Moral Foundations and Prejudicial Evidence:

Helping Jurors Adhere to Jury Instructions

by

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ABSTRACT

Across three studies and two robust pilot studies, this project addressed issues surrounding prejudicial evidence and jury instructions to disregard inadmissible evidence. Specifically, this project examined a new framework for understanding how people vary in their response to prejudicial evidence, based on the morals they value, and tested the effectiveness of a novel way to phrase jury instructions to debias jurors inspired by moral foundations theory. In two experimental studies, participants read a transcript of a sexual assault (Study 1: n = 544) or an assault and battery criminal case (Study 2: n = 509). In each experiment, participants were randomly assigned to read either a case with or without prejudicial evidence. Participants exposed to prejudicial evidence were either given standard jury instructions to disregard the evidence, no instructions, or novel jury instructions inspired by moral foundations theory. Individual differences in moral foundations affected how susceptible people were to prejudicial evidence and case facts in general. This pattern emerged regardless of the type of jury instructions in most cases, suggesting that the moral foundation inspired instructions failed to help jurors disregard prejudicial evidence. The impact of people's moral foundation endorsement has direct implications for how attorneys may phrase evidence to cater towards these moral biases and select ideal jurors during the voir dire process. To further advance people's understanding of the effects of prejudicial evidence and jury instructions in legal settings, a third study looked at how attorneys (n = 138) perceived the prevalence and impact of prejudicial evidence in real cases and the effectiveness of jury instructions. Over three quarters of the sample (77.54%) reported having experienced prejudicial evidence in their cases and expressed concern that prejudicial evidence is influential to jurors with jury

instructions being ineffective. Taken altogether, the results of this project show the potential impact moral foundation endorsement can have on case judgments and how jurors are differently influenced by prejudicial evidence. In addition, data from attorneys showing the perceived prevalence and impact of prejudicial evidence in real cases further justifies the need to continue researching safeguards against prejudicial evidence.

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Moral Foundations and Prejudicial Evidence:

Helping Jurors Disregard Inadmissible Evidence

Justice systems rest on the ideal objective of providing a fair and impartial achievement of justice for the parties involved (U.S. Const. amend. VI). However, prejudicial evidence can elicit strong emotional responses in jurors and tends to unjustifiably influence them (e.g., Salerno, 2017). While Federal Rules of Evidence (e.g., FRE 403) and jury instructions are designed to prevent some of this prejudicial evidence from getting introduced and minimize the consideration jurors give to it, there is little evidence to support their efficacy. Researchers find that even when a judge deems evidence in court as inadmissible and instructs jurors to disregard it, jurors are still influenced by the inadmissible evidence in their case judgments (e.g., Steblay et al. 2006). Furthermore, jurors may be bad at recognizing their own biases, and see their own judgments as less susceptible to the impact of biases (e.g., bias blind spot; Pronin, Lin, & Ross, 2002).

Although some inadmissible evidence might not be particularly notable to jurors, other evidence may be especially salient when it relates to biases people already hold. For example, evidence in sexual assault cases related to the complainant's sexual history may induce victim-blaming biases against promiscuous women being seen as immoral. This type of moral judgment relates to moral foundations theory (Haidt & Graham, 2007), where individuals may make non-deliberate judgments about a person and situation based on the morals they themselves value and moral instincts (Haidt, 2001). For example, individuals who value morals in line with authority/respect tend to think more positively about police and military personnel (Graham et al., 2011). Although there are a handful

of core moral values that humans tend to hold, different people tend to prioritize these values differently, which has direct implications for how people interpret and judge what is fair and just in legal cases (e.g., Vaughan, Holleran, & Silver, 2019). As such, it could be useful to provide jurors with a basis for understanding moral foundations, and why weighing evidence based on subjective moral values may interfere with a just verdict, while also encouraging them to be more objective in their moral reasoning.

Overall, while there is some evidence on the ineffectiveness of judicial instructions to disregard evidence (e.g., Lieberman & Arndt, 2000), much of the literature is relatively aged (e.g., Kassin & Sommers, 1997; Pickel, 1995; Wolf & Montgomery, 1977) and literature on solutions documents room for improvement. To address these gaps, the proposed research investigated the effects of prejudicial evidence and jury instructions on mock juror participants, specifically looking at the impact of moral foundation endorsements (i.e., the variety of moral domains that people value, such as authority/respect, purity/sanctity) − testing a novel jury instruction that may help mitigate the biasing potential of prejudicial evidence.

Studies 1 and 2 addressed the effects of prejudicial evidence and jury instructions in the context of a sexual assault case, and an assault and battery case, respectively. Each introduced a different form of prejudicial evidence related to moral foundations, to test whether the effects of moral foundation endorsement and jury instructions extend to several contexts. Study 3 complemented the possible implications of these studies by examining the extent to which prejudicial evidence is brought up in actual cases and attorneys' overall perceptions of the biasing potential of prejudicial evidence and effectiveness of jury instructions. Overall, the goal of the proposed research was to look

at how moral foundations impact whether a juror is able to disregard prejudicial evidence, whether moral foundations theory can be applied to judicial instructions to help jurors adhere to the instructions, as well as how these situations tend to play out in real-world scenarios.

The Legal Problem: Prejudicial Evidence and its Admissibility

In accordance with Federal Rules of Evidence, in order to reduce undue influence of evidence, its probative value must outweigh its potential for: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence (FRE 403). Probative value refers to evidence's ability to prove something useful in trial (Law.com, n.d.). Similarly, Rape Shield Laws are in place to prohibit evidence related to the complainant's prior sexual behavior, or evidence offered to prove a sexual predisposition. However, due to exceptions to these rules, this evidence can still be deemed admissible in certain cases and used in court (e.g., Ariz. Rev. Stat. § 13-1421). While research has been done suggesting the limitations of certain rape laws and arguing that sexual history evidence still gets admitted, the actual prevalence of it being admitted in actual cases is not well documented and is often based on non-U.S. cases (e.g., Levanon, 2012; McGlynn, 2017).

In order to narrow the scope of the project and focus on evidence more relevant to moral foundations theory, this project looked at unfair prejudicial evidence captured under FRE 403 and Rape Shield Laws. Prejudicial evidence can also include a large variety of evidence. Generally though, it can be thought of as evidence that unduly arouses emotions and bias in the jury that can impair their ability to reach an impartial verdict (Bixon Law, 2019). The prejudicial evidence aspect of FRE 403 has been applied

to cases of whether to exclude evidence of prior felony (*U.S. v. Gomez*, 2014), evidence of evoking the right to silence (*Doe ex rel. Rudy-Glanzer v. Glanzer*, 2000), and evidence showing graphic pornographic videos (*U.S. v. Loughry*, 2011), among many others. There is evidence from European studies that sexual history evidence continues to be brought up in cases despite similar laws designed to prevent this evidence from being admitted (e.g., Lord et al., 2016). To our knowledge though, no U.S. study exists that provides a comprehensive look at just how extensive and prevalent prejudicial evidence is. However, preliminary Google Scholar case law searches showed that in the last five years alone there have been around 3,000 cases that mention FRE 403 and "prejudice". This may not be an exhaustive list, and alternatively, may overrepresent the issue. Overall though, there is some evidence of its prevalence, and justification for focusing in on prejudicial evidence. Specifically, the cases and prejudicial evidence used in this project relate to sexual history and organization affiliation, as both have been documented as prejudicial in several court cases (e.g., sexual history: *Hernandez v.* Velez, 1998, *U.S. v. Brown*, 2020; organization affiliation: *U.S. v. Abel*,1984, *U.S. v. Thompson*, 2021).

As an added protectant in sexual assault cases, Rape Shield Laws and FRE 412a apply to prohibit prejudicial evidence offered to prove that a victim engaged in other sexual behavior, or evidence offered to prove a victim's sexual predisposition (see also Ariz. Rev. Stat. § 13-1421 for an example of a state-level rape shield law). Rape Shield Laws aim to prevent potentially biasing evidence from being admitted into court to ensure that jurors focus on relevant case facts rather than information that can unduly bias them against a complainant. Preventing this evidence from being admitted also protects the complainant against potential embarrassment and sexual stereotyping that may elicit

prejudice. The proper application of these rules of evidence is important, as inadmissible evidence related to a victim's prior sexual history tends to prejudicially influence verdicts in favor of the defendant (e.g., Wistrich, Guthrie, & Rachlinski, 2005).

However, with both general prejudicial evidence and specific Rape Shield Laws, exceptions exist. For example, if the relevance outweighs potential harm, it can be admitted, and if the evidence is offered by the defendant to prove consent or that someone else could be the source of injury, semen, or physical evidence, it can be admitted (FRE 412b). Therefore, when an attorney objects to evidence presented, it is ultimately up to the judge to consider the rules and exceptions and weigh these issues to determine admissibility and whether the evidence should be considered by the jury.

In *U.S. v. Abel* (1984), the court questioned whether evidence of a witness's membership to the same prison gang as the defendant was admissible. In this case, the Aryan Brotherhood prison gang had an oath that swore to protect members even if by means of murder, theft, and importantly, perjury. Due to the probative value of knowing the witness may perjure on behalf of the defendant, the description of the gang was admitted. However, in cases where prior organization membership is not relevant, admissibility may be rejected. In addition, recent cases have upheld rulings that evidence of sexual history relating to people other than the accused was admissible and potentially relevant (e.g., *R v. Ched Evans*, 2016). In *State v. Shaw* (2014) the Connecticut Supreme Court decided that the trial court improperly excluded evidence of prior sexual history, based on the exceptions listed in Rape Shield Laws (e.g., relevance). These cases show that although rules of evidence are in place, not all potentially prejudicial evidence is inadmissible, and there is some discretion as to whether it is admitted.

In addition, some evidence may have limited scope, and be admitted for certain consideration, while limiting jurors to not use it to draw certain other inferences (FRE 105). For example, evidence of multiple sexual partners may be used to suggest an alternate source of semen, but the counsel may request limiting instruction that ideally limit the way in which jurors consider the evidence. In this case, jurors may consider whether based on the evidence of multiple sexual partners, the evidence presents a probability that someone else could have been the reason semen was found in the alleged victim. However, they would instruct jurors that the evidence not be used to form prejudice against the complainant based on their sexual predisposition and multiple sexual partners. This leaves two main avenues for prejudicial evidence: (1) objected to and deemed inadmissible, and (2) admitted but under limited scope.

While limiting instructions can be argued as a more realistic avenue, the purpose of this study was to test the overall effectiveness of instructions and whether jurors are impacted by prejudicial evidence. And while studying limiting instructions may have real world benefits, it would be difficult to tease apart the prejudicial from probative effects. Therefore, this project focused on prejudicial evidence with no probative value. Evidence with no probative value could for example be a victim's sexual history with someone who was already excluded as a source of semen. Therefore, that relationship would not provide any useful information for jurors to consider. The legal admissibility of prejudicial evidence has important implications, since psychological science has shown the negative effects this evidence can have on judgments (e.g., Bright & Goodman-Delahunty, 2006).

The Psychological Impact of Prejudicial Evidence

Prejudices are negative attitudes and feelings toward an individual or group based on their group membership or characteristic (Allport, 1954), and have been shown to impact jury verdicts (e.g., Sommers & Ellsworth, 2000). Prejudicial evidence can take many forms including graphic photos, pretrial publicity (e.g., Otto, Penrod, & Dexter, 1994; Ruva & McCevoy, 2008), and other evidence that may elicit stereotypes and prejudices (e.g., Schuller & Klippenstine, 2004). When jurors are exposed to prejudicial evidence, it can elicit strong emotions and biases that may impact their judgments of the evidence, the parties involved, and the case. For example, when mock jurors are exposed to gruesome photographs of murder victims, they experience more emotional responses and render more guilty verdicts than those not exposed to gruesome photographs (e.g., Bright & Goodman-Delahunty, 2006; Douglas, Lyon, & Ogloff 1997; Salerno, 2017).

Evidence in sexual assault cases may evoke prejudices against a complainant, such as when it pertains to their relationship with the defendant, sexual history, substance consumption, or physical violence. For example, mock jurors tend to give more lenient sentencing to defendants who were married to, or knew, their victim (e.g., Osborn et al., 2018; van der Bruggen & Grubb, 2014). In addition, when there is evidence that a complainant voluntarily consumed alcohol or other substances (e.g., marijuana) mock jurors tend to place more blame on the complainant (e.g., Sims, Noel, & Maisto, 2007; Stewart & Jacquin, 2010), and view victims as less credible when there are fewer signs of resistance (e.g., Campbell, Menaker, & King, 2015).

Evidence related to a participants' gang, professional, or other type of organization affiliation can also bias a juror in favor or against that person. Eisen and

colleagues (2013) looked at the effect of gang affiliation in a mock trial with the defendant accused of stabbing someone in a bar fight. Gang affiliation was associated with more guilty verdicts than those who were not given information of the defendant's gang affiliation (see also Maeder & Burdett, 2011). Contrary to this, professional occupation can have benefits if belonging to a higher social status membership. In one study (Deitz & Byrnes, 1981) participants were less certain of a defendant's guilt if he was a scientist compared to a janitor. Showing that group affiliation can have both positive and negative biasing effects on a defendant's case.

Bias Blind Spot

More so, even when jurors appear to be making decisions influenced by prejudicial evidence and emotional or cognitive biases, they may not be aware of it and may deny the biasing effects the evidence had on them. This phenomenon is called the bias blind spot, where people are better able to recognize other people's biases but have difficulty recognizing their own (Pronin et al., 2002). For example, despite evidence that forensic scientists can be impacted by biases (e.g., confirmation bias; Dror & Charlton, 2006), Kukucka and colleagues (2017) found that about a third of forensic examiners who believed bias was a concern in their field nonetheless believed that their own judgments were not influenced by bias.

Related to judicial judgments, participants in Pronin and colleagues' study (2002) expressed that the average person would be significantly more susceptible to the fundamental attribution error in victim-blaming than themselves. One limitation of this was that it found evidence of bias blind spot looking at general commonly studied biases (e.g., fundamental attribution error and halo effect), but it did not look at whether

participants were accurate in judging their lower biases. That is, it could be that the participants truly would show less halo effect bias than the average person, which would make this "bias blind spot" a nonetheless accurate representation of their low bias and not necessarily a failure to recognize their own biases. In a third study, Pronin and colleagues (2002) looked at whether people could recognize their self-enhancement bias. Participants completed a test and were told they either scored in the 80th percentile (success feedback), or the 30th percentile (failure feedback), then were asked to rate the validity of the test. In support of relevant and self-serving bias, participants who were provided with success feedback rated the test as more valid than those who were given failure feedback, suggesting participants were displaying bias in their judgments. Then, in support of bias blind spot, even though participants were displaying the bias, they on average thought that their partner's failure score had biased that partner's evaluation of the test more than they felt their own score had biased their own evaluation of the test.

Individuals with higher bias blind spot may be less motivated to engage in the effortful process of ignoring evidence, as they may feel they won't be susceptible to the biasing effects it could have. While there is mixed evidence on how bias blind spot affects actual decisions, there is some evidence that individuals who score higher on bias blind spot are less likely to take others' advice, and that those who score higher on bias blind spot measures are less receptive to bias reduction trainings (Scopelliti et al., 2015). Based on this findings, it could be that those who do not believe they are susceptible to making a biased decision do not feel that recommendations to improve that bias are relevant to them – which has direct implications for jury instructions. If a juror does not feel that they would be unduly impacted by inadmissible evidence to begin with, they

may not pay close attention to jury instructions to disregard the evidence, rendering the information ineffective for them.

One potential solution to addressing biases in line with the general literature on biases is to motivate individuals to engage in more effortful processing and recognize their biases in order to correct for the bias in their decision-making (e.g., Nunspeet et al., 2015). Recognizing biases prior to encoding information may help reduce the biasing potential of this information (e.g., Ecker, Lewandowsky, & Tang, 2010). However, studies have shown that debiasing techniques may be more effective when presented after the biasing information has already been seen/heard and encoded (e.g., Almashat et al., 2008; Walter & Murphy, 2018). The latter is especially relevant for issues of prejudicial evidence and jury instructions in court, since it is usually not until prejudicial evidence is brought up that a court has a need to address the evidence and get jurors to retroactively ignore information and prevent it from biasing their decisions. In this case, the evidence has already been encoded, and the task becomes how to prevent the potentially biased encoding from translating into biased case judgments.

