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ESSAY

THE SHAPING OF INFORMATION FLOW IN LAW AND LIFE

*John Allenbach & Richard Zeckhauser**

INTRODUCTION

Fred Schauer showed how the law takes a messy, probabilistic world and uses rules to draw bright lines through it: liable or not, knowing or ignorant, guilty or innocent.¹ Such neat categorical boxes are a feature, not a bug, for the law. They serve two critical purposes: (1) they determine an outcome, and (2) they fulfill the law's need for predictability and administrability.²

From an economic perspective, though, information comes in shades of gray, not black and white. Indeed, sometimes those grays include dots and waves and not merely tones, such as when potential states of the world are poorly defined. Beliefs update by degree, and uncertainties in the law are rarely resolved to one or zero before a decision must be made.

* Teaching Fellow, Kennedy School, Harvard University; Frank P. Ramsey Professor of Political Economy, Kennedy School, Harvard University. We are grateful to the editors of the *Virginia Law Review* for their careful editing and insightful suggestions. We thank the Mossavar-Rahmani Center for Business and Government for research support.

¹ Of course, the law sometimes uses standards or probabilistic thresholds (reasonableness tests, burdens of proof), but the ultimate result is a categorical determination.

² See Frederick Schauer, *Playing by the Rules: A Philosophical Examination of Rule-Based Decision-Making in Law and in Life* 95, 137 (1991); Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* 35–37 (2009); Frederick Schauer, *Formalism*, 97 *Yale L.J.* 509, 539 (1988); see also Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 *Duke L.J.* 557, 611 (1992) (underscoring the need for legal predictability).

Finally, information may be written in invisible ink, as when ignorance hits and individuals do not even recognize the existence of some states of the world.

When law imposes categorical boundaries on this amorphous, ill-defined reality, it does more than merely regulate information asymmetries. It creates new strategic landscapes, where the boundaries themselves create games among strategic players. Hold people liable for what they know, and they might choose not to learn. Punish lies but not misleading truths, and quasi-truths will flourish. When some reputations get protected but others sullied, collective identities become both a valuable resource and a significant vulnerability.

This Essay explores three conceptual domains, which lie well outside of traditional legal scholarship. Nonetheless, each of the three has strong implications for the law. Those domains are information asceticism, the strategic choice not to learn; paltering, misleading without lying; and reputational externalities, spillovers—positive or negative—from associations. In each case, we show how and where the law draws lines. We then use simple economic models to illustrate the incentives that follow. Schauer's insights about legal categorization embrace the economic logic of uncertainty, generating predictable strategic responses that often reshape but rarely eliminate the asymmetries that underlie them.

I. STRATEGIC INFORMATION ASCETICISM

We use the term “Strategic Information Asceticism” to describe the phenomenon where individuals or institutions deliberately deny themselves otherwise valuable information to prevent others from accessing it and using it against them. A tech firm might avoid market testing if there is a chance the results will leak to a competitor. An intelligence agency might forgo further surveillance that would improve the success of an operation but risk tipping off the target. Colleges might avoid collecting standardized test scores from all their applicants, so they can report higher median scores.

Many intentional self-denials of knowledge do not fit our category. For our purposes, three criteria define Strategic Information Asceticism:

1. *Feasible Acquisition*: Information is available and cost-effective to acquire.
2. *Deliberate Non-Acquisition*: The decision-maker actively chooses not to acquire the information.

3. *Concern with External Reaction:* The decision-maker avoids the information because it wants to avoid others' getting and acting upon it in a way that harms her.³

To illustrate the distinction, consider a patient who is genetically predisposed to Huntington's Disease. According to historical data, the chance that he will take a cheap and accurate test to determine if he has the genetic markers of the disease is less than ten percent.⁴ In some cases, this is to avoid the psychic pain and loss of hope that comes if the news is bad.⁵

This does not fit our definition.

An alternative motivation, though, fits our criteria: he avoids the test to prevent its results from leaking to insurers, who might raise the rates on life or long-term care coverage.⁶ Because this is a strategic response to the potential for adverse actions of others, it qualifies as Strategic Information Asceticism.

Strategic Information Asceticism, though its phrasing has hardly been used, has long been a concern of the law.⁷ Legal doctrines wrestle with how much an actor's knowledge, or deliberate lack of it, should matter in determining liability. Different areas of law adopt different tests, which seem to fall into four general buckets:

1. *Strict Liability:* At one extreme, the law sometimes deems knowledge irrelevant. Under strict liability, an actor is responsible regardless of what she knew or could have known.⁸ For instance, environmental statutes may require parties to remediate hazardous waste whether or not they have knowledge of the contamination.⁹

³ John Allenbach & Richard Zeckhauser, Strategic Information Asceticism: Denying Self to Deny Others 3–4 (Oct. 24, 2025) (unpublished manuscript) (on file with authors).

⁴ See Emily Oster, Ira Shoulson & E. Ray Dorsey, Optimal Expectations and Limited Medical Testing: Evidence from Huntington Disease, 103 Am. Econ. Rev. 804, 809 (2013).

⁵ Id. at 806.

⁶ See Emily Oster et al., Fear of Health Insurance Loss Among Individuals at Risk for Huntington Disease, 146A Am. J. Med. Genetics Part A, 2070, 2072 (2008).

⁷ See, e.g., David Luban, Contrived Ignorance, 87 Geo. L.J. 957, 959 (1999) (considering the common law tradition of “deniability” in criminal law).

⁸ See Restatement (Second) of Torts §§ 519–520 (A.L.I. 1965).

⁹ See Alexandra B. Klass, From Reservoirs to Remediation: The Impact of CERCLA on Common Law Strict Liability Environmental Claims, 39 Wake Forest L. Rev. 903, 920–22 (2004).

