulnerable to being deceived into signing forms with problematic provisions would be more likely than those who were not vulnerable to desire courts or legislatures to protect them from unfair contract terms.

The first standard we asked the participants to respond to was that articulated by the European Union's Directive on Unfair Contract Terms: "I think if there is a term in the consumer transaction contract that causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, and if the term was not specifically discussed and negotiated between the consumer and the company, the law should be that a court should not enforce that term." The second standard was articulated by the American Law Institute's Restatement Second of Contract Law: "I think that if there is a term in a consumer transaction contract that the company has reason to know the consumer would not agree to that term had the consumer known the term was in the written contract, the law should be that a court should not enforce that term." The third standard we articulated is the classic common law definition of "unconscionability": I think that all of the terms in a consumer transaction contract that the consumer signs should be enforced by the courts unless the term is so overly harsh, one-sided, or oppressive that it "shocks the court's conscience." We created a fourth standard that was even broader and more vague than the prior three standards: "I think that if a consumer contract contains "unfair terms" a court should not enforce the unfair terms." Finally, the fifth standard delegated the decision as one to be made by a legislature in the form of a regulation prohibiting a specific term or set of terms in a contract: "I think that legislatures should review consumer transactions to identify terms that would be considered unfair and prohibit the enforcement of such terms."

Procedure

After participants had completed a previous, unrelated experiment, the researcher asked participants to sit down and handed them the bogus consent form. The researcher said, "We need you to sign this form consenting to being a participant in the next study which will take approximately five minutes. Do you have any questions?" Participants were given as much time as they wanted while the researcher timed how long they spent looking at the form. In the case of students who raised concerns about the problematic provision, the time they spent looking at the form included both the time from when they received the form until they raised concerns and from after the researcher had explained the problematic provision until they either signed or refused to sign. To control for any differences in the time it took to express concerns or to explain the problematic provision, this timing measure did not include the time during which the participant expressed the concern or the time during which the researcher explained the problematic provision. The researcher also noted whether participants did not even look at the bogus consent form, looked so briefly that they could not have read it, skimmed enough to get a vague idea about some provisions, read parts but skimmed the rest, or read the bogus consent form in its entirety. If the participant signed the form without expressing concerns, the experiment was over, and participants were debriefed as described below.

If participants expressed concerns about the problematic provision, they were randomly assigned to one of three conditions: the control condition, the plausible condition, or the senseless condition. The goal of the control condition was to simulate bait-and-switch type fraud. Bait-and-switch fraud was chosen as the control, because we wanted to investigate why consumers are susceptible even when they notice problematic terms in a contract but are persuaded to proceed with the deal anyhow. Under bait-and-switch type fraud the deception is disclosed before signing. As such, the deception

continues in the experimental conditions, but ceases in the control or bait-and-switch condition and other factors such as sunk cost effects^{xlix} and participants who might have chosen to participate for three hours because they enjoy doing so are held constant. In the case of this study, the researcher simulated bait-and-switch by disclosing to participants that contrary to previous assurances the problematic provision would be enforced. Participants would be expected to participate for three hours, one hour over three separate weeks, and they would only receive one hour's credit. The goal of the plausible and senseless conditions was to emulate another type of consumer fraud situation where the consumer is told one thing but the contract says something to the contrary, the consumer notices the discrepancy, and the salesperson explains the discrepancy away. In the plausible condition, the researcher told participants not to worry because the consent form only read that way, because it is an old form. In the senseless condition, the researcher told participants not to worry because the consent form only read that way, because that is the way that the consent form was drafted. In the plausible and senseless conditions, the researcher reassured participants that "of course" the problematic provision would not be enforced, the study would only take approximately 5 minutes and they would receive one hour of credit. Following realistic consumer fraud situations, the plausible and senseless conditions differ from the control or bait-and-switch condition in several respects that allow for the continuation of the fraud. The researcher told participants not to worry, provided an explanation for the problematic provision or at least the syntax of an explanation, and continued to lie by reassuring them that what they had initially been led to believe was still true. Future research should unbundle and isolate these factors to investigate the degree to which each allows fraud to be perpetuated and how these factors might interact.

After the fraud manipulation, the researcher asked all participants to please go ahead and sign the consent form. After participants had either signed or refused to sign, participants were debriefed. They were told that the goal of the research was to understand why people sign contracts that are not in their interests and that the form they had just signed or not signed was bogus and was not in their interests. The researcher pointed to the highlighted problematic provision. They were told that this provision would not be enforced and the researcher tore the form in half.

The DePaul University Institutional Review Board required us to ask participants for permission to use their data. This requirement was fortuitous as it allowed us to investigate whether people learn to read contracts more carefully after being deceived. Participants were then asked to read and sign the actual consent form. The researcher timed how long participants looked at the actual consent form and noted whether participants did not even look at the actual consent form, looked so briefly that they could not have read it, skimmed enough to get a vague idea about some provisions, read parts but skimmed the rest, or read the actual consent form in its entirety. After participants signed the actual consent form, they filled out the follow-up survey.

Fraud Simulation Study 1 Results

A rather high 43.8% of participants (35 out of 80 participants) did not express concerns about the problematic provision, even though it was part of a short consent form, boldfaced, in a larger 16-point font, and printed in red ink. Still, this result was an improvement compared with the 4.4% of participants (4 out of 91 participants) who did

not express concerns about the problematic provisions in Stark and Choplin (2009) where the problematic provisions were buried in a much longer consent form. This difference in the proportion of participants who expressed concerns about the problematic provisions in these two studies was statistically significant, $\chi^2(1, N=171)=56.12, p<.01$.

The 35 participants who did not express concerns about the problematic provision spent less time looking at the form ($M=6.0$ seconds, $SD=10.6$ seconds) than the other 45 participants who did express concerns ($M=17.4$ seconds, $SD=13.7$ seconds), $t(78)=4.06, p<.01$. Of these 35 participants, the researcher rated 14 (40.0%) of them as not even looking at the bogus consent form before signing it; 13 (37.1%) as looking over the bogus consent form so briefly that the researcher doubted that the participant had read much; 6 (17.1%) as skimming the bogus consent form enough to get a vague idea about some provisions; one (2.9%) as reading parts of the bogus consent form but skimming the rest; and one (2.9%) as reading the bogus consent form in its entirety. An analysis of these 35 participants' own judgments of whether they themselves had read the consent form found similar proportions with 14 (40.0%) of them reporting that they did not read the consent form at all; 11 (31.4%) reported that they had only read the portion highlighted in red ink; 5 (14.3%) admitted that they read parts of the consent form but not all of it and they insisted that they read more than just the portion that was highlighted in red ink; and 5 (14.3%) insisted that they read the consent form in its entirety.

These results suggest that 60% of the participants (21 out of 35) who failed to raise concerns about the problematic provision had read or skimmed enough of the consent form to notice the problematic provision. It seems a mystery then why these 21 participants failed to raise concerns. Clues as to why they proceeded to sign the form without raising concerns can be gleaned from the follow-up survey. These 21 participants differed from the 31 participants who expressed concerns about the problematic provision but nevertheless signed in that they placed significantly greater importance on being perceived as cooperative, $t(50)=2.52, p<.05$, trustworthy, $t(50)=2.37, p<.05$, and being respected by the researcher, $t(50)=2.46, p<.05$. These 21 participants were also more likely to say that they were influenced by the fact that they felt that they were "expected to sign the consent form," $t(50)=2.28, p<.05$, less likely to say that the provision highlighted in red was "problematic," $\chi^2(1, N=52)=10.16, p<.01$, and more likely to assume that they would receive the same amount of credit for their time as they had previously received for other experiments "no matter what the bogus consent form said," $t(50)=3.31, p<.05$. The degree to which they were more likely to trust the researcher reached marginal significance, $t(50)=1.77, p<.1$. It is clear then that some consumers (those who more greatly wish to be perceived as cooperative and trustworthy and who more greatly seek respect and more greatly feel they are expected to sign a form) are more vulnerable to deceptive sales practices than others due to these characteristics (hereafter "vulnerability characteristics") that courts and legislators do not currently recognize as being important. Fraud Simulation Study 2 also investigated whether other demographic factors such as gender and lower socio-economic status are associated with greater vulnerability to deceptive sales practices. The policy and legal implications from these findings are further discussed in Section VII.

We next analyzed the 45 participants who raised concerns about the problematic provision. Of the 15 participants in the control, bait-and-switch condition, six (40.0%) signed the consent form and nine did not. In the plausible condition, thirteen (86.7%)

signed and two did not. In the senseless condition, twelve (80.0%) signed and three did not. These omnibus differences were statistically significant, $\chi^2(2, N=45)=8.92, p<.05$, as was the difference between the control and the plausible condition, $\chi^2(1, N=30)=7.03, p<.01$, and the difference between the control and the senseless condition, $\chi^2(1, N=30)=5.00, p<.05$. The difference between the plausible and the senseless conditions was not statistically significant, $\chi^2(1, N=30)=0.24, p>.05$. Of the 14 participants who refused to sign, 11 said that they did not sign because they believed that the provision highlighted in red might be enforced. Of the 66 participants who signed, only 15 said that they would still have signed if they believed that the provision highlighted in red was going to be enforced. An analysis of the follow-up survey found that the 5 participants in the plausible and senseless conditions who refused to sign the consent form differed from the 25 participants in these two conditions who accepted the explanation and proceeded to sign in that they were less likely to believe what the researcher told them about the red highlighted portion of the bogus consent form, $t(28)=2.96, p<.01$, more likely to feel that they are expected to read all of the words in a consent form before signing, $t(28)=2.35, p<.05$, and less likely to say that they were influenced by the expectation that they would sign the consent form, $t(28)=2.43, p<.05$. These 5 participants displayed characteristics that were almost the mirror opposite of the vulnerability characteristics and these characteristics are hereafter referred to as “resistant factors.” Future studies should attempt to explore what causes some consumers to possess these resistant factors that makes them less vulnerable to consumer fraud.

We also analyzed the time that the 45 participants who raised concerns about the problematic provision spent looking at the consent form. A 3(condition: control, plausible, senseless) x 2(signed or not) analysis of variance (ANOVA) found a main effect of condition, $F(2,39)=4.81, MSE=155.31, p<.05$. A post-hoc Fisher’s Least Significant Difference test found that participants in the control condition spent more time looking at the consent form ($M=26.00$ seconds, $SD=18.21$) than did participants in the plausible ($M=13.33$ seconds, $SD=7.93$) and senseless conditions ($M=12.87$ seconds, $SD=8.75$), perhaps because they were deliberating whether to break the social norm and expectation that they would sign¹ after being told that they would only get one credit for three hours’ work. Because this analysis excluded participants who signed without noticing and expressing concerns, the difference between the remaining participants who signed or not was not significant, $F(1,39)=0.02, MSE=155.31, p>.05$, and there was no interaction, $F(2,39)=1.67, MSE=155.31, p>.05$.