How the Law Tries to Address Prejudicial Evidence Concerns

The law acknowledges the potential biasing effect of prejudicial evidence and has safeguards in place to mitigate the effects of this evidence. When an attorney objects to evidence, a judge can sustain the objection (deem the evidence as inadmissible) and provide jurors with instructions to disregard that evidence. In theory, jurors would adhere to these instructions and not factor the prejudicial information into their case judgments. However, jurors tend to be influenced by inadmissible evidence, even when given instructions to disregard it (e.g., Lieberman & Arndt, 2000; Steblay et al. 2006). For

example, in one study, mock jurors provided with simple instructions from a judge to disregard incriminating, but unreliable, wiretap evidence still found the defendant guilty, suggesting they considered the inadmissible evidence in their verdicts (Oakes et al., 2021). Cognitive theories have been applied to jurors' inability to disregard evidence, providing possible rationales and remedies for the issue.

The Psychology for Why the Law's Approach to Addressing Prejudicial Evidence Might Fail

One potential problem with judicial instructions to jurors is that providing admonition to disregard information may create a backfire effect in line with two prominent psychological theories: reactance theory and ironic processes of mental control theory (Brehm, 1966; Wegner, 1994). Reactance theory explains individuals' general tendencies to engage in behavior they are told not to in order to reestablish their freedom of action and thought. This relates to the specific ironic process of mental control theory, which provides a rationale for why jurors actually might consider the evidence *more* when given admonishment instructions to disregard it entirely.

This theory posits that mental control (e.g., thought suppression) requires conscious and unconscious cognitive processes, and that the more we try to ignore and block out a thought by engaging these cognitive processes, the more salient the thought we put so much effort into banishing becomes. Therefore, according to this theory, any added attention to inadmissible evidence, and requirement of conscious mental control (i.e., not thinking about evidence already presented), could backfire and make that thought more prominent in the individual's mind, which could impact their judgment.

Some studies lend support for this hypothesis, showing that mock jurors who were given strong admonishment instructions were more influenced by the inadmissible evidence than those who were provided with no objection or instructions at all. Specifically, Lee and colleagues (2005) found that when mock jurors were provided with instructions to disregard hearsay evidence, they still rendered guilty verdicts similar to those in the condition without an objection and admonition. This effect was even more prominent for those who were given strong instructions to not consider it (e.g., using words such as "must not" and "prohibited"), which could be due to backfire effects of excessive attention placed on the necessity of blocking out the thought. Cook and colleagues (2004) found similar results, showing that participants were more influenced by inadmissible evidence when told to disregard it than when the evidence was admissible. However, these effects were conditional on whether people were inclined to follow their own intuitions and nullify the law.

Taken altogether, the best way to minimize the effect of prejudicial evidence is ideally to not have the evidence introduced to jurors at all – which can be achieved if this evidence is excluded during pre-trial processes such as evidence hearings and depositions. This is not always feasible or practical though, and court safeguards are needed in these cases where it does get brought up to jurors. In these cases, if the evidence is introduced during trial, the best way to minimize the effect it has on jurors could be not to object to it at all, so as to not draw added attention that could result in the backfire effects.

Another remedy based on this theory, which has had some success in clinical settings, is ironically to instruct people to focus on the thought they are meant to suppress

(Shoham & Rohrbaugh, 1997; Wegner & Wenzlaff, 1996). Judge's instructions then could acknowledge the impact of the information and stress that when the jurors think about evidence that has been deemed inadmissible, that they also remember why it shouldn't impact their decisions. This could work to motivate individuals to adhere to instructions by providing rationale for the inadmissibility and bias, which has been shown to be more effective than standard instructions (e.g., Kassin & Sommers, 1997). In addition, reducing cognitive load by using simplified language may help jurors engage in effortful processing and disregard the evidence.

Compatible with this idea, Severance and Loftus (1982) conducted a study looking at mock jurors' understanding of general jury instructions and found that people had a difficult time understanding complex instructions (see also Lieberman & Sales, 1997). Other theories from psychology might also be useful for improving jurors' abilities to disregard inadmissible evidence. Overall, there is mixed support for the effectiveness of jury instructions and although many theories have been applied to help explain and alleviate this (e.g., ironic processes of mental control, reactance theory, simplified language), one potential solution common across jury instruction and bias literature is to provide rationale and motivate jurors to engage in effortful processing to ignore the inadmissible evidence.

A Psychologically-Informed Approach to Address Prejudicial Evidence Concerns

Prejudicial evidence may carry the extra burden of overcoming an individual's moral foundation biases. Moral Foundations Theory holds that individuals hold moral beliefs that tend to fall into five main domains: harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity (Graham et al., 2013; Haidt &

Joseph, 2004). These moral foundation domains were proposed with consideration that morality varies across cultures, but with the aim of identifying the best candidates for innate and universal morals that would consistently apply to different cultures. Individual morals are argued to be both innate – for example, cognitive modules are designed to yield pleasure when fair exchanges occur (fairness/reciprocity) – and learned. As a child develops, their "learning/moral modules" expand to include more specific values within each. Additionally, while they are argued to be universal, the specifics and values within each moral may look differently between cultures. Graham and colleagues (2013) provide the following example of how authority/respect may develop and be valued differently across Hindu and American communities:

> "*…children in traditional Hindu households are frequently required to bow, often touching their heads to the floor or to the feet of revered elders and guests. Bowing is used in religious contexts as well, to show deference to the gods. By the time a Hindu girl reaches adulthood, she will have developed culturally specific knowledge that makes her automatically initiate bowing movements when she encounters, say, a respected politician for the first time… A girl raised in a secular American household will have no such experiences in childhood and may reach adulthood with no specialized knowledge or ability to detect hierarchy and show respect for hierarchical authorities.*"

From this example, they suggest that Americans may be less likely to hold authoritarian values as an adult. Similar comparisons can be made across households that do or do not endorse religious beliefs, gender roles, and other societal beliefs that can shape how a child's moral domains expand. Political beliefs for example, and whether someone identifies as conservative or liberal tends to impact the moral domains that they value (e.g., conservatives tend to endorse/score higher on authority/respect than liberals) (Haidt & Graham, 2007). Morality is complex and evolving though, and while the five domains

are offered as ones with strong support, the authors do not mean for them to be an exhaustive list of all possible moral foundations (Graham et al., 2013).

Extending the base moral foundation theory, individuals tend to make fast, unconscious moral evaluations that affect ethical action and other decision-making (i.e., moral intuition or moral heuristics; Gigerenzer, 2008; Haidt, 2001; Haidt & Bjorklund, 2008). These moral heuristics can lead to mistaken judgments of others' morality (e.g., Sunstein, 2003). Researchers have found that when jurors place value on a complainant woman's prior sexual history, and when they view her as someone who had promiscuous tendencies, they were more likely to attribute blame toward her and render not guilty verdicts (Schuller & Hastings, 2002).

The relationship between blame attribution and sexual history may relate to moral foundations theory, where people differentially value and place importance on the purity/sanctity moral domain. For example, people who strongly value purity/sanctity may view women who engage in sexual activity as impure and wicked and make moral intuition-based judgments on their character, which could affect other decision-making processes as well. This rationale is based on research showing that individuals' endorsements of the purity/sanctity domain correlated with their perceptions of virgins, prostitutes, people who have casual sex, and similar social groups (Graham et al., 2011). Other research has also found purity/sanctity to be related to rape myth acceptance and victim-blaming in sexual assault cases (e.g., Barnett & Hilz, 2018; Milesi, 2020). In Graham and colleague's study (2011), the researchers also found that authority/respect was correlated with attitudes towards police officers, soldiers, military personnel, people who spank their children, and anarchists.

Several studies have applied moral foundations theory to help explain decision-making and judgments (e.g., the trolley problem; Bruers & Braeckman, 2014). A recent study (Cox et al., 2021) applied this theory to policy support, finding that people who value purity/sanctity and authority/respect supported implementing policy to restrict public restroom usage based on sex. Moral foundations theory can also be applied to the court system and how to get individuals to make more ethical legal decisions. Vaughan, Holleran, and Silver (2019) found that participants who endorse binding moral foundations (ingroup/loyalty, authority/respect, and purity/sanctity) were more death qualified (i.e., willing to consider applying the death penalty in capital cases) than those who endorse individualizing moral foundations (harm/care, fairness/reciprocity), which impacted their sentencing decisions. Rather than using moral foundations to explain biased decision-making, Egorov, Verdorfer, and Peus (2019) implemented self-awareness of moral foundations in order to help individuals make more ethical decisions, which can translate into ethical and objective jury decisions.

Overall, the literature mainly applies this theory as a framework to explain certain phenomenon and decisions, but little work has been done on how to mitigate circumstances where these moral foundations can lead to biased decisions. This project aims to build on this work by directly targeting awareness of moral foundations to help jurors make less morally heuristic-driven judgments through legal safeguards for prejudicial evidence (i.e., judicial instructions to disregard evidence).

The Current Project

The literature points to an overall limitation in jurors' ability to adhere to jury instructions and disregard inadmissible evidence, finding that instructions are relatively

ineffective and jurors who are admonished to disregard evidence are still impacted by inadmissible evidence in their case judgments. While theories such as ironic processes of mental control shed light on why this may happen, less support has been found for effective solutions (see Steblay et al., 2006 for theoretically-inspired solutions). This reality poses a threat to the integrity of the justice system, since inadmissible evidence, specifically prejudicial evidence (under FRE 403), can influence case judgments (e.g., Ruva & McCevoy, 2008).

Given the impact that prejudicial evidence can have on jurors, and the ineffectiveness of instructions to ignore inadmissible evidence, it's important to further study this issue and contribute to possible solutions. One promising avenue that has not been explored is how moral foundations theory may advance solutions. The current study sought to better understand jurors' susceptibility to biases (e.g., judgments based on moral heuristics), and lack of adherence to instructions, in order to develop effective strategies to improve judgments in the justice system. To do so, this project tested a novel jury instruction for disregarding prejudicial evidence, inspired by moral foundations theory, assessing its effectiveness against traditional jury instructions. This instruction provided participants with context as to what moral foundations are and why they may interfere with judgments and decision-making. In doing so, the project aimed to provide participants with a rationale in order to reduce the effect that their moral bias could have. In this case, effective instructions were those that helped mock jurors disregard the inadmissible evidence, making case judgments similar to what one would expect if they had never been given the evidence to begin with.

Specific Aim #1: *Investigate the effectiveness of different jury instructions to disregard prejudicial evidence.*

The project tested a novel instruction inspired by moral foundations theory to assess its effectiveness compared to traditional jury instructions. This can inform ways to address prejudicial evidence in court to help jurors make less biased judgments.

Specific Aim #2: *Identify individual differences in moral foundation endorsements that predict (a) people's overall susceptibility to prejudicial evidence, and (b) people's ability to adhere to jury instructions.*

This project looked at whether the extent to which people value certain moral foundations impacted their susceptibility to prejudicial evidence relevant to those moral foundations. For example, do people who more strongly value purity/sanctity make different case judgments than those who do not endorse this domain? Given the diverse nature of cases, this relationship is likely to look different depending on context though. For example, cases involving environmentalists might be more relevant to people who value harm/care; whereas, those involving flag burners may be more relevant for those who value ingroup/loyalty (Graham et al., 2011). Importantly, people may feel strongly about more than a single domain, therefore, someone who values purity/sanctity may also value harm/case, etc. For the purpose of this study, purity/sanctity and authority/respect domains were focused on. In addition, the project looked at whether the pattern and strength of moral foundations influenced adherence to jury instructions inspired by moral foundations theory.

Specific Aim #3: *Investigate jurors' recognition of their potential biases in line with the bias blind spot.*

One challenge in addressing biases is that people tend to underestimate their own susceptibility to biased judgments. In this study, mock jurors may acknowledge that moral foundations could influence judgments yet believe that they themselves can overcome these biases and make more objective decisions. This study tested for the presence of the bias blind spot. First, by looking at whether participants rate others' susceptibility to biases as greater than their own; and second, by seeing whether participants who report being less susceptible to biases still make judgments based on the prejudicial evidence, suggesting they were more susceptible than they believe and report.

Specific Aim #4: *Investigate the presence and use of prejudicial evidence and jury instructions in real cases.*

Researchers have shown the negative impacts that prejudicial evidence can have on jurors and the limitations of standard jury instructions in mock trial settings. However, less is known about the extent of this problem in actual court settings (as opposed to the mock juror research context). Given that there are pretrial safeguards to reduce the chance of inadmissible evidence being brought up in court, how often are jurors actually faced with disregarding inadmissible evidence? When they are exposed to it, do attorneys view it as a real threat to their cases? How do attorneys decide to object to or ignore possibly prejudicial evidence? The project looked to answer questions related to this issue to assess how inadmissible evidence is used and dealt with in real cases. This study has

the potential to provide insight into the broader impacts of the project, and whether the issues highlighted in the literature and possible solutions could extend to real cases.

Study 1

Study 1 assessed specific aims #1-3 looking at the impact of moral foundations theory on participants' judgments and biases related to the purity/sanctity moral foundation. These potential effects were tested in the context of a sexual assault criminal case, with prejudicial evidence relating to the complainant's sexual history and promiscuity.

All Study 1 data analysis plans and study materials were pre-registered on the Open Science Framework (OSF): Study 1 OSF Link.

Study 1 Hypotheses

(1) Participants given moral foundations-based instructions for why the evidence is inadmissible would be less impacted by the evidence; rendering more guilty verdicts and less blame towards the complainant, compared to those in the no objection condition; and similar verdicts to those in the control condition who were not shown the inadmissible evidence at all. It was expected that those in the standard instruction condition would be slightly less impacted by the prejudicial evidence than those in the no objection condition, but slightly more than those in the moral foundations instruction and control conditions.

(2a) Participants with higher purity/sanctity moral foundation endorsement (i.e., higher scores on this domain) would be more impacted by prejudicial evidence, rendering fewer guilty verdicts and more blame towards the complainant, than those who less

strongly endorse this moral foundation. It was not predicted that the other moral foundations would influence judgments in the case.

(2b) Participants with higher purity/sanctity moral foundation values would benefit most from moral foundation-based instructions, compared to those who endorse this moral foundation less and may already be less likely to place significance on the prejudicial evidence.

(3a) Participants would display a bias blind spot, rating others' susceptibility to moral heuristics as greater than their own.

(3b) Furthermore, it was hypothesized that participants would underestimate the degree to which they were actually influenced by the prejudicial evidence, and that those with a larger bias blind spot (i.e., larger discrepancy between their estimate of their own susceptibility to bias as compared to their peers) would be more impacted by the prejudicial evidence than those with smaller bias blind spots. Bias blind spot was conceptualized as the difference between their rating of the average person's bias susceptibility and their own (average-self, with higher scores indicating larger bias blind spot). Those with smaller bias blind spots may be more aware of their limitations and more likely to correct these biases in their case judgments. By manipulating the presence of prejudicial evidence, the study was able to compare the responses of participants exposed to prejudicial evidence to the judgments one would expect if there was no bias involved (control condition). Therefore, if a participant's case judgments differ from those in the control group there would be some evidence of biased judgments. This hypothesis was in part based on West and Kenny's (2011) Truth and Bias Model of Judgment and establishing a "true" value.

Pilot Study A

Prior to conducting Study 1, a pilot study was run to ensure all Study 1 case materials and evidence were perceived as intended (see Appendix A1 for IRB Approval). The goal of the pilot study was to ensure that: 1) the general case (aside from the prejudicial evidence) was viewed as pro-prosecution and somewhat neutral and ambiguous, and 2) the prejudicial evidence was perceived as pro-defense. The different evidence strengths and directions would allow us to detect differences in conditions. If both the case itself and the prejudicial evidence were seen as pro-prosecution then there likely would be no detectable effects across conditions as all would likely endorse pro-prosecution sentiments and judgments (e.g., less blame attributed to the complainant, guilty verdicts, high likelihood of guilt).

Participants

Participants (N = 105) were recruited from SONA, Arizona State University's West campus system for recruiting student research participants (see Appendix A2 for recruitment script). They received extra credit for their participation. Ten participants were excluded for failing an attention check asking them to select a certain response option, leaving 95 eligible participants (M_{Age} = 22.82; 74.74% Female, 20% Male, 3.16% Other). Eligible participants self-identified as 60% White, 13.68% Hispanic (white), 9.47% Asian, 5.26% Hispanic (non-white), 4.21% African American, 3.16% other, and 2.11% identified as more than one race.

