DOING THE RIGHT THING? AN EXPERIMENTAL INVESTIGATION OF THE PSYCHOLOGY OF PROSECUTORIAL DECISIONS

by

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This study aims to investigate the psychology that motivates prosecutors to violate the *Brady* rule, which demands a prosecutor disclose material exculpatory evidence to the defense, in pursuit of convictions. Prior research suggests that there are multiple causes of prosecutorial misconduct. This study focuses on the effects of consequences of the misconduct and the perceived relevance of the evidence. Four experimental conditions were used to examine how different consequences might influence the decision to either withhold exculpatory evidence and win a case or do the right thing at the expense of potentially losing. I hypothesized that more severe consequences for misconduct would result in higher disclosure rates, and that increased levels of perceived relevance would similarly increase the likelihood of disclosure. Participants (N=200) participated in a one-hour experiment in which they were instructed to place themselves in the shoes of a prosecutor. They reviewed evidence, ranked its importance, and were asked whether they would suppress or disclose each piece of information. Consequences alone did not have a significant impact on disclosure rates; however, their effect emerged when considered alongside perceived guilt. By examining the intersection of psychology and law, this study hopes to identify factors that influence prosecutorial decision making and inform strategies to mitigate misconduct and increase fairness.

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Table of Contents

An Introduction to the Problem 7

Literature Review 8

A. Criminal Process 8

B. Defense 9

C. Prosecutorial Misconduct 11

i. The Role of the Prosecutor and Prosecutorial Misconduct 11

ii. Prosecutorial Psychology 13

D. The *Brady* Rule 16

i. Brady v. Maryland and Its Progeny 16

ii. Sanctioning Violations of the Brady Rule 19

Methodology 23

A. Participants 23

B. Methods 25

Results 28

A. Effect of Demographics 28

B. Effect of Perceived Guilt on Disclosure Decisions 28

C. Effect of Consequences on Disclosure Decisions 29

D. Confidence in Perceived Guilt 30

Discussion 32

A. Limitations 34

B. Future Directions 35

Conclusion 37

Appendix 38

Appendix A: Participant Instructions 38

Appendix B: Evidence List 39

Appendix C: Post-Case Materials 43

List of Figures

Figure 1: Disclosure of Evidence by Consequence and Perceived Guilt 30

List of Tables

Table 1: Evidence Disclosure by Type of Evidence & Perceived Guilt of the Defendant 29

Table 2: 2-Way ANOVA Examining the Effect of Consequence Conditions and Perceived Guilt on Participants' Tendency to Reveal Evidence to the Defense 29

Table 3: Confidence by Consequence and Perceived Guilt 31

An Introduction to the Problem

This paper examines the moral and decision-making psychology of prosecutorial misconduct. There are many types of prosecutorial misconduct. This paper focuses on noncompliance with the *Brady* rule, which requires prosecutors to disclose material exculpatory evidence to the defense, and the resulting violations of the Due Process Clause of the Fourteenth Amendment, which guarantees criminal defendants a fundamentally fair trial.

The impacts of prosecutorial misconduct can be severe, resulting in outcomes that range from unfairly harsh sentences to wrongful conviction of defendants. For example, a prosecutor's decision not to reveal exculpatory evidence in a murder trial could lead to a longer sentence for a defendant. Classic *Brady* claims, which occur when a prosecutor withholds evidence that may prove a defendant is not guilty, contribute to a fraction of prosecutorial misconduct cases. This paper explores the reasoning that drives a prosecutor to withhold exculpatory evidence. The moral systems involved with making choices that could have lasting harmful consequences on others play a major role in the decision-making analysis. Ultimately, attorneys who fail to comply with the *Brady* rule are faced with a decision that pits two strong influences against one another: the desire to win, and the legal obligation of a prosecutor to disclose all information.

A plethora of factors may drive an individual to withhold information. These factors include the perceived importance of the information, the possible result of withholding the evidence, the potential of being caught, and the consequences of their actions. This paper discusses the psychology behind why people choose to commit prosecutorial violations and tests a methodology for examining the rationales behind these decisions.

Literature Review

A. Criminal Process

In the United States, the federal criminal justice system is comprised of a court system with judges who are appointed by the President and confirmed by the United States Senate.[1] The Attorney General and local United States Attorneys, known colloquially as prosecutors, handle the majority of criminal charges.[2] Throughout the criminal process, officials are required to abide by the Due Process Clause of the Constitution. State prosecutors, who typically handle state cases at the county level, are also bound to operate within the confines of the Due Process Clause.

The initial step in the criminal process is a report of a crime, which usually occurs in the form of a call to the police.[3] Afterward, an investigation is conducted. This investigation results in either the arrest of a defendant or the crime remaining unsolved. Following an arrest, the defendant will be taken to a police station for booking, a series of actions that includes the formal processing of the individual into the criminal justice system.[4] This can include fingerprinting, photographs, a search of the individual, and a survey of the defendant's belongings.[5]

Once booking is complete, the defendant will make an initial appearance at which their charges may be presented.[6] Alternatively, their case may be dropped or dismissed.[7] If the case proceeds, the following step is an initial appearance (sometimes called an arraignment) where a

[1] *See generally* Marcus Paul, *The United States Criminal Justice System: A Brief Overview*, WM. & MARY SCHOLARSHIP REPOSITORY, 1996, at 1 (discussing the federal and state criminal justice system).
[2] *Id.*
[3] *Id.* at 2
[4] *Id.*
[5] *See id.*
[6] *Id.* at 4
[7] *Id.*

defendant may be offered a plea deal.[8] At the initial appearance, if the defendant pleads not guilty, their case is set to go to trial. A prosecutor is assigned by the State and obtains the evidence as gathered by the police; however, prosecutors are sometimes involved with a case long before the initial appearance.[9] If needed, the prosecutor may investigate further to gather more evidence about the crime. Trial is where evidence is presented by both the defense and the prosecution to ultimately determine whether or not the defendant is guilty of the alleged crime.[10]

B. Defense

Criminal defense attorneys hold a distinct role in the trial process because it is their responsibility to protect the defendant's rights and present the most effective defense on their behalf. They may be privately retained by defendants, but when a defendant is unable to afford to pay a private attorney, a public defender is appointed for the defendant by the state.[11] Defense counsel has the precarious position of needing to present the defendant's case, educating their clients on the possible penalties,[12] protect the defendant's constitutional rights, and uphold the rules and regulations of the justice system.[13] Defenders are considered "officers of the court," As such, they must "avoid conduct that undermines the integrity of the adjudicative process."[14]

These responsibilities can create ethical dilemmas. Defense attorneys must defend with "loyalty and zeal while taking care never to engage in dishonesty, fraud, or misrepresentation."[15]

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[8] *See generally* MARK CONSTANZO & DANIEL KRAUSS, FORENSIC AND LEGAL PSYCHOLOGY: PSYCHOLOGICAL SCIENCE APPLIED TO LAW (Worth Publishers, 5th ed., 2021) (explaining the basic framework of the criminal justice system).
[9] Paul, *supra* note 1, at 6.
[10] *Id.*
[11] *Id.* at § 210.40.30.
[12] *Id.* at § 4-8.3(b).
[13] CRIM. JUST. STANDARDS FOR DEFENSE FUNCTION § 4-1.2(c) (A.B.A. 2017).
14 MODEL RULES OF PROF'L CONDUCT r. 3.3 cmt. 2.
[15] Joshua A. Liebman, *Dishonest Ethical Advocacy?: False Defenses in Criminal Court*, 85 FORDHAM L. REV. 1319 (2016).