Participants spent more time reading the true consent form ($M=15.78$ seconds, $SD=13.21$) than they spent reading the bogus consent form ($M=12.43$ seconds, $SD=13.60$), $t(79)=2.33, p<.05$. Of the 80 participants in Fraud Simulation Study 1, the researcher rated 4 (5.0%) of them as not even looking at the true consent form before signing it; 12 (15.0%) as looking over the true consent form so briefly that the researcher doubted that the participant had read much; 18 (22.5%) as skimming the true consent form enough to get a vague idea about some provisions; 25 (31.3%) as reading parts of the true consent form but skimming the rest; and 21 (26.3%) as reading the true consent form in its entirety.

The results of the follow-up survey are analyzed in more detail below and shed light on our participants’ beliefs regarding why they failed to express concerns about the problematic provision or proceeded to sign even after expressing concerns.

Discussion of Fraud Simulation Study 1

Fraud Simulation Study 1 demonstrated that consumers are vulnerable to communication rituals, explanations (even the syntax of an explanation), and deception. Participants were less likely to sign the consent form if the deception was disclosed as in bait-and-switch type fraud than if the researcher continued to deceive them and provided a bogus explanation for the problematic provision. One surprising finding of Fraud Simulation Study 1 was that many participants (i.e., 43.8% or 35 out of 80 participants) failed to express concerns about the problematic provision even when the consent form was short, user-friendly, and a problematic provision was highlighted. Furthermore, even if participants succeeded in reading the consent form, discovering the problematic provision, and expressing concern about it, they were still vulnerable to interpreting the verbal conversation and written text as a type of communication ritual, mindlessly following senseless explanations, and deception. Of the participants who noticed and expressed concerns about the problematic provision, the vast majority (86.7% or 13 out of 15 participants in the plausible condition and 80.0% or 12 out of 15 participants in the senseless condition) went ahead and signed the form after being further deceived to do so.

Our findings on consumer vulnerability to deception and mindlessly following explanation scripts^{hi} suggest several legal implications that are discussed in Section VII.

V. Results and Analysis of Follow-up Survey

The follow-up survey was administered to the 80 participants in Fraud Simulation Study 1 and 104 participants in a replication of Fraud Simulation Study 1 in which participants were required to initial the problematic provision. The results are presented in Tables 1 through 4. Table 1 presents the average responses to questions regarding trust and cooperation given by those who signed and those who did not sign the bogus consent form. The extent to which participants endorsed factors relating to trust and cooperation varied, $F(8,1424)=45.29$, $MSE=1.07$, $p<.01$. A Fisher's Least Significance Difference test found that more than other factors participants thought they trusted the researcher, placed great importance on being treated with respect, and did not feel free to negotiate. They did not feel rushed. There were also differences in how those who signed and those who did not sign responded to these questions, $F(8,1424)=6.24$, $MSE=1.07$, $p<.01$, such that those who refused to sign reported that they trusted the researcher less, were less likely to believe what the researcher told them about the highlighted provision, felt less rushed, and believed it less important to be perceived as cooperative.

Table 2 presents average responses to questions regarding how social norms and signing scripts or learned sequences of behavior that people perform—typically without thinking—while signing contracts affected those who signed and did not sign. The extent to which participants endorsed these factors varied, $F(8,1424)=22.11$, $MSE=1.26$, $p<.01$. A Fisher's Least Significance Difference test found that more than other factors participants believed that they were influenced by what they had previously been told, assumed they would receive the same amount of credit they received in previous experiments, and were influenced by the fact that they were already in the lab for a prior experiment. Participants felt that they were expected to sign the consent form and that

they were expected to read all of the words before signing. Those who signed differed from those who did not, $F(8,1424)=22.61$, $MSE=1.26$, $p<.01$, in that those who did not sign were more likely to feel that they knew what to look for when reading consent forms, felt more strongly that they were expected to read all of the words, were less likely to assume that they would receive the same amount of credit as they had in previous experiments, were less influenced by the expectation that they would sign, less influenced by the length of the form, were more influenced by the fact that the problematic provision was printed in red, and more likely to be influenced by the inconsistency.

The follow up survey results from Tables 1 and 2 demonstrated that consumers with certain “vulnerability characteristics” (i.e., those who trusted the researcher, wished to be perceived as cooperative, and felt they were expected to sign) were even more likely to fall prey to deception and to mindlessly follow explanation scripts^{lii} than those with “resistant characteristics.” Some of these vulnerability characteristics (most notably, degree of trust and wish to be perceived as cooperative) are consistent with the results from a qualitative investigation by Hill and Kozup^{liii} on how borrowers perceive and experience predatory lenders. Their study found an industry practice by lender representatives of presenting a “friendly veneer” (engaging in acts of kindness, signs of respect, and confirmation of the consumer’s status as trustworthy) that was initially empowering to the borrowers. The borrowers also reported, however, how lenders would then insist on “rules of engagement” (inducing them to not ask many questions, close the loan quickly, and promptly make payments). If the consumer failed to comply with these rules of engagement, the lenders would aggressively respond to obtain compliance. Hill and Kozup found that consumers were typically given very brief, cursory descriptions of the documents that they were asked to sign and that they were expected to sign without reading these documents for themselves.^{liv} People likely did not object, because the friendly veneer of lenders’ representatives and their professed trust in the consumer created a situation in which consumers were required to place reciprocal trust in the lenders’ representatives by accepting their synopsis of the contractual provisions.^{lv} These factors noted by Hill and Kozup (most notably, degree of trust and wish to be perceived as cooperative) were also more likely present by those who were deceived in the two fraud simulation studies we report here. These vulnerability characteristics may explain how unscrupulous salespeople can obtain misplaced trust from consumers, which as noted in Stark & Choplin (2009),^{lvi} is one of the social psychological phenomena that may explain why certain consumers are more likely to fall prey to fraud and deception than are others.

Table 3 presents average responses from participants who failed to notice and express concerns about the problematic provision regarding why they did not read the bogus consent form. Of the 90 participants who failed to notice and express concerns, 11 did not answer these questions leaving 79 responses for analysis. The extent to which participants endorsed each of the potential reasons for not reading varied, $F(1,6)=25.77$, $MSE=1.05$, $p<.01$. A Fisher’s Least Significance Difference test found that participants primarily attributed their failure to read to their assumption that all consent forms would read the same way and their assumption that regulatory agencies (i.e., the DePaul University Institutional Review Board and unnamed federal agencies) would protect them. These two factors did not significantly differ from each other. In a similar fashion, some consumers when presented with federally mandated disclosure forms and quasi-

governmental form loan documents may have assumed that the loan terms were regulated in such a way that unfair loan terms would not be permitted. The extent to which people believe that regulatory agencies will protect them from predatory lending and other harmful practices should be empirically tested in future research. The next important factor noted by these participants was their assumption that the consent form did not contain anything important for them to know or agree to (which did not significantly differ from their confession that they were lazy). Similarly, consumers who fail to notice and express concerns about problematic terms in contracts they sign may be doing so because they assume that there is nothing important in the contracts for them to agree to. Perhaps this is so, because they lack the knowledge that they ought to look for certain pieces of information in these contracts. This situation suggests either the need to better educate consumers on contractual rights and obligations or the need to hire an attorney to look out for their interests. Participants attributed their failure to read more to their assumption that the consent form did not contain anything important for them to know or agree to than to how boring the consent form was or to never hearing of anyone having any problems. Participants disagreed most with the view that they did not read the consent form because it was too long. This last factor was rated significantly lower than all of the others.

Table 4 presents average responses to questions regarding participants' beliefs and attitudes regarding the enforcement of "unfair" contractual terms. The extent to which participants endorsed these attitudes varied, $F(8,1424)=22.11$, $MSE=1.26$, $p<.01$. A Fisher's Least Significance Difference test found that participants rated greater agreement with the view that contracts "should be enforced by the courts unless the term is so overly harsh, one-sided, or oppressive that it 'shocks the court's conscience'" than to endorse the view that "if a consumer contract contains 'unfair terms' a court should not enforce unfair terms." Participants also rated greater agreement with the view that "legislatures should review consumer transactions to identify terms that would be considered unfair and prohibit the enforcement of such terms" than with any of the other views. There were no statistically significant differences in how participants who signed and did not sign answered these questions.

In their comments explaining why they rated each test as they did, a very large number emphasized that a consumer should read a contract before signing it. But participant responses otherwise varied greatly. Some expressed that there should be no protection to a consumer who has signed a contract, even if the contract contains unconscionable terms (one noting: "there can't always be fairness within a contract"; another noting "they didn't have to sign it"); some agreed that consumers should read the contracts they sign, but noted that consumers should be protected when deceived; some stated that companies should not hide important information; some stated that all the terms (or at least the important ones) should be discussed and explained up front (or that no new aspects should be introduced in the contract that were not discussed by the parties before the contract was signed); some stated that courts should intercede to protect consumers against contract terms that are highly imbalanced or contain severely harsh terms, but some also noted that it is difficult to measure this and define what is "overly harsh" and that all the contract terms must be taken into account; while some stated that courts should refuse to enforce "unfair" contract terms (one noted that a court would have to define what is "unfair," another noted "This is why we have a justice system," another

noted “Why enforce something that’s unfair. The courts are there to provide equality”). Specifically, in responding to the fourth, made up standard, some stated that courts should not enforce “unfair” contract terms, but several noted the need to create a definition of what is “unfair” and asked who would create that definition. In responding to the Regulatory Approach, several stated that it was not the business of government to do this and expressed concern over the government having too much power over businesses; while others stated this approach makes the most sense to prevent unfair terms from being put in contracts and keeping businesses in check. Reflecting the ambivalence of some participants with the Regulatory Approach, one participant stated: “Would be nice,” but then raised the practical point “but does the legislature have time to do that for all transactions?” Section VII addresses the legal and policy implications of the results of this portion of the follow-up survey in terms of how courts and legislatures should address unfair terms in consumer contracts.

V. Fraud Simulation Study 2

The purpose of Fraud Simulation Study 2 was to generalize the results of Fraud Simulation Study 1 (which was based upon participants signing a consent form to participate in an experiment run at an undergraduate university) to real situations in which consumers sign contracts (an apartment lease and a catering contract). The survey in Fraud Simulation Study 2 specifically investigated consumers’ self-reports of whether they would sign contracts with terms that were contradictory to what they had been promised if they were also given a senseless explanation for the discrepancy and reassured that the problematic contractual terms would not apply. It also examined how demographic variables (i.e., gender, race and ethnicity, age, education, income, belief in God, and political affiliation) influence the likelihood that consumers will accept senseless explanations.

The survey presented hypothetical vignettes that described realistic consumer contract signing situations in which a representative gives verbal reassurances that contradict the terms of the contract. In the first scenario, for example, the contract stated that a parking space was not included in the rental agreement, but the leasing agent reassured the consumer that there was a parking space included and provided the senseless explanation for the discrepancy that the form only read that way because it was a standardized form. This study also provided an opportunity to extend the results from the fraud simulation study by examining a non-student sample outside of the laboratory setting.