2. *Actual Knowledge Only*: At the opposite end of the spectrum are doctrines where liability attaches only if the actor truly knew—and the state can prove it.¹⁰ Ignorance, whether genuine, deliberate, or feigned, becomes a shield. This creates a strong incentive for actors to avoid knowing in the first place. Tax law illustrates this point: courts sometimes excuse individuals who failed to report foreign accounts or income on the grounds that they lacked awareness of the obligation.¹¹

3. *Negligence*: Between these poles lies negligence, where the law asks not what the actor knew, but what a reasonable person in their position should have known.¹² Ignorance offers no refuge if a duty of care required investigation. In *The T.J. Hooper*, tugboat owners were held liable for cargo lost in a storm because, despite the threat, they had not equipped themselves with radios.¹³ They may not have known the storm was coming, but they should have known. Failure to acquire readily available information tipped them to fault.¹⁴

4. *Willful Blindness*: Related to negligence is willful blindness. Here, liability attaches when an actor deliberately avoids confirming what they strongly suspect to be true; the law treats purposeful ignorance as equivalent to knowledge.¹⁵ In *Global-Tech Appliances, Inc. v. SEB S.A.*, the Supreme Court held a parent company liable for patent infringement because it deliberately avoided checking whether a rival's patent existed.¹⁶ In this regime, “see no evil” is not a defense. Strategic Information Asceticism, if it can be exposed, can be grounds for liability.¹⁷

¹⁰ See, e.g., 18 U.S.C. § 1001(a) (criminalizing false statements made “knowingly and willfully”).

¹¹ *Cheek v. United States*, 498 U.S. 192, 201–03 (1991); Mark C. Winings, Comment, Ignorance is Bliss, Especially for the Tax Evader, 84 J. Crim. L. & Criminology 575, 575–77 (1993).

¹² See Restatement (Second) of Torts § 283 (A.L.I. 1965).

¹³ 60 F.2d 737, 739 (2d Cir. 1932).

¹⁴ *Id.*

¹⁵ See Model Penal Code § 2.02(7) (A.L.I. 1985).

¹⁶ 563 U.S. 754, 770–71 (2011).

¹⁷ Jeremy Adler, See No Evil: How the Supreme Court's Decision in *Global-Tech Appliances, Inc. v. SEB S.A.* Further Muddles the Intent Element of Induced Infringement, 11 Nw. J. Tech. & Intell. Prop. 559, 559 (2013).

These doctrines create incentive structures for Strategic Information Asceticism. For decision-makers on the margins, modest shifts in how liability applies—whether knowledge is irrelevant, required, presumed, or inferred—can decisively alter behavior. In some regimes, actors are pushed to seek information aggressively; in others, they are nudged to remain in the dark.¹⁸ Often, they must weigh not just whether to learn, but the probability that a court will later conclude that they should have learned.¹⁹ The law, in effect, shifts between penalizing, tolerating, and even encouraging the non-acquisition of information. Strategic Information Asceticism, then, emerges not just as a behavioral quirk, but as a rational adaptation to the liability frameworks that govern knowledge.

Unlike markets, which often handle uncertainty through price adjustments, the law is often forced into binary determinations. A parcel of land that might flood sells for less, reflecting the confluence of the buyer's and seller's assessments of risk. But in court, the question becomes categorical: Was the seller liable for failing to disclose flood risk?²⁰ That indivisibility sharpens the incentives for information asceticism: actors may avoid knowledge not just to shift a price, but to avoid crossing a line that triggers liability altogether.

A. Illustrative Model

We demonstrate how a public-records disclosure law can reshape incentives with a stylized example. Imagine a clean-energy start-up, Firm *A*, which develops smart-grid hardware. To win a long-term supply contract with a city, *A* could first run a pilot program. Pilots generate valuable information: Do customers adopt quickly? Do systems perform reliably? What price will clear the market?

But, because the pilot is conducted with a government agency, the results may be subject to public-records requests. Consider two regimes: In the first, a disclosure law allows a competitor, Firm *B*, to file a request

¹⁸ See, e.g., Assaf Hamdani, *Mens Rea and the Cost of Ignorance*, 93 Va. L. Rev. 415, 428 (2007) (“Unlike mens rea, strict liability induces offenders to make the socially desirable level of investment in verification.”).

¹⁹ See Jonathan L. Marcus, *Model Penal Code Section 2.02(7) and Willful Blindness*, 102 Yale L.J. 2231, 2237 (1993) (“Many courts have voiced concern that a jury could easily translate the notion that the defendant consciously avoided the truth into the idea that the defendant should have known the truth.” (emphasis omitted)).

²⁰ See *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985) (“[W]here the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer.”).

and obtain the pilot data. If the pilot reveals a viable, profitable market, *B* can immediately enter with an undercut bid. In the second regime, there is an exception in disclosure law that allows courts to deny requests if they contain trade secrets.

Here, the strict disclosure law encourages information asceticism. What would normally be a prudent information-gathering step becomes a liability because the information will be secured by *B*. Firm *A* knows that, as the results of the pilot improve, *B* becomes more likely to bid on the contract. Faced with that knowledge, *A* may rationally choose ignorance, skipping the pilot altogether. The statute designed to promote government transparency, with its administrable bright lines, chills useful exploration by private firms.

We can formalize this trade-off with a two-player game theoretic model.²¹ Firm *A* makes two choices. The first is whether to conduct the pilot. If *A* conducts the pilot, it receives a signal, *s*, which is uniformly distributed from 0 to 100 and represents the attractiveness of the market. If required by law, this signal inevitably is seen by *B*.

Then, both firms must choose whether to bid on the contract. If *A* bids alone, it enjoys a stronger position. If *B* also bids, however, prices are driven down.

The payoffs (in the form (*A*, *B*)) to the two players are:

		<i>B</i>	
		No Bid	Bid
<i>A</i>	No Bid	$(100 + 0.2s, 80 + 0.2s)$	$(80 + 0.2s, 45 + 0.8s)$
	Bid	$(75 + s, 60 + 0.2s)$	$(40 + 0.8s, 20 + 0.8s)$

²¹ See generally Avinash K. Dixit & Barry J. Nalebuff, *The Art of Strategy: A Game Theorist's Guide to Success in Business and Life* 76–78 (2008) (introducing game tables, or “payoff tables,” which offer a visual representation of the consequences of two players acting simultaneously).