On the surface, these duties may appear to work in tandem. However, when a defense attorney knows that a defendant has, in fact, committed a crime, they still must diligently represent their client despite knowing the truth.[16] A prevailing view holds that defense attorneys should not undertake the defense of a defendant believed to be guilty.[17] This raises the same dilemma: defense attorneys must follow the professional rules and uphold their ethical responsibilities, but guilty defendants also deserve representation.[18] Defenders must "advocate fiercely on each client's behalf, but … never *too* fiercely by engaging in behavior or tactics that impede, discredit, or derail the criminal process."[19]

Defense counsel has a distinct disadvantage in a criminal trial due to their late appointment to a case. Public defense attorneys are typically not assigned to a client until after a prosecutor becomes involved, meaning they must play "catch-up" to become informed on the case.[20] These attorneys usually have more limited budgets than their prosecutorial counterparts. Private defense attorneys may be hired by a defendant at any time, even before a public defender is appointed to a case. Accordingly, private defense attorneys do not always lack the same information that public defenders do. However, private defense attorneys are often expensive and unavailable to defendants who are not wealthy enough to afford them.

Police are unlikely to conduct further investigations once they believe that they have sufficient evidence to obtain a conviction. Furthermore, evidence that is available to the defense counsel may be dated or incomplete due to the passage of time since the crime occurred, the information provided, and the resources that are available to the defendant. Given the passage of

[16] *Id.* at 1321.
[17] James T. Bayorgeon, *Ethical Problems in Criminal Defense Work*, 42 MARQ. L. REV. 138, 140 (1958) (citing A. S. Cutler, *Is a Lawyer Bound to Support an Unjust Cause? A Problem of Ethics*, 38 A.B.A.J. 300, 301 (1952)).
[18] *Id.*
[19] Liebman, *supra* note 15, at 1327.
[20] CRIM. JUST. STANDARDS FOR DEFENSE FUNCTION., *supra* note 13, at §220.10.

time and financial constraints, it can be difficult to find and contact witnesses. By the time a defense attorney can contact witnesses, their memories may be less detailed or simply incorrect than they were immediately after the event. Witness testimony that is provided long after the crime can become muddled by news media, other witnesses, and even other investigators.[21] This contamination of testimony can prevent defense attorneys from receiving truthful information at no fault of the witnesses.[22]

Prosecutors are not placed in the same difficult position because they work with police to collect evidence.[23] This means that prosecutors have access to police reports, physical evidence, and investigative records right after the crime occurs. Therefore, the passage of time generally does not have as large of an impact on the evidence provided to prosecutors.

C. Prosecutorial Misconduct

i. The Role of the Prosecutor and Prosecutorial Misconduct

Prosecutors play a pivotal role in the outcomes of fair and just trials.[24] The American Bar Association states that the role of the prosecutor is to act as a "minister of justice, and not simply that of an advocate."[25] Prosecutors must pursue actions that are right and just, and they must ensure that every "defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence, and that precautions are taken to prevent… conviction of the innocent."[26]

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[21] Laura Mickes, Brent M. Wilson & John T. Wixted, *The Cognitive Science of Eyewitness Memory*, TRENDS IN COGNITIVE SCIS., Jul., 2025, at 655.
[22] *Id.*
[23] CRIM. JUST. STANDARDS FOR PROSECUTORIAL INVESTIGATION § 1.3 (A.B.A. 2008).
[24] MARGARET KOVERA & MELANIE FESSINGER, PROSECUTORIAL MISCONDUCT 1 (DeMatteo & Scherr eds., 2021).
[25] MODEL RULES OF PROF'L CONDUCT r. 3.8. cmt 1(A.B.A. 2020).
[26] *Id.*

Section 3-1.2 in the American Bar Association's Fourth Edition of the Criminal Justice Standards for the Prosecution Function outlines the responsibilities of a prosecutor. It deems that the role of a prosecutor is to "seek justice within the bounds of the law, not merely to convict."[27] The section indicates that a prosecutor should aim to convict the guilty, but more importantly, should seek to "protect the innocent… and respect the constitutional and legal rights of all persons, including suspects and defendants."[28] The role of the prosecutor in the disclosure of evidence is further outlined in Standard 3-5.4 and discusses the ethical obligation that prosecutors have to "make timely disclosure of evidence to the defense" that is relevant to the case, regardless of its impact on the outcome of the trial.[29] This means that prosecutors have a duty to share evidence with their opposing counsel and provide time for examination, even if it could harm their case. It also states that a prosecutor should not attempt to obscure information and that these obligations are present throughout a case.[30]

Prosecutors should, under any circumstances, hold themselves to a standard of fairness in prosecution and conviction. Despite this universal agreement, some prosecutors stray from their responsibilities and break the rules in an attempt to "win" their cases. This is prosecutorial misconduct. In *Berger v. United States*, Justice Sutherland explained prosecutorial misconduct as "overstepp[ing] the bounds of … propriety and fairness which should characterize the conduct of … an officer in prosecution."[31] The Supreme Court has identified many forms of prosecutorial misconduct, including misstating facts, misinterpreting witness testimony, assuming prejudicial facts, and arguing with witnesses.[32] Research on DNA exonerations has documented additional

[27] CRIM. JUST. STANDARDS FOR PROSECUTION FUNCTION § 3-1.2 (A.B.A. 2017).
[28] *Id*.
[29] *Id.* at § 3-5.4(c).
[30] *Id.* at § 3-5.4(c).
[31] Berger v. United States, 295 U.S. 78, 84 (1935).
[32] Id.

types of misconduct that resulted in wrongful convictions, such as suppressing exculpatory evidence, fabricating evidence, making false statements to the jury, and knowingly using perjured testimony.[33] It is unknown just how frequently the rules are broken.[34] Some research suggests that prosecutorial conduct violations may account for upwards of forty-five percent of overturned cases,[35] while death-row exoneration studies have found that upwards of seventy percent of exonerations included prosecutorial misconduct.[36]

In his 1970 opinion in *In re Winship*, Justice Brennan iterated the societal importance of upholding fair trials in the pursuit of justice, stating, "it is … important in our free society that every individual … have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty."[37] This lends support to an overarching disapproval of rule breaking. Nevertheless, prosecutors still exhibit misconduct.

ii. Prosecutorial Psychology

There is much speculation as to the direct causes of these violations; some suggest that the competitive culture of the American legal system pushes attorneys to bend the rules, while others point to conviction psychology as an explanation.[38] On one hand, the American legal system fosters a culture of competition that innately pushes prosecutors to break the rules and secure convictions as a form of "winning."[39] One notable example of this comes from the U.S.