Method

In a between-subjects design, participants were randomly assigned to one of three conditions, each varying the amount of evidence that participants were exposed to (full

case, case omitting prejudicial evidence, prejudicial evidence only). Participants who chose to participate were directed to Qualtrics, where they provided consent (see Appendix A3 for consent form) and read the transcript they were randomly assigned to. In the full case condition, participants read the case transcript of a criminal sexual assault trial (including the prejudicial evidence that was not be objected to). In the case omitting prejudicial evidence condition, participants read the case transcript with all evidence except the prejudicial evidence. Lastly, in the prejudicial evidence only condition, participants read a very brief description of the criminal charges and case, followed by one of two types of prejudicial evidence.

Both versions of prejudicial evidence related to the complainant's prior sexual history and promiscuity; however, one was prior consensual sex with the defendant, and the other was prior consensual sex with the defendant's friend (see Appendix A4 for case transcripts and prejudicial evidence versions). The rationale for two different versions was to test how extreme the evidence had to be in order to be seen as prejudicial against the complainant. The main concern using the defendant's relationship was that based on rape shield laws, this prior relationship may have been seen as probative enough to be admissible. In order to reduce possible criticism over admissibility, evidence of prior relationship with the defendant's friend and alleged promiscuity was tested to see if it would still be prejudicial enough to sway opinions towards pro-defense, while being less probative and more realistically inadmissible.

After reading over the case, participants filled out various measures related to their case judgments and demographics (see Appendix A5).

Measures

Case Judgments. Participants were asked to rate the extent to which they felt the defendant was guilty on a 10-point sliding scale (1 = *not at all guilty*, 10 = *very guilty*), the likelihood that the defendant is guilty (1-100 sliding scale), and a verdict preference (not guilty vs. guilty). Those in the prejudicial evidence only condition were also asked whether the prejudicial evidence provided support for the prosecution or defense, and how strong that evidence was in supporting their case (1 = *very weak*, 7 = *very strong*). Various other measures were asked for exploratory analyses (e.g., rating the strength of pieces of evidence used in the case).

Blame Attribution. To assess blame attribution, participants completed a brief blame attribution questionnaire for both the defendant and complainant. The defendant blame attribution questionnaire consisted of two items based on items from Gudjonsson Blame Attribution Inventory (1989) and previous research (Davies, Pollard, & Archer, 2006), measuring the extent to which participants felt the defendant is at blame ("The defendant was fully aware of what he was doing," "The defendant did not intend to hurt the complainant" (reverse scored)). The items were rated on a 7-point Likert scale (1 = *strongly disagree*, 7 = *strongly agree*), and averaged for a total score from 1-7. The study also more directly measured responsibility, asking participants to what extent they felt the defendant was responsible for what happened (1 = *not at all responsible*, 7 = *very responsible*). Scores below four would indicate that participants viewed the defendant less responsible to some extent, which is what the study was aiming for in the prejudicial evidence condition.

The complainant blame attribution questionnaire consisted of two items adapted from previous research (Grubb & Harrower, 2009; Loughnan et al, 2013; $\alpha = .88$): ‘‘To what extent did the complainant act carelessly?’’ and ‘‘To what extent did the complainant lead the defendant on?” The items were rated on a 7-point scale (1 = *not at all*, 7 = *very much so*), and averaged for a total score from 1-7. To more directly measure responsibility, the survey asked participants to what extent they felt the complainant was responsible for what happened (1 = *not at all responsible*, 7 = *very responsible*). Since the aim was for the prejudicial evidence to be seen as pro-defense, it was expected that those in the prejudicial evidence only condition would rate the complainant as slightly responsible and to blame (scores above, or around 4) if the manipulation was perceived as intended. All pilot measures can be found in Appendix A5.

Pilot A Results

Overall the pilot study results provided some support for the manipulations working as intended. Looking at general verdict trends, those who were not exposed to the prejudicial evidence on average voted guilty (73.33% guilty verdicts) more so than those in the two conditions that were exposed to this evidence (full case: 57.6% guilty verdicts; prejudicial only: 62.5% guilty verdicts). Similar results were found looking at participants’ ratings on the extent of guilt (Guilt Likert; rated 1-10), and likelihood of guilt (Guilt Likelihood; 1-100%) (see Table 1 for descriptive statistics). Those who were not exposed to the prejudicial evidence on average viewed the defendant as more guilty, and more likely of guilt. In addition, participants tended to view the prejudicial evidence overall as pro-defense (60% pro-defense). While the overall percent of individuals who viewed the prejudicial evidence as pro-prosecution was originally concerning, when

broken up to compare across the two versions of prejudicial evidence, more differences emerged. Results suggested that participants viewed the prejudicial evidence with the friend as more pro-defense (68.75% pro-defense), and the evidence as stronger in terms of the extent to which it supported the defense's case (M = 4.55, SD = 2.38), compared to the evidence of sexual history with the defendant himself (50% pro-defense; extent of support: M = 3.38, SD = 2.07).

Table 1

Descriptive Statistics for Pilot A Measures.

Measure	Full Case		No Prejudicial Evidence		Only Prejudicial Evidence	
	M	*SD*	*M*	*SD*	*M*	*SD*
Guilt Likert	6.48	2.59	7.33*	*2.31*	*5.94**	*3.12*
Guilt Likelihood	*64*	*26.2*	70.8*	26.9	55.6*	33.4
Defendant Blame	5.04	1.40	5.31	1.31	4.97	1.10
Defendant Responsibility	5.20	1.41	5.03	1.80	4.06	2.22
Complainant Blame	2.70	1.52	2.38*	1.24	2.99*	1.72
Complainant Responsibility	2.17	1.46	2.21*	1.37	2.97*	2.05

Note. Significance values are based on linear regressions performed for each variable with condition entered as the predictor, and the no prejudicial evidence entered as the reference group. Significance indicates which variables were significantly different from one another. For example, Guilt Likert, No Prejudicial Evidence was significantly

different than Only Prejudicial Evidence, but Full Case was not significantly different so was not designated an asterisk. *$p < .05$.

In addition, despite few people acknowledging that they viewed the prejudicial evidence as pro-defense, their overall case sentiments still suggested they endorsed more complainant-blaming and responsibility than those who were not exposed to the prejudicial evidence. Specifically, those who were exposed to prejudicial evidence on average viewed the complainant as more to blame ($M = 2.99$, $SD = 1.72$), and responsible ($M = 2.97$, $SD = 2.05$), than those who did not receive this evidence (blame: $M = 2.38$, $SD = 1.24$; responsibility: $M = 2.21$, $SD = 1.37$). Participants who were exposed to prejudicial evidence also on average viewed the defendant as less responsible ($M = 4.06$, $SD = 2.22$) and less to blame ($M = 4.97$, $SD = 1.10$) compared to those without prejudicial evidence (responsibility: $M = 5.03$, $SD = 1.80$; blame: $M = 5.31$, $SD = 1.31$).

Pilot Conclusion

The manipulations were generally perceived as intended. Participants exposed to prejudicial evidence tended to on average view the case as more pro-defense (less guilty verdicts, lower guilt perceptions on continuous variables), the complainant as more to blame and responsible, and the defendant as less to blame and responsible, than those not exposed to prejudicial evidence. It is important to note that many of these differences were small or not statistically significant, which could be due in part to people's overall hesitancy to admit to victim-blaming tendencies due to social desirability bias (e.g., Edwards, 1953). Another limitation to these results were the low cell sizes (n = 30-33) that could limit interpretations of statistical tests. Given the results, the prejudicial

evidence involving sexual history with the defendant's friend (rather than the defendant himself) was used for Study 1.

Study 1 Method

Study 1 Design

Participants read a criminal sexual assault case containing different sources of evidence from the prosecution and defense. Three variables of interest were manipulated, and participants were randomly assigned to one condition in this between-subjects design. The three variables of interest were prejudicial evidence related to the complainant's sexual history (present or absent), attorney's objection to the prejudicial evidence (yes or no), and the type of instruction the judge provides the mock jurors to disregard prejudicial evidence (none, standard, moral foundations-inspired). While there are instances where an attorney would object to evidence, and a judge would overrule (i.e., deem the evidence as admissible), for the sake of this project all attorney objections were sustained (i.e., deemed as inadmissible) and followed with jury instructions. If the design were fully crossed, it would have been a 2 x 2 x 3 condition study with 12 separate conditions. However, many of these conditions would not be plausible in an actual legal setting (e.g., an attorney would not object to prejudicial evidence if no prejudicial evidence were presented; a judge would not provide instructions to disregard prejudicial evidence in the absence of prejudicial evidence). As such, the study proceeded with four between-subject conditions in a partially crossed design (see Table 2).

Table 2

Study 1 Conditions

	Prejudicial Evidence			
	Absent		Present	
	Objection		Objection	
Instruction Type	Yes	No	Yes	No
None	X[a]	(1) Control	X[b]	(2) No Objection
Standard	X[a]	X[c]	(3) Standard Instruction	X[c]
Moral Foundations	X[a]	X[c]	(4) Moral Foundations Instruction	X[c]

Note. A breakdown of the 12 possible conditions had it been a fully crossed 2 x 2 x 3. An X indicates that a certain condition was excluded, followed by a subscript specifying why the condition was not included in the final design. All other cell labels indicate the corresponding condition label.

[a] Without prejudicial evidence there would not be an objection. [b] If a judge sustained an objection, they would provide jury instructions. [c] With no objection there would be no need for jury instructions to disregard the evidence.

Conditions

(1) *Control.* Participants in this condition read the same case as participants in the other three conditions, only with the omission of the prejudicial evidence. The Control condition was intended to act as a baseline for how participants judge the case and parties involved when they were not exposed to prejudicial evidence that

could impact their judgments. If participants who were given instructions and safeguards to ignore the evidence rendered similar verdicts and blame attribution as those in the control condition, it would suggest that they effectively ignored the inadmissible evidence as they were instructed to.

(2) *No Objection*. Participants in this condition were exposed to the inadmissible evidence, without the lawyer objecting to the evidence, and thus participants did not receive instructions to disregard it. This no objection condition was intended to be used as another baseline to see if participants considered evidence more or less when they were told to disregard it vs. when no added attention and effortful disregarding instructions were given. This condition was used to test whether no objection was more effective in partial support of the ironic processing of mental control theory, and whether the moral foundations instruction was more effective.

(3) *Standard Instruction.* Participants in this condition were exposed to an objection to the inadmissible evidence, followed by standard jury instructions on disregarding prejudicial evidence (based on instructions given in a prior study; Bergman, 1993, p .690). The study compared the novel moral foundations instruction to this standard instruction in order to see if the novel psychologically-informed approach was any more or less effective than what is standard practice today.

"*You have heard evidence pertaining to the complainant's prior sexual history. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Therefore, we instruct*

that you decide this case as if you had never heard the evidence, and ignore it in your deliberations."

(4) *Moral Foundations Instruction*. This condition provided participants with a new approach to admonishment, in an effort to combat the possible immorality that participants may have ascribed to the complainant based on the inadmissible evidence. By providing participants with a basis for how moral foundations can unduly influence decisions, and target emotion reappraisal, the study aimed to emphasize the importance of justice and motivate people to understand their moral foundation heuristics and use a more fully informed theory of morality to help reduce bias in their case judgments. This instruction was a general description of moral foundations that could be applied to numerous scenarios and cases, rather than being specific to the purity/sanctity or any of the other four moral domains. It was modified from jury instructions on biases used in a California case (CACI No. 113).

"You have heard evidence pertaining to the complainant's prior sexual history. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Each one of us has moral biases about or certain perceptions of other people and behaviors that violate morals we value. If someone violates a moral we find important, it can trigger automatic intuitive judgments that may not have any rational basis. This bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Therefore, decide this case as if you had never heard the evidence, and ignore it in your deliberations. We

ask that you evaluate the evidence and resist any urge to reach a verdict that is influenced by moral bias for or against any party or witness.

Study 1 Participants

Participants (n = 544; M_{age} = 41.61; 57.72% Female, 42.10% Male, and 0.18% Non-binary) were recruited using Amazon's Mechanical Turk (Mturk; Litman et al., 2017), and compensated $2.00. Participants were U.S. citizens and 18 years or older, in partial fulfillment of U.S. jury eligibility requirements. The intended sample size (*N*=489) was determined by conducting a power analysis for a between-subject design with four groups, with enough power to detect an estimated effect size of Cohen's *f* = .15, α = .05, and 80% power. Eleven participants were excluded from the full sample (*N* = 555) for failing a multiple-choice attention check (*n* = 9), and a question asking them to type in a specific word in a sentence (*n* = 2). Participants identified as 66.91% White, 9.01% Hispanic (white), 8.27% African American, 6.25% Asian, 4.04% Hispanic(non-white), 4.04% mixed race, 3.68% Native American, and 7.35% other. Other specified racial identities included European American (*n* = 1), Middle Eastern (*n* = 1), and Scottish American (*n* = 1). See Table 3 for full demographic information.

Table 3

Study 1 Demographics

Demographic	*N*	%	*M* (*SD*)
Age	543		41.61 (13.04)
Gender			
Female	314	57.72	

Male	229	42.10	
Non-binary	1	00.18	
Race			
African American	45	8.27	
White	364	66.91	
Asian	34	6.25	
Hispanic (non-white)	22	4.41	
Hispanic (white)	49	9.01	
Native American	2	3.68	
Mixed Race	22	4.04	
Other	4	7.35	
Religion			
Jewish	12	2.21	
Protestant	149	27.39	
Muslim	6	1.10	
Orthodox	4	00.73	
Roman Catholic	103	18.93	
Latter-Day Saints	2	00.37	
Atheist	120	22.06	
Other	106	19.48	
Political Ideology	543		3.49 (1.91)

Note. Political Ideology was rated on a 7-point scale, where 1 = *strongly liberal*, 4 = *centrist/middle of the road,* and 7 = *strongly conservative*. Not all demographic's *n* values

add up to the full 544 sample due to some participants choosing not to answer that demographic question.

Study 1 Procedure

Participants accessed the study from Amazon's Mechanical Turk platform, where they were able to read a brief description of the study's recruitment listing (see Appendix B2). Upon opening the study in Qualtrics, participants read the consent form (see Appendix B3) and asked whether they agreed to participate. If consented, participants then read one of four variations of a mock trial (depending on the condition they were assigned to), which was a condensed criminal case accusing the defendant of sexually assaulting the complainant (see Appendix B4).

After reading over the case, participants filled out a survey regarding their judgments on the case, the evidence, the complainant and defendant, as well as moral foundations and bias blind spot questionnaires, and a demographic survey (see Appendix B5).

Study 1 Materials

Case Vignette

The case vignette was a condensed transcript of a criminal trial, with the defendant being charged with sexual assault that allegedly took place at a party that the complainant and defendant attended (see Appendix B4 for the full transcripts provided in each condition). The defendant and complainant were referred to as Nathan Smith and Jane Doe, respectively, to avoid salient references to race. The core evidence in the case was from four testimonies: a nurse, police officer, the complainant, and a general witness, and slightly leaned towards pro-complainant judgments (e.g., guilty verdicts, more

defendant blame attribution). The evidence and witness testimonies were chosen in order to provide a condensed trial (approximately 14 pages), while also giving participants enough context to form a case for and against the defendant. Law enforcement and medical professionals represent what have been viewed as typical expert testimony in sexual assault cases (Lonsway, 2005).

The prejudicial evidence was introduced during cross-examination of the complainant, and leaned in favor of the defense (e.g., not guilty verdicts and less blame attributed to the defendant) and victim-blaming attitudes. This framing was to enable us to detect any effects of the prejudicial evidence. If the prejudicial evidence was also in favor of the complainant, then participants would likely be rendering guilty verdicts regardless of condition, making it difficult to determine if the prejudicial evidence impacted judgments. The case and prejudicial evidence were pilot tested to ensure participants perceive it as intended (see Pilot Study A).