Methods

Participants

One hundred and twenty-six participants (64 men, 61 women, and 1 who did not self-identify) were recruited from public locations in Chicago, Illinois. The sample was racially diverse and approximately representative of the U.S. population, with 72 participants who identified themselves as White, 24 participants who identified as African American, 19 who identified as Hispanic/Latinos, 9 who identified as Asian, 1 who identified as a Native Hawaiian/Pacific Islander and 1 participant did not identify their race or ethnicity. The sample also included participants from a wide range of ages with thirteen participants between the ages of 18 and 21, twenty-nine participants

between the ages of 22 and 25, twenty-two between the ages of 26 and 30, twenty-two between the ages of 31 and 40, seventeen between the ages of 41 and 50, eight between the ages of 51 and 60, thirteen participants who were 61 and over, and two did not identify. The sample also included a wide variety of educational backgrounds. One participant did not complete high school, 10 graduated from high school, 18 attended college but did not complete a degree, 11 completed an Associate's degree, 48 completed a Bachelor's degree, 19 completed a Masters degree, and 7 completed a doctoral or professional degree, and 1 who did not identify educational background. There were also 11 participants who were identified as current students. The range of incomes in our sample was also diverse. We excluded current students from this analysis due to the fact that they were financial dependent and their incomes did not reflect their socio-economic status. Of the remaining participants who were not current students, twelve reported making less than \$10,000, six made between \$10,000 and \$14,999, nine made between \$15,000 and \$24,999, eleven made between \$25,000 and \$34,999, nineteen made between \$35,000 and \$49,999, nineteen made between \$50,000 and \$74,999, twenty made between \$75,000 and \$99,999, nine made between \$100,000 and \$149,999, one made between \$150,000 and \$199,999, six made over \$200,000 a year, and six did not identify income. A majority of the participants, 106 out of 126, reported a belief in God, 12 reported that they did not believe in God, and 8 participants did not answer the question. For political affiliation, 57 were Democrats, 17 were Republicans, 3 were identified with the Green Party, 2 were Libertarians, 33 were Independents, and 14 did not answer the question.

Materials and Procedure

Potential participants were approached in public areas such as parks, sidewalks, and festivals in downtown Chicago, and in laundromats, bus stops, and train stops in the northern residential areas of Chicago. The experimenter asked them whether they would be interested in taking a five-minute survey. If potential participants asked for clarification regarding the content of the survey, they were told that the survey contained three scenarios that a consumer may encounter followed by demographic questions. If they agreed to participate, they were given a questionnaire and asked to fill out the survey.

The survey contained three hypothetical vignettes that consumers were instructed to imagine encountering. The first scenario asked participants to imagine that they were about to sign a lease for a studio apartment and a parking space was supposed to be included. The lease, however, explicitly stated that no parking space would be provided. Parking in the neighborhood was difficult, so the participant would want the parking spot that was promised. The participant asked the landlord about the provision and the landlord told the participant not to worry, that there would be a parking space, and that the lease only read that way because it was a standard form. The second scenario was designed to control for the possibility that participants might figure out that they were supposed to reject the explanations and refuse to sign the contract in the first and third scenarios.^{lvii} It asked participants to imagine that they were shopping and they noticed a sign, which stated that shoppers were being videotaped. The participant asked the security guard about the videotaping, and she explained that the cameras were set up to deter shoplifters. The last scenario asked participants to imagine that that they needed catering for a small party of six people. The payment schedule was supposed to require

that 50% of the payment would be due one week before the party. However, the contract stated that the full amount was due one week before the event. The participant did not want to pay the full amount before the party in case something went wrong and the catering functions were not performed the day of the party. The participant asked the caterer about the provisions and she told the participant not to worry that the participant would only need to pay 50% one week before the event and the contract only read that way because it was a standard form.

After reading the apartment lease scenario, participants marked their agreement with each of the following statements by marking “agree,” “disagree,” or “unsure”: I would agree to sign the lease as it is, I would have agreed to sign the lease even if I knew the lease read that way when I first contacted the landlord, I do not like the explanation for the language in the lease regarding parking, I accept the explanation of the language in the lease regarding parking, and I have signed an apartment lease in the past. The second statement (i.e., “I would have agreed to sign the lease even if I knew the lease read that way when I first contacted the landlord”) was designed to test for bait-and-switch type fraud.^{lviii} If participants marked that they agreed with the first statement (i.e., that they would agree to sign the lease as it was), but disagreed with the second statement (i.e., that they would have done so even if they knew that the lease read that way when they first contacted the landlord), then their agreement to sign reflected vulnerability to bait-and-switch type fraud. By contrast, if participants marked that they agreed with both statements, then their agreement to sign reflected vulnerability to other types fraud such as deception through communication rituals and explanation scripts. The third statement (i.e., “I do not like the explanation for the language in the lease regarding parking”) was designed to gage whether the participants who agreed with the fourth statement (i.e., “I accept the explanation of the language in the lease regarding parking”) embraced the explanation or only accepted the explanation grudgingly.

In the shopping scenario participants marked their agreement with each of the following four questions by marking “agree,” “disagree,” or “unsure”: I would continue to shop, I would have entered the store to shop even if I knew of the videotaping before I entered, I do not like the explanation for the videotaping, and I accept the explanation of the videotaping. The second statement (i.e., “I would have entered the shop even if I knew of the videotaping before I entered”) was designed to test for bait-and-switch type fraud. The third statement (i.e., I do not like the explanation for the videotaping”) was designed to gage whether the participants who agreed with the fourth statement (i.e., “I accept the explanation of the videotaping”) embraced the explanation or only accepted the explanation grudgingly.

After reading the catering contract scenario, participants marked their agreement with each of following five statements by marking “agree,” “disagree,” or “unsure”: I would agree to sign the contract as is, I would have agreed to sign the contract as it is even if I knew that the contract read that way when I first contacted the catering company, I do not like the explanation for the amount due one week before the event, I accept the explanation for the amount due one week before the event, and I have signed catering contracts in the past. If participants marked that they would agree to sign the contract as it was, but marked that they would not have done so if they knew that the contract read that way when they first contacted the catering company, then their agreement could be attributed to a sunk cost effect (i.e., the psychological phenomenon

thought to be responsible for consumers' vulnerability to bait-and-switch type fraud). If participants marked that they accepted but did not like the explanation, then they were classified as having grudgingly accepted the explanation, rather than as having embraced it.

After completing the three scenarios, participants answered demographic questions about themselves including their gender, age (which had seven categories: 18 to 21, 22 to 25, 26 to 30, 31 to 40, 41 to 50, 51 to 60, or 61 and over), highest level of education (did not finish high school, graduated from high school, attended college but did not complete degree, completed an Associate's degree, completed a Bachelors degree, completed a Masters degree, or completed a Doctoral or Professional degree), income (as less than \$10,000; \$10,000 to \$14,999; \$15,000 to \$24,999; \$25,000 to \$34,999; \$35,000 to \$49,000; \$50,000 to \$74,999; \$75,000 to \$99,999; \$100,000 to \$149,999; \$150,000 to \$199,999; or \$200,000 or more), race and ethnicity (African American, American Indian/Native American, Asian, Hispanic/Latino, Native Hawaiians/Other Pacific Islander, or White; where participants checked all categories that applied), belief in God, and political affiliation (Democrat, Republican, Green, Libertarian, or Independent). Participants were debriefed upon request.

Results

Apartment Lease

The apartment lease scenario had participants imagine they were about to sign a lease for a studio apartment that included a parking space. The lease explicitly stated that no parking space was included, but the landlord told the participant that they would get the parking space and that the lease only read that way because it was a standard form. Ten participants (8%) reported that they would agree to sign the apartment lease as it was 26 (21%) were unsure, and 90 participants (71%) disagreed. Although the proportion of participants who either agreed to sign or were uncertain (29%) is smaller than the proportion observed in Fraud Simulation Study 1 (80%, i.e., 12 out of 15 in the senseless condition of Fraud Simulation Study 1), it is still not reassuring from a public policy perspective that so many participants were vulnerable to deception and fraud. The results from the follow-up survey of Fraud Simulation Study 1 suggest that one reason for the observed difference between the two fraud simulation studies might have been that participants in Fraud Simulation Study 1 might have trusted that DePaul University's Institutional Review Board would protect them just as some consumers assume that federal agencies regulate unfair loan terms because disclosures are presented on federally mandated disclosure forms and quasi-governmental form loan documents. Participants may have been less likely to make this assumption in Fraud Simulation Study 2. Furthermore, this proportion may very well underestimate the actual proportion who are vulnerable to deception and fraud, because many participants may have been able to tell from our scenario descriptions that they were not supposed to sign.^{lix} Because this proportion only includes those participants who self-report that they would sign, this proportion is almost certainly a lower bound estimate. The fact that so many participants said that they would sign the contract or were uncertain as to whether or not they would do so does not only reflect bait-and-switch type fraud, because of the 36 participants who either agreed to sign the apartment lease as it was or were unsure, only 13 of them, 36%, said that they would not have done so if they knew that the lease read that way when they first contacted the landlord. These results, therefore, demonstrate vulnerability to other

types fraud such as deception through communication rituals and explanation scripts. Thirty-eight participants, 30%, marked either that they accepted the explanation or were not sure whether they would do so, and 88 participants, 70%, marked that they would not. Thirty-three of the 38 participants who accepted the explanation or were not sure disagreed with the statement that they did not like the explanation or were not sure (21 disagreed, and 12 were not sure); so only 5 of the 38, or 13%, grudgingly accepted the explanation. A majority of participants, 97 out of 126 or 77%, reported that they had signed a lease in the past.

Two demographic factors, income and age, significantly correlated with agreement to sign and acceptance of the explanation that the lease did not include the parking space because it was a standard form. There was a significant negative correlation between income and acceptance of the explanation [$r(112) = -.19, p < .05$] such that higher income participants were less likely to accept the explanation. A negative correlation between income and agreement to sign was marginally significant, $r(112) = -.18, p = .06$. This marginal difference suggests that participants with higher income were less likely to say that they would sign the apartment lease and the finding would support the hypothesis that those with higher status would be more alert to fraud and more cautious when signing contracts in order to maintain their status.^{ix} Similarly, 100% of the participants who accepted the explanation and earned less than \$30,000 did so grudgingly, compared to 43% of participants who accepted the explanation and earned more than \$50,000, $\chi^2(1, N = 19) = 4.94, p < .05$.

Age was negatively correlated with agreement to sign the apartment lease [$r(124) = -.26, p < .01$] such that older participants were less likely to sign the lease without the parking space than younger ones. Perhaps because age and experience have given older participants more experiences with contract signing and more confidence to refuse to sign the lease; or perhaps because older participants were less likely to be willing to go through the trouble of constantly finding parking should the landlord later refuse to give them a parking space.

Other demographic factors appeared not to affect responses to the apartment lease scenario. Demographic factors that did not affect the agreement to sign the apartment lease were: gender, $t(123) = .44, p > .05$; education, $r(114) = -.14, p > .05$; race, $t(120) = .14, p > .05$; belief in God, $t(116) = -1.4, p > .05$; and, political affiliation $F(2,104) = 1.83, p > .05$. Demographics that did not affect whether or not participants accepted the explanation were: gender $t(123) = 1.17, p > .05$; age, $r(124) = -.09, p > .05$; education $r(114) = -.13, p > .05$; race, $t(123) = .14, p > .05$; belief in God $t(116) = -1.19, p > .05$; and political affiliation, $F(2,104) = .03, p > .05$. Past experience signing apartment leases did not affect whether participants said they would sign the lease, $\chi^2(4, N=126) = 5.88, p > .05$.