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[33] Peter Joy, *The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System*, 2006 WISC. L. REV. 399, 403 (2006).
[34] Kovera & Fessinger, *supra* note 24, at 2.
[35] Kovera & Fessinger, *supra* note 24, at 10.
36 DEATH PENALTY INFORMATION CENTER, PROSECUTORIAL ACCOUNTABILITY (Jun. 30, 2022); *id.* at 250.
[37] In re Winship, 397 U.S. 358, 364 (1970).
[38] Heather Schoenfeld, *Violated Trust: Conceptualizing Prosecutorial Misconduct*, 21 J. CONTEMP. CRIM. JUST. 250, 252 (2005) (discussing possible explanations for prosecutorial misconduct).
[39] Catherine Ferguson-Gilbert, *It is Not Whether You Win or Lose, It is How You Play the Game: Is the Win-Loss Scorekeeping Mentality Doing Justice for Prosecutors?*, 38 CAL. W. L. REV. 283, 289 (2001).

Attorney's Office, where prosecutors keep track of their "successful batting average."[40] Some offices have created games to keep track of their wins and losses, such as "two-ton," a contest where prosecutors compete to be the first to convict enough defendants to weigh two tons.[41] This game occurred at the Illinois State Attorney's Office decades ago, but similar games continue in prosecutors' offices around the nation to this day.[42] The motivation behind scorekeeping is derived from the desire for personal notoriety and professional promotions; more "wins" equals greater success.[43] Research has demonstrated that in thirty percent of cases involving prosecutorial misconduct, prosecutors felt motivated by the desire to secure *any* conviction.[44] Reportedly, prosecutors felt pressure from supervisors, political leaders, or media to close high-profile cases by securing another "win,"[45] even going so far as to say they would rather "win dirty" than lose.[46] This desire to win is perhaps perpetuated by the drive to promote one's career.[47] District Attorneys' and state Attorney General's political campaigns may be driven by their "effective," "tough on crime"[48] positions which in turn may put pressure on line prosecutors. Between interpersonal contests at attorney's offices, political advancements, and professional career pressures, the culture of the American legal system is a natural motivator for misconduct, and easily justifies "tipping the scale" to favor convictions.

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[40] *Id.* (citing Alan M. Dershowitz, *Foreward to the First Edition of* JOSEPH F. LAWLESS. JR., PROSECUTORIAL MISCONDUCT xiv (2d ed., Matthew Bender & Co. 1999)).
[41] Ken Armstrong & Maurice Possley, *Trial and Error: The Flip Side of a Fair Trial*. *Series Two in a Five Part Series*, CHI. TRIB., Jan. 2, 1999, at NI.
[42] *Id.*
[43] Ferguson-Gilbert, *supra* note 39, at 292.
[44] Jon B. Gould et al., *Mapping the Path of Brady Violations: Typologies, Causes, and Consequences in Erroneous Conviction Cases*, 71 SYRACUSE L. REV. 1061, 1088 (2021).
[45] *Id.*
[46] [46] Kovera & Fessinger, *supra* note 24, at 11 (citing Ken Armstrong & Maurice J. Possley, *The Flip Side of a Fair Trial, Series: Trial and Error,* CHI. TRIB., Jan. 11, 1999).
[47] Ferguson-Gilbert, *supra* note 39, at 295.
[48] Ferguson-Gilbert, *supra* note 39, at 295.

Conviction psychology is the idea that all defendants are inherently guilty.[49] Convictions are correlated with prosecutorial success, therefore placing fundamental importance on the pursuit of findings of guilt.[50] Accordingly, prosecutors who fall into this mindset tend to adopt an "ends justify the means" attitude toward their work, effectively excusing misconduct as a necessary step to guarantee righteous convictions.[51] Conviction psychology can also lead to "tunnel vision."[52] Tunnel vision is a form of confirmation bias. Prosecutors who believe a defendant is guilty tend to ask leading questions and view evidence through a lens of guilt.[53] Tunnel vision also leads prosecutors to ignore evidence that proves a defendant is not guilty.[54] This type of bias is so prevalent that one scholar suggests it is "a common theme in almost every case of wrongful conviction."[55] Cognitively, tunnel vision has been described as a "compendium of heuristics and logical fallacies" inducing prosecutors to give more weight to evidence that could help secure a conviction and less weight to evidence that supports the defense.[56] This creates a large problem because, obviously, not all defendants are guilty, but many prosecutors inadvertently apply this bias to all defendants.[57] Convictions that result at the hands of tunnel vision are notoriously difficult to overturn, yet few prosecutors are active about combatting its effects.[58]

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[49] Ronald F. Wright, Kay L. Levine & Marc L. Miller, *The Many Faces of Prosecution*, 127 STAN. J. CRIM. L. & POL'Y 27, 35 (2014).
[50] Jackie Chavez & Scott Mathers, *An Examination of How District Attorneys Perceive Justice*, 10 INT'L J. CT. ADMIN 35, 38 (2019).
[51] George T. Felkenes, *The Prosecutor: A Look at Reality*, 7 SW. U. L. REV. 98 (1975) (examining a prosecutor's level of experience and adherence to conviction psychology).
[52] Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 293 (2006).
[53] *Id*.
[54] Brian Reichart, *Tunnel Vision: Causes, Effects, and Mitigation Strategies*, 45 HOFSTRA L. REV. 451 (2016).
[55] *Id.* at 453.
[56] *Id*.
[57] Kovera & Fessinger, *supra* note 24, at 12.
[58] *Id.*

D. The *Brady* Rule

i. Brady v. Maryland *and Its Progeny*

In 1963, the Supreme Court of the United States heard *Brady v. Maryland*, a monumental case that redefined evidentiary law. John Brady and his accomplice, Charles Boblit, were found guilty of murder by separate juries in Maryland and were both sentenced to death.[59] Brady admitted to participating in the murder but alleged that Boblit did the actual killing.[60] Brady's attorney requested to review Boblit's extrajudicial statements and located a confession from him.[61] The prosecution had withheld the confession, which indicated that Boblit committed the murder, and Brady was convicted.[62] Later, the Court of Appeals held that withholding the evidence denied Brady the right to a fair and just trial as guaranteed by the Constitution.[63] After granting certiorari, the Supreme Court of the United Stated affirmed the Court of Appeals, holding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."[64] The Court reasoned that prosecutors have disproportionate access to evidence collection, which significantly hinders the fairness of a case.[65] By acknowledging this disparity, the *Brady* rule emerged, although *Brady v. Maryland* failed to provide detailed explanation of the rule and left materiality broadly defined as evidence that could be considered "helpful."[66]

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[59] Brady v. Maryland, 383 U.S. 83, 84 (1963).
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.* at 85.
[64] *Id.* at 87.
[65] Harold Price Fahringer, *The Brady Rule: Has Anyone Here Seen Brady*?, 6 U. Ill. Chi. L. Rev. 77 (1972).
[66] Lewis R. Katz, *Symposium Prosecutorial Ethics and the to a Fair Trial: The Role of the Brady Rule in the Modern Criminal Justice System*, 57 CASE W. RSRV. L. REV. 521, 524 (2007).