The transcript began with the judge providing opening instructions describing an overview of what the defense was charged with and what the prosecution must prove in order for the defendant to be convicted. After the opening instructions, the prosecution and defense gave opening statements. The first witness was Dr. Hart, a medical examiner brought in by the prosecution. She testified that Jane Doe presented to her 3 days after the alleged assault, testifying about apparent injury to the cervix and the presence of sperm. However, she also testified that the source of the sperm could not be confirmed, and that cervical/vaginal injury is not exclusive to assault and could have been caused by other events. The next witness called by the prosecution was Officer Stark, the police officer to whom Jane Doe reported the incident. During the direct examination, he provided a

general account of the reported incident and timeline of events, and other evidence found that could corroborate that an assault took place.

The prosecution then called the complainant, Jane Doe, to the stand to provide her testimony of what she remembered from that night and the days following. The defense cross examined her to call into question her memory and delayed reporting. In the control condition, this was the only testimony the complainant provided. In the non-control conditions, additional prejudicial evidence was introduced when the defense attorney cross-examined the complainant about her sexual history, introducing evidence related to her prior relationship to the defendant's friend and her alleged promiscuity. The defense attorney argued this evidence was to provide a case for consent, but the judge would decide it was not admissible on the basis of Rape Shield Laws (e.g., Ariz. Rev. Stat. § 13-1421). The evidence was designed to have minimal probative value seeing as though it was not the defendant himself that the complainant had a previous relationship with. Thus, if participants were influenced by it, it would likely be due to any moral implications it had for them. Given the prejudicial nature of this evidence, if it impacted participants' decisions, it should have swayed their decisions in favor of the defense (i.e., not guilty verdicts).

In the no objection condition, the evidence was not objected to, and the trial proceeded. In the two conditions with instructions, the prosecuting attorney did object to the prejudicial evidence, and the judge sustained the objection followed by one of the two instruction types (standard or moral foundations instructions). The jury instructions to disregard the evidence were presented by the judge immediately following the evidence and objection. This format is based on studies finding that jury instructions are more

effective when presented earlier in the evidence-processing task, rather than post-trial (Cush & Goodman-Delahunty, 2006).

Lastly, the defense called their witness to the stand, an acquaintance of both the complainant and defendant who hosted the party where the alleged assault took place. The witness testified primarily on behalf of the defendant, stating she noticed the complainant flirting with him throughout the night. After both parties rested their case, the judge provided closing instructions, followed by closing statements by the prosecution and defense.

Study 1 Measures

Case Judgments

Participants were asked to answer a series of questions regarding their judgments of the case and parties involved. The variables that were used in primary analyses for the hypotheses were: verdict (dichotomous), guilt answered on a Likert scale (guilt (Likert); 1 = *not at all guilty*, 10 = *very guilty)*, the likelihood that the defendant was guilty (guilt likelihood; 1-100% sliding scale), and how responsible the complainant and defendant each were (1 = *not at all responsible*, 7 = *very responsible*). Various other measures were also asked for exploratory analyses (e.g., rating the strength of pieces of evidence used in the case).

Blame Attributions Scales

To assess blame attribution, participants completed a blame attribution measure for both the defendant and complainant. The defendant blame attribution measure consisted of five items based on items from Gudjonsson Blame Attribution Inventory (1989) and previous research (Davies, Pollard, & Archer, 2006) measuring the extent to

which participants felt the defendant was to blame (e.g., “The defendant is entirely to blame,” “The defendant was fully aware of what he was doing,” “The defendant just got carried away” (reverse scored), “The defendant did not intend to hurt the complainant” (reverse scored), and “The defendant exhibited poor behavior”). The items were rated on a 7-point Likert scale (1 = *strongly disagree*, 7 = *strongly agree*), and averaged, with higher scores indicating more blame attribution towards the defendant.

The complainant blame attribution measure used five items adapted from previous research (Grubb & Harrower, 2009; Loughnan et al, 2013; α = .88; Davies & McCartney, 2003): ‘‘To what extent did the complainant act carelessly?’’; ‘‘To what extent did the complainant lead the defendant on?’’; ‘‘To what extent was the complainant’s behavior responsible for her sexual encounter with the defendant?’’; ‘‘To what extent could the complainant have avoided the situation if she wanted to?’’; and ‘‘To what extent did the complainant have control over the situation?’’ The items were rated on a 7-point scale (1 = *not at all*, 7 = *very much so*), and averaged, with higher scores indicating more blame towards the complainant.

Moral Foundations Questionnaire

The Moral Foundations Questionnaire (Graham et al., 2011) was used to measure the extent to which individuals endorse and consider the five moral domains (harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity). The questionnaire consists of 30 items on moral relevance and moral judgment, with 6 items loading onto each domain. Fifteen items ask how relevant certain characteristics are to participants when deciding whether something is right or wrong (e.g., harm/care: “whether or not someone suffered emotionally,” fairness/reciprocity: “whether or not

some people were treated differently than others," ingroup/loyalty: "whether or not someone did something to betray his or her group," authority/respect: "whether or not an action caused chaos or disorder," purity/sanctity: "whether or not someone acted in a way that God would approve of"). These were rated on a 6-point Likert scale (0 = *not at all* relevant, 5 = *extremely* relevant. The final fifteen items asked participants to rate their agreement with statements (e.g., purity/sanctity: "Chastity is an important and valuable virtue"), rated on a 6-point Likert scale (0 = *strongly disagree*, 5 = *strongly agree*). Total scores on each domain were averaged across the 6 items. For analysis purposes, scores were standardized.

Bias Blind Spot Questionnaire

To measure bias blind spot (based on Pronin et al., 2002), the survey first asked specific questions to measure the extent to which participants fell they are susceptible to moral heuristic biases, as well as the extent to which they feel the average person is susceptible (1 = *not at all*, 9 = *strongly*). From these, a bias blind spot variable was created subtracting participant's self-bias rating from their average person's susceptibility rating, so that higher scores indicated that they perceived their own bias as less than the average persons' (indicating bias blind spot). They were also asked how much they believed they were influenced by the prejudicial evidence, and how much they believe the average person would be influenced by this information. This was used to create an alternative bias blind spot indication that more specifically targeted their perceived susceptibility to the evidence introduced in this case.

Study 1 Results

Hypothesis 1: Effect of Condition on Judgments

In all conditions, between 40-45% of individuals found the defendant guilty, showing relatively evenly split guilty vs. not guilty decisions. This was similar to other case judgments, where in all conditions the average ratings were relatively middle-ground. Complainant responsibility and blame were the two exceptions to this where judgments were slightly skewed right towards not responsible or to blame (see Table 4 for descriptive statistics).

Table 4

Study 1 Descriptive Statistics

	Condition			
Variable	Control	Standard	MF	No Objection
Verdict (dichotomous)	45.77% Guilty	42.10% Guilty	43.61% Guilty	41.91% Guilty
	M (*SD*)	*M* (*SD*)	*M* (*SD*)	*M* (*SD*)
Guilt (Likert)	5.96 (2.90)	6.35 (2.71)	5.95 (2.88)	6.18 (2.88)
Likelihood	59.02 (31.03)	62.89 (27.99)	59.01 (29.42)	61.07 (27.99)
Defendant Responsibility	4.89 (1.90)	4.95 (1.76)	4.57 (1.92)	4.74 (1.95)
Complainant Responsibility	2.51 (1.81)	2.56 (1.69)	2.74 (1.78)	2.61 (1.65)

Defendant Blame Attribution	4.99 (1.39)	5.13 (1.40)	4.76 (1.33)	4.96 (1.40)
Complainant Blame Attribution	2.83 (1.57)	2.86 (1.54)	2.98 (1.59)	2.94 (1.53)

Note. Descriptive data for main dependent variables across conditions.

To analyze the effect of condition, and test the impact of prejudicial evidence (i.e., complainant sexual history) and jury instruction effectiveness, a series of logistic and linear regressions were performed across seven key dependent variables: verdict (dichotomous), guilt (Likert), likelihood that the defendant is guilty (0-100), blame attribution for both parties, and the overall responsibility attributed to each party, with condition predicting each variable. While ordinal regressions might be considered more appropriate for the Likert variables (verdict Likert and responsibility attribution), research suggests that ordinal variables with more than five points can often be treated as continuous without jeopardizing the analysis (e.g., Norman, 2010; Sullivan & Artino, 2013). In addition, the pattern of results did not change when ordinal regression was used to analyze the Likert variable. Therefore, for interpretability purposes the study reports the results of linear regressions for these variables. To account for multiple tests being performed for the seven dependent variables, all significance levels were adjusted using a Bonferroni Correction for an adjusted alpha of .007.

Contrary to this hypothesis, there was no main effect of condition across the dependent variables suggesting that the prejudicial evidence of complainant sexual history did not significantly impact judgments, regardless of the presence and type of jury instruction received. A logistic regression with condition predicting dichotomous verdict preference revealed no significant main effect of condition on verdict (measured

dichotomously), $p = .91$, $R^2 = .001$. Similar non-significant results were found running linear regressions with condition predicting guilt (Likert), $F(3, 540) = 0.61$, $p = .61$, $R^2 = .003$, likelihood of guilt, $F(3, 540) = .54$, $p = .65$, $R^2 = .003$, defendant responsibility, $F(3, 540) = 0.45$, $p = .72$, $R^2 = .01$, blame, $F(3, 540) = 1.60$, $p = .19$, $R^2 = .003$, and complainant responsibility, $F(3, 540) = 1.09$, $p = .35$, $R^2 = .002$, and blame, $F(3, 540) = 0.25$, $p = .86$, $R^2 = .001$. These findings suggest that the prejudicial evidence of the complainant's sexual history did not have a significant impact on participants' judgments, and that the instructions had no added benefit for participants in ignoring the prejudicial evidence. Although the evidence was pilot tested and was strong enough in isolation, it may not have been strong enough in the larger study when all the other case information was added. In our study sample, when asked how strong the prejudicial evidence was in favor of the defense, participants did not perceive it as very strong, with half (50.25%) of the sample rating it as a three or lower (1 = *very weak [in support of the defense]*, 7 = *very strong [in support of the defense]*, $M = 3.31$, $SD = 1.73$). The null effects therefore, could be due to the prejudicial evidence manipulation not being strong enough to produce biased judgments.

Hypothesis 2: Effect of Condition and Purity/Sanctity on Judgments

The effect of moral foundations was examined, as well as whether the impact of prejudicial evidence and jury instructions (i.e., condition) differed based on the extent to which someone endorses purity/sanctity moral foundation. We hypothesized that individuals with higher purity/sanctity endorsement would be more impacted by the prejudicial evidence and jury instructions than those who score lower on this moral domain. This hypothesis was analyzed using the same seven dependent variables as

Hypothesis 1, with condition and purity/sanctity interacting to predict each. All analyses for Hypothesis 2 used a Bonferroni Correction for an adjusted alpha of .007. Overall, participants displayed average endorsement of the purity/sanctity domain (M = 15.33, SD = 7.66), and covered the full range of possible scores (0-30) with a relatively normal distribution. As in Hypothesis 1, ordinal regressions yielded the same statistical significance results as linear regressions for the three Likert data responses (guilt Likert, defendant and complainant responsibility), so for interpretability purposes results from linear regressions were reported when appropriate.

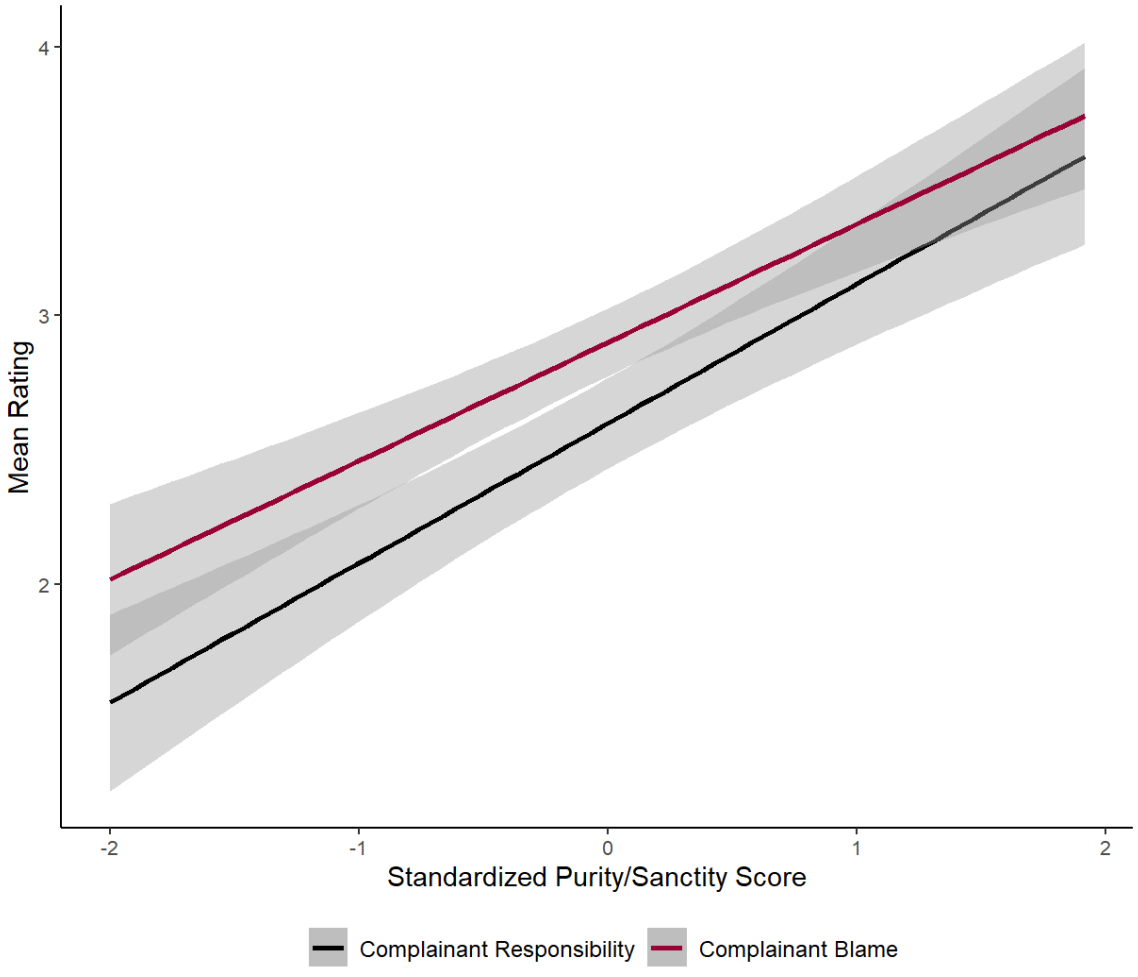
Contrary to hypotheses, a logistic regression with condition and purity/sanctity endorsement interacting to predict verdict indicated no significant interaction or main effects, p = .68, R^2 = .01. For the remaining six variables, linear regressions were performed with condition and purity/sanctity endorsement interacting to predict each. There were again no significant effects for guilt (Likert), p = .43, R^2 = .01, likelihood, p = .47, R^2 = .01, defendant responsibility, p = .65, R^2 = .01, or defendant blame, p = .03, R^2 = .03. This finding is contrary to hypotheses and suggests that participant judgments on these five guilt and defendant related measures were not impacted by the presence of prejudicial evidence or whether they endorsed purity/sanctity. Rather, across all participants, the prejudicial evidence and jury instructions seemed to remain insignificant.

Judgments toward the complainant (i.e., complainant responsibility and blame) only had significant main effects of purity/sanctity. For interpretability purposes, main effects of purity/sanctity were reported based on linear regressions without the interaction term included. There was a significant main effect of purity/sanctity endorsement on complainant responsibility, $F(1, 542) = 45.3$, b = 0.48, SE = 0.07, $p < .001$, R^2 = .07,

indicating that higher purity/sanctity endorsement predicted higher complainant responsibility ratings. A similar positive relationship was found between purity/sanctity endorsement and complainant blame attribution, $F(1, 542) = 47.3$, $b = 0.44$, $SE = 0.06$, $p < .001$, $R^2 = .08$ (see Figure 1). This finding was not hypothesized, but could suggest that people who endorse purity/sanctity are just overall more likely to attribute blame on a complainant in sexual assault cases.