Shopping Scenario

In the shopping scenario, participants were asked to imagine that they were in a supermarket and noticed a sign that said that they were being videotaped. When they asked about the videotaping, the security guard explained that the cameras were set up to track shoplifters. Since this scenario was included to control for the possibility that participants might figure out that the appropriate response was to reject the explanations and refuse to sign the contract in the first and third scenarios, perhaps it is not surprising

that 98% of participants reported that they would continue shopping after being notified they were being videotaped. Eighty-seven percent of the participants accepted the explanation for the videotaping (that it was used to deter shoplifters), 9% were unsure, and 4% did not accept the explanation. Of the 124 participants that agreed to continue shopping, 123 would have entered the store to shop even if they knew about the videotaping before entering or were not sure, and only one would not have entered the store. The decision to continue shopping was, therefore, not due to a sunk cost effect. Of the 119 participants who accepted or were not sure about the explanation for the videotaping, only 5 did not like the explanation and were classified as having grudgingly accepted the explanation. The remaining 114 participants apparently accepted the explanation.

Age was the only demographic that affected responses to the shopping scenario. Age was negatively correlated with the decision to continue shopping, $r(124) = -.18, p < .05$, with older participants less likely to say that they would continue to shop once notified that they were being videotaped. Perhaps younger participants are more accepting of security measures although age was not significantly correlated with acceptance of the explanation, $r(123) = -.06, p > .49$.

Other demographic factors appeared not to affect responses in the shopping scenario. Demographic factors that did not affect whether participants would continue shopping included: gender, $t(123) = -.48, p > .05$; education $r(112) = .05, p > .05$; race, $t(123) = .25, p > .05$; income, $r(112) = .12, p > .05$; belief in God, $t(116) = -1.4, p > .05$; and, political affiliation $F(2,104) = 1.83, p > .05$. Demographic factors that did not affect whether or not participants accepted the explanation included: gender $t(123) = 1.24, p > .05$; age, $r(123) = -.06, p > .05$; education $r(113) = -.3, p > .05$; race, $t(122) = -.39, p > .05$; income, $r(111) = .01, p > .05$; belief in God $t(115) = 1.22, p > .05$; and political affiliation, $F(2,103) = 1.24, p > .05$.

Catering Contract

The catering contract scenario involved a discrepancy between the caterer's description of the payment process and the written contract that described a very different payment process provision. The contract required that the full bill must be paid before the event. However, the participants were verbally assured that only 50% of the bill was due before the event. The latter was preferable, in case something went wrong with the catering services. Similar to the apartment lease scenario, the caterer reassured the participant that they would only need to pay 50% one week before the event and that the contract only read that way because it was a standard form. Thirty-eight participants, 30%, either marked that they would sign the contract as it was or were not sure, while 88 participants, 70%, marked that they would not. This effect reflected not only vulnerability to bait-and-switch type fraud, but also vulnerability to other types of fraud such as deception through communication rituals and explanation scripts, because of the 38 participants who agreed or were not sure about signing the contract as it was, 23 said that they would have done so even if they knew that the contract read that way when they first contacted the catering company or were not sure. That is, only 15 participants said that they would not have signed if they knew when they first contacted the company and were thereby classified as being vulnerable to bait-and-switch type fraud. Fifty-two participants, 41%, either accepted the explanation or were not sure, while 74, 59%,

marked that they did not. Three participants did not respond. Of the 52 participants who accepted the explanation or were not sure, 8 did not like the explanation and were classified as having grudgingly accepted the explanation. Twenty-nine participants were classified as having wholeheartedly accepted the explanation, and 15 were not sure. Fewer participants, 40%, reported having signed a catering contract in the past as compared to 77% of participants who had signed apartment leases.

Age and race were the only demographic variables that seemed to have any relationship to willingness to sign the catering contract as it was written and acceptance of the explanation. There was a statistically significant negative correlation between age and the agreement to sign the catering contract, $r(124) = -.22, p < .01$, and between age and acceptance of the explanation, $r(121) = -.16, p < .05$. Older participants were less likely to sign or accept the catering contract explanation, however, age did not make a difference between grudgingly or completely accepting the explanation, $\chi^2(1, N=32) = .46, p > .05$. Older participants were as likely as younger participants to grudgingly accept an explanation.

White and nonwhite participants did not differ in willingness to sign the catering contract, $t(123) = .09, p > .05$; but nonwhite participants were marginally more likely to accept the explanation ($M=1.75, SD=.86$) than the white participants ($M=1.47, SD=.72$), $t(120) = 1.90, p = .06$.^{lxi} This marginal difference—should it be replicated in future research and eventually prove to be statistically significant—could be explained by previous research which demonstrated that people of higher social economic status are most fearful of being outsmarted and deceived and that people of lower social economic status are most fearful of being disrespected. To the extent that race remains a signifier of social status in the contemporary United States white participants might be less likely to accept senseless explanations while nonwhite participants might be satisfied as long as they are treated with respect.^{lxii} Race did not have an effect on grudging acceptance, $\chi^2(1, N=32) = .46, p > .05$, or sunk cost effect $\chi^2(1, N=27) = .07, p > .05$.

Other demographic factors appeared not to affect responses in the catering contract scenario. Demographic factors that did not affect the agreement to continue shopping were: gender, $t(123) = -.54, p > .05$; education, $r(114) = .08, p > .05$; race, $t(123) = .09, p > .05$; income, $r(112) = .01, p > .05$; belief in God, $t(116) = -.52, p > .05$; and, political affiliation, $F(2,104) = .94, p > .05$. Demographic factors that did not affect participants accepting the explanation for videotaping are: gender, $t(120) = .50, p > .05$; education, $r(111) = -.11, p > .05$; income, $r(109) = -.15, p > .05$; belief in God, $t(113) = -.30, p > .05$; and political affiliation, $F(2,102) = 1.18, p > .05$. Whether participants signed catering contracts in the past did not appear to affect whether or not they agreed to sign the contract in this scenario, $\chi^2(4, N=126) = 6.41, p > .05$.

Discussion of Fraud Simulation Study 2

The purpose of Fraud Simulation Study 2 was to generalize the results of Fraud Simulation Study 1 to realistic consumer fraud situations and to measure the extent to which demographic variables would affect whether participants would accept disadvantageous contractual terms if they were also given contradictory verbal assurances and senseless explanations for the discrepancy. The results found that 29% of participants in the apartment scenario and 30% in the catering scenario either reported that they would sign the contract or were unsure whether they would do so even after concerns were

raised about the problematic provisions as long as they were given a senseless explanation and were verbally assured that those provisions would not be enforced. This result is partially, but not entirely, due to sunk cost effects and bait-and-switch type fraud. Other factors such as grudging and full acceptance of the proffered explanation also played a role. These results demonstrate that many consumers in realistic consumer fraud situations are vulnerable to being deceived to sign contracts with problematic provisions if sales representatives assure them that the problematic provision will not apply and provide an explanation for the discrepancy between verbal assurances and the contract.

These results also demonstrated that some demographic factors appear to affect the vulnerability to deception through mindlessly following explanation scripts and fraud. Age was consistently a significant factor. Although older participants remained vulnerable, younger participants were more likely to be vulnerable to deception through communication rituals and explanation scripts. The participants in Fraud Simulation Study 1 were college students and may, therefore, have been more vulnerable than their older, middle-aged counterparts would have been. Future research should manipulate the type of fraud participants observe as was done in Fraud Simulation Study 1 to investigate whether middle-aged participants are less likely to be deceived by senseless explanation. Furthermore, the sample in Fraud Simulation Study 2 only included 13 participants who were 61 years old or over. Future studies should investigate the vulnerability of elderly participants to senseless explanations. Income was an influential factor in the apartment lease scenario. Those with higher income were less likely to agree to sign the lease, accept the explanation, and were less likely to grudgingly accept the explanation. Those with lower income were more susceptible to signing the lease and accepting explanation grudgingly. Race appeared to be a marginally significant factor in whether or not participants accepted the senseless explanation in the catering scenario and future research ought to pursue this question further. The finding that income was associated with agreement to sign the catering contract, and grudgingly accept the explanation also support the hypothesis that those with lower status are more likely to agree and accept senseless explanations, if they are treated with respect. Those with higher status seem to be more vigilant, perhaps in an effort to protect their higher status.^{lxiii}

VII. Summary of Findings & Legal and Policy Implications

Fraud Simulation Studies 1 and 2 found that participants were vulnerable to being deceived into signing contracts with problematic provisions and this vulnerability was not limited to just those cases in which participants failed to read the contract.^{lxiv} In Fraud Simulation Study 1, many participants went ahead and signed the consent form even though it contained a conspicuous problematic provision that was bolded and printed in a large, red font. Furthermore, many of those who raised concerns were induced to sign anyway by the researcher who told them not to worry, explained the problematic provision away, and reassured them that it would not be enforced. Consumers were even vulnerable to senseless explanations (i.e., do not worry, the consent form only reads that way because that is the way it was drafted). In Fraud Simulation Study 2, a smaller—but still troubling—proportion of participants self reported that they would go ahead and sign an apartment lease and a catering contract once they were told that the lease and the contract only read contrary to verbal promises because it was a standard form. Following

realistic consumer fraud situations, Studies 1 and 2 bundled several factors including that the researcher told participants not to worry, provided an explanation for the problematic provision—or at least the syntax of an explanation, and continued to lie by reassuring them that what they had initially been led to believe was still true. Future research should isolate these and other factors that contribute to consumers’ vulnerabilities and investigate possible interactions between these factors in order to design strategies to better protect consumers.

The results from these studies provide insights that implicate three important areas of law. First, our results call into question the effectiveness of certain federal measures to prevent predatory home lending. The federal government’s primary method of protecting consumers from predatory home lending was to enact disclosure laws (RESPA and TILA) that mandate the disclosure of the basic economic terms of the home loan applied for in order to enable consumers to shop around and obtain the lowest cost loan possible. Notwithstanding these disclosure laws, unscrupulous mortgage brokers and lenders were able to convince borrowers to take out higher cost loans than the borrowers qualified for^{lxv} and caused some borrowers to think that they were taking out affordable fixed rate loans when in fact they were entering into an adjustable rate loan that could rise to unaffordable levels.^{lxvi} One explanation for how mortgage brokers or lenders were able to induce borrowers to enter into overpriced and unaffordable loans, even when the borrowers received disclosures reflecting the problematic loan terms, are the five psychological phenomena discussed in section III and tested in the fraud simulations studies and follow-up survey, including the use of deception by mortgage brokers and lenders and their ability to induce borrowers to mindlessly follow explanation scripts.^{lxvii}

The results of our fraud simulation studies support anecdotal evidence that when some mortgage brokers and lenders presented the mandatory disclosure forms to home borrowers they were able to do so in ways that caused the borrowers to fail to realize that they were entering into an overpriced or unaffordable loan.^{lxviii} Although the disclosure forms were recently revised to make clearer when a loan is an adjustable rate loan and how high the monthly payments can rise,^{lxix} the results from our fraud simulation studies call into question whether these or future problematic terms can still be deceptively explained away. Due to the problem of consumer vulnerability to deception and mindlessly following explanation scripts,^{lxx} relying upon disclosure forms alone is inadequate to protect borrowers, especially those who possess some of the “vulnerability characteristics” identified in Sections V and VI of this article.