Three elements of a successful *Brady* claim arose: (1) suppression of evidence; (2) the evidence's tendency to support the defense; and (3) the materiality of the evidence.[67] The Court traced its definition of suppression back to *Mooney v. Holohan* in 1935.[68] In *Mooney*, a prosecutor intentionally used perjured testimony to secure the conviction of the defendant.[69] The Court held that the Due Process Clause was violated, reasoning that "a deliberate deception of court and jury by the presentation of testimony known to be perjured" defies justice.[70] Therefore, the Court translated suppression to mean intentional misuse of evidence. The definition was expanded in *Napue v. Illinois,* wherein the Court held that the Due Process Clause is violated "when the State, although not soliciting false evidence, allows [false evidence] to go uncorrected when it appears."[71] While these cases focused on the presentation of false evidence rather than the suppression of exculpatory evidence, they are nevertheless representative of suppression because "the prosecutor did not disclose evidence that that the defense could have used to impeach the false testimony."[72]

Continuing the development of the *Brady* rule in 1972, Chief Justice Burger held that the duty to disclose from *Brady v. Maryland* extends not only to exculpatory evidence, but also to impeachment evidence.[73] Impeachment evidence is evidence that has the potential to "alter the jury's assessment of credibility of a significant prosecution witness."[74] Thus, as of 1972, prosecutors were required to disclose both exculpatory evidence *and* impeachment evidence.

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[67] Robert Hochman, Brady v. Maryland *and the Search for Truth in Criminal Trials*, 63 U. CHI. L. REV. 1673, 1674 (1996).
[68] Mooney v. Holohan, 294 U.S. 103, 112 (1935).
[69] *Id.* at 110.
[70] Id. at 112.
[71] Napue v. Illinois, 360 U.S. 264, 269 (1959).
[72] Hochman, *supra* note 67, at 1674.
[73] Giglio v. United States, 405 U.S. 150, 155 (1972).
[74] United States v. Avellino, 136 F.3d 249, 255 (2d Cir. 1998).

Subsequent Supreme Court cases have further clarified the breadth of the materiality standard within the *Brady* rule. In 1976, *United States v. Agurs*, the Court held that "the mere possibility that an item of undisclosed information might have aided the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense."[75] Practically, this finding delineates the materiality standard; the Court rejected the idea that evidence which may be "helpful" is automatically material. Nine years later, in *United States. v. Bagley*, the materiality standard was additionally refined. Here, the Court found that material evidence must have a "reasonable probability" that the outcome of the trial would have been different had the evidence been disclosed.[76] This finding was strengthened in *Kyles v. Whitley*, where Justice Souter wrote that when materiality is being determined, one must consider the cumulative effect of all suppressed evidence, rather than considering each piece of evidence individually.[77]

These cases also suggest that it is sometimes the responsibility of prosecutors to search for exculpatory evidence not in their possession.[78] In *Kyles*, the Court found that a prosecutor has a duty to disclose evidence "known only to police investigators and not to the prosecutor" themself.[79] Furthermore, *Giglio* establishes that a prosecutor is responsible for the disclosure of evidence held by another prosecutor in the same office.[80] Consequently, the *Brady* rule imposes an affirmative duty on prosecutors to account for evidence that supports a not guilty finding, even when that evidence is not personally known to the attorney.

[75] United States v. Agurs, 427 U.S. 97, 98 (1976).
[76] U.S. v. Bagley, 473 U.S. 667, 682 (1985) (adopting a definition from Strickland v. Washington, 466 U.S. 668, 694 (1984)).
[77] Kyles v. Whitley, 514 U.S. 419, 420 (1995).
[78] Hochman, *supra* note 67, at 1675.
[79] *Kyles,* 514 U.S. at 438.
[80] Giglio v. United States, 405 U.S. 150, 154 (1972).

Succinctly, the *Brady* rule as established by *Brady v. Maryland* and its progeny requires prosecutors to disclose material exculpatory and impeachment evidence favorable to the defense, including information known to police investigators and other members of the prosecution team, when the suppression of such evidence could undermine confidence in the verdict. Despite these additions, scholars have clarified that many additions are often case specific, leaving inadequate descriptions of the responsibilities that prosecutors hold under *Brady*.[81]

There are two kinds of *Brady* claims: classic *Brady* claims and search *Brady* claims.[82] Classic *Brady* claims arise under the aforementioned circumstances when a prosecutor withholds material evidence, regardless of the intention behind the withholding.[83] For example, in *Brady v. Maryland,* the prosecutor failed to disclose a confession that could have reasonably undermined the confidence in Brady's guilty verdict.[84] The suppression of this material evidence illustrates a classic *Brady* claim. On the other hand, a search *Brady* claim arises when a prosecutor fails to gather (or "search" for) sufficient material evidence that may be favorable to the defense. [85]

ii. Sanctioning Violations of the Brady *Rule*

Because prosecutors who commit *Brady* violations rarely suffer consequences, prosecutors remain undeterred from committing this form of misconduct. Most of the time, *Brady* violations go unnoticed by defendants and defense counsel.[86] While exact empirical data about undetected violations is not available, some researchers have stated that "for every one of these cases [with detected violations], we have every reason to suspect that there are many more

[81] Hochman, *supra* note 67, at 1676.
[82] Hochman, *supra* note 67, at 1677.
[83] *Id.*
[84] Brady v. Maryland, 383 U.S. 83, 84 (1963).
[85] *Id.*
[86] Elizabeth Dewar, *A Fair Trial Remedy for* Brady *Violations,* 115 YALE L. REV. 1451, 1455 (2006).

in which a prosecutor's refusal to disclose the exculpatory evidence was never discovered by the defendant or his attorney."[87]

Frequently, these violations are discovered during post-conviction hearings when evidence emerges through sources other than the prosecution.[88] In the rare instance that a *Brady* violation is brought to light, relief is far from guaranteed. The defendant may bring the case back to the trial court; however, trial courts often conclude that suppressed evidence was "harmless" to the verdict.[89] In one jurisdiction over a period of eight years, more than seventy-five percent of cases in which courts identified prosecutorial misconduct deemed the violations harmless.[90] Defendants who pursue *Brady* claims on appeal face an additional challenge: the materiality standard.[91] Many claims are adjudicated on grounds that the evidence was not sufficiently material.[92] The materiality standard set by *United States v. Agurs* demands a "reasonable doubt… that constitutional error has been committed."[93] Not only is this test alone challenging to prove, but guidance on "reasonable doubt" ends there.[94] Practically, this means prosecutors may construe materiality more narrowly to limit the scope of evidence that must be disclosed and *Brady* claims may be subject to high levels of judicial interpretation. As a result, few *Brady* claims survive appellate review and even fewer lead to sanctions for prosecutors.[95]

[87] Joseph R. Weeks, *No Wrong Without a Remedy: The Effective Enforcement of the Duty of Prosecutors to Disclose Exculpatory Evidence* 22 OKLA. CITY U. L. REV. 833, 869 (1997).
[88] Anna Revill, *Shady Brady: A Case for Open File Discovery*, CLAREMONT J. L. & PUB. POL'Y (2026); Brandon L. Garrett, Adam M. Gershowitz & Jennifer Teitcher, *The Brady Database,* 114 J. CRIM. L. & CRIMINOLOGY 1, 14 (2024); Dewar, *supra* note 80, at 1454.
[89] Dewar, *supra* note 86, at 1452.
[90] Kovera & Fessinger, *supra* note 24, at 15.
[91] Brandon L. Garrett & Adam M. Gershowitz, *The* Brady *Materiality Standard*, 78 STAN. L. REV. 303 (2026).
[92] *Id.*
[93] U.S. v. Agurs, 427 U.S. 97, 98 (1976).
[94] Garrett & Gershowitz, *supra* note 88, at 312.
[95] Garrett & Gershowitz, *supra* note 88, at 303