These payoffs and the distribution of the signal are common knowledge. As the Appendix shows, *A*'s choice to conduct a pilot is dictated by the state's disclosure law.²²

In both cases, if *A* eschews the pilot, it chooses to bid, and its expected payoff is 125. If the law requires the pilot's results be provided if *B* requests them, the expected payoff for *A* drops to 112. However, if *A* can keep the pilot results private, its payoff is 128. Thus, if *A* expects to have to disclose the pilot results, it will not conduct the pilot; if it can be kept private, *A* will go through with the pilot test. The law here creates incentives that dictate behavior, and possibly behavior that is contrary to the public interest.

Rather than treat disclosure as binary, decision theorists would suggest that *A* might do better to assess subjectively the probability that the court requires it to disclose.²³ This is especially important since, in reality, at the federal level, courts have shifted the tests for disclosure of trade secrets in recent years.²⁴ Given the payoff structure above, *A* will conduct the pilot if it believes there is a seventy-seven percent chance it can keep the results private, whether due to a court ruling or *B*'s failure to file a request. Unless *A* is rather confident that *B*'s incompetence or the court's rulings will prevent *B* from accessing the pilot's findings, *A* will rationally choose to forgo the pilot and still bid on the contract.

This simple model highlights a broader truth: law can flip the value of information. Rules meant to encourage transparency or accountability sometimes make ignorance the safer bet. A landlord may avoid testing a unit for lead if a positive test forces her to remediate. A pharmaceutical firm might hesitate to run a trial if unfavorable results must be disclosed and could kill a promising drug line. Strategic Information Asceticism, which the law has wrestled with intuitively for generations, might be better understood—and thus more effectively regulated—as a sharp economic calculation of the risks and benefits of acquiring knowledge.

²² See *infra* Appendix.

²³ Maciej H. Kotowski, David A. Weisbach & Richard J. Zeckhauser, Audits as Signals, 81 U. Chi. L. Rev. 179, 180–85 (2014).

²⁴ In *Food Marketing Institute v. Argus Leader Media*, the Supreme Court shifted the standard for FOIA exceptions. 139 S. Ct. 2356, 2360, 2366 (2019). Previously, under *National Parks & Conservation Ass'n v. Morton*, information was exempt from disclosure if it would cause substantial competitive harm. 498 F.2d 765, 770 (D.C. Cir. 1974). Now, information is confidential if it is customarily kept private and the government assured it would be private. *Food Mktg. Inst.*, 139 S. Ct. at 2366.

II. PALTERING

We begin this Part with two palters, one by us and one by you. By introducing the term “palter,” we subtly suggest that we command an especially rich vocabulary.²⁵ And when you fail to raise your hand to ask what the word means, you too palter. Your silence plausibly implies that you already knew its meaning.²⁶ Neither act involves a lie, but both are designed to create a belief that is not quite true.²⁷

This is the essence of paltering: intentionally misleading despite telling the truth. Often palters function by reporting a selective part of the truth in a way that encourages the listener to draw a mistaken conclusion.²⁸ Paltering differs from lying, where the statement itself is false. It lives in the murky middle ground—sometimes less than lying, but often no less harmful.²⁹

Paltering is a family of strategies. It can be carried out by silence, by framing, by action, or, at its most pernicious, by altering by 180 degrees the meaning of the truth itself.

1. Paltering by Silence. This occurs when the response, or lack thereof, leaves out enough to mislead.³⁰ Fred Schauer was known as an accomplished furniture maker. If a visitor to his home complimented the craftsmanship of the desk in his office, he might simply have replied, “Thank you.” The visitor could easily infer that

²⁵ Frederick Schauer & Richard Zeckhauser, *Paltering*, in *Deception: From Ancient Empires to Internet Dating* 38, 39 (Brooke Harrington ed., 2009) (defining paltering as practices that are “less than lying,” but still deceptive, misleading, or insincere, inhabiting a grey area).

²⁶ Reputational concerns may lead to the “blindness” of the crowds. Thus, a single person may be more likely to ask than would be a group of, say, half a dozen people. None would know the meaning, but admitting that in a group, particularly where others might know, doubly risks embarrassment.

²⁷ Schauer & Zeckhauser, *supra* note 25, at 44 (“Often the recipient’s misimpression is a consequence of failing to correct a wrong impression.”).

²⁸ See Todd Rogers, Richard Zeckhauser, Francesca Gino, Michael I. Norton & Maurice E. Schweitzer, *Artful Paltering: The Risks and Rewards of Using Truthful Statements to Mislead Others*, 112 *J. Personality & Soc. Psych.* 456, 456 (2017).

²⁹ Frederick Schauer & Richard Zeckhauser, *Paltering* 4 (John F. Kennedy Sch. Gov’t, Working Paper No. RWP07-006, 2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=832634 [<https://perma.cc/ZR4V-K9CN>].

³⁰ See Despoina Alempaki, Valeria Burdea & Daniel Read, *Deceptive Communication: Direct Lies Versus Ignorance, Selective Truth, and Silence*, 3 *J. Pol. Econ. Microeconomics* 827, 829 (2025).

Schauer built the desk himself, when in fact he had ordered it from an acclaimed woodworker in Oregon.³¹

2. Paltering by Framing. Here, the truth is presented selectively, with emphasis placed on a flattering detail so that the unflattering whole is concealed.³² At a dinner party, as you leave, the host asks if you enjoyed the food. “That tiramisu was unbelievably spectacular,” you reply. You have told the truth but shifted the frame. The gussied-up chicken was dry, and the fancy potatoes undercooked, yet your answer suggests broader approval.

3. Paltering by Action. Sometimes the arrangement of events misleads as effectively as words.³³ Consider a professor interviewing a promising undergraduate, Joe, for a research assistant (“RA”) position. “Come by my office at 10:00 AM,” he says. Then he invites a former RA, Denise, with whom he is coauthoring a paper, to stop by at 10:15. “Denise, tell Joe how we met and what we are working on now.” Every statement is true. But the professor has carefully staged the scene, highlighting one successful RA while leaving unmentioned the many others who did not work out.