Our results similarly suggest that the federal government’s primary consumer oriented response to the sub-prime loan crisis, trying to make the home loan disclosure forms contain important information in a more “user-friendly” format, is inadequate and therefore misguided. Instead, for the disclosure forms to truly become an important protection against overpriced or otherwise unsuitable home loans, the disclosures need to be supplemented with additional protections such as a mortgage counseling intervention (both “in-person” and through an interactive computer training program) by an independent and trained mortgage counselor who can review the home loan disclosure with the borrower in the manner that Congress intended.^{lxxi} This counseling (which should be empirically tested for its effectiveness against deceptive presentation of disclosure forms by mortgage brokers and lenders) should also better empower consumers to overcome the many other cognitive and social psychological barriers to

rational home loan decision-making identified in Stark and Choplin (2010).^{lxxii} In Stark and Choplin (2010)^{lxxiii} we engaged in a detailed cost/benefit analysis of mandating mortgage counseling for borrowers when they were seeking home loans that appeared to be overpriced or otherwise contained risky features and concluded that the benefits should outweigh the costs.^{lxxiv} We also noted that mandating counseling interferes less with consumer autonomy to make decisions than would outright prohibition of certain terms since while some terms may be harmful to most consumers they may still be beneficial to a small minority of others due to their higher tolerance for risk or their special circumstances.

A second area of law where the results from our research provide insights relates to consumer fraud law. The common law action for fraud in three-quarters of the states requires not only that a knowing false statement of material fact is made by the defendant and relied upon by the plaintiff to the plaintiff's harm, but also that the plaintiff show that she "reasonably" relied upon the false statement.^{lxxv} Moreover, it is a fundamental principle within contract law that individuals are presumed to have read and understood the terms of the contracts that they sign and are generally bound to such terms even if they do not read or understand them.^{lxxvi} Consequently, if a person fails to read the contract and the contract contains a term that is contradictory to what the salesperson falsely told them, some courts will rule that the consumer failed to "reasonably rely" upon the false statement (or may rule under the parol evidence rule in jurisdictions that narrowly define the fraud exception to "fraud in the execution" versus "fraud in the inducement" that such misrepresentation is not the basis for relief).^{lxxvii} The consumer is then unable to recover her losses in a common law fraud action.^{lxxviii} Yet, as Fraud Simulation Study 1 showed, even when a problematic term is highlighted in red, in a larger font from the rest of the document, initialed, and in a short one-page document, a significant proportion of participants (i.e., 43.8% of participants in Fraud Simulation Study 1) still failed to read and object to the problematic term. This is a vast improvement to the results of Stark & Choplin (2009) where a problematic term was buried in a lengthier document and only 4.4% read and objected to the problematic term. This difference in results suggests that courts should generally take into account how conspicuous a problematic term has been presented in the contract when determining whether to enforce the term but courts should be cautioned that even when a problematic term is conspicuously displayed in a contract and noticed by the consumer who then questions it, the term can be deceptively explained to the consumer to persuade the consumer to still sign the contract.

The basic foundation of contract law, that both parties have read and agreed to the terms of a contract they sign, is clearly inaccurate in the context of a consumer transaction where the contract is typically on a take it or leave it basis (a "contract of adhesion") and the consumer is not represented by an attorney who reviews the contract on her behalf. Yet courts generally need to presume that consumers read and understand the contracts they sign and presume that an authentic agreement took place in order to prevent consumers from being able to argue that they did not truly agree to the deal (or specifics of the deal) whenever they are later disappointed regarding the agreement. Courts need to maintain a largely false presumption of assent to all of the terms in the contract in order to safeguard the goal of certainty of contract. While this presumption may generally be necessary, we contend it is inappropriate to do so in the context where a

consumer is alleging that the contract term at issue is inconsistent with what they had been promised and when the presumption would then bar the consumer from being able to prove the inconsistent prior promise or representation was made in an action for fraud.

In addition, even when a consumer does read the problematic term in the contract, such reading will not necessarily cause the consumer to object to the term. The results of the follow-up survey to Fraud Simulation Study 1 suggest that this failure on the consumer's part is primarily due to consumers' vulnerability to deception and mindlessly following explanation scripts and to the phenomena of sunk costs; but also due to some consumers' inability to detect lies or discomfort in calling someone a liar, pressure to conform with the social norm to sign contracts presented to them, and, especially if the consumer is of a lower socio-economic status, trust in the salesperson based upon the concept of reciprocity of trust and respect. Consequently, if a consumer relies upon a false, but implausible, explanation for the presence of a term in the contract that contradicts what has been promised, or an implausible explanation as to the effect of the presence of this term in the contract, it is inappropriate for courts to rule that this causes such reliance to be "unreasonable." In addition, courts should be made aware of the vulnerability characteristics identified in the follow up survey, especially if those who possess these vulnerability characteristics are more likely to be persons of a lower socio-economic status, when determining whether the consumer had "reasonably" relied upon deceptive explanations when the consumer brings a common law fraud action.

In order to understand why the common law action for fraud required "reasonable reliance" rather than simply "reliance," it is important to note that common law fraud applied to any fraud action—whether by sophisticated parties or in a consumer transaction. When deception occurs between two sophisticated parties in a business transaction, they tend to be represented by attorneys who will carefully review all of the terms of the contract and negotiate for changes to problematic terms before the parties sign the contract. In this context it makes more sense to require "reasonable" reliance. The duty to read and the barring of a fraud action based upon an alleged false statement that is inconsistent with a term in the written, signed contract, promoted certainty of contractual obligations and did not result in unfairness to the parties. But, when applied to consumer transactions, where consumers fail to read the terms of the contracts they sign and are not represented by attorneys who do so on their behalf, the "reasonable" reliance requirement under the common law action for fraud can lead to unfairness to consumers and a license to deceive to the companies supplying goods and services to consumers.^{lxxxix}

Due to the difficulty for consumers to prevail in a common law action for fraud, beginning in the 1960s, state legislatures began to enact consumer fraud and deceptive practices statutes to better protect consumers by (i) making it more economically feasible for consumers to bring statutory fraud actions by awarding attorneys' fees to a prevailing consumer under the statute^{lxxx} and (ii) by reducing the required elements for a cause of action. In most of the states, this reform changed the requirements for bringing claims so that consumers no longer had to prove that the seller had "knowingly" made a false statement and no longer had to prove that the consumer had "reasonably relied" upon the false statement and instead simply required them to show that the false statement "caused" the consumer to be economically harmed.^{lxxxi} However, states courts in six of the fifty states (Georgia, Indiana, Maryland, Michigan, Ohio and Pennsylvania) have interpreted the "causation" of harm element in these statutes to mean "reasonable

reliance.”^{lxxxii} Although “causation of harm” in this context is similar to “reliance on the false or deceptive statement,” the courts in the six states additionally required that the reliance be “reasonable” since that is how reliance was usually applied under the common law action for fraud. Courts that interpret the “causation of harm” element to mean “reasonable reliance” fail to take into account the legislative purpose of moving away from the onerous elements for a common law fraud action when a claim is raised by a consumer rather than a sophisticated company represented by attorneys in their transaction.

The results from our fraud simulation studies strongly militate against court interpretation of the “causation” element in consumer fraud and deceptive practices statutes to mean “reasonable reliance.” Many companies include provisions in their contracts that state that the consumer agrees that no salesperson has made any representations to the consumer about the product or service and that the consumer is not relying on any representations other than what is in the contract (a “no reliance/exculpatory provision”). Companies include “no reliance/exculpatory provisions” in their contracts in an attempt to influence courts to rule that there is no valid action for fraud because the consumer could not reasonably rely upon any false or deceptive statement when they agreed in the contract that there were no representations made or relied upon.^{lxxxiii} Yet, companies know that consumers will often ask questions of the salesperson regarding the product, the service, or the terms of its purchase (including, occasionally asking about the meaning of a term in the contract) and, as supported by our fraud simulation studies, that consumers will often rely upon what they have been told. The results from our studies strongly suggest that courts should not enforce this type of exculpatory provision since its enforcement does not reflect reality, but instead creates a license for unscrupulous companies to deceive consumers.

In summary, based upon the results from our fraud simulation studies we propose four recommendations relating to the law of consumer fraud. First, in a common law fraud action, courts should only require a showing of actual reliance versus reasonable reliance in consumer transactions (or should not interpret reasonable reliance to prevent a fraud claim when a contract contains a term contradictory to the alleged false statement). This would apply to either a specific contradictory term or a more general “no reliance/exculpatory term.” Second, when a consumer has read the contract and asks about a problematic term, if the consumer relies upon an implausible explanation, courts should not rule this to be “unreasonable” reliance. Third, when interpreting a consumer fraud and deceptive practices statute, courts should not imply “reasonable reliance” from a “reliance” or “causation” element in the statute. Finally, courts that currently narrowly interpret the fraud exception to the parol evidence rule to “fraud in the execution”, should instead apply the “fraud in the inducement” standard to provide relief to consumers who have relied upon false representations that induce consumers to sign contracts when the deception relates to a problematic term in the contract rather than require that the misrepresentation relate to the nature of the contract they are signing.

The third area of law that our research provides some insights into involves how courts and legislatures should treat “unfair” contract terms even where there has been no prior misrepresentation relating to the terms of the contract. Three facts suggest that courts should consider expanding upon the scope of what is considered to be an “unconscionable” (and therefore unenforceable) term in a consumer contract or that

legislatures should enact laws that prohibit specific terms in the context of certain consumer contracts. The first fact is that typically only a small percentage of consumers carefully read and understand the terms of the contracts they sign, a point supported in the studies described in this article. The second fact is the demonstrated susceptibility of consumers to deception and mindlessly following explanation scripts that can be used to explain away problematic contract terms when they do read^{lxxxiv} and the influence of the other four psychological phenomena described in Section III in causing consumers to sign contracts containing problematic terms. The third fact is the inability to negotiate for a change to the contract's terms in the context of a typical consumer transaction. Due to these three facts it is likely that consumer contracts will contain terms that are very one-sided in favor of the drafter of the contract (the supplier of the consumer product or service) and that consumers will still be entering into these contracts. Nevertheless, due to the goal of certainty of contract, and the presumption that people read the contracts they sign (or should do so), it is very rare for a court to rule that a term in a contract is unconscionable and unenforceable.^{lxxxv} Equally problematic, some of the standards articulated by courts as to what would make a term unconscionable are vague and difficult to apply. For example, in one classic articulation, a court should enforce each contract term "unless the term is so overly harsh, one-sided, or oppressive that it 'shocks the court's conscience'" (the "common law test of unconscionability").^{lxxxvi}

By articulating a standard that is so difficult to meet, courts further the goal of certainty of contract but fail to adequately take into account the problem that true contractual agreement does not occur in a typical consumer contract and, consequently, consumers are likely to be surprised by highly unfair contract terms. One reform of the law of unconscionability that our data suggests would be for courts to take into account the vulnerability factors identified in the fraud simulation study 2 and in the follow up survey when considering whether any terms in the contract the consumer signed is unconscionable. Indeed, courts already focus on more than just the substance of the contract in determining if there has been unconscionability and consider "procedural" forms of unconscionability (such as the age of the party claiming unconscionability—one of the factors reflected in our data) together with "substantive" unconscionability.^{lxxxvii} For example, one court identified the following factors of procedural unconscionability: the age, education, intelligence, and business acumen and experience of the party claiming unconscionability, the relative bargaining power of the parties, who drafted the contract, whether the terms were explained to the weaker party, whether alterations in the printed terms would have been permitted by the drafting party and whether there were alternative providers of the subject matter of the contract.^{lxxxviii} Courts should expand this list to include the additional characteristics our data reflects make some consumers more vulnerable to signing contracts containing highly problematic terms, namely: consumers who are lower income individuals, and consumers who in general are from a lower socio-economic status who are more likely to be influenced by a desire to be perceived as cooperative and more eagerly seek out to be treated with respect.