Figure 1

Main Effect of Purity/Sanctity on Complainant Responsibility and Blame



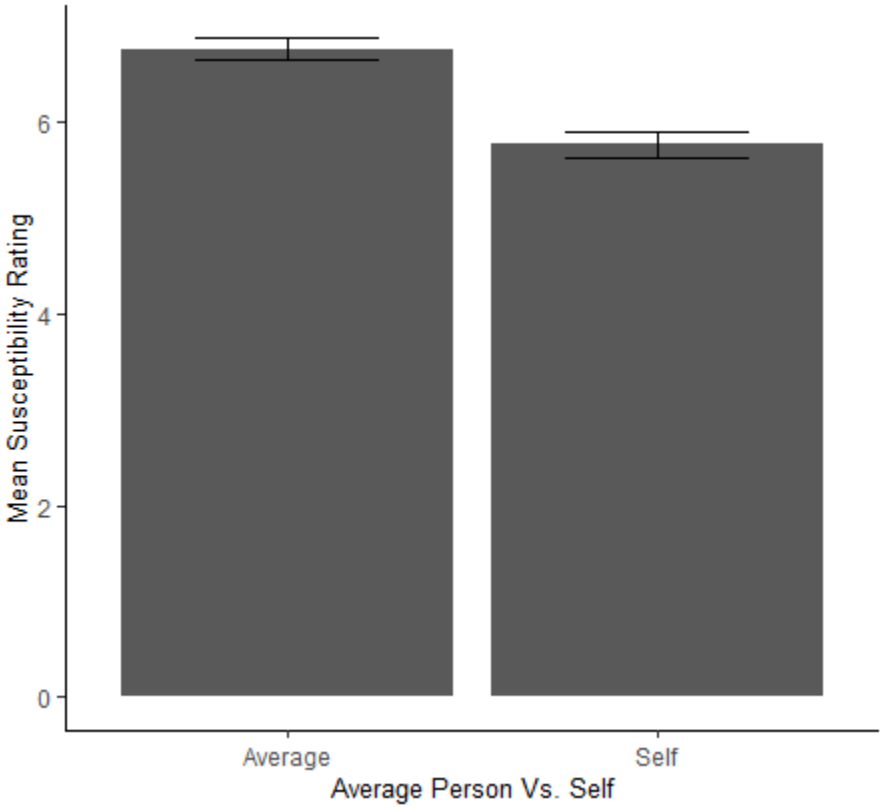
Note. The main effect of purity/sanctity endorsement on complainant responsibility (red) and blame (black) ratings. The x-axis represents participants' standardized scores on the purity/sanctity moral foundation domain, with higher scores indicating greater endorsement of that domain, and the y-axis represents the mean complainant responsibility and blame ratings (on a 7-point scale, 1 = *not at all responsible*, 7 = *very responsible*). The shaded region represents the 95% CI.

Hypothesis 3: Bias Blind Spot

Lastly, it was hypothesized that individuals would display bias blind spot, rating their own susceptibility to moral heuristics as lower than the average persons', and that higher bias blind spot would predict more biased judgments (since these individuals may be less aware of their biases in order to correct for them). In partial support for our hypothesis, participants displayed the bias blind spot and tended to rate the average person's susceptibility to moral biases (M = 6.76, SD = 1.36) as greater than their own (M = 5.77, SD = 1.67), $t(543) = 13.44$, $p < .001$. This was also true for susceptibility to prejudicial evidence influencing judgments: Participants exposed to prejudicial evidence on average felt the average person would be more impacted by this evidence (M = 6.23, SD = 1.86) than they were (M = 3.71, SD = 2.53), $t(401) = 22$, $p < .001$ (see Figure 2).

Figure 2

Bias Blind Spot



Note. Participants' rating of the average person's susceptibility to moral heuristic bias vs. their own bias. The y-axis represents the mean rating in each group. Error bars represent 95% CI.

To analyze whether bias blind spot impacted participants' actual susceptibility to biased decisions, the study looked at whether participants' computed bias blind spot scores (others' bias susceptibility rating minus their own bias susceptibility rating) were correlated with biased judgments. A "biased judgment" was operationalized as one that differed significantly from the "true" value (the average judgment of those in the control group who were not exposed to the biasing prejudicial information; based on West &

Kenney, 2011). Biased judgment was computed by looking at the critical value for what a significantly different score from the control condition would be (one-sample t-test critical value; t-score = 1.96). Any participant who had a score above (or below, depending on the measure) was considered significantly different, and showing evidence of bias in their judgments. Based on this calculation, each value was coded for whether it was or was not "biased" (0 = *not significantly different from the control group mean*, 1 = *significantly different from the control group mean*). This was calculated for the six main Likert and continuous variables [guilt (Likert), likelihood, defendant responsibility and blame, and complainant responsibility and blame].

Using the Bonferroni Correction adjusted alpha level of .008 (six dependent variables), and logistic regressions for each of the seven variables, there were no significant effects of bias blind spot for guilt (Likert), $p = .27$, $R^2 = .003$, likelihood of guilt, $p = .68$, $R^2 = .0004$, defendant responsibility, $p = .43$, $R^2 = .001$, defendant blame, $p = .69$, $R^2 = .0003$, or complainant blame, $p = .04$, $R^2 = .01$. Bias blind spot did predict biased judgments for complainant responsibility, $b = -0.15$, $SE = 0.05$, $p = .005$, $R^2 = .02$. Contrary to hypotheses, those with higher bias blind spot were actually less prone to biased judgments on this measure. This finding could be due to the bias blind spot question being asked after the fact. It is possible that when making their case judgments people were not thinking of their biases in order to correct for them, but that after being explicitly asked about potential moral heuristics they were then able to recognize that they were prone to this bias. Further, it could be that people were accurately rating their biases, and that people with "higher bias blind spot" who rated their susceptibility as lower than the average person, were in fact less likely and susceptible to making biased

decisions than those who had "lower bias blind spot" and rated their susceptibility as higher. This effect was only found for one variable though, and was a small effect, with only about 2% of the variance in biased judgments explained by bias blind spot measures, so one should remain hesitant to draw significant conclusions from it. Rather, overall it seemed that bias blind spot was not predictive of making biased judgments.

Exploratory Analyses: Age, Gender, and Political Ideology

As exploratory analyses, the relationship between purity/sanctity endorsement and age, gender, and political ideology were tested to address whether these could be possible covariates. Due to only one participant identifying as non-binary, this data point was excluded from gender analyses since this cell was underpowered. There was no significant difference in purity/sanctity scores across age, $p = .06$, $R^2 = .01$. Performing a logistic regression for verdict, and a series of linear regressions for the remaining variables (using Bonferroni Correction .007 adjusted alpha), age did have a significant main effect on verdict, $b = -0.02$, $SE = 0.01$, $p < .001$, $R^2 = .03$, and defendant blame attribution, $b = -0.01$, $SE = 0.004$, $p = 0.005$, $R^2 = 0.01$, such that older participants were less likely to render guilty verdicts and perceived the defendant as less blameworthy.

Purity/sanctity did differ significantly by gender, $F(1, 541) = 12.24$, $p < .001$, $R^2 = .02$, such that on average men endorsed purity/sanctity ($M = 14.0$, $SD = 7.67$) less than women ($M = 16.3$, $SD = 7.52$). However, when controlling for gender, purity/sanctity remained a significant predictor of complainant responsibility, $b = 0.60$, SE = 0.24, $p = .01$, and complainant blame attribution, $b = 0.43$, $SE = 0.21$, $p = 0.04$. Political ideology was also significantly related to purity/sanctity endorsement, $F(1, 541) = 111$, $b = 1.65$, $SE = 0.16$, $p < .001$, with more conservative views associated with higher purity/sanctity

endorsement. Again, purity/sanctity remained significant even when taking political ideology into account for both complainant responsibility, $b = 0.57$, $SE = 0.14$, $p < .001$, $R^2 = .12$, and blame attribution, $b = 0.57$, $SE = 0.12$, $p < .001$, $R^2 = .13$. Overall, purity/sanctity did not differ by age, but age was an additional predictor for complainant judgments, which supports prior literature showing this phenomenon (e.g., Adams-Price et al., 2004). In support of moral foundation theory application (e.g., Haidt & Graham, 2007), political ideology was associated with purity/sanctity, but purity/sanctity endorsement remained a significant predictor of complainant judgments even when taking political ideology into account, suggesting something unique about moral foundations influences attitudes towards complainants.

Study 1 Discussion

The purpose of this experiment was to test whether inadmissible prejudicial evidence related to complainant sexual history would bias individuals against a complainant, and whether moral foundation inspired jury instructions to disregard this evidence would mitigate this bias. The case in Study 1 was a sexual assault case involving prejudicial evidence regarding the complainant's sexual history, which in prior research studies has been shown to induce victim-blaming judgments (e.g., Schuller & Klippenstine, 2004). As such, it was hypothesized that prejudicial evidence would impact participants' judgments, and allow us to test for whether different jury instructions to disregard this evidence would be effective.

Prejudicial Evidence and Jury Instructions

If participants in one of the conditions that received prejudicial evidence of the complainant's sexual history rendered similar judgments as those in the control (who

were not given any prejudicial information to bias them), it would provide support for those instructions being effective at getting jurors to ignore the inadmissible evidence. Overall though, the findings did not support the hypotheses. There was no main effect of condition, and the null results between those who received the prejudicial evidence and those in the control condition suggests that the prejudicial evidence about the complainant's sexual history had no significant impact on participants' judgments. These null effects across all conditions made it difficult to determine if the jury instructions were effective or if the evidence just wasn't strong enough to impact judgments. In support of the former, those in the jury instruction conditions rendered similar judgments as those in the control, who were not given prejudicial evidence, suggesting that they were accurately able to adhere to instructions and ignore the evidence.

However, the finding that those in the no objection condition (who were given no reason not to weigh the evidence of sexual history into their judgments) were also rendering judgments similar to those in the control condition suggests the latter – that the evidence was not impacting judgments and that this was not due to any specific jury instruction. This suggests that the instructions were not necessarily effective, but rather unnecessary. Without an effect of the prejudicial evidence, it was not possible to determine an effect of jury instructions and whether the standard or moral foundation jury instructions were effective at mitigating any biasing potential of the evidence (since no significant bias seemed to exist in the first place).

The lack of significant interactions also indicates that, contrary to our hypotheses, the effect of prejudicial evidence did not differ between those who do or do not value purity/sanctity, and that in general the prejudicial evidence was not impactful. Instead, it

seemed that in all conditions the verdicts and judgments were relatively split and neutral (i.e., 50/50 guilty vs. not guilty, and average ratings on guilt and blame towards the parties). Overall, participants, regardless of purity/sanctity values, were able to appropriately weigh this type of irrelevant prejudicial evidence of sexual history on their own, and make judgments that were similar to those that had not heard evidence of sexual history at all (e.g., the control condition). In light of the #MeToo movement, and societal views on rape myths shifting (e.g., Levy & Mattsson, 2020), it could be the case that jurors do not view sexual history as an important piece of information and can refrain from victim-blaming when presented with it. However, this interpretation is contradictory to what previous literature on sexual history in sexual assault cases suggests.

In prior literature, participants were more likely to blame a complainant when given evidence of the complainant's sexual history (e.g., Schuller & Hastings, 2002). In many of these cases however, the sexual history was between the complainant and defendant, which may be more probative to jurors since it is more indicative of potential consent relevant to the defense's case. In this study, sexual history with the defendant's friend was used to suggest promiscuity, but avoid the issue of whether the evidence would be relevant and thus admissible – which was purposefully decided in order to increase external validity and the probability of the evidence being inadmissible in a case to introduce jury instructions. Due to the general lack of relevance to this evidence though, participants may not have perceived it as probative enough to influence their judgments, even without a judge telling them such through jury instructions. Future studies should look at not only the strength of the evidence, but also whether it is perceived as relevant to the case. Had the evidence been stronger in favor of the defense,

there is a chance that participants would not have ignored it in their judgments, and the sexual history would have impacted judgments similar to what has been found in prior research (e.g., Schuller & Klippenstine, 2004).

Although the pilot indicated the prejudicial evidence would bias judgments against the complainant, it was done in isolation without other information provided. When provided with more context, it is not uncommon for the effects of the manipulation to become less prominent. When given only the prejudicial evidence, there was nothing else to weigh against it to inform judgments. In real legal cases, there are several pieces of evidence presented and, in line with Bayesian updating theorem (James, 2021), as evidence is presented jurors are able to adjust their beliefs to account for the new information presented.

The extent to which a juror updates their beliefs and weighs each piece of evidence though can depend on several factors. For example, the cognitive theory of salience (Kahneman et al., 1982), states that information that is more emotional and prominent will be focused on more than evidence that is unremarkable. If this is the case, it would suggest that the prejudicial evidence was not any more or less remarkable to participants than the other evidence that was presented against the defense. Therefore, the evidence of the complainant's sexual history would have blended in to the overall decision process rather than overpowering other evidence to lead to victim-blaming sentiments. There is some support for this, as participants in the final study did not perceive the evidence as strongly supporting the defense's case, so it is likely that the evidence was not enough to sway decisions in either direction. This expectation was based on literature where jury instructions to disregard inadmissible evidence have been

found relatively ineffective, with jurors still rendering case judgments indicating that they were impacted by the inadmissible evidence (e.g., Lieberman & Arndt, 2000; Steblay et al., 2006).

This pattern of findings could be due to jury instructions drawing excess attention to inadmissible evidence, making it more prominent in a juror's mind when reaching case decisions, consistent with ironic process of mental control theory (Wegner, 1994; Lee et al., 2005). However, it has also been proposed that when jurors are provided with rationale and motivation for why the evidence is inadmissible and prejudicial, they may be more likely to adhere to jury instructions and disregard the evidence (e.g., Kassin & Sommers, 1997). With these theories in mind, standard instructions may fail to provide jurors enough context as to why they would be biased against the evidence and need to ignore it, and if they do not feel instructions apply to them they likely pay less attention to them (e.g., selective attention and processing; Broadbent, 1982).

Based on the literature, the study used a novel jury instruction inspired by moral foundations theory to test whether jury instructions that educate jurors on their moral biases that may interfere with their objectiveness – as a rationale for adhering to the instructions – would be more effective than standard instructions. Based on moral foundation theory, and those who value purity/sanctity having more negative attitudes towards casual sex (e.g., Graham et al., 2011), it was also hypothesized that participants with higher purity/sanctity endorsement would be more impacted by evidence of the complainant's prior sexual history than participants with lower purity/sanctity endorsement.

Moral Foundations Theory: Purity/Sanctity

While the prejudicial evidence was not overall influential, there were main effects of purity/sanctity moral foundation endorsement, such that purity/sanctity endorsement predicted more blame and responsibility towards the complainant in all conditions. The fact that this pattern also emerged in the control condition again suggests that the effects were not due to the prejudicial evidence, but nonetheless show that individual differences in purity/sanctity endorsement had implications for how jurors perceived the overall case and potentially sexual assault complainant's in general. Specifically, they were more likely to rate the complainant as responsible and to blame than those who did not endorse the purity/sanctity domain.

This result was not hypothesized, but could relate to the attitudes that purity/sanctity measures. For example, this moral domain is concerned with preserving physical purity, so a woman who has been a potential victim of a sex crime could be unconsciously (or consciously) perceived as "degraded" and less pure. Prior research supports this theory and, similar to this study, found that those who value purity/sanctity are more likely to blame a victim (e.g., Miandoab, 2021; Milesi, 2020) and endorse rape myth acceptance (e.g., Barnett & Hilz, 2018; Burt, 1980). Given this relationship between purity/sanctity and rape myth acceptance it is also not unexpected then that purity/sanctity predicted complainant blame and responsibility in our study, since rape myth acceptance is also predictive of rape victim-blaming (e.g., Hammond et al., 2011). Overall, based on the literature of this moral domain, and its relation to other prominent individual characteristics associated with victim-blaming (i.e., rape myth acceptance), this study provides further support for purity/sanctity being related to more complainant

blame in sexual assault. The relationship between purity/sanctity and complainant blame was not explicitly hypothesized though, and as such, future studies should continue to explore this relationship and whether it replicates in other sexual assault cases.