4. Altering. A particularly nefarious form of paltering occurs when omission or selective framing projects the opposite meaning of the truth.³⁴ In Cambridge, Massachusetts, home sellers must complete a questionnaire about their property. In response to a question about water damage, a seller might reply: “A few years ago, there was a torrential downpour, and about a cup of water seeped into the basement through a crack in the wall. It has since been patched.” Every word is accurate. Yet the seller has omitted that the same storm caused the roof to leak badly, and the roof has not been repaired. The omission reverses the meaning: instead of “minor problem, now fixed,” which hints at full revelation, the hidden truth is “major problem, still unresolved.” This is altering. Dropping the “p” from paltering frames the partial truth so selectively that it functions as falsehood.

³¹ Schauer & Zeckhauser, *supra* note 25, at 40.

³² See Alempaki et al., *supra* note 30, at 829.

³³ Schauer & Zeckhauser, *supra* note 25, at 44.

³⁴ *Id.* at 43–44.

Paltering is strikingly common. We encounter it in advertising, politics, negotiations, and everyday conversation. Negotiation scholars note how parties highlight selective truths to gain leverage,³⁵ and psychologists studying influence show how framing accurate facts can mislead as effectively as lies.³⁶

Many who would never lie outright nonetheless palter in comfort. Sometimes a palter is as benign as a white lie; the dinner party host did not need to know her cooking was subpar. In other cases, however, it can create meaningful misunderstandings that hurt the deceived individual and yield material benefits to the palterer.³⁷ Such situations might benefit from legal intervention or regulation.

From the perspective of decision theorists, a two-pronged test for whether a palter ought to be sanctioned³⁸ might be optimal:

1. Would a high percentage of reasonable people be misled?
2. Does being misled create a consequential loss?

From a legal perspective, however, this test might be difficult to operationalize. It is far easier to identify a lie than to identify when a technically true statement has misled enough people in a costly way. Broadly, the law treats paltering in one of three ways: it regulates, tolerates, or explicitly protects it.

A. Regulated Paltering

The clearest interventions occur when paltering shades into what we call “altering”—truth framed so selectively that it functions as falsehood. Many of the Federal Trade Commission’s most prominent deception cases fit this category. In *FTC v. Brown & Williamson Tobacco Corp.*, the U.S. Court of Appeals for the District of Columbia Circuit held that the company’s claim that its cigarettes delivered only one milligram of tar was deceptive: it was true only when smoked by machines, not by

³⁵ See, e.g., Howard Raiffa, *The Art and Science of Negotiation* 352–53 (1982) (discussing the ethics of true but selective disclosure of information in negotiation).

³⁶ See, e.g., Daniel Kahneman, *Thinking, Fast and Slow* 88 (2011) (sharing experimental evidence on how the same fact framed in different ways changes perception).

³⁷ See Rogers et al., *supra* note 28, at 471 (finding that paltering adds value for the palterer but has harmful effects on the palterer’s relationship with the deceived).

³⁸ Here, “sanctioned” serves appropriately as a contranym, a second palter on our vocabulary.

humans.³⁹ Likewise, in *Kraft, Inc. v. FTC*, the Seventh Circuit ruled that Kraft could not advertise that its Singles contained the calcium of five ounces of milk, since nearly a third of that calcium was lost in processing.⁴⁰ These were not mere palterers. They conveyed the reverse of the truth itself and satisfied both prongs of our test, thus meeting our standard for punishment.⁴¹

B. Tolerated Paltering

Notably, toward the other end of the spectrum lie practices that are misleading in form but tolerated in law: puffery, signposting, and ambiguity. All involve truth-bending, but they rarely satisfy both prongs of our test to justify punishment.

Puffery. Puffery survives because it fails prong 1: very few reasonable people are actually misled. When a diner claims to have “the world’s best coffee” or a daycare describes itself as “top-rated,” consumers recognize the exaggeration for what it is. Courts have consistently treated such statements as non-actionable. In *Pizza Hut, Inc. v. Papa John’s International, Inc.*, for example, the slogan “Better Ingredients. Better Pizza.” was allowed to stand despite being unverifiable and in no sense literally true.⁴² Puffery escapes sanction primarily because it is discounted: consumers learn to ignore it, and thus the law sees no need to intervene.⁴³

Signposting. Signposting is a more sophisticated cousin to puffery. It involves emphasizing some true facts while omitting others, leading consumers to underestimate their negatives.⁴⁴ An airline ad trumpeting “Flights from Boston to Miami for \$199!” is a signpost if the fine print reveals that the price only applies to a middle seat on a 2:00 AM flight.

³⁹ 778 F.2d 35, 43 (D.C. Cir. 1985).

⁴⁰ 970 F.2d 311, 314, 322 (7th Cir. 1992).

⁴¹ *Brown & Williamson Tobacco Corp.*, 778 F.2d at 42 (“Consumers have no innate ability to assess an individual tar claim standing alone.”); *Kraft*, 970 F.2d at 322 (“Here, the average consumer is not likely to know that much of the calcium in five ounces of milk (30%) is lost in processing, which leaves consumers with a misleading impression about calcium content.”).

⁴² 227 F.3d 489, 504 (5th Cir. 2000).

⁴³ See David A. Hoffman, *The Best Puffery Article Ever*, 91 Iowa L. Rev. 1395, 1435 (2006) (arguing against the “routine[] assum[ptions]” of “[j]urists and regulatory authorities” that consumers ignore puffery).

⁴⁴ See Richard J. Zeckhauser & David V. P. Marks, *Sign Posting: The Selective Revelation of Product Information*, in *Wise Choices: Games, Decisions, and Negotiations* 22, 22–23, 27–29 (Richard J. Zeckhauser, Ralph L. Keeney & James K. Sebenius eds., 1996).