Other standards, besides the typical common law tests for what is an unconscionable term in a contract, have been articulated that try to better balance the goal of certainty of contract with the goal of fairness. As previously noted, under the Restatement Second of Contracts, Section 211(3), a court would be directed to not enforce a term in the contract: if there is a term in a consumer transaction contract that

the company has reason to know the consumer would not agree to that term had the consumer known the term was in the written contract (the “Restatement Test” which has been adopted in Arizona and by some courts in insurance policy cases).^{lxxxix} The European Union’s Directive on Unfair Contract Terms also articulated a standard that would likely lead to more terms being stricken than under the current American common law unconscionable standard. Under the EU standard: if there is a term in the consumer transaction contract that causes a significant imbalance in the parties’ rights and obligations under the contract to the detriment of the consumer, and if the term was not specifically discussed and negotiated between the consumer and the company, a court should not enforce that term (the “EU Test”).^{xc} Because of the ambiguity and likely difficulty in applying the Restatement Test (how does a company know whether the consumer would have agreed to any specific term in a contract if the consumer were aware of it?) and the added expense of attempting to comply with the EU Test (the company would need to specifically discuss and negotiate over each term that might be construed to cause a significant imbalance in the parties’ rights to the consumer’s detriment), it might make more sense to attempt to identify specific unfair terms routinely found in consumer contracts in various contexts and create legislation to regulate or prohibit those specific unfair terms (the “Regulatory Approach”). The advantages of the Regulatory Approach are that it would make clear what terms would be prohibited, preserving the important goal of certainty of contract, while at the same time furthering the equally important goal of creating a fair and just system of law. The disadvantages to the Regulatory Approach are: (i) companies could always create new forms of problematic terms not covered by the statute and (ii) it will be a difficult task for a legislative body to enact regulations limiting or prohibiting certain identified unfair contract terms in different consumer contract contexts, and therefore unlikely to take place. This difficulty is due to many factors, including, potential lack of consensus on the need or benefits from this type of protection and pressure from various special interest groups who would find this type of reform against the interests of companies who supply goods and services to consumers.

In the follow up survey to Fraud Simulation Study 1 we queried participants as to their degree of approval or disapproval with each of: (i) the EU Test, (ii) the Restatement Test, (iii) the common law test, (iv) a made up standard (that simply stated courts should not enforce “unfair” contract terms), and (v) the Regulatory Approach. We also asked them to explain their responses. Participants rated greatest agreement with the Regulatory Approach (expressing agreement with it at an average of 3.89 out of a scale from 1- 5) and the least agreement with the made up standard. They rated more agreement with the common law test than the EU Test or the Restatement Test (see Table 4). To the extent the justice system strives to be consistent with the values, expectations, and thoughts of the general population, the results from the follow up survey provide support for the idea of expanding consumer protection through the Regulatory Approach, but not necessarily through expanding upon the common law test in the manners set forth in the EU Test or the Restatement Test.

Finally, the results from both fraud simulation studies caution against over-reliance on protections based solely upon making problematic terms conspicuous (an example in the context of a home purchase would be requiring that the waiver of the warranty of habitability be conspicuously presented in the purchase contract).^{xci} Due to

the high level of vulnerability of some consumers to deception through, among other things, following explanation scripts, for many consumers making a problematic term more conspicuous will not cause those consumers to be able to negotiate for the term to be removed from the contract (if the term is negotiable at all in the first place). Instead, the results of our fraud simulation studies and follow up survey suggest that to protect consumers from unduly unfair contract terms, and to still be able to promote the goal of certainty of contract, legislatures need to enact regulations that attempt to identify and prohibit specific categories of highly unfair terms in various consumer contract contexts (such as the seller having no liability to the buyer in the event of the seller's breach of a material term of the contract, a highly unfair term present in 65% of condominium unit purchase contracts surveyed in an empirical study of condominium purchase contracts in Chicago, Illinois from 2003-2008).^{xcii} Another appropriate example of when laws should be created by a legislature to prohibit certain widespread terms or practices that are highly unfair to consumers is the recent prohibition by Congress of "yield spread premiums" in the Financial Reform Bill enacted in July 2010.^{xciii} When a term is highly unfair to all consumers (versus problematic to some but not to all consumers such as adjustable rate loans) it makes more sense to prohibit the term than to try to better disclose its existence and risks in the contract.

We identify three categories of potentially unfair contract terms for legislatures to consider prohibiting in various consumer contexts even when fraud or deception is not present: (i) terms that take away rights the consumer would otherwise have under the law, (ii) terms that provide for non-parallel treatment, such as no remedy upon default to the consumer but extensive remedies to the company, or (iii) provisions that are inconsistent with what the consumer thought were the basic terms of the deal, such as being told the price of the good is "X", but other terms in the contract significantly increase the cost of the good that are not anticipated by the typical consumer. Legislatures should also consider requiring consumers to be represented by an attorney in the two contexts where consumers have the most to lose: the purchase of a home and when obtaining a loan secured by the consumer's home. To the extent that legislation fails to prohibit a specific highly unfair contract term, the presence of a specially trained attorney^{xciv} representing the consumer can help the consumer to identify, and potentially, bargain for the removal of such terms. Without such protections, consumers will continue to fall prey to highly unfair contract terms due to the numerous cognitive and social psychological barriers to consumers reading, understanding and successfully bargaining for a contract with more fair terms, including the tendency of consumers to mindlessly follow explanation scripts.

Conclusion

The results of the two fraud-simulation studies and a follow up survey demonstrate that many consumers are vulnerable to deception even when they notice problematic terms in contracts (i.e., terms that are inconsistent with the consumers' interests and contrary to what was represented or promised to them) and question salespeople. Salespeople can deflect consumer concerns by responding in a deceptive fashion to their questions, even when the deceptive explanation for the term would be considered senseless to a rational consumer. The results from the studies support the hypothesis that consumers are vulnerable to this type of deception based upon the five

psychological phenomena we discussed and empirically tested: (i) communication rituals and explanation scripts, (ii) sunk cost effects, (iii) difficulty in detecting and acknowledging lies, (iv) reciprocity of trust, and (v) social norms to sign contracts as presented. Our investigation also found that consumers with certain identified vulnerability characteristics are more likely to accept deceptive explanations than other consumers. These results pose important implications for several areas of law including: the reliance on mandatory home loan disclosures to empower consumers to make wise home loan decisions, the common law action for fraud, statutory causes of action for consumer fraud, the fraud exception to the parol evidence rule, and the law of unconscionability. The article proposed modifications to these areas of law to better take into account consumer vulnerability to deception reflected from the studies and survey presented in this article. The results from our psychological investigation of consumer vulnerability to fraud also supports a policy prescription for legislatures to collect data on contract terms in the most important consumer contexts (such as home loans and home purchases) and consider enacting laws that prohibit specific terms that are “highly unfair.” One example of a highly unfair term that legislatures should consider prohibiting would be providing no remedy to a home purchaser other than return of her earnest money when the real estate developer willfully breaches the contract. By prohibiting specific, highly unfair contract terms, rather than having courts articulate a much more broad based definition of unconscionability, lawmakers can better promote both the policy of certainty of contract and the policy of fairness in contract formation and terms.

Table 1: Trust and Cooperation

Question Asked □ Rating: 1="No, not at all" 5="Yes, completely"

	Signed	Did not Sign
Did you trust the researcher?	4.54	3.77**
Did you believe what the researcher told you about the red highlighted portion of the bogus consent form?	3.81	3.12*
Did you feel free to question the researcher?	3.95	4.49
Did you feel that you could negotiate the terms of the form?	2.72	2.80
Did you feel rushed?	2.72	2.03*
Rating: 1="Not Important" 5="Very Important"		
How important was it to you that the consent form be consistent with what you originally understood was the amount of time the experiment would take and the amount of credit you would receive for your participation?	3.93	4.20
How important was it to you that you were perceived as cooperative to the researcher?	4.02	3.14**
How important was it to you that you were perceived as trustworthy by the researcher?	3.85	3.29
How important was it to you to be treated with respect by the researcher?	4.36	4.11

Note: *=p<.05, **=p<.01 by Fisher's Least Significant Difference Test.

Table 2: Social Norms & Signing Scripts

Question Asked □ Rating: 1="Do not agree at all" 5="Agree completely"

	Signed	Did Not Sign
I know what to be looking for when reading and before signing a consent form.	3.46	4.06*
I feel that I am not expected to read all of the words in a consent form before signing one.	2.79	2.26*
In deciding whether to read and sign the bogus consent form, I was influenced by what I had previously been told on how much credit I would receive for the time I put in on an experiment.	4.02	3.66
No matter what the bogus consent form said, I assumed that I would receive the same amount of credit for the time spent on this experiment as I had previously received for other experiments.	4.11	2.86***
In deciding whether to read and sign the bogus consent form, I was influenced by the fact that I had just participated in an experiment and was already sitting there to participate in the second experiment.	4.00	3.49
In deciding whether to sign the bogus consent form, I was influenced by the fact that I felt I was expected to sign the consent form.	4.19	2.66***
In deciding whether to read the bogus consent form, I was influenced by the length of the bogus consent form.	3.15	2.23***
In deciding whether to read the bogus consent form, I was influenced by the fact that a portion of the form was highlighted in red.	3.40	3.94*
In deciding whether to sign the bogus consent form, I was influenced by the fact that the portion of the form highlighted in red was inconsistent with what I had originally been told.	3.27	4.47***

Note: *= $p < .05$, **= $p < .01$, ***= $p < .001$ by Fisher's Least Significant Difference Test.