Bias Blind Spot

In addition to moral purity/sanctity endorsement predicting complainant perceptions, individuals were relatively blind to their moral heuristic bias. When asked whether they would be susceptible to making moral heuristic driven judgments, they rated their own susceptibility as lower than the average person's. This finding supports the literature on bias blind spot, and that in general people are able to recognize the effects of certain cognitive and emotional biases, but tend to believe that they are better than the average person at overcoming these biases (i.e., the bias blind spot; Pronin et al., 2002). It is important to note that our study measured perceived susceptibility related to general moral biases not specific to purity/sanctity, so it does not mean that individuals fail to recognize that they value purity/sanctity, rather they felt that they would be less susceptible to making general morally biased judgments than the average person. And, while the study found overall support for bias blind spot, it does not necessarily imply that those who are blind to their potential bias actually make biased judgments - they could be accurately rating their own susceptibility as low.

In fact, for the most part, bias blind spot did not impact actual judgments. That is, individuals who had higher bias blind spot were mostly no more likely to make biased judgments than those who scored lower on bias blind spot. This finding was contrary to hypotheses, as it was expected that those who were aware of their biases and had lower bias blind spot would be more likely to try to correct for their biases. We hypothesized

this based on selective attention theory (e.g., Broadbent, 1982) and that individuals who were "blind" to their moral bias would not find the jury instructions to ignore prejudicial evidence relevant to them, and not feel the need to overcome any bias. The findings in this study could be due to the order of bias blind spots being after encoding the information and after the judgments were already made. In line with continued influence effect, once information is heard, it is difficult to prevent it from influencing later judgments (e.g., Brydges, Gignac, & Ecker, 2018). Participants also may have only recognized their susceptibility to moral heuristics after being explicitly asked about it and after already making a biased decision, rendering it insignificant at the time of the decision-making. Although some research has looked at questions similar to the implications of bias blind spot on behavior and judgments (e.g., Scopelliti et al., 2015), the literature mainly concerns the overall presence of bias blind spot. Results from this study then suggests that individuals may have a bias blind spot, but even if people are more aware of their biases they likely are not any better at correcting for them as those who are less "blind" to their bias. Therefore being "blind" to biases may not be any more or less detrimental to actual decisions than being aware of biases.

Limitations and Future Directions

One main limitation in this study was that our evidence manipulation was likely not strong enough to make significant conclusions about jury instruction effectiveness. It could be that jurors were able to accurately ignore prejudicial evidence that was not relevant to the case, but nonetheless made it to where the instructions were not necessary and therefore the study was unable to test whether jury instructions would be effective if a bias did exist. For this study, evidence related to the complainant's sexual history with

the defendant's friend was used in order to suggest promiscuity and invoke victim-blaming. This was also designed to be irrelevant enough to be deemed inadmissible, otherwise, jury instructions would not be necessary. It is acknowledged that in doing so, the evidence was designed in a way that would naturally make it less prominent to a jury. And, due to researcher oversight, the study did not directly ask about evidence relevance in the final project, so it is unclear whether jurors were accurately perceiving it as irrelevant to judgments as a potential explanation for why it was not impacting judgments. Instead, when asked about the strength of the sexual history evidence, they generally expressed that the evidence did not provide much support for the defense's case, again suggesting that it was not that biasing and the manipulation failed to invoke the emotions aimed for.

Although pilot testing aimed to address this potential issue, and the pilot showed some significant effect of prejudicial evidence, causing us to move forward in using it in the final study, there were limitations. The evidence was presented in isolation, so once given in a broader context other evidence seemingly lessened its impact. This limited the internal validity and ability to accurately measure the effectiveness of jury instructions as intended. Specifically, it left no need for jury instructions, but may also be representative of real cases. It is likely that evidence of sexual history is relatively harmful to a complainant's case (as seen in prior literature; e.g., Schuller & Klippenstine, 2004), but it is not the only piece of information a jury has. In the bigger context, this information may not be so biasing as to outweigh all the other evidence that may incriminate the defendant (e.g., Bordalo, Gennaoili, & Shleifer, 2015; Winter & Greene, 2006). Therefore, by providing additional neutral and incriminating evidence, the study lessened the potential

for prejudicial evidence to impact judgments, but provided a potentially more realistic case. To address this limitation, a study focusing primarily on jury instructions would aim to provide evidence that is strong enough to detect potential significant effects.

The case itself was also a condensed trial, and although evidence was presented for both sides in order to present a case for each, it was presented in a fast paced manner and not representative of how a true case unfolds. In an actual case there likely would have been more witnesses, and testimony would have been presented over the course of days to weeks, rather than a short time span (approximately 14 pages). Condensed trial transcripts also have been criticized for failing to capture the nuances of an actual trial (e.g., non-verbal cues; Bornstein, 1999). We tried to mitigate these limitations by choosing evidence that can best represent some of the key players in a sexual assault case (e.g., police, nurse examiners, witnesses; Lonsway, 2005), and having a transcript with attorney discourse rather than just a short vignette summarizing the case. In addition, due to budgeting and time restraints a transcript was the most feasible way to represent a case, but nonetheless for reasons discussed may lack ecological validity.

Another limitation, although not necessarily avoidable, is that individuals have different thresholds for what constitutes as enough proof to meet the "beyond reasonable doubt" burden of proof. This concern was somewhat addressed by asking a range of questions that would allow people to express that they lean towards guilty or not guilty, without having to cross the beyond reasonable doubt threshold. For example, if someone is fairly confident that a defendant is guilty, but not enough to convict them, this would be captured by asking them how likely it is that they believe the defendant is guilty (referred to as likelihood of guilt in Study 1 analyses). Future studies should more

directly address this issue, and ask people what their threshold for finding someone guilty would be (i.e., how much evidence and confidence would they need to have in order to convict someone). Including this type of question would not necessarily change the null results found in this study, since the additional questions capture a range of confidence and guilt, but would nonetheless be an interesting contribution to the overall jury literature.

The blame attribution scales used in this study also had potential construct validity limitations. These questions were based on prior sexual assault literature assessing victim blaming (e.g., Davies, Pollard, & Archer, 2006), as a way to assess blame without having to overtly ask this. This is based on social desirability, and that individuals may be hesitant to outright endorse sentiments that they "blame a victim," especially given the #MeToo movement and people potentially become more aware of these attitudes and the danger of dismissing sexual assault (e.g., Szekeres, Shuman, & Saguy, 2020).

The questions used in this study were intended to gauge whether participants felt certain complainant behaviors contributed to the assault happening, as a way to measure whether their actions could be partly to blame. However, in hindsight some of these questions may not have operationalized blame the way they were intended to. For example, "to what extent did the complainant act carelessly," essentially ties carelessness to blame, which is not always the case. It is equally plausible that a participant may feel that the complainant was careless (e.g., drinking), but that does not mean they feel that the carelessness lead to an assault or makes them blameworthy. Therefore, this construct

of blame should be met with some skepticism as it may not measure blame as well as intended.

This study also was done entirely online and may not represent jury demographics, bringing additional limitations. Although the participants fulfilled jury eligibility criteria to match the intended population, the other demographics may have not been representative of the actual jury pool. The sample was mainly White/Caucasian participants with liberal leaning political views, potentially overrepresenting these demographics compared to a real jury pool (e.g., U.S. Census Bureau; c.f., Gau, 2015 on lack of jury diversity). Recruiting online from Amazon's Mechanical Turk (MTurk) also introduces the possibility of bots, since researchers were not able to oversee participation compared to in-person studies.

This project tried to minimize this by using CAPTCHA questions and enforcing multiple choice and free response attention checks, which have been known to better safeguard against bots (e.g., Chmielewski & Kucker, 2019). Participants recruited online also may not feel the added importance of taking their time and treating the case as if they are an actual juror, since there are no actual consequences to their judgments. They also may have taken part in several psychological or mock jury studies that make them more aware of the phenomenon being studied and have response expectation bias (e.g., Chandler et al., 2014). The nature of this type of sample and analogue research in a controlled setting limits the external and ecological validity.

The results from this study can inform future literature looking at the effect that this evidence has on the victims. Although in this study the prejudicial evidence of complainant's sexual history did not have a significant effect on case judgments, this type

of evidence can be burdensome to the complainant and lead to secondary victimization (also referred to as double victimization and revictimization). Secondary victimization refers to any further victimization that a person may experience post-crime by the judicial system and related services (e.g., police reporting, Baldry, 1996). In a study of secondary victimization in sexual assault cases, a little over half of sexual assault victims who went to trial reported harmful experiences from the system (Campbell et al., 2001). In her memoir, Chanel Miller reflected on her experience during her trial against Broc Turner for sexual assault. In the memoir, she expressed discomfort while on the stand related to being asked questions on her apparel and personal history (Miller, 2019). Being asked questions on sexual history in front of a jury and peers can understandably then create negative experiences for complainants. Future studies may further the research on prejudicial evidence in these cases to look at the implications it has for victim well-being, creating further justification to prevent it from being allowed in court.

Overall, our hypotheses were not supported, and our prejudicial evidence failed to bias jurors, making it difficult to draw conclusions on the effectiveness of jury instructions in this experiment. Instead, the null results suggest that the sexual history used in this study did not impact judgments even for those who highly endorse purity/sanctity morals. It could be that regardless of instructions, jurors accurately ignore the evidence and weigh it appropriately in their judgments, but also likely indicates that the evidence in this study was not strong enough to sway judgments, and other types of sexual history evidence may find different results.

The study did provide additional, though limited, support for moral foundations endorsement influencing case judgments regardless of whether prejudicial evidence was

introduced. This finding has implications for how sexual assault cases are tried and the type of jurors that may be biased against a complainant, but was specific to sexual assault. While Study 1 has implications for those who endorse purity/sanctity moral foundations, the project aimed to create instructions that can be applied in all prejudicial evidence situations that may trigger moral heuristics. To build on this initial study by expanding to a different moral foundation, Study 2 used the same conceptual approach, but applied to a case with prejudicial evidence that instead would trigger authority/respect moral foundation underpinnings.

Study 2

Study 2 was a conceptual replication and extension of Study 1 addressing specific aims #1-3, but instead applying moral foundations and jury instructions to an assault and battery case in order to see if moral foundations theory can be applied to several different case contexts. Due to the similarities in variables and hypotheses between Study 1 and Study 2, Study 2 was not pre-registered. Rather, the same theoretical framework and data analysis was used to form the basis of the hypotheses and analysis plan. The prejudicial evidence in Study 2 was intended to target the authority/respect moral foundation domain that individuals differentially value and endorse. The moral foundations was related to evidence introduced that involved the defendant's status as a former police officer and affiliation with an anti-protest group. The prejudicial evidence was also prejudicial against the defense (i.e., evidence that would sway verdicts towards guilty and defendant blaming attitudes).

The overall case still provided mostly neutral evidence, but this time slightly in favor of the defense. The evidence and case directions were in order to detect potential

effects of the prejudicial evidence. If the overall case and prejudicial evidence were both in favor of the defense, then it is likely that participants would render not guilty verdicts and judgments no matter what condition they were in. Instead, by having the prejudicial evidence biased against the defendant, those affected by this evidence would have more guilty case judgments that differed from those that were not shown this evidence. Therefore, if a participant rendered a guilty verdict, they were likely influenced by the prejudicial evidence against the defense. Similar to Study 1, this study also had a control condition (no prejudicial evidence presented), no objection condition (prejudicial evidence presented but not objected to), standard instruction condition (objection and standard instructions to disregard evidence), and a moral foundations instruction condition (objection and moral foundations theory inspired instructions).

Study 2 Hypotheses

Similar results as Study 1 were hypothesized, with the main difference being that authority/respect moral foundation endorsement would have an effect on judgments (rather than purity/sanctity). Specifically, it was hypothesized that: (1) participants who were given moral foundations-based instructions for why the evidence was inadmissible would be less impacted by the evidence than those in the no objection and standard instructions condition; rendering similar judgments as those in the control condition; (2a) participants with higher authority/respect endorsement would be less impacted by the prejudicial evidence, rendering fewer guilty verdicts and less blame towards the defense, than those who less strongly endorsed this moral foundation; (2b) participants with lower authority/respect moral foundation endorsement would benefit most from moral foundation based instructions, compared to those who more strongly endorsed the moral

foundation and may have already been less likely to place significance on the prejudicial evidence; (3a) participants would display a bias blind spot, rating others' susceptibility to moral heuristics as greater than their own; and (3b) participants with a larger bias blind spot would be more impacted by the prejudicial evidence, underestimating their own susceptibility to prejudicial information.

Pilot Study B

To test whether the vignette and evidence was perceived as intended, a pilot study for Study 2 materials was conducted (see Appendix C1 for Pilot B IRB approval). It was intended that participants would perceive the general case (case excluding prejudicial evidence) as pro-defense (e.g., fewer guilty verdicts and less defendant blame) and relatively ambiguous, and for the prejudicial evidence to be perceived as prejudicial against the defendant (e.g., swaying verdicts towards guilty and more defendant blame attribution).

Participants

Participants (N = 101) were collected from Cloud Research/Amazon's Mechanical Turk and compensated $2.00 for their participation (see Appendix C2 for recruitment script). Two participants were excluded for failing an attention check asking them to select a certain response option (n = 99). Of the remaining eligible participants, 44.45% were female and 55.55% male, with a mean age of 37.38. Participants identified as: 60.61% White, 12.12% African American, 8.08% Hispanic (white), 7.07% Asian, 6.06% Hispanic (non-white), 2.02% Pacific Islander, 1.01% other, and 3.03% identified as more than one race.

Method

In a between-subjects design, participants were randomly assigned to one of three conditions, each varying the amount of evidence that participants are exposed to (full case, case omitting prejudicial evidence, prejudicial evidence only). In the full case condition, participants read a case transcript of the criminal assault and battery trial (including the prejudicial evidence that was not objected to). In the condition omitting prejudicial evidence, participants read the case transcript with all evidence except the prejudicial evidence. Lastly, in the prejudicial evidence only condition, participants read a very brief description of the criminal charges and case, followed by the prejudicial evidence related to the defendant's police organization membership. See Appendix C4 for the transcripts and evidence used in each condition.

Measures

The same case judgment measures as those in Pilot Study A were used in this pilot, only changing phrasing when necessary to make it applicable to the assault and battery case, instead of the names and evidence used for the sexual assault case. In addition, rather than including the blame attribution scales, which are primarily relevant and adapted for rape cases, the survey asked more case specific questions related to the defendant and complainants' intent and responsibility. Items were rated on a 7-point Likert scale, with higher scores indicating greater blame attributed to that party (1 = *strongly disagree*, 7 = *strongly agree*). Five items pertained to complainant blame and responsibility (e.g., "the complainant provoked the defendant," "The complainant exhibited poor behavior," "The complainant was not at all to blame" (reverse scored)), and five to defendant blame and responsibility (e.g., "the defendant just got carried away"

(reverse scored), “The defendant did not intend to severely hurt the complainant” (reverse scored), “The defendant exhibited poor behavior”). See Appendix C5 for all Pilot B measures.

Pilot B Results

Overall the pilot study results provided some support for the manipulations working as intended. Looking at general verdict trends, those who were not exposed to the prejudicial evidence on average voted guilty (37.14% guilty verdicts) less so than those in the two conditions that were exposed to this evidence (full case: 48.39% guilty verdicts; prejudicial only: 51.52% guilty verdicts). Similar results were found looking at participants’ ratings on the extent of guilt (Guilt Likert; rated 1-10), and likelihood of guilt (Guilt Likelihood; 1-100%) (see Table 5 for descriptive statistics). Those who were exposed to the prejudicial evidence on average viewed the defendant as more guilty, and more likely of guilt, than those who were not given prejudicial evidence. In addition, participants tended to view the prejudicial evidence overall as pro-prosecution (78.13% pro-prosecution).