The ad is literally accurate, but misleading by selective display.⁴⁵ Much signposting also fails one or both prongs of the test. Either few people are seriously misled (prong 1), or the expected losses are modest enough to rarely trigger legal action (prong 2).⁴⁶ Signposting is particularly common in resumes, where selective omission and emphasis are expected and therefore heavily discounted by evaluators. As a result, the magnitude of deception is usually modest. While such practices are tolerated, embellishment is risky, and outright lying, such as claiming a degree one does not possess, can carry major professional consequences.⁴⁷

In some areas, however, puffery and signposting do not escape completely. When claims implicate health or safety, regulators intervene. A pharmaceutical advertiser must show a “fair balance” between information about benefits and risks to avoid misleading consumers.⁴⁸ A weight-loss product showcasing unusually successful outcomes must note that the depicted results are atypical.⁴⁹ These disclaimers provide a formal shield but rarely undo the misleading net impression. Mutual fund disclosure requirements illustrate the same dynamic: SEC rules mandate exhaustive prospectuses and risk reports, yet the volume and framing often leave investors no clearer about fees or risk exposure.⁵⁰ In practice, the palter remains effective, even if liability is blunted.

Intentional Ambiguity. Some palterers trade not on exaggeration, but on the multiple meanings a word can bear.⁵¹ A gallon in Great Britain is twenty percent larger than a gallon in the United States. If a British purveyor in the U.K. sold “a thousand gallons of milk” to an American

⁴⁵ Id. at 27–28.

⁴⁶ See *Moore v. Trader Joe’s Co.*, 4 F.4th 874, 882–83 (9th Cir. 2021) (finding no reasonable consumer would be deceived by ambiguous labeling on a jar of honey).

⁴⁷ Christine A. Henle, Brian R. Dineen & Michelle K. Duffy, Assessing Intentional Resume Deception: Development and Nomological Network of a Resume Fraud Measure, 34 J. Bus. Psych. 87, 88–90, 95 (2019) (distinguishing résumé fabrication, embellishment, and omission and treating outright falsification as categorically more serious than selective emphasis or omission).

⁴⁸ See U.S. Food & Drug Admin., U.S. Dep’t of Health & Hum. Servs., Guidance for Industry: Consumer-Directed Broadcast Advertisements 1 (1999) (explaining that consumer-directed prescription drug advertisements must balance claims about benefits with disclosures of material risks).

⁴⁹ See 16 C.F.R. § 255.2(b), (e)(4) (2025) (prohibiting deceptive consumer endorsements and using weight-loss products as an example).

⁵⁰ See Jill E. Fisch & Tess Wilkinson-Ryan, Why Do Retail Investors Make Costly Mistakes? An Experiment on Mutual Fund Choice, 162 U. Pa. L. Rev. 605, 611, 624–25 (2014).

⁵¹ See Rogers et al., *supra* note 28, at 456–57.

customer and delivered the smaller U.S. gallon, the claim would be literally true, yet misleading in context.

C. Protected Paltering

Some domains go further, not merely tolerating but deliberately protecting paltering.

Safe Harbors in Securities Law. Under the Private Securities Litigation Reform Act (“PSLRA”), forward-looking statements are sheltered from liability if framed cautiously.⁵² In *In re Cutera Securities Litigation*, the Ninth Circuit held that forward-looking projections accompanied by meaningful cautionary language fall within the PSLRA safe harbor.⁵³ The doctrine protects such statements even when they may lead investors to overly optimistic interpretations.

Politics. Political speech presents the most extreme case. Courts have gone beyond protecting palters; they have protected even outright lies through appeal to the First Amendment. In *United States v. Alvarez*, misleading and false political claims were held to be speech protected by the First Amendment.⁵⁴ From our perspective, this reflects a kind of common knowledge. If everyone knows that a type of statement is likely to be false or misleading, as might well be the case with speech by politicians, both social norms and the law seem less likely to punish it. A compact man who falsely claims to be six feet tall on a dating app is unlikely to be held accountable; it is common knowledge those heights are regularly inflated.

D. Regulating Paltering

In some cases, palters that meet both prongs of our test ought to be discouraged by regulation. But regulatory efforts to clamp down on paltering can themselves go awry. Professors Robinson, Viscusi, and Zeckhauser argue that effective warnings should distinguish serious

⁵² 15 U.S.C. § 78u-5(c)(1).

⁵³ 610 F.3d 1103, 1112–13 (9th Cir. 2010).

⁵⁴ 567 U.S. 709, 713–15, 729–30 (2012); see also Frederick Schauer, Free Speech, the Search for Truth, and the Problem of Collective Knowledge, 70 SMU L. Rev. 231, 233–36 (2017) (arguing that First Amendment doctrine often values categorical protection of speech over the pursuit of factual accuracy).

“wolf” risks from trivial “puppy” ones.⁵⁵ When extensive puppy risks get mixed in with wolf risks, the wolf risks get insufficient attention.⁵⁶ Yet in practice, disclosure mandates often elicit just such mixes. Securities prospectuses bury investors under encyclopedic lists of potential risks; pharmaceutical ads often overwhelm patients when they disclose a deluge of side effects with no information on frequency or severity. Rather than illuminate, these disclosures desensitize.⁵⁷ By failing to separate the wolves from the puppies, regulation can leave people less, not more, protected from paltering. Ranking risks by their expected impact, whether in dollars for investors or Quality Adjusted Life Years for patients, would at least help investors distinguish the howls from the whimpers.⁵⁸

III. PALTERING AS A POTENTIALLY UNDESIRABLE EQUILIBRIUM OUTCOME

The persistence of paltering is not accidental. It reflects the incentives built into the system. Often, paltering represents a decision-maker’s dominant strategy, clearly preferable to lying or telling the truth. But the utility of society, not the private gain of the palterer, is generally the law’s concern.⁵⁹ To illustrate, consider a stylized example involving three different hypothetical ads for the same cholesterol pill and their related outcomes.

The first is the plain truth: “In clinical trials, 18% of patients saw a decrease in LDL cholesterol levels. The average LDL decrease among those patients was 19 mg.” This is accurate, but hardly compelling. Few patients may be moved by statistics that emphasize modest results. Profits increase by \$1 million, but there is no risk of regulator intervention.

The second is a palter: “Meet Jane. Her LDL cholesterol dropped by 56 points. Jack did even better—a 72-mg drop.” Every word is accurate, but the impression it leaves, that dramatic improvements are typical, is false. Consumers tend to overlook the fine print, stating that “results are not typical”; a massive number of new customers provide the evidence.