Table 3: Reasons Not to Read

Question Asked □ Rating: 1=“Do not agree at all” 5=“Agree completely”

I didn't read the bogus consent form, because I was lazy.	3.44
I didn't read the bogus consent form, because it was boring.	3.23
I didn't read the bogus consent form, because I have read other Consent forms and I presumed that they all read the same.	4.06
I didn't read the bogus consent form, because I presumed that there was nothing problematic in the form because all experiments at De Paul must conform with federal standards and be approved by the IRB (Institutional Review Board).	4.30
I didn't read the bogus consent form, because I didn't think it contained anything important for me to know or agree to.	3.73
I didn't read the bogus consent form, because I have never heard of anyone having a problem with the consent forms they have signed.	3.25
I didn't read the bogus consent form, because it was too long.	2.56

Table 4: Beliefs Regarding Standards for Enforcement of Unfair Contractual Terms

Question Asked □ Rating: 1="Do not agree at all" 5="Agree completely"	
I think if there is a term in the consumer transaction contract that causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer, and if the term was not specifically discussed and negotiated between the consumer and the company, the law should be that a court should not enforce that term.	3.33
I think that if there is a term in a consumer transaction contract that the company has reason to know the consumer would not agree to that term had the consumer known the term was in the written contract, the law should be that a court should not enforce that term.	3.29
I think that all of the terms in a consumer transaction contract that the consumer signs should be enforced by the courts unless the term is so overly harsh, one-sided, or oppressive that it "shocks the court's conscience."	3.44
I think that if a consumer contract contains "unfair terms" a court should not enforce the unfair terms.	3.15
I think that legislatures should review consumer transactions to identify terms that would be considered unfair and prohibit the enforcement of such terms.	3.89

ⁱ K.B. Anderson, *Federal Trade Commission's Consumer Fraud in the United States: An FTC Survey, 2004*, available at <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

ⁱⁱ E. Schloemer, W. Li, K. Ernst, & K. Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners, 2006*, available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf>.

ⁱⁱⁱ But see J.E. Swan, M.R. Bowers & L.D. Richardson, *Customer Trust in the Salesperson: An Integrative Review and Meta-Analysis of the Empirical Literature*, 44 JOURNAL OF BUSINESS RESEARCH 93 (1999) (providing a review of research on factors that cause consumers to trust sales people). Also, Stark and Choplin have, in *A License To Deceive: Enforcing Contractual Myths Despite Consumer Psychological Realities*, 5 NYU JOURNAL OF LAW & BUSINESS 617 (2009)(hereafter "License to Deceive"), examined the extent to which consumers are vulnerable to fraud when they fail to carefully read the terms of the contracts they enter into. In *A Cognitive and Social Psychological Analysis of Disclosure Laws and Call for Mortgage Counseling to Prevent Predatory Lending*, 16 PSYCHOLOGY, PUBLIC POLICY, AND LAW 85 (2010)(hereafter "Psychological Analysis of Disclosure Laws"), Stark and Choplin analyzed the effectiveness of home loan disclosure laws mandated by Congress to prevent predatory home loans by providing consumers with the information necessary to shop around for the lowest cost and most affordable loan possible. In that article we provided a literature review of certain key cognitive and social psychological phenomena that we hypothesized impede the ability of consumers to use these disclosures as Congress intended and that contributed to so many consumers entering into overpriced and unaffordable home loans.

^{iv} E.J. Langer, A. Blank & B. Chanowitz, *The Mindlessness of Ostensibly Thoughtful Action: The Role of "Placebic" Information in Interpersonal Interaction*, 36 JOURNAL OF PERSONALITY & SOCIAL PSYCHOLOGY 635 (1978).

^v For example, the Alabama Supreme Court ruled in a case where the insurance company had allegedly misrepresented that there would be no premium charge for the first year of coverage but the contract terms did include a charge for the first year of coverage that the insured would not have a viable cause of action for common law fraud under the reasonable reliance requirement because of the duty to exercise "some measure of precaution to safeguard their interests" and "[i]f the purchaser blindly trusts, where he should not, and closes his eyes where ordinary diligence requires him to see, he is willingly deceived." *Foremost Ins. Co. v. Parham*, 693 So. 2d 409, 433 (Ala. 1997)(quoting *Torres v. State Farm Fire & Casualty Co.*, 438 So. 2d 757, 758-58 (Ala. 1983). In addition, while fraud is an exception to the parol evidence rule, some jurisdictions require that the fraud relate to the nature of what has been signed ("fraud in the execution") such as when a party deceives the other contracting party into believing that a signed document is something different than a binding contract. BLACK'S LAW DICTIONARY 456 (6TH ED. 1991), rather than other types of fraud that induce a person to sign the contract ("fraud in the inducement") such as a fraud connected with an underlying transaction and not with the nature of the document itself. BLACK'S LAW DICTIONARY 456 (6TH ED. 1991). For an example of a jurisdiction that narrowly interprets the fraud exception to the parol evidence rule to fraud in the execution, See, *Peerless Wall and Window Coverings, Inc. v. Synchronics, Inc.* 85 F. Supp. 2d 519, 531 (W.D. Pa. 2000).

^{vi} R.P. Hill & J.C. Kozup, *Consumer Experiences with Predatory Lending Practices*, 41 JOURNAL OF CONSUMER AFFAIRS 29 (2007), at 40.

^{vii} *Id.*

^{viii} K.B. Anderson, *Federal Trade Commission's Consumer Fraud in the United States: An FTC Survey, 2004*, available at <http://www.ftc.gov/reports/consumerfraud/040805confraudrpt.pdf>.

^{ix} E. Schloemer, W. Li, K. Ernst, & K. Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners, 2006*, available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/foreclosure-paper-report-2-17.pdf>.

^x R. Simon, *Rising Rates to Worsen Subprime Mess—Interest Payments Set to Grow on \$362 Billion in Mortgages in 2008*, WALL. ST. J., Nov. 24, 2007, at A1.

^{xi} Center for Responsible Lending, *Soaring Spillover: Accelerating Foreclosures to Cost Neighbors \$502 Billion in 2009 Alone; 69.5 Million Homes Lose \$7,200 on Average, Over Next Four Year, 91.5 Million Families to Lose \$1.0 Trillion in Home Value; \$20,300 on Average, 2009*, available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>.

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- ^{xii} Hill, *supra* note 6; Stark and Choplin, “Psychological Analysis of Disclosures” *supra* note 3 at 94.
- ^{xiii} E. WARREN & A.W. TYAGI, *THE TWO INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE*, (Basic Books 2003).
- ^{xiv} Stark and Choplin, “License to Deceive” *supra* note 3.
- ^{xv} *Id.* at 695.
- ^{xvi} D.A. Lussier & R.W. Olshavsky, *Task Complexity and Contingent Processing in Brand Choice*, 6 JOURNAL OF CONSUMER RESEARCH 154 (1979).
- ^{xvii} Stark and Choplin, “License to Deceive” *supra* note 3 at 688 (participants in a fraud simulation study self-reported that they didn’t read the consent form presented to them because the researcher asked them to sign it and did not suggest that they read it first rating this factor of 3.7 on a 5 point scale for reasons why they did not read the form before signing it).
- ^{xviii} R.B. Cialdini, *Reciprocation: The Old Give and Take... and Take*, in INFLUENCE: THE PSYCHOLOGY OF PERSUASION (Harper Collins, 1984), at 17-56.
- ^{xix} T. Crossley & R. Guzman, *Corporate Fraud*, 10 AMERICAN JOURNAL OF FORENSIC PSYCHOLOGY 31 (1992).
- ^{xx} See, e.g., In re Sheppard, 299 B.R. 753 (2003)(where the borrower learned just before closing on the loan that the loan terms were different from what he had previously been told and decided to go ahead anyhow. The bankruptcy court held that since the borrower learned of the truth before he closed the loan, the borrower would not prevail in a common law fraud action against the lender).
- ^{xxi} H.R. Arkes & C. Blumer, *The Psychology of Sunk Cost*, 35 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 124 (1985).
- ^{xxii} Hill, *supra* note 6.
- ^{xxiii} *Id.* (providing examples of cases where predatory lenders provided after-the-fact rationales to explain away discrepancies between final loan products and promises that were made during early discussions).
- ^{xxiv} Ginsburg v. Bartlett, 262 Ill. App. 14 (1st Dist. 1931) [hereinafter *Ginsburg*].
- ^{xxv} Stark and Choplin, License to Deceive, *supra* note 3 at 647-48; see also Bates v. Southgate, 31 N.E.2d 551, 558 (Ma. 1941)(cited in Snyder v. Ron Lovercheck, d/b/a Bear Mountain Land Co., 992 P.2d 1079, 1086 (Wyo. 1941) (referring to the “frequent instances in everyday experience where parties accept, often without critical examination, and act upon agreements containing somewhere within their four corners exculpatory clauses... in reliance upon the honesty of supposed friends, the *plausible* and disarming statements of salesmen, or the customary course of business” implying that while people might reasonably rely upon plausible false explanations, they do not necessarily reasonably rely upon implausible explanations (emphasis added)); and Foremost case, *supra* note 5.
- ^{xxvi} Bates v. William Chevrolet/Geo, Inc., 785 N.E.2d 53 (Ill. App. Ct. 2003).
- ^{xxvii} See note 25 *supra*.
- ^{xxviii} *Id.*
- ^{xxix} Lucas v. Oxigene, No. 94 Civ. 1691, 1995 WL 520752 (S.D.N.Y. Aug. 31, 1995). [Hereinafter *Lucas*].
- ^{xxx} McEvoy Travel Bureau Inc. v. Norton Co., 563 N.E. 2d 188 (Mass. 1998).
- ^{xxxi} See note 25 *supra*.
- ^{xxxii} H.H. Clark, *Responding to Indirect Speech Acts*, 11 COGNITIVE PSYCHOLOGY 430 (1979).
- ^{xxxiii} R.W. Gibbs, *Do People Always Process the Literal Meanings of Indirect Requests?*, 9 JOURNAL OF EXPERIMENTAL PSYCHOLOGY: LEARNING, MEMORY, AND COGNITION 524 (1983).
- ^{xxxiv} Langer, *supra* note 4.
- ^{xxxv} R.P. Abelson, *Script Processing in Attitude Formation and Decision-Making*, in COGNITION AND SOCIAL BEHAVIOR (J. S. Carrol & J.W. Payne eds., Erlbaum 1976); E. Langer & R.P. Abelson, *The Semantics of Asking a Favor: How to Succeed in Getting Help Without Really Trying*, 24 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 26 (1972).
- ^{xxxvi} See e.g., B.M. DePaulo, *Spotting Lies: Can Humans Learn to do Better?* 3 CURRENT DIRECTIONS IN PSYCHOLOGICAL SCIENCE 83 (1994).
- ^{xxxvii} See e.g., A. Vrij, *Beyond Unconscionability: The Case for Using “Knowing Assent” as the Basis for Analyzing Unbargained-for Terms in Standard Form Contracts*, 31 SEATTLE U. L. REV. 159 (2004).

^{xxxviii} P. Keith-Spiegel et. al., *Why Professors Ignore Cheating: Opinions of a National Sample of Psychology Instructors*, 8 ETHICS & BEHAVIOR 215 (1998).