Table 5

Descriptive Statistics for Pilot B Measures

	Full Case		No Prejudicial Evidence		Only Prejudicial Evidence	
Measure	*M*	*SD*	*M*	*SD*	*M*	*SD*
Guilt Likert	5.35	2.60	4.94	2.79	5.58	2.82
Guilt Likelihood	51.1	29.7	44.5	31.5	57.3	31.1
Defendant Blame	3.56	.64	3.77*	.82	4.39*	1.01

Defendant Responsibility	4.87	1.80	4.89	1.62	4.58	1.77
Complainant Blame	4.90	1.26	5.33**	1.22	4.04**	1.10
Complainant Responsibility	5.26	1.32	5.00**	1.41	3.58**	1.54

Note. Significance values are based on linear regressions performed for each variable with condition entered as the predictor, and the no prejudicial evidence entered as the reference group. *$p < .05$, **$p < .001$

In addition, participants' overall case sentiments suggested they endorsed more defendant-blaming than those who were not exposed to the prejudicial evidence. Specifically, those who were exposed to only prejudicial evidence on average viewed the defendant as more to blame ($M = 4.39$, $SD = 1.01$), than those who did not receive this evidence ($M = 3.77$, $SD = .82$). However, those who received the full case had similar defendant blame attribution as those in the no prejudicial evidence condition, suggesting that the addition of evidence may reduce blame towards the defendant, even if prejudicial evidence is provided. Participants who were exposed only to prejudicial evidence also on average viewed the complainant as less to blame ($M = 4.04$, $SD = 1.10$) and less responsible ($M = 3.58$, $SD = 1.54$) compared to those without prejudicial evidence (blame: $M = 5.33$, $SD = 1.22$; responsibility: $M = 5.00$, $SD = 1.41$).

Pilot Conclusion

The manipulations were generally perceived as intended. Participants exposed to prejudicial evidence tended to on average view the case as more pro-prosecution (more guilty verdicts, higher guilt perceptions on continuous variables), the defendant as more to blame and responsible, and the complainant as less to blame and responsible, than those not exposed to prejudicial evidence. However, several of these findings were non-

significant, and overall participants seemed hesitant to assign guilt towards the defendant. Another limitation to these results were the low cell sizes (n = 31-35) that could limit interpretations of statistical tests. Based on these results, Study 2 materials were revised to include more evidence against the defendant, and stronger language against the defendant in the prejudicial evidence.

Study 2 Method

Study 2 Participants

Participants (N = 509) were recruited using Amazon's Mechanical Turk (Mturk) (see Appendix D2 for recruitment script) and compensated $2.00 for their participation. The intended sample size (N = 489) was determined by conducting a power analysis for a between-subject design with four groups, with enough power to detect an estimated effect size of Cohen's f = .15, α = .05, and 80% power. Participants were 18 years and older, in partial fulfillment of U.S. jury eligibility requirements. MTurk workers who completed Study 1 and Pilot B (Study 2 Pilot) were not eligible to take part in Study 2 to avoid participant bias in those who already understood the experiment's purpose.

Eight of the original participants were excluded for failing attention checks asking them to select "7, strongly agree", and typing in the fifth word of a given. Of the remaining eligible participants, 49.90% identified as Male, 49.51% as Female, and 0.59% as Non-binary (M_{Age} = 41.33, SD = 12.43). A majority of participants were white (64.83%), followed by: African American (8.25%) and Hispanic (white) (8.25%), Asian (7.27%), Hispanic (non-white) (7.07%), Native American (0.59%). Sixteen identified as multiple races (3.14%), and 0.39% as other. Participants identified as: 30.25% Protestant, 23.38% Atheist, 21.61% Roman Catholic, 5.70% Agnostic, 1.96% Jewish, 0.78%

Hinduism, 0.78% Orthodox, 0.39% Muslim, 0.20% Latter-Day Saints, 7.07% identified as other (e.g., “spiritual but not religious”, “no affiliation”), and 7.86% preferred not to answer. Ideologically, participants were relatively evenly distributed, with around 46.95% ranging from weakly to strongly liberal, 33.40% from weakly to strongly conservative, and 18.86% as centrist/middle of the road.

Table 6

Study 2 Demographics

Demographic	*N*	%	*M* (*SD*)
Age	509		41.33 (12.43)
Gender			
Female	252	49.51	
Male	254	49.90	
Non-binary	3	0.59	
Race			
African American	42	8.25	
White	330	64.83	
Asian	37	7.27	
Hispanic (non-white)	36	7.07	
Hispanic (white)	42	8.25	
Native American	3	0.59	
Mixed Race	16	3.14	
Other	2	0.39	
Religion			
Jewish	10	1.96	
Protestant	154	30.25	
Muslim	2	0.39	

Orthodox	4	0.78	
Roman Catholic	110	21.61	
Latter-Day Saints	1	0.20	
Atheist	119	23.38	
Hinduism	4	0.78	
Agnostic	29	5.70	
Prefer not to answer	39	7.86	
Other	36	7.07	
Political Ideology	509		3.65 (1.91)

Note. Demographic information for Study 2 participants.

Study 2 Design

Study 2 had the same four condition design as Study 1, with participants being randomly assigned to read one of four variations of a criminal trial. The case was a criminal assault and battery case containing different sources of evidence from the prosecution and defense. The control condition again contained all evidence and testimony except the prejudicial evidence, to act as a baseline for what responses one would expect when there was no prejudicial information possibly biasing judgments. The remaining three conditions (no objection, standard instruction, and moral foundation instruction) contained prejudicial evidence related to the defendant's status as a police officer and member of a police organization that encourages violence against protestors.

In the no objection condition, no objection was made to the prejudicial evidence, and the case proceeded accordingly without instructions to disregard the evidence. This condition was used to gauge the responses one would expect had the prejudicial evidence been factored into the judgments (since in this condition participants had no reason to think they should not consider this evidence). In the standard and moral foundation

instruction conditions, the defense attorney objected to the prejudicial evidence, and the judge sustained the objection followed by jury instruction to disregard the evidence. The two types of instruction were the same format as Study 1, only changing the phrasing of the type of evidence they heard (e.g., "You have heard evidence pertaining to the defendant's prior occupation and organization membership…").

Study 2 Procedure

Participants followed the same procedure as in Study 1. The study was posted on Amazon's Mechanical Turk, where participants read a brief description of the study and were directed to Qualtrics to participate. If participants consented to take part in the study (see Appendix D3 for consent form), they then read the criminal trial transcript and filled out the survey on their case judgments, the moral foundations questionnaire, the bias blind spot questionnaire, and a demographic survey.

Study 2 Materials

Case Vignette

The case vignette was a condensed transcript of a criminal trial, with the defendant, Franklin Holder, being charged with assault and battery that took place at a bar (see Appendix D4 for the full transcripts provided in each condition). The individual who was injured during this bar fight and filed the report of assault and battery against the defendant was referred to as the complainant, Jacob Allen. Names were randomly generated and chosen to avoid salient references to race. In order to allow for possible effects across the conditions, the majority of the case was designed to be fairly ambiguous, leaning slightly in favor of the defendant (not guilty verdicts, less defendant blame attribution). In addition, the presence of injury/harm itself was not in question, as a

nurse testified confirming the presence of serious injury. Instead, the ambiguity came from whether the assault was started by the defendant or not, and whether intoxication and self-defense could serve as a defense (i.e., legal question of intent). There were four key pieces of evidence introduced during testimonies: a police officer, a nurse examiner, a witness/friend of the defendant, and the bar owner of where the fight took place. Participants in the control condition were exposed to all evidence provided in these testimonies except for the prejudicial evidence.

In the non-control conditions, during the prosecution's cross-examination of the witness/friend, prejudicial evidence was introduced that the witness knew the defendant from being active members together in a police organization that sells and collects commemorative coins encouraging violence against protestors (this situation was based on a police organization in Phoenix; Biscobing, 2021). The evidence was intended to provide a case for the witness being unreliable due to his strong bond with the defendant, but was inadmissible based on the description of their shared organization being excessively prejudicial (based on legal questions in US vs Abel, 1984). The prejudicial evidence was designed to be prejudiced against the defendant (resulting in more guilty verdicts compared to those without the prejudicial evidence), to enable us to detect effects of the prejudicial evidence. The case and prejudicial evidence were pilot tested to ensure participants perceived it as intended (see Pilot Study B).

This prejudicial evidence was also designed to activate authority/respect moral foundations that individuals hold. It was anticipated that participants who value the authority/respect moral domain would be less impacted by this evidence and view the defendant as less guilty due to their greater support of police and the authority they hold.

This was based on Graham and colleagues' (2011) work showing the positive relationship between individuals' attitudes towards police and authority/respect endorsement. These individuals were predicted to see the prejudicial evidence of the defendant's membership in a controversial anti-protester police organization as less offensive and character damaging, compared to those who less strongly value the authority/respect moral foundation domain. It was also expected that those who less strongly endorsed authority/respect would be more likely to condemn this type of behavior and view the defendant as less moral and guiltier after hearing the evidence.

Study 2 Measures

Case Judgments

Participants were asked to answer a series of questions regarding their judgments of the case and parties involved. The variables that were used in primary analyses for the hypotheses were: verdict (dichotomous), guilt answered on a Likert scale (1 = *not at all guilty*, 10 = *very guilty*), the likelihood that the defendant is guilty (1-100% sliding scale), and how responsible the complainant and defendant each are (1 = *not at all responsible*, 7 = *very responsible*). Various other measures were also asked for exploratory analyses (e.g., rating the strength of pieces of evidence used in the case).

Blame Attributions Scales

This survey used the same approach from Study 1's assessment of blame attribution for this second study: participants completed a blame attribution measure for both the defendant (five items) and complainant (five items). These items were modified and developed to apply to an assault and battery case, rather than the typical sexual

assault case that blame attribution scales are typically used in (e.g., Grubb & Harrower, 2009).

Five items pertained to complainant blame and responsibility [e.g., “The complainant provoked the defendant,” “The complainant exhibited poor behavior,” “The complainant was not at all to blame” (reverse scored), “The complainant could have avoided the situation had he wanted to”, “The complainant was just in the wrong place at the wrong time” (reverse scored)]. Five items pertained to defendant blame and responsibility [e.g., “The defendant just got carried away” (reverse scored), “The defendant did not intend to severely hurt the complainant” (reverse scored), “The defendant exhibited poor behavior”, “The defendant is an aggressive person”, “The defendant should not have been served as much alcohol as he had” (reverse scored)]. They were answered on a 7-point Likert scale, with higher scores indicating greater blame towards that party (1 = *strongly disagree*, 7 = *strongly agree*). Scores across the five items were averaged for a single blame attribution score for both the complainant and defendant.

Moral Foundations Questionnaire

The same Moral Foundations Questionnaire (Graham et al., 2011) as the one used in Study 1 was used. For Study 2 though, scores on the authority/respect moral foundation domain were the main focus.

Bias Blind Spot Questionnaire

This questionnaire was also mostly the same as Study 1. The first question related to susceptibility to moral heuristics in general remained the same. For Study 2 though, the survey also asked participants how much they themselves were influenced by the

prejudicial evidence of the defendant's organization membership (rather than the complainant's sexual history that was used in Study 1), compared to how much they felt the average person would have been influenced by this information.

Study 2 Results

Hypothesis 1: Effect of Condition on Participant Judgments

Overall, participants tended to find the defendant not guilty across all conditions, and had relatively middle-ground case judgments. The exception to this was complainant blame attribution where responses were skewed left towards higher blame attribution (see Table 7).

Table 7

Study 2 Descriptive Statistics

	Condition			
Variable	Control	Standard	MF	No Objection
Verdict (dichotomous)	34.64% Guilty	37.30% Guilty	39.10% Guilty	35.77% Guilty
	M (*SD*)	*M* (*SD*)	*M* (*SD*)	*M* (*SD*)
Guilt (Likert)	5.06 (2.80)	5.30 (2.68)	5.60 (2.78)	5.12 (2.90)
Likelihood	49.51 (33.06)	46.63 (32.33)	47.93 (32.13)	44.97 (31.52)
Defendant Responsibility	4.94 (1.43)	4.87 (1.44)	4.94 (1.62)	4.72 (1.51)
Complainant Responsibility	4.93 (1.40)	4.71 (1.31)	5.01 (1.35)	4.74 (1.24)

Defendant Blame Attribution	3.96 (.81)	4.09 (.85)	4.07 (.89)	4.14 (.93)
Complainant Blame Attribution	5.68 (1.13)	5.67 (1.10)	5.46 (1.05)	5.54 (1.00)

Note. Descriptive data for Study 2 dependent variables across conditions.

To analyze the effects of condition (i.e., prejudicial evidence and jury instructions) a series of logistic and linear regressions were run across seven key dependent variables: verdict (dichotomous), guilt (Likert), likelihood that the defendant is guilty (0-100), blame attribution for both parties, and the overall responsibility attributed to each party, with condition predicting each variable. To account for multiple tests being performed for the seven dependent variables, all significance levels were adjusted using Bonferroni Correction for an adjusted alpha of .007. Ordinal regressions were performed for the three Likert variables (guilt Likert, defendant and complainant responsibility), and yielded the same level of significance as regressions. For interpretability purposes, results from linear regressions were reported.

Contrary to our hypothesis, there was no main effect of condition across the dependent variables, suggesting that the prejudicial evidence and jury instructions did not alone impact judgments. A logistic regression with condition predicting dichotomous verdict preference revealed no significant main effect of condition on verdict, $p = .89$, $R^2 = .001$. Similar non-significant results were found running linear regressions with condition predicting guilt (Likert), $F(3, 505) = 1.00$, $p = .39$, $R^2 = .01$, likelihood of guilt, $F(3, 505) = .45$, $p = .72$, $R^2 = .003$, defendant responsibility, $F(3, 505) = 0.57$, $p = .64$, $R^2 = .003$, blame, $F(3, 505) = 0.95$, $p = .41$, $R^2 = .01$, and complainant responsibility, $F(3,$

505) = 1.55, p = .20, R^2 = .01, and blame, F(3, 505) = 1.31, p = .27, R^2 = .01 (see Table 7 for descriptive statistics). This pattern of non-significant findings emerged despite a majority of participants viewing the prejudicial evidence as supporting the prosecution's case (80.26%). However, similar to Study 1, when looking at how strongly they felt the evidence supported the prosecution's case, judgments tended towards average support (M = 4.02, SD = 1.72; where 1 = *very weak in support of the prosecution*, 7 = *very strong*), so it may have not been strong enough to significantly influence judgments for the average person.

Hypothesis 2: Effect of Condition and Authority/Respect on Judgments

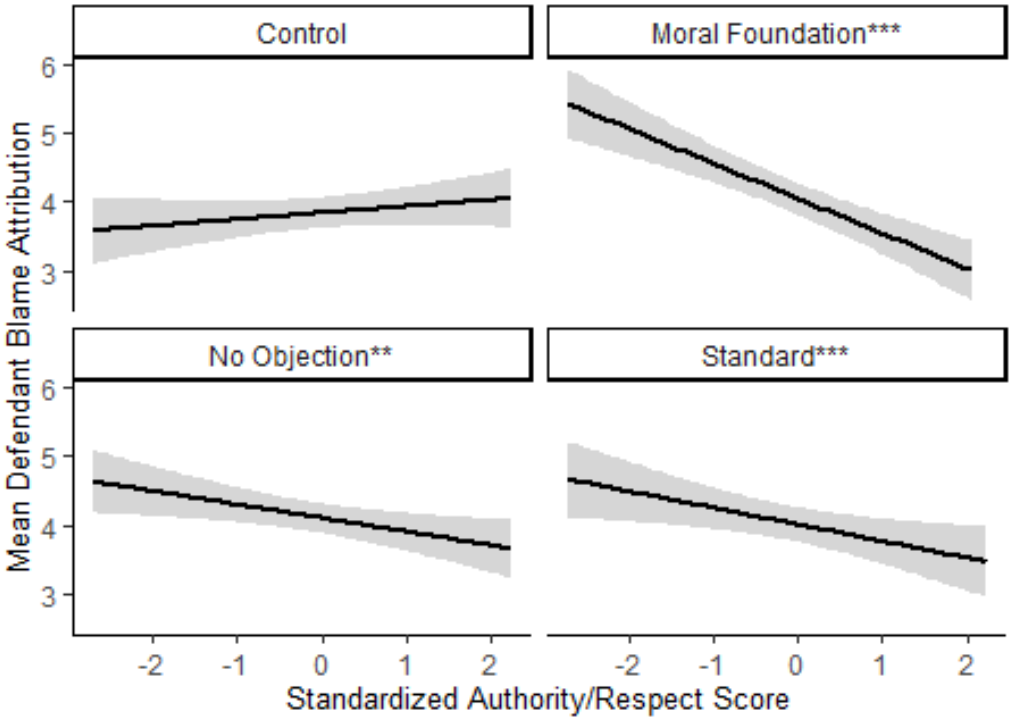
To test whether the impact of prejudicial evidence and jury instructions differed based on authority/respect endorsement as hypothesized, additional logistic and linear regressions were run across the seven dependent variables with condition and authority/respect interacting to predict each. Ordinal regressions again yielded the same results, so linear regressions were reported for clearer interpretability. The Bonferroni Correction was used for an adjusted alpha of .007. Overall, participants displayed average endorsement of the authority/respect domain (M = 16.48, SD = 6.08), and covered the full range of possible scores (0-30) with a relatively normal distribution. Contrary to hypotheses, there were no significant main effects or interaction predicting complainant responsibility, p = .02, R^2 = .03, or complainant blame, p = .21, R^2 = .02, indicating that the prejudicial evidence and moral foundation endorsement did not impact judgments towards the complainant.