⁵⁵ Lisa A. Robinson, W. Kip Viscusi & Richard Zeckhauser, Efficient Warnings, Not “Wolf or Puppy” Warnings, *in* *The Future of Risk Management* 227, 237–38 (Howard Kunreuther, Robert J. Meyer & Erwann O. Michel-Kerjan eds., 2019).

⁵⁶ *Id.*

⁵⁷ See Omri Ben-Shahar & Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* 101 (2014).

⁵⁸ See Robinson et al., *supra* note 55, at 238–40, 246 n.13.

⁵⁹ One reason paltering might dominate lying is the moral cost. Many are comfortable shading the truth but would bristle at lying, and their payoff functions reflect that. See Rogers et al., *supra* note 28, at 456–57.

Profits increase by \$5 million, but there is a 10% chance the FTC imposes a \$5 million fine. The expected payoff is a strongly positive \$4.5 million.

The third is a straight lie: “Take our pill. Your doctor will never bug you about your cholesterol again.” This is bolder and more successful, albeit flatly untrue. Profits soar to \$7 million, but now there is an 80% chance the FTC fines the advertiser \$10 million. The expected payoff is now -\$1 million. Lying, at least here, does not pay.

From the perspective of the pharmaceutical firm, paltering dominates, with much higher returns than fully objective truth-telling, which in turn is far better than lying. From society’s perspective, the truth would be far superior. Patients misled by paltering switch from or don’t try out other statins that would have been more effective for them and much cheaper for those paying.

This example omits broader harms, such as diminished trust in pharmaceutical advertising, but the key point is clear: paltering is not just rhetorical sleight-of-hand. Often, it is a clearly preferred strategy for the speaker or advertiser, yet harmful to overall welfare. This phenomenon is not limited to misleading advertising: a legal rule that asks only whether the speech is protected or permissible, not what its expected cost is, misses or ignores that misalignment.

There are at least three types of punishment that deter lying, only the first of them being legal punishment. The second is social punishment: if caught lying, people will think less well of you, sully your reputation, or no longer buy from your firm. The third is personal punishment: you think less well of yourself for having lied.⁶⁰ Relative to lying, the punishment for paltering is less severe, and the probability of being caught paltering and thus punished is lower. Indeed, many of us who would recoil from lying palter on a regular basis. In sum, paltering thrives even where lying is deterred. The law rarely punishes it, society often forgives it, and the speaker may find it quite acceptable.

Reputational Externalities. Few lay people can distinguish a skilled orthopedic surgeon from a mediocre one, or a trustworthy auto repair shop from a dishonest one. When shopping online, we face the same challenge: few could independently verify which product is more durable, or which seller is more reliable. Instead, we rely on reputational shortcuts—brands, licensing boards, rating organizations, online ratings, and professional

⁶⁰ See Sanne Preuter, Bastian Jaeger & Mariëlle Stel, The Costs of Lying: Consequences of Telling Lies on Liar’s Self-Esteem and Affect, 63 British J. Soc. Psych. 894, 907 (2024).

associations—to guide our decision-making in the face of asymmetric information. In the Renaissance, for example, artists formed guilds that imposed strict standards for testing and apprenticeships. This allowed patrons, who often lacked the expertise to judge quality directly, to rely on guild membership as a signal of an artist’s training and competence.⁶¹

Operating in this fashion creates both value and vulnerability. Reputational externalities run in both directions: an honest mechanic benefits when the high-reputation repair shop where he works attests to that fact. By contrast, a quality surgeon is hurt when local subpar surgeons in his specialty get bad outcomes. These spillovers are what we call reputational externalities: the costs or benefits that one actor’s behavior imposes on others with a shared association.⁶² The law, at times, steps in with bright lines to decide who has standing and who is liable when shared reputations are put at risk.

A. Policing Reputations

The law makes blunt distinctions when handling reputational externalities. If a group can decide for itself who belongs, or if a group is so large that any harm is diffuse, courts typically offer no remedy. But when outsiders can freely appropriate a reputation, the law is far more willing to play a role.

Unprotected Reputations. In many cases, the law shrugs at reputational harm. If the group bearing a collective reputation is large or amorphous, reputational harm is treated as a cost of group membership rather than a legal injury. For large enough groups, individual members are not allowed to sue for libel. In *Neiman-Marcus v. Lait*, models had standing to sue after being described as “call girls” since there were only 9 of them, but 382 saleswomen could not sue after most were labeled “fairies.”⁶³ The principle was bright: small groups could claim defamation; large ones could not. The size differences were sufficient that the court did not have to decide at what number a group was large.⁶⁴

⁶¹ Jonathan K. Nelson & Richard J. Zeckhauser, *Risks in Renaissance Art: Production, Purchase, and Reception* 77–78 (2023).

⁶² *Id.* at 78 (“Through the mechanism of reputational externalities, buyers extrapolated the quality of one guild member from the evidence of (or tales about) the quality of another; in much the same way, the reputations of today’s physicians, lawyers, or professors spill over to other members of their practice, firm, or university.”).

⁶³ 13 F.R.D. 311, 313, 315–17 (S.D.N.Y. 1952).

⁶⁴ See *id.*

Groups that control their own membership are treated the same way. Accountants at Arthur Andersen did not bring a claim against their peers nor their employer after Enron's collapse. Likewise, no police officer sued Derek Chauvin for reputational harm to the profession. The implicit message: if you admit or hire a group member, any reputational fallout falls on you.

Thus, unlike environmental externalities which are affirmatively regulated,⁶⁵ reputational externalities are not generally protected. Indeed, even the term and concept of reputational externality has received little attention, neglected by both economists and legal scholars.