^{xxxix} Stark and Choplin, Psychological Analysis of Disclosures *supra* note 3 at 104.

^{xl} Cialdini, *supra* note 18; J.K. Rempel, J.G. Holmes & M.P. Zanna, *Trust in Close Relationships*, 49 JOURNAL OF PERSONALITY AND SOCIAL PSYCHOLOGY 95 (1985); J.M. Weber, D. Malhorta & J.K. Murnighan, *Normal Acts of Irrational Trust: Motivated Attributions and the Trust Development Process*, 26 RESEARCH IN ORGANIZATIONAL BEHAVIOR 75 (2005).

^{xli} Hill, *supra* note 6; M.M. Pillutla, D. Malhorta & J.K. Murnighan, *Attributions of Trust and the Calculus of Reciprocity*, 39 JOURNAL OF EXPERIMENTAL SOCIAL PSYCHOLOGY 448 (2003).

^{xlii} Weber, *supra* note 40.

^{xliii} K. Hong & I. Bohnet, *Status and Distrust: The Relevance of Inequality and Betrayal Aversion*, 28 JOURNAL OF ECONOMIC PSYCHOLOGY 197 (2007).

^{xliv} Snyder, M. (1984). When belief creates reality. *Advances in Experimental Social Psychology*, 18, 247-305. Snyder, M. & Swann, W.B., *Behavioral confirmation in social interaction: From social perception to social reality*, Journal of Experimental Social Psychology, 14, 148-162 (1978); Jones, S.C., & Panitch, D., *The self-fulfilling prophecy and interpersonal attraction*, Journal of Experimental Social Psychology, 7, 356-366, (1971); Kuhlman, D.M., & Wimberley, D., *Expectations of choice behavior held by cooperators, competitors, and individualists across four classes of experimental game*, Journal of Personality and Social Psychology, 34, 69-81 (1976); Rosenthal, R., *On the social psychology of the self-fulfilling prophecy: Further evidence for Pygmalion effects and their mediating mechanisms*. M.S.S. Modular Publications (1976).

^{xliv} Hill, *supra* note 6.

^{xlvi} H.R. Arkes & C. Blumer, *The Psychology of Sunk Cost*, 35 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 124 (1985).

^{xlvi} Stark and Choplin, License to Deceive, *supra* note 3.

^{xlvi} *Id.*

^{xlvi} H.R. Arkes & C. Blumer, *The Psychology of Sunk Cost*, 35 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 124 (1985).

ⁱ Stark and Choplin, License to Deceive and Psychological Analysis of Disclosures *supra* note 3.

ⁱⁱ Langer, *supra* note 4.

ⁱⁱⁱ Langer, *supra* note 4.

^{liii} Hill, *supra* note 6.

^{liv} *Id.*

^{lv} See *id.* at 36. See also, Cialdini, *supra* note 18; Pillutla, *supra* note 41; Rempel, *supra* note 40; Weber, *supra* note 40.

^{lvi} Stark and Choplin, License to Deceive *supra* note 3 at 669-671.

^{lvii} M.T. Orne, *On The Social Psychology of the Psychological Experiment: With Particular Reference to Demand Characteristics and Their Implications*, 17 AMERICAN PSYCHOLOGIST 776 (1962)

^{lviii} H.R. Arkes & C. Blumer, *The Psychology of Sunk Cost*, 35 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 124 (1985).

^{lix} M.T. Orne, *On The Social Psychology of the Psychological Experiment: With Particular Reference to Demand Characteristics and Their Implications*, 17 AMERICAN PSYCHOLOGIST 776 (1962)

^{lx} See Stark and Choplin, License to Deceive, note 3 *supra* at 669-671.

^{lxi} Responses were coded as Disagree = 1, Not Sure = 2, and Agree = 3

^{lxii} See Stark and Choplin, License to Deceive, note 3 *supra* at 669-671.

^{lxiii} *Id.* at 669-671.

^{lxiv} *Id.* at 617-744.

^{lxv} WARREN, *supra* note 13.

^{lxvi} HOUSING ACTION ILLINOIS, FINDINGS FROM THE HB 4050 PREDATORY LENDING DATABASE PILOT PROGRAM (2007) (on file with author) (hereinafter “Housing Action Illinois, 2007”)

^{lxvii} Langer, *supra* note 4.

^{lxviii} Housing Action Illinois, 2007 note 69 *supra*; Swan, *supra* note 3.

^{lxix} Final Rule to Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, 70 Fed. Reg. 222 at 68204 (2008)(hereinafter “2008 HUD Rule”)

^{lxx} Langer, *supra* note 4.

^{lxxi} Stark and Choplin, A Psychological Analysis of Disclosures, *supra* note 3 at 113-130.

^{lxxii} *Id.*

^{lxxiii} *Id.*

^{lxxiv} *Id.* at 125-130.

^{lxxv} Stark and Choplin, License to Deceive *supra* note 3 at 713-721 (which contains a table summarizing the laws of all fifty states on the elements necessary for common law fraud in each state).

^{lxxvi} *Harding County, S.D., v. Frithiof*, 575 F.3d 767, 775 (8th Cir. 2009); *Interdonato v. Interdonato*, 521 A.2d 1124, 1133 (D.C. 1987). See also *Rainier Nat. Bank v. Lewis*, 635 P.2d 153, 155 (Wash. Ct. App. 1981)(explaining that in the absence of fraud, deceit or coercion, one who has knowingly affixed his signature to an agreement is bound by the contract); *Pers Travel, Inc. v. Canal Square Associates*, 804 A.2d 1108, 1110 (D.C. 2002) (stating that a person that signs a contract which he had an opportunity to read and understand is bound by its provisions unless enforcement of the agreement should be withheld because the terms are unconscionable); *Phoenix Leasing, Inc. v. Kosinski*, 707 A.2d 314, 317 (D.C. 1998) (explaining that the general rule is that when a literate person of mature years signs or accepts a formal written contract, it is their duty to read it and notice the content of the contract so responsibility will be assigned to that person is they negligently fail to do so).

^{lxxvii} See, e.g., *Castellana v. Conyers Toyota, Inc.*, 407 S.E. 2d 64, 64-68 (Ga. Ct. App. 1991)(there is a duty to read and understand the contract and to verify the contract terms and representations, which bars persons from relying on what they are told without independently verifying.) See also the discussion on the different approaches of courts to the fraud exception to the parol evidence rule in note 5 *supra*.

^{lxxviii} *Id.* See, also, *Foremost Insurance Company v. Parham*, 693 So. 2d 409 (Ala. 1997).

^{lxxix} Stark and Choplin, License to Deceive *supra* note 3 at 706-712.

^{lxxx} D.P. Stark & J.M. Choplin, *Does Fraud Pay? An Empirical Analysis of Attorney's Fees Provisions in Consumer Fraud Statutes*, 56 CLEV. ST. L. REV. 483, 484 (2008).

^{lxxxi} Stark and Choplin, License to Deceive *supra* note 3 at 713-721.

^{lxxxii} *Id.*

^{lxxxiii} *Id.* at 618-620.

^{lxxxiv} Langer, *supra* note 4.

^{lxxxv} See, e.g., *CC- Aventura, Inc. v. The Weitz Co., LLC*, 2008 U.S. Dist. LEXIS 7214 (S.D. Fla. 2008) (explaining that the overreaching policy in Florida is that unconscionability is a highly disfavored defense, and courts should not employ that concept to relieve a part of an individual's obligation under a contract because he has made a bad bargain containing contractual terms which are unreasonable or impose an onerous hardship on him); Edith Warkentine, *Beyond Unconscionability: The Case for Using "Knowing Assent" as the Basis for Analyzing Unbargained-for Terms in Standard Form Contracts*, 31 Seattle U. L. Rev. 469, 472 (stating that the unconscionability doctrine places an extremely high burden on the challenging party that most plaintiffs will have a hard time making the showing required for a court to find unconscionability).

^{lxxxvi} See, e.g., *Arguelles-Romera v. Superior Court*, 184 Cal. App. 4th 825, 843-44 (Ca. App. 2d Dist. 2010) (Court explained that substantive unconscionability traditionally involves contract terms that are so one-sided as to "chock the conscience" or that impose harsh or oppressive terms.); and *Jackson v. S.A.W. Entertainment Ltd.*, 629 F. Supp. 2d 1018, 1024 (N.D. Cal. 2009) (applying the same test).

^{lxxxvii} See, e.g., *Stirlen v. Supercuts, Inc.*, 60 Cal. rptr. 2d 138, 145 (Cal. App. 1 Dist. 1997); *Armendariz v. Foundation Health Psychare Svcs, Inc.*, 6 P. 3d 669, 767 (Cal. 2000); and *Cottonwood Financial, LTD v. Estes*, 784 N.W. 2d 726, 730 (Wis. App. 2010).

^{lxxxviii} *Cottonwood Financial, LTD v. Estes*, 784 N.W. 2d 726, 730 (Wis. App. 2010).

^{lxxxix} See, e.g., *Broemmer v. Abortion Service of Phoenix, Ltd.*, 840 P. 2d 1013 (Ariz. 1992); and *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 682 P. 2d 388 (Ariz. 1984).

^{xc} The EU test for unconscionability (i.e. terms so unfair that they will not be enforced) is discussed in James r. Maxeiner, *Standard-Terms Contracting in the Global Electronic Age: European Alternatives*, 28 YALE L. J. INT'L LAW. 109, 131-41 (Winter 2003).

^{xci} Our data in fraud simulation study 1 reflected that fewer consumers failed to notice and object to a problematic term in a contract when the term is more conspicuously highlighted in a shorter form contract, compared with the percentage who failed to do so in the fraud simulation study presented in License to Deceive. Nevertheless, a large percentage of consumers were still deceived into signing the contract even

when they noticed the term. *See, e.g.*, *Eckel v. Orleans Construction Co.*, 519 A.2d 1021 (Pa. 1986); *Burbo v. Harley C. Douglass, Inc.* 106 P.3d 258 (Wash. Ct. App. 2005) for examples of jurisdictions that require that a waiver of implied warranty of habitability provision be conspicuous to be enforceable.

^{xcii} The authors have filed a freedom of information act request with the City of Chicago to have access to each condominium property report filed with them for the period of 2003-2008 to review the form purchase contracts created for the sale of the condominium units to see what percentage contained “highly unfair” contract terms, which we defined to include a contract where if the seller breaches the buyer is entitled to no relief other than a return of buyer’s earnest money and found that 65% of the contracts we reviewed contained this term. (data on file with the author). State legislatures can earmark funds to engage in similar studies to try to determine the extent to which company form contracts contain highly unfair contract terms in different consumer contexts.

^{xciii} Public Law 111-204 (H.R. 4173) “Dodd-Frank Wall Street Reform and Consumer Protection Act” Section 1403 (c)(4)(A) Prohibition on Steering Incentives.

^{xciv} The law should require that the attorneys handling these type of transactions receive special training and licensing as experts in these areas to ensure that if the consumer is required to hire an attorney for these two types of transactions that the attorneys in fact possess the knowledge and training to provide real value to the consumers who hire them.