In partial support of hypotheses, a linear regression predicting defendant blame had significant interactions, such that authority/respect had no significant effect in the

control condition, $b = 0.12$, $SE = 0.07$, $p = .10$, but had a significant negative relationship in the remaining three conditions that contained prejudicial evidence (i.e., no objection: $b = -0.28$, $SE = 0.10$, $p = .006$; moral foundation: $b = -0.43$, $SE = 0.10$, $p < .001$; and standard instruction conditions: $b = -0.37$, $SE = 0.11$, $p < .001$; overall model $R^2 = .07$). This finding supports the hypothesis that the prejudicial evidence would not influence those who score higher on authority/respect as much, and those who do not endorse authority/respect would be more biased against the defendant based on the prejudicial evidence of the defendant belonging to an anti-BLM protest related police organization. Prejudicial evidence did seem to have an effect on judgments towards the defendant, but the evidence affected individuals differently based on their authority/respect endorsement. The similar findings across the no objection, standard, and moral foundation conditions also indicate that jury instructions did not help reduce this bias, and the prejudicial evidence impacted them regardless of being told not to factor it into their judgments (see Figure 3). This finding had a small effect size however, so should be replicated in order to draw stronger conclusions from it.

Figure 3

Condition and Authority/Respect Predicting Defendant Blame



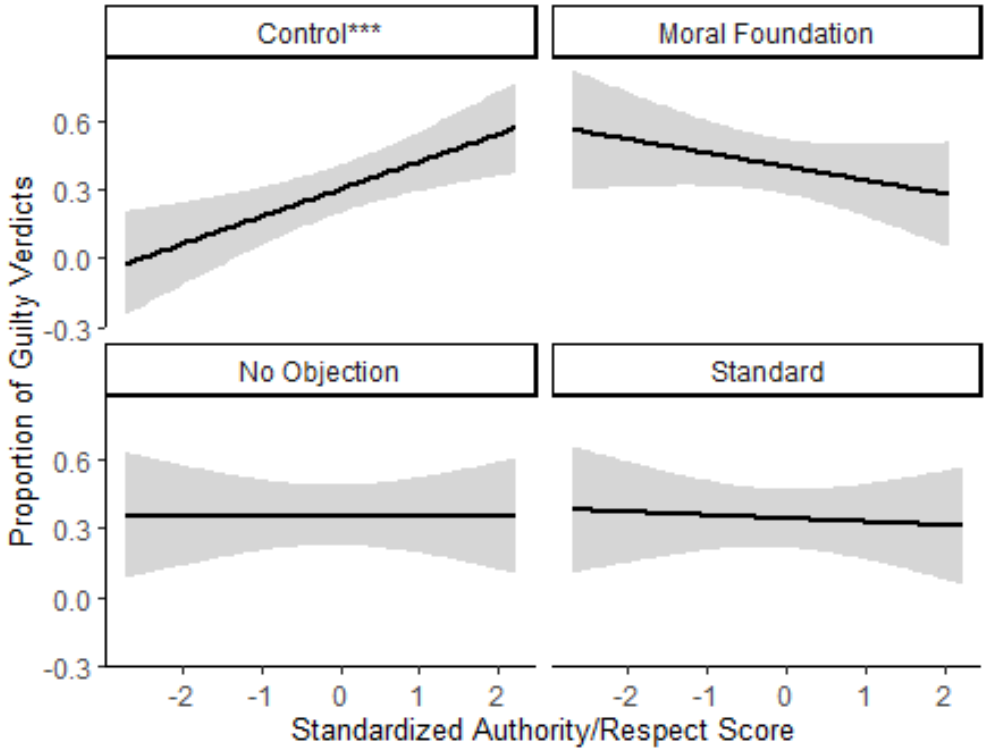
Note. The effect of authority/respect endorsement on defendant blame attribution across conditions. The x-axis represents participants' standardized scores on the authority/respect moral foundation domain, with higher scores indicating greater endorsement of that domain, and the y-axis represents the mean guilt rating (1 = *not at all guilty*, 10 = *very guilty*). Shaded regions represent 95% CI. ** $p < .01$, *** $p < .001$.

Contradictory to this finding, for the remaining four dependent variables (verdict, guilt, likelihood of guilt, and defendant responsibility) authority/respect was a significant predictor only in the control condition. A logistic regression with condition and authority/respect endorsement interacting to predict verdict indicated a significant interaction such that, there was a significant effect of authority/respect in the control

condition, b = 0.77, SE = 0.22, p < .001, R^2 = .05. However, all other conditions (no objection: b = -0.69, SE = 0.28, p = .01, standard: b = -0.86, SE = 0.30, p < .01; moral foundation, b = -0.70, SE = 0.29, p = .02) differed significantly from the control condition (reference group), indicating null results (see Figure 4).

Figure 4

Condition and Authority/Respect Predicting Verdict



Note. The effect of authority/respect endorsement on verdict across conditions. The x-axis represents participants' standardized scores on the authority/respect moral foundation domain, with higher scores indicating greater endorsement of that domain, and the y-axis represents the proportion of participants who voted guilty. Shaded regions represent 95% CI. *** p < .001.

Similar patterns were found with authority/respect only being a significant predictor in the control condition when looking at guilt (Likert), $b = 0.69$, $SE = .23$, $p = .004$, $R^2 = .03$ (see Figure 5), likelihood of guilt, $b = 9.50$, $SE = 2.73$, $p < .001$, $R^2 = .03$, and defendant responsibility, $b = 0.35$, $SE = 0.13$, $p = .005$, $R^2 = .02$, which were analyzed with linear regressions. These results were specific to the control condition and those that did not receive evidence related to the defense's police and anti-protest membership. Participants who scored higher on authority/respect on average found the defendant guiltier and more responsible than those who had lower authority/respect endorsement in the control condition, whereas, in the other conditions, there were no significant effects. This result was not hypothesized, and it is also important to note that the effect was relatively small across the four dependent variables, with only 2-5% of the variance in judgments being explained by authority/respect endorsement. Therefore, it could be that these results were a type II error (not a true effect) and further studies should be done to test whether this finding is reliable.

Figure 5

Condition and Authority/Respect Predicting Guilt

Note. The effect of authority/respect endorsement on guilt (Likert) across conditions. The x-axis represents participants' standardized scores on the authority/respect moral foundation domain, with higher scores indicating greater endorsement of that domain, and the y-axis represents the mean guilt rating (1 = *not at all guilty*, 10 = *very guilty*). Shaded regions represent 95% CI. ** $p < .01$.

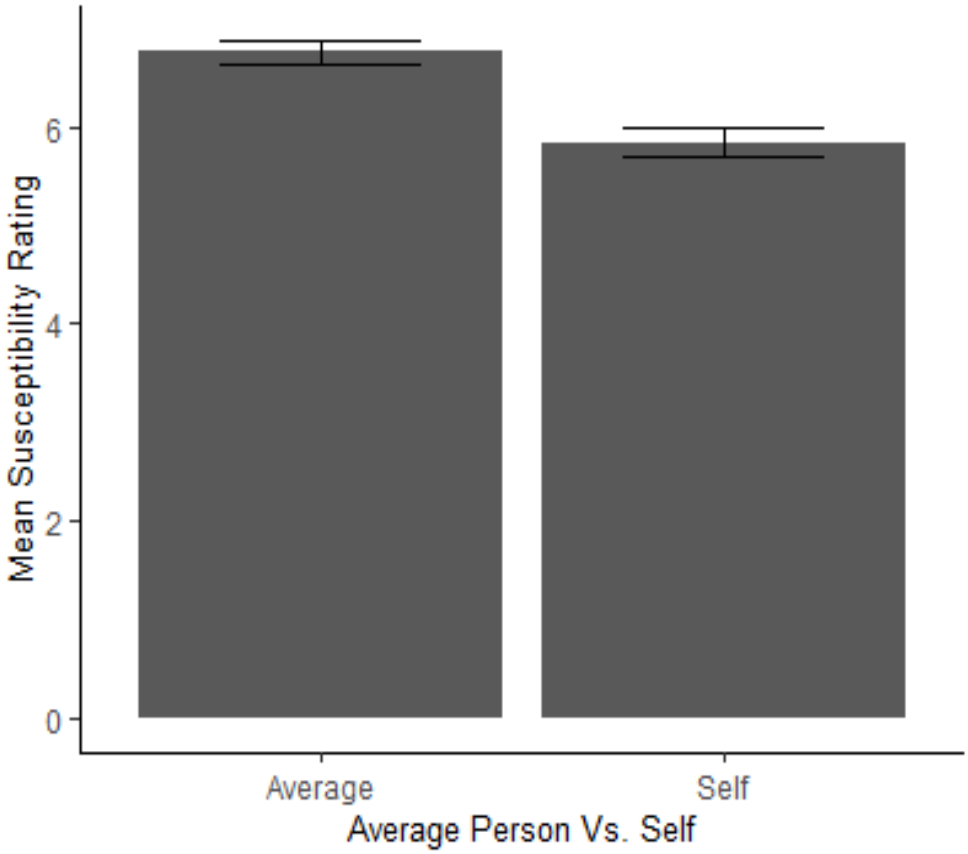
Hypothesis 3: Bias Blind Spot

Lastly, it was hypothesized that participants would display a bias blind spot to moral heuristics. Similar to Study 1, participants in this study also displayed the bias blind spot and tended to rate the average person's susceptibility to moral biases (M = 6.76, SD = 1.40) as greater than their own (M = 5.84, SD = 1.74), $t(508) = 13.02$, $p <$

.001. This trend was also true for rating how susceptible they were (vs. the average person) to the prejudicial evidence influencing judgments, $t(381) = 17.55$, $p < .001$. Participants exposed to prejudicial evidence felt the average person would be more impacted by this evidence ($M = 6.06$, $SD = 1.96$) than they were ($M = 3.97$, $SD = 2.49$) (see Figure 6).

Figure 6

Bias Blind Spot (Study 2)



Note. Participants' rating of the average person's susceptibility to moral heuristic bias vs. their own bias. The y-axis represents the mean rating in each group. Error bars represent 95% CI.

To analyze whether bias blind spot impacted participants' actual susceptibility to biased decisions − using the same methods as Study 1 − tests were conducted to see whether participants' computed bias blind spot scores (others' bias susceptibility rating minus their own bias susceptibility rating) were correlated with biased judgments. Ordinal regressions for the three Likert variables remained insignificant and linear regression results were reported.

There were no significant effects of bias blind spot for guilt (Likert), b = -0.07 SE = 0.06, p = .23, R^2 = .003, likelihood, b = -0.02 SE = 0.06, p = 0.76, R^2 = .0002, defendant responsibility, b = -0.040, SE = 0.06, p = 0.49, R^2 = .001, or complainant responsibility, b = -0.06, SE = 0.09, p = 0.50, R^2 = .003. In line with hypotheses, bias blind spot scores did significantly predict biased judgments of defendant blame, b = 0.21, SE = 0.08, p = 0.006, R^2 = .03, such that those with larger bias blind spots were on average more likely to make biased judgments. It also predicted biased judgments of complainant blame, b = -0.17, SE = 0.06, p = 0.003, R^2 = .02, but in the opposite direction as predicted. Instead, those with bias blind spot were less likely to make biased judgments on complainant blame. This finding could be due to the evidence and "bias" measured being generally biased against the defendant. Therefore, being "blind" to this bias might not necessarily translate into being more likely to make biased judgments against the complainant. Overall however, these effects were small and there was little evidence of bias blind spot impacting actual decision-making abilities.

Exploratory Analyses: Age, Gender, Political Ideology

Exploratory analyses were conducted to test the relationship between authority/respect endorsement and age, gender, and political ideology and whether these

could be possible covariates. Due to only three participants identifying as non-binary, these data points were excluded from the gender analysis. There was no significant difference in authority/respect scores by gender, $F(1, 504) = 0.77$, $p = .38$, $\eta_p^2 = .001$. However, authority/respect did differ significantly across age, $F(1, 507) = 10.65$, $b = 0.07$, $SE = 0.02$, $p = .001$, $R^2 = .02$, and political ideology, $F(1, 503) = 166.20$, $b = 1.59$, $SE = 0.12$, $p < .001$, $R^2 = .25$, such that endorsement tended to increase with age and more conservative views. When adding age (standardized) and political ideology in as covariates, authority/respect remained significant across the previous findings.

Study 2 Discussion

Study 2 expanded on Study 1, applying the theoretical frameworks and jury instructions to another criminal context to generalize the findings. Similar to Study 1, there was little evidence that the prejudicial evidence had a direct impact on participants judgments, but rather it seemed to depend on their authority/respect moral foundations endorsement.

Prejudicial Evidence and Jury Instructions

In partial support of hypotheses, participants in the three conditions that did receive prejudicial evidence (i.e., moral foundation instruction, standard, and no objection conditions) and scored higher on authority/respect rated the defendant as less blameworthy than those who had lower authority/respect endorsement. The significant effects found in these conditions vs. the null effects in the control condition indicate that the prejudicial evidence was impacting defendant blame judgments, dependent on people's authority/respect endorsement. This pattern was hypothesized, as the prejudicial evidence related to the defendant's affiliation with a police organization associated with

anti-BLM protesting. In line with moral foundations, it was predicted that the added knowledge that the defendant was a police officer would make people who scored higher on authority/respect (which is correlated with positive attitudes towards law enforcement; Graham et al., 2011) more lenient and less likely to find the defendant blameworthy than those who did not endorse authority/respect.

This finding adds support to the literature on moral foundations and those valuing authority/respect potentially being more lenient and positive towards those in authority positions (e.g., police officers). On the one hand, this being found only for defendant blame could indicate that although the evidence was strong enough to influence perceptions of the defendant, it was not strong enough to influence verdict decisions. This is similar to other literature where biases impacted implicit case judgments (e.g., blame and evidence significance), but not verdict (e.g., Levinson, Cai, and Young, 2010; Wenger & Bornstein, 2006). The prejudicial evidence also mainly called into question the defendant's character, rather than relating to case facts. Therefore, it could make sense that the evidence only changed perceptions of the defendant rather than changing attitudes towards the case as a whole. In this case, jurors may be better than expected at not letting their perceptions of a defendant bias their final legal judgments. On the other hand, though, this pattern of results was not replicated across other variables and had relatively small effect sizes. Therefore, it is also plausible that this effect was a result of error and may not be a true effect – additional studies should replicate this finding in order to test the reliability.

The three conditions differing from the control condition suggests that the prejudicial evidence of the defendant's police organization had an effect on participants'

defendant blame perceptions (dependent on their authority/respect endorsement). However, the non-significant differences among the jury instruction and no objection conditions also indicates that neither the novel moral foundation inspired instructions nor the standard instruction had a beneficial impact on helping jurors disregard the inadmissible evidence. While this finding was not hypothesized, it does support the larger literature on jury instructions being ineffective (e.g., Lieberman & Arndt, 2000). Although providing rationale and motivation in some studies has been an effective way to get jurors to adhere to instructions (e.g., Kassin & Sommers, 1997), this was not the case in this study, and the majority of the literature has shown proposed remedies to be insignificant (e.g., Lee et al., 2005).

In addition, not drawing attention to the evidence in line with ironic processes of mental control theory (Wegner, 1994) had no added benefit, as participants in the no objection condition (where excess attention via an objection and instructions was not present) were still impacted by the evidence of the defendant's organization affiliation (i.e., the prejudicial evidence). Instead, the evidence impacted defendant blame judgments regardless of any objection and instruction. This finding again supports the majority of the literature on jury instructions, but also indicates that there is further need for research to inform solutions on this issue.

Importantly, this effect was also only found for the defendant blame attribution, so the prejudicial evidence may not have been strong enough to influence judgments in order to detect reliable effects (or null effects) of jury instructions. Participants on average