When *Brady* violations do occur, rarely are consequences imposed. In fact, one treatise states that, "[a] prosecutor's violation of the obligation to disclose favorable evidence accounts for more miscarriages of justice than any other type of malpractice, but is rarely sanctioned by courts, and almost never by disciplinary bodies."[96] In a report from the Santa Clara University School of Law, researchers discovered 707 cases over a twelve-year period involving prosecutorial misconduct.[97] Over that period, only six prosecutors were sanctioned for their actions.[98] Moreover, the researchers stated that courts are not required to forward cases in which they find misconduct harmless.[99] This translates to seventy-five percent of prosecutorial misconduct remaining unsanctioned, despite blatant infringements on Due Process rights.[100] These consequences not only impact defendants, but by withholding information from a defense team, the prosecution is affecting the jury's ability to make a fair and informed decision. This can have life-altering effects on the outcome for a defendant.[101]

In theory, there are many repercussions that should mitigate the frequency of prosecutorial misconduct. For example, the case could be dismissed with prejudice.[102] This means that the case cannot be retried after appeal, essentially resulting in an automatic "loss" for the prosecutor. Unfortunately, dismissal with prejudice is extremely uncommon, even if misconduct is detected, so it is not a strong deterrent. In actuality, there are no effective reprimands for *Brady* noncompliance, and prosecutors are not directly dissuaded from pursuing "dirty" wins. When prosecutorial misconduct is discovered, prosecutors are rarely identified by

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[96] BENNETT L. GERSHMAN, PROSECUTORIAL MISCONDUCT ix (2d ed. 2005).
[97] Jack Leonard, *Report Finds Many Prosecutors in California Have Committed Misconduct*, L.A. TIMES (Oct. 5, 2010), https://www.latimes.com/archives/la-xpm-2010-oct-05-la-me-prosecutorial-misconduct-20101005-story.html.
[98] *Id.*
[99] *Id.*
[100] Dewar, *supra* note 86, at 1454.
[101] Kovera & Fessinger, *supra* note 24, at 7.
[102] FED. R. CIV. P. 41(b).

name,[103] leaving their reputations untouched by their behavior. Additionally, prosecutors receive civil immunity, so defendants are unable to sue an attorney for committing misconduct.[104] They are also unlikely to be criminally charged for their violations.[105] On a state level, bar associations typically lack adequate funding and resources to individually sanction prosecutors.[106] Since 1963 there has not been a single public sanction for prosecutors engaged in misconduct.[107] Private sanctions may occur, but their occurrence is undocumented, therefore rendering it nearly impossible to identify whether prosecutors receive low-level sanctions or no sanctions.[108]

[103] Ferguson-Gilbert, *supra* note 39, at 300.
[104] Ferguson-Gilbert, *supra* note 39, at 300.
[105] Ferguson-Gilbert, *supra* note 39, at 300.
[106] Ferguson-Gilbert, *supra* note 39, at 301 (citing JIM DWYER, PETER NEUFELD & BARRY SCHECK, ACTUAL INNOCENCE 181 (2000)).
[107] Ken Armstrong & Maurice Possley, *Trial and Error: Break Rules, Be Promoted. Series Five in a Five Part Series*, CHI. TRIB., Jan. 2, 1999, at CI.
[108] Ferguson-Gilbert, *supra* note 39, at 302.

Methodology

Brady v. Maryland and its progeny impose a constitutional duty to disclose material exculpatory evidence to the defense. Despite legal scholarship that addresses the development of the *Brady* rule, there is little empirical research on the factors that motivate disclosure behavior. Decision-making may be driven by both psychological and institutional pressures. However, a significant question remains: what is the impact of circumstantial factors on a prosecutor's decision to disclose exculpatory evidence? Specifically, it remains unclear whether disclosure behavior is shaped by the consequences of nondisclosure (or noncompliance with the *Brady* rule), the perceived relevance of materiality of the evidence, or a combination of both factors. This study examined both potential influences.

Participants were randomly assigned to one of four consequence conditions and asked to assume the role of a prosecutor, read case evidence, and make judgments about both disclosure and perceived relevance. The variables included: the *consequence* (reward or punishment for disclosing potentially exculpatory evidence) and the perceived relevance of the information. The consequence conditions included no punishment (reflective of current proceedings), a reward for disclosing the exculpatory evidence, a moderate punishment for failure to disclose, or a severe punishment for failure to disclose. The relevance of exculpatory evidence ranged from high to low.

A. Participants

Participants in this study were obtained from the Psychology Department Human Subjects Pool at the University of Oregon. The participants were students enrolled in psychology or linguistics classes at the university who were required to participate in psychology or linguistics research as part of their coursework. All subjects received a consent form prior to

their participation and a debriefing following the experiment. The University of Oregon Internal Review Board granted permission on June 2, 2025, to ensure the protection and privacy of all participants. The experiment was conducted twice: once in Fall 2025 and again in Spring 2026. Both trials used undergraduate students as outlined above.

Data from the Fall 2025 trial was used to modify study materials but was not used in statistical analysis. Two hundred individuals participated in the experiment during the Spring 2026 term. However, only 98 participants passed "attention check" questions designed to measure whether they had read the materials well-enough to make the required judgments. Data from the participants who did not pass these questions were eliminated.

The characteristics of the resulting sample were:

Age: 90% of sample were 21 years old or younger, with a mean age of 20 years.

Gender: 76.5% (25) participants were women, 19.4% (19) were male, and 4.1% (4) were nonbinary or did not disclose.

Race: 64.3% (63) participants were white, 19.4% (19) participants were Hispanic, and 16.3% (16) identified as all other races.

Income: 89.8% (88) participants had incomes less than $24,000 per year.

Education: 76.5% (75) participants had some college education, 19.4% (19) participants had only a high school diploma, and 4.1% (4) participants had a college degree.

Political Leaning: 84.7% (83) participants described themselves as leaning or more strongly liberal (mean=2.21 on a 7-point strongly liberal to strongly conservative scale); 12.2% (12) participants described themselves as neither liberal nor conservative; 3.1% (3) participants described themselves as leaning conservative; no participants described themselves as "somewhat" or "strongly" conservative.

Experience with the Legal System: 89.8% (88) participants reported having no experience with courts.

The final sample consisted of primarily young undergraduate students with limited experience in the legal system. Participants were predominantly white, female, low-income, and politically liberal leaning.

B. Methods

All participants in the study began by receiving an informed consent statement describing what the experiment entailed and authorizing their participation. They then received a brief overview of the United States judicial system summarizing the role of the prosecutor. Participants were instructed to assume the position of a prosecutor when reading the evidence in a criminal case (see Appendix A). They were given information about the specific responsibilities of a prosecutor and the legal obligations required of them by their role in a preliminary briefing. The preliminary briefing informed participants that prosecutors are required to disclose exculpatory evidence to the defense. Participants were then advised of the consequences that would follow if they suppressed exculpatory evidence and their noncompliance was later discovered. The specific consequence varied by condition, but all were written in bold, underlined font to direct visual attention to the information (see Consequence Conditions below). The four consequence conditions ranged from severe negative sanctions to positive rewards, and participants were randomly assigned to one of the four conditions. The no-consequence condition served as the control condition and was designed to mirror the limited consequences prosecutors face for *Brady* noncompliance. Participants then received an evidence list outlining a case (see Appendix B). They subjectively evaluated the relevance of each piece of evidence in a post-case questionnaire (see Appendix D), which allowed the researchers to

explore variations in levels of perceived relevance (or materiality) on an individual level. The post-case questionnaire also asked participants to share if they thought the information was more important to the prosecution or the defense, and if they would reveal the information to the defense counsel.