Protected Reputations. By contrast, when outsiders can appropriate a reputation that others have invested in establishing, the law is far more willing to step in. Trademark dilution is the clearest case. Victoria's Secret spent decades and millions cultivating a brand associated with quality alongside a little naughtiness. When "Victor's Little Secret," a small adult novelty and lingerie store in Kentucky, tried to piggyback on the better-known brand, the company sued and ultimately won an injunction.⁶⁶ The law recognized that even a modest impostor could drain reputational value.⁶⁷

Collective brands, especially those tied to geography, have also won protection against imitators. Blue cheese must hail from Roquefort to claim that name.⁶⁸ Cognac must come from Cognac, France.⁶⁹ "Idaho Potatoes" is a protected certification mark.⁷⁰ Without such limits, outsiders could free ride on reputations built over generations. Legal protections ensure that the value of these shared investments stays with those who made them, rather than being siphoned off by impersonators. An economist might ask whether the losses due to market power outweigh the benefits coming from quality assurance. Such weighing would tend to compete with a law seeking bright-line clarity.

⁶⁵ See, e.g., Clean Air Act, 42 U.S.C. § 7401 (establishing regulation of air pollution).

⁶⁶ *Moseley v. V Secret Catalogue, Inc.*, 558 F. Supp. 2d 734, 750 (W.D. Ky. 2008), *aff'd*, 605 F.3d 382 (6th Cir. 2010). Cathy's Little Secret, renamed for Victor's wife, still operates in Elizabethtown, KY.

⁶⁷ *Id.* at 736, 750.

⁶⁸ *Comty. of Roquefort v. William Faehndrich, Inc.*, 198 F. Supp. 291, 294 (S.D.N.Y. 1961).

⁶⁹ *Bureau Nat'l Interprofessionnel du Cognac v. Cologne & Cognac Ent.*, 110 F.4th 1356, 1363 (Fed. Cir. 2024).

⁷⁰ *Idaho Potato Comm'n v. G & T Terminal Packaging, Inc.*, 425 F.3d 708, 711 (9th Cir. 2005).

Professions operate much the same way. You cannot simply hang out a shingle and call yourself a doctor, or a lawyer, or even a barber. Licensing boards, sometimes state-run, sometimes delegated to private groups, police the collective brand of the profession. In principle, these gatekeepers protect consumers by ensuring minimum competence.⁷¹ In practice, they often also serve to protect insiders from competition. In Massachusetts, basic EMT training requires less than 200 hours.⁷² Commercial pilots can fly for hire after 250 training hours.⁷³ But to become a licensed barber in Massachusetts, candidates must complete 1,000 hours of professional training, file an application, pay fees, and then pass a board-written exam.⁷⁴ Barbers likely welcome the ordeal: were it easier to become a barber, the profession's reputation could conceivably take a hit from undertrained practitioners, but it is certain that the supply of barbers would rise and the price of a haircut would fall.

Lawyers once tried to protect their collective brand by suppressing advertising. The American Bar Association long argued that letting lawyers tout their services would cheapen the profession. State bars enforced this self-imposed code until *Bates v. State Bar of Arizona*, when the Supreme Court struck it down as a violation of the First Amendment.⁷⁵ Still, the ABA's Model Rules recommend that states restrict lawyer advertising that is misleading, including when the statements are literally true.⁷⁶

The law draws clear boundaries around reputational externalities. Some are fenced out: large or self-governing groups are left to manage reputational fallout on their own. Others are fenced in: trademarks, collective brands, and professions receive protection when outsiders might dilute the value of a shared investment. These bright lines serve administrability, but they make no effort to measure the costs and benefits of alternative approaches, and hence do not optimize outcomes. An economic approach would ask not who has standing, but how reputational spillovers alter outcomes, and how incentives shift depending on whether reputations are fenced in or out of protection. Economic determinations

⁷¹ See Jeffrey P. Gray, In Defense of Occupational Licensing: A Legal Practitioner's Perspective, 43 Campbell L. Rev. 423, 425 (2021).

⁷² Emergency Medical Technician (EMT), Quincy Coll., <https://quincycoll.edu/program/emt/> [<https://perma.cc/B3YE-WPMN>] (last visited Feb. 17, 2026).

⁷³ 14 C.F.R. § 61.129.

⁷⁴ See 240 Mass. Code Regs. 8.01 (2019).

⁷⁵ 433 U.S. 350, 353, 384 (1977).

⁷⁶ Model Rules of Pro. Conduct r. 7.1 (A.B.A. 1983).

would change with the times, as, say, when the internet or AI dramatically magnifies information flow. Legal determinations, at best, would evolve sluggishly due to the molasses of legislation on the books and past precedents.

B. The Economics of Reputation

An economist or decision theorist would approach regulating reputational externalities much in the way a group would regulate for itself. At some law school next week, a professor will prioritize pickleball ahead of paper production. Such free riding will slightly sully the school's reputation. Some schools, like some law firms, address this problem by paying big producer Bill twice what little producer Lil gets. Others rely on initial selection of its tenured professors or partners. Hence, within them, salaries correlate strongly with age.

Outright misbehavior presents a more challenging problem. Group reputations are much more vulnerable to the professor who plagiarizes or the lawyer who misrepresents than the mere loafer in either profession. Such "reckless riding" is much harder to detect than the free riding, since its perpetrator made efforts to cover it up and expected it to go undetected. The policy problem arises since the expected reward to the pickleball player or plagiarizer is strongly positive, despite the substantial expected reputational loss.⁷⁷ This also implies that without effective deterrence, cases will arise even when the expected loss dramatically outweighs the perpetrator's gains.

One of the most famous cases is the Enron scandal of 2001, which almost certainly had a strongly negative expected value from the outset. The accounting firm Arthur Andersen ("AA") joined with the firm to produce a raft of accounting documents, such as balance sheets and earnings statements, that hid its debt and multiplied its profits.⁷⁸ Enron ultimately collapsed.⁷⁹ When the scandal came to light, Arthur Andersen bled clients, and despite being a top-five firm, it too collapsed.⁸⁰ The reckless riding of a sliver of AA partners imposed massive losses on their

⁷⁷ There also is a loss to the group on a personal basis, quite apart from reputation, for having a colleague who will engage in such behavior.

⁷⁸ See Jeffrey S. Kinsler, *Arthur Andersen and the Temple of Doom*, 37 Sw. Univ. L. Rev. 97, 100–01 (2008).