All participant materials were written without legal jargon to increase comprehensibility for a sample that may be unfamiliar with the subject. The preliminary briefing was intended to provide all participants with the basic information necessary to understand the assignment and their duties as a prosecutor. The informed consent form, pre-study briefing, evidence list, post-case questionnaire, and debriefing were administered in the form of a Qualtrics survey through the University of Oregon SONA Systems.

Consequence Conditions

a. Severe Negative Sanctions

If the court determines that you withheld required information, even though it could harm your case, **you will be removed from the case and disbarred. You will lose your position and be unable to practice law.**

b. Moderate Negative Sanctions

If the court determines that you withheld required information, even though it could harm your case, **you will receive a fine from the court and be heavily reprimanded. You will be removed from the case and will not receive any credit if the prosecution wins the case, and your reputation as an attorney will be damaged.**

c. Positive Rewards

If the court determines that you revealed all necessary information to the defense, even though it could harm your case, **you will be more likely to receive promotions in the near future and will build your reputation.**

d. No Consequences

If the court determines that you withheld required information, even though it could harm your case, **there will be no consequence other than potentially losing the case.**

Results

This section presents analyses examining how varying consequences impacted the decision to reveal or withhold exculpatory evidence. Three primary outcomes were analyzed: the tendency to reveal information to the defense based on (a) consequence of withholding information; (b) perceived guilt of the defendant; and (c) confidence in the guilt of the defendant.

A. Effect of Demographics

Most participants were white, ranged in age from 18-22 and self-identified as female. Most participants also identified as liberal and had little-to-no experience with the legal system.

Race: White participants revealed slightly more information (Mean=13.2) to the defense than non-white participants (Mean=12.2; $t(96) = 1.870$, $p = 0.065$).

Gender: Self-identified men and women did not differ in the tendency to reveal information to the defense ($t(92) = 0.702$, n.s.).

Political Leaning: The less liberal the participant, the greater the tendency to reveal information to the defense ($b = 0.495$, $t(96) = 2.178$, $p = 0.032$).

B. Effect of Perceived Guilt on Disclosure Decisions

On average, participants who indicated that they believed the defendant was guilty after reading the evidence decided to reveal more information to the defense ($N = 68$; Mean = 13.0) than participants who believed the defendant was not guilty ($N = 30$; Mean = 11.5, $t(96) = 2.810$, $p = 0.006$).

Evidence	Perceived Guilt	N	Mean	Std. Deviation	t-test
Favors Prosecution	Not Guilty	30	4.83	1.44	t(96)=2.02,p=.046
	Guilty	68	5.35	1.03	
Favors Defense	Not Guilty	30	2.83	1.15	t(96)=1.44, p=.152
	Guilty	68	3.21	1.19	
Neutral	Not Guilty	30	3.83	1.23	t(96)=2.76, p=.007
	Guilty	68	4.44	0.89	

Table 1: Evidence Disclosure by Type of Evidence & Perceived Guilt of the Defendant

This pattern was present for evidence that favored the prosecution, favored the defense, or was neutral (see Table 1). The difference was statistically significant for evidence that favored the prosecution and for evidence that was neutral.

C. Effect of Consequences on Disclosure Decisions

Consequences ($F(3,90)=2.90$, $p=0.040$), perceived guilt ($F(1,90)=12.411$, $p<0.001$), and the interaction of consequences and perceived guilt ($F(3,90)=3.472$, $p=0.019$) had significant effects on decisions to disclose evidence (see Table 2).

Source	Type III Sum of Squares	df	Mean Square	F	Sig.
Guilt	67.177	1	67.177	12.411	<.001
Condition	47.007	3	15.669	2.895	.040
Guilt * Condition	56.382	3	18.794	3.472	.019
Error	487.150	90	5.413		
Total	16029.000	98			
Corrected Total	616.337	97			

R Squared = .210 (Adjusted R Squared = .148)

Table 2: 2-Way ANOVA Examining the Effect of Consequence Conditions and Perceived Guilt on Participants' Tendency to Reveal Evidence to the Defense

Consequence conditions did not create a significant difference among the participants who perceived the defendant to be guilty ($F(3,64) = 1.284$, n.s.). However, a significant effect of consequence condition emerged among participants who perceived the defendant to be not guilty ($F(3,26) = 3.941$, $p = 0.019$). Specifically, participants assigned to the moderate consequence condition ("Fine") disclosed less evidence than participants in the remaining three conditions ($t(26) = 3.345$, $p = 0.003$), which did not differ from each other.



Figure 1: Disclosure of Evidence by Consequence and Perceived Guilt

D. Confidence in Perceived Guilt

Participants who believed that the defendant was guilty were more confident (Mean=2.21) in their judgment of guilt than participants who believed the defendant was not guilty (Mean=3.15; $F(1,90) = 20.02$, $p < 0.001$).

This pattern remained consistent across all four consequence conditions; participants who found the defendant guilty consistently reported greater levels of confidence than those who found the defendant not guilty. Of the participants who determined that the defendant was guilty, over seventy percent rated their confidence as "very" or "extremely" confident. Of the participants who determined that the defendant was not guilty, only three percent rated their confidence as "very confident" and none rated themselves as being "extremely confident." Seventy percent rated themselves as "not at all" or "slightly" confident.

Condition	Perceived Guilt	Mean	Std. Error	t-test
Disbarred	Not Guilty	2.000	.329	t(27)=2.68, p=.012
	Guilty	2.905	.203	
Fine	Not Guilty	2.200	.416	t(21)=2.06, p=.052
	Guilty	3.333	.220	
Promotion	Not Guilty	2.200	.294	t(21)=2.15, p=.043
	Guilty	3.154	.258	
None	Not Guilty	2.429	.352	t(21)=2.20, p=.039
	Guilty	3.187	.233	

Table 3: Confidence by Consequence and Perceived Guilt

Neither gender, race, or liberalism alone or together significantly predicted differences in confidence based on guilt decisions within each condition.

Discussion

Disclosure decisions were influenced more heavily by participants' perceptions of guilt than by the consequence conditions alone. Although consequence conditions on their own did not significantly influence disclosure decisions, perceived guilt and the interaction between perceived guilt and consequences produced an unexpected pattern of results.

Perceived Guilt

The perceived guilt data indicates that subjective perceptions of a case play a larger role in the decision to disclose than consequences alone. In theory, changing the consequences of withholding information should have been more significant. In reality, changing the consequences alone had a very small effect.

Overall, participants who perceived the defendant as guilty disclosed more evidence than participants who perceived the defendant as not guilty. This result was not only statistically significant but was also surprising. Logically, it makes sense for a prosecutor who believes a defendant is guilty to disclose *less* evidence to avoid the possibility of the defense using some pieces of evidence to convince a juror to vote not guilty. These findings contradict that expectation.