⁷⁹ *Id.* at 101.

⁸⁰ *Id.* at 104–05.

colleagues. AA had done too little, through initial selection and/or deterrence, to protect its reputation.

There are two ways to plausibly address the swamping of private gain by shared expected loss. The first is via public regulation: the law may impose sanctions on the bad actor, as with harsh punishments for investment advisors who violate their fiduciary duties.⁸¹ The second is private governance: groups may police themselves through ex ante screens, like ethics requirements for lawyers, or after-the-fact punishments, including fines, expulsions, and shaming. But for private policing to work, the law must permit the group to employ tools strong enough to deter misconduct.

Good actors may exert themselves to improve internal policing mechanisms. But if doing so is too costly or the results too weak, they may choose exit over exertion.⁸² The departure of good agents further degrades the group's reputation. Left behind are those more willing to misbehave, hence a downward spiral. Meanwhile, if bad actors can still capture private gains despite sanctions or monitoring being too weak, they will continue to cheat. The combination of ineffective law and ineffective self-policing leads to underinvestment in collective reputation.⁸³

This example highlights the difference between legal and economic approaches. The law tends to ask a yes-or-no question: Does this kind of reputational harm get protection or not? That leaves large groups and self-governing associations outside the fence, whereas brands and professions are protected inside. The decision-analytic frame, by contrast, asks how strong the protection should be. *It asks how much protection is enough to align private and collective incentives.*

CONCLUSION

Fred Schauer taught us that the law often draws bright lines as a means to manage a messy, uncertain world. That insight, like many excellent

⁸¹ See, e.g., *SEC v. Cap. Gains Rsch. Bureau, Inc.*, 375 U.S. 180, 191–94 (1963) (describing SEC enforcement of fiduciary duties).

⁸² See also Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* 47 (1970) (explaining that the members most likely to voice objections are often the first to exit in case of deterioration). Even when effective mechanisms could be put in place, producing them is a public good for the group, and the exertions necessary to implement them may not be worth it to the individual creating them.

⁸³ For further discussion, see Jean Tirole, *A Theory of Collective Reputations (with Applications to the Persistence of Corruption and to Firm Quality)*, 63 *Rev. Econ. Stud.* 1, 3–4, 18 (1996).

insights, obvious when it is pointed out, inspired our analysis. We examine three domains—Strategic Information Asceticism, paltering, and reputational externalities—where asymmetric information is central, and where the law, with its passion for bright lines, sometimes steps in and sometimes does not. Paltering, explored in a work by Schauer and one of our coauthors and expanded here, has drawn little scholarly attention, yet it demonstrates how the law’s binary determinations create strategic landscapes that misalign incentives. Our analysis combines Schauer’s insight on the law’s passion for categorization with the economist’s passion for incentives. The result shows how bright lines can often produce behaviors that rational players pursue but society would like to avoid.

APPENDIX

The payoffs (in the form (A, B)) to the two players are as follows:

		<i>B</i>	
		No Bid	Bid
<i>A</i>	No Bid	$(100 + 0.2s, 80 + 0.2s)$	$(80 + 0.2s, 45 + 0.8s)$
	Bid	$(75 + s, 60 + 0.2s)$	$(40 + 0.8s, 20 + 0.8s)$

Given these payoffs, positing that if *B* does not bid, *A* will bid if $100 + 0.2s \leq 75 + s$,⁸⁴ hence when $s \geq 31.25$. Taking account of the prior distribution, the players’ optimal actions will be the following: If *B* does not bid, *A* bids at 31.25 and above. If *B* bids, *A* bids at 66.67 and above. If *A* does not bid, *B* bids at 58.33 and above. If *A* bids, *B* bids at 66.67 and above.

A must decide whether to receive a signal. If it chooses *no signal*, the average value of *s* will be 50. Hence, *A* bids and *B*, knowing that 50 value, does not bid. *A*’s expected payoff is 125.

Posit, contrary to our usual assumption, that *A* can get the signal, but can prevent *B* from getting it. *B* will not bid, since the expected value of

⁸⁴ Given a continuous distribution for values, a tie is a zero-probability event. For convenience, we assume players bid given ties.

s , 50, is below both of his required bid probabilities. A would then receive (in expectation) the following:

$$\begin{aligned} &0.3125 \left[100 + 0.2 \frac{(0 + 31.25)}{2} \right] + (0.6667 - 0.3125) \\ &\quad \left[75 + \frac{(31.25 + 66.67)}{2} \right] + \\ &(1 - 0.6667) \left[75 + \frac{(100 + 66.67)}{2} \right] = 128.91. \end{aligned}$$

Since 128.91 exceeds 125, A would opt to receive the signal if it could keep it private from B . The advantage of the signal is that A would now not bid if the signal were below 31.25, whereas without a signal, A would bid and get a lower payoff. At 31.25, either action by A yields an expected 106.25.

A 's concern about getting the signal is that B will get it as well. Consider the payoffs if both get the signal. A will bid if the signal is 31.25 or higher. B will bid as well if the signal is 66.67 or higher. A 's payoff (in expectation) will be the following:

$$\begin{aligned} &0.3125 \left[100 + 0.2 \frac{(0 + 31.25)}{2} \right] + (0.6667 - 0.3125) \\ &\quad \left[75 + \frac{(31.25 + 66.67)}{2} \right] + \\ &(1 - 0.6667) \left[40 + 0.8 \frac{(100 + 66.67)}{2} \right] = 111.68. \end{aligned}$$

Since 111.68 is less than 125, A will choose not to receive the signal if B will also receive it. That is because B would bid precisely when s is high, the time when A most wants B not to bid. Recognizing this situation, A will opt for no signal. It will be an information ascetic.

To summarize, here are A 's payoffs:

		<i>B</i> 's Access to <i>A</i> 's Information	
		<i>A</i> 's Information Private	<i>A</i> 's Information Shared
<i>A</i> 's Action	No Signal	125	125
	Get Signal	128.91	111.68

Obviously, if A can keep its information private, it will get the signal.