Confidence in perceived guilt also played a role in disclosure rates. The participants who perceived the defendant to be guilty tended to be very confident in their perceptions. Perhaps they believed that the case against the defendant was so strong that there was little chance that jurors would not vote to convict. Participants who perceived the defendant to be not guilty tended to be much less confident in their perceptions. If they believed that their goal as a prosecutor was to win the case, they may have decided to withhold evidence to avoid losing the case and accept the risk of negative consequences. These findings suggest that disclosure

behavior may not only be driven by one's subjective perception of guilt, but also by the certainty attached to those perceptions.

Notably, confidence levels were not experimentally manipulated in this study, so all interpretations should be considered exploratory and speculative. However, this data delineates a potential area of future research to expand the understanding of psychological reasoning.

Combination of Consequence and Perceived Guilt

While the consequence conditions on their own did not produce statistically significant results, statistically significant results emerged when examining the combination of both consequence conditions and perceived guilt ($p = 0.019$). The combination of both factors accounted for twenty-one percent of the variation in data (R-Squared = 0.210), a dramatic difference from the consequence conditions alone (R-Squared = 0.034).

Interestingly, the participants that demonstrated the greatest reluctance to disclose evidence were those who perceived the defendant to be not guilty and were in the condition in which they would have been subjected to moderate disciplinary actions if their failure to disclose was discovered. One possible explanation is that the consequences these participants would have received were not perceived as seriously as intended. Compared to being disbarred for failing to disclose exculpatory evidence or being rewarded for disclosure, receiving a fine and losing a small amount of notoriety would appear to be a minor punishment. Because of the lack of severity, these participants may have considered the consequence a worthwhile risk. Additionally, imposing a minor cost may have been counterproductive. Perhaps a small consequence inadvertently communicated that failure to disclose was not a serious violation. If true, participants may have felt less pressure to disclose than those who received stronger sanctions.

The significance of this interaction implies that prosecutorial decision-making cannot be understood by simply exploring the effects of consequences. Rather, participants' subjective interpretations of guilt play a role in shaping how those consequences are perceived and applied.

A. Limitations

One important limitation is simply a lack of a reliable sample. The experiment was conducted using a population of undergraduate students recruited from the University of Oregon Human Subjects Pool. Despite an initial sample of 200 participants (N = 200), only 98 participants passed the attention checks. As a result, the usable data was reduced to less than half of the initial sample size, which caused some conditions to have a relatively low number of participants. There is a possibility that the conditions have the potential to produce statistically significant results, but those results were hidden due to the small samples. A potential cause for not passing the "attention check" questions is the inability to monitor individual testing conditions. A majority of the subjects received course credit for their participation, and receiving these credits is a requirement for introductory psychology courses. Participation was mandatory for course credit, and some students may have been motivated by the need to fill a course requirement instead of being fully engaged with the materials. Consequently, many subjects may not have given the tasks at hand a high level of attention. Ensuring the focus of participants in self-report surveys poses a significant challenge, particularly when subjects take the survey at home. Being unable to monitor individual testing conditions created noticeable unreliability in the data.

Furthermore, the demographic information reveals that a vast majority of the population (89.8%) had no experience with the legal system. As a result, it is highly likely that the participants struggled to place themselves in the role of a prosecutor. Despite receiving

instructions and explanations about their role and the requested tasks, it is possible that subjects who lack familiarity with the judicial system were unable to fully understand the responsibilities of a prosecutor. This would create barriers to the effectiveness of the conditions. If participants did not understand what it means to be a prosecutor, then the varying consequence conditions would have had a much smaller impact on their decisions. Whereas a real prosecutor would find disbarment punitive, an undergraduate student may not feel the same level of severity.

B. Future Directions

While this analysis is not comprehensive enough to determine causal relationships between consequences, perceived guilt, and confidence on disclosure rates, there is a clear relationship between the three factors. Although the present study identified these interactions, additional research is needed to further understand the mechanisms at play.

In the future, the most dramatic alteration to this study should be the sample population. While undergraduate students were an available and convenient population, the general lack of experience with the legal system constrained the participants' understanding of the material. A population that has more experience with the legal system is more likely to have higher levels of comprehension. Additionally, a different population may be able to appreciate the consequences better than an undergraduate student who can't grasp the severity of disbarment. The ideal population would be prosecutors themselves. However, it may be challenging to obtain a sample of prosecutors because of scheduling conflicts and lack of interest in psychological studies. Therefore, law school students would make an appropriate second choice.

Future research should also look more closely at the relationships between consequences, perceived guilt, and confidence. While this study aimed to examine the perceived relevance of each piece of evidence, it appeared that guilt was more indicative of disclosure behavior. This

unexpected finding should shape how similar studies are designed. Experimentally manipulating guilt and confidence will not only allow for those factors to be more closely identified, but could also make the consequences more easily identifiable.

Conclusion

The present study investigated prosecutorial disclosure behavior through a lens of consequences and relevance. Although perceived relevance did not have an observable effect on disclosure decisions, a surprising third factor had an unexpected impact. Consequences on their own failed to produce significant results, but when paired with perceived guilt, the results were statistically significant. Participants who believed the defendant was guilty disclosed more evidence than those who believed the defendant was not guilty, and a subject's confidence in their assessment of guilt also shaped their decision.

These findings suggest that the effect of consequences is dependent on more than reward systems alone. Instead, subjective perceptions likely have a greater impact on decision-making than initially expected. Attitudes toward guilt and certainty played an important role in disclosure behavior, suggesting that legal choices may be influenced by factors that extend beyond formal rules and objective evidence.

While the present study was limited by its sample size and use of undergraduate students with limited understanding of the legal system, it provided insight into the interactions between consequences, perceived guilt, confidence, and disclosure behavior. By demonstrating that subjective, external factors may greatly influence prosecutorial decision-making, this research contributes to a broader understanding of the factors that influence disclosure choices. Ultimately, this study underscores the importance of continued research in this area in pursuit of judicial fairness.

Appendix

Appendix A: Participant Instructions

Prosecutors work for the state government. Their job is to try to prove that someone charged with a crime (a defendant) committed a crime. They present evidence to the judge and jury, and they must prove guilt beyond a reasonable doubt. Defense attorneys represent the defendant. They challenge a prosecutor's case, present evidence of innocence, and argue that the prosecution's evidence is insufficient to meet the standard of "beyond a reasonable doubt"

Both prosecutors and defense attorneys seek to win cases. Prosecutors who win cases are more likely to be promoted to higher positions with higher salaries and that involve more responsibilities with more interesting and higher profile cases. Defense attorneys who win cases will have more and better paying clients.

To make trials as fair and accurate as humanly possible, both prosecutors and defense attorneys must follow a variety of legal rules. One of those rules is that both sides must provide the other with a list of the evidence that they intend to produce in court so that the other side can examine it and be prepared to challenge it. Prosecutors have the additional duty of revealing to the defense any evidence that could be favorable to the defendant, potentially affecting whether the defendant is found guilty or not guilty at trial. This requirement exists to ensure accurate judicial decisions. However, the prosecutor is not required to share every detail of the investigation, such as irrelevant or unimportant evidence.

On the next page, you will find a list of evidence given to you by investigators working on the case. Please read through the evidence carefully. Please place yourself in the role of the prosecutor while reading. After reading, you will be asked a series of questions about which pieces of evidence you find the most important, and which pieces you would choose to reveal.

As you read the case on the next page, place yourself in the role of the prosecutor. As a prosecutor, you have several decisions to make. First, you must determine whether the evidence in the case is strong enough for you to believe that a jury would convict the defendant for having committed the crime. Second, you must decide what pieces of evidence you should provide to the defense prior to the start of the trial.

This case is separated into two trials because the defendants are both suggesting that the other party committed the crime. **This is a trial of John Thompson.**

Appendix B: Evidence List

1. **Statement 1 from Kevin Freeman**

Freeman stated that he was driving home in the evening when John Thompson stopped him and asked him for a ride home. Due to their prior association, he agreed. Freeman stated that after driving a few blocks, the car ran out of gas, so he parked the car on the side of the road. Freeman said that Thompson then asked him if he wanted to make some money and said, "I got the heat with me."

2. **Statement 2 from Kevin Freeman**

Freeman stated that shortly thereafter, a man (who was later identified as Raymond Liuzza) approached the area near their parked vehicle. According to Freeman, when Thompson spotted him, he said, "I'm going to hit him," and then Thompson grabbed a .357 Magnum revolver.

3. **Statement from Officer Henderson**

Henderson stated that he was on patrol when he received a call about a potential homicide. He arrived at the scene to find a body in the yard, which would later be identified as

Raymond Liuzza. He called for backup and multiple other patrol units arrived. Officer Henderson interviewed the witnesses.

4. **Statement from S.A. (a neighbor of Liuzza)**

S.A. said that he saw two men walking towards Liuzza, and that "the two men walked into Liuzza's yard and dipped behind his fence." S.A. said that he was unable to see what happened afterward. He heard gunshots moments later, but nothing further until the police arrived at the scene.

5. **Statement from P.S. (a neighbor of Liuzza)**

P.S. states that she was sleeping when she heard gunshots and ran to her bedroom window. She said that she, "heard Liuzza offering his watch and wallet to someone who was threatening him" and that it sounded as though Liuzza was begging. She stated that she then heard multiple gunshots, followed by silence.

6. **Statement from P.B. (neighbor of Liuzza)**

P.B. stated that he was leaving his home when he heard a gunshot and chose to run to the scene to see what was happening. He stated that he heard four more shots as he approached Liuzza's home. He said that he then "saw a black man with a gun in his hand running away." He reported shortly thereafter, another black man ran out of Liuzza's yard. P.B. described one man [Thompson] as tall with short hair, wearing a black leather jacket and dark jeans. The other man [Freeman] was described as wearing a big, blue jacket with trousers.

7. **Statement 2 from P.B. (neighbor of Liuzza)**

P.B. reported that he saw the man in the blue jacket hand a gun to the man in the black jacket while running away from the scene.

8. **Statement from Investigator Evans**

Evans reported that, “Video footage from a security camera at a food mart near where the crime occurred showed two men, one [Thompson] wearing a black hat, a black leather jacket, and jeans and the other [Freeman] wearing a blue jacket, and dark trousers and holding a container of gasoline. P.B. identified the men in the video as matching his description. In the days following the crime, we published photo stills from the video in the local newspaper with descriptions of the suspects. An anonymous civilian tip from the same area where the crime occurred suggested that the first man resembled Thompson and the second man resembled Freeman and they had been seen in that neighborhood at the time.” Based on this information, we arrested both Thompson and Freeman and charged them with murder.”

9. Alibi from John Thompson

Thompson alleged that the night of the crime, he was attending the county fair in the late afternoon. He was at the fair to attend a concert, so he entered the venue using a physical ticket. Once entering the grounds, an employee (T.M.) took this ticket, so he went to the middle of the crowd to view the concert. He claims that he was at the concert the whole night and left at the end with a large crowd.

10. Previous Conviction

One month after the publication of the video stills from the security camera and after the men in the photographs had been identified as Thompson and Freeman, several members of the Johnson family reported that a man who matched the image of Thompson in the newspaper had stolen their vehicle a few months earlier. As a result, Thompson was charged with carjacking. The District Attorney decided to try Thompson for the carjacking charge before the homicide case because a previous conviction could sway the jury to convict him a second time. Three

minors provided eyewitness testimonies against Thompson in the carjacking case. Thompson was found guilty and sentenced to 15 years in prison.

11. Statement 2 from Investigator Evans

Searches of the homes of Freeman and Thompson were conducted. In Thompson's home, we discovered a ring. Liuzza's family identified the ring and said that he was wearing it the night of his death. In Freeman's home, there was an empty gun safe. When asked, Freeman said that he did not have a gun on him the night of the crime. Thompson claimed that he had owned a .357 revolver before the robbery, but he had sold it to a private purchaser two months earlier and did not have it on him that night.

12. Autopsy Report Summary

An autopsy was performed at the hospital that had treated Liuzza after he was shot. The autopsy revealed that Liuzza had been shot five times. All of the bullets passed entirely through his body. Two of the bullets were recovered from the wall of P.B.'s home. There was no gunpowder residue on Liuzza's skin or clothing, indicating that the gun had been fired from between 3 to 5 feet from the victim.

13. Report from Investigator Evans

The murder weapon was found in a nearby dumpster by an acquaintance of Thompson. The acquaintance sold the gun to a pawn shop in exchange for cash, where it was recovered by the police. Two bullets recovered from the walls of the crime scene were identified as having been fired from the weapon.

14. Notes from Investigator Evans

Following the arrest, police returned to the fairgrounds and contacted several employees. R.S., an employee of the fairgrounds, stated that he had seen a story about the arrest in the news

and had seen Thompson at the fairgrounds early on Friday evening. When asked, he said that he did not know when Thompson had left. However, he saw Thompson enter the concert venue and stated that T.M., the employee taking tickets, would have seen him leave. T.M. was not available to be interviewed at that time.

15. Notes from Investigator Evans

When placed under arrest, Thompson stated, "I didn't do it. I've been at the fair all night. I want a lawyer."

Appendix C: Post-Case Materials

Post-Case Instructions

You represent the state in criminal cases. Your performance is evaluated by how effectively you handle cases and how often you secure convictions. Your work affects victims, defendants, and public confidence in the justice system.

You control important information. You review police reports, witness statements, and evidence gathered during the investigation. Some of this information strengthens your case. Some of it may help the defense.

Your goal in cases is to secure convictions. This means that you should do everything in your power to find the defendant guilty. Winning a case could lead to promotions, boosts in your reputation, and more high-profile cases in the future that would help your career.

As the prosecutor in this case, you need to decide two things about each piece of evidence: 1) whether or not you would reveal that piece of evidence to the defense and 2) how important that piece of evidence is -- for the prosecution or the defense -- to the case. The following questions present each piece of evidence that you previously encountered while reading the case.

Post-Case Questionnaire

Participants were asked whether they would find the defendant guilty or not guilty, and how confident they were in their answer on a scale from -5 (highly confident not guilty) to +5 (highly confident guilty). They were then asked three questions about each piece of evidence:

1. Would you reveal this evidence to the defense?
2. Does this evidence favor the prosecution's case for a guilty verdict OR the defense's case for a not guilty verdict?
3. Rank the evidence on a scale from 1 to 7 on its importance to the case (1 being the least important, 7 being the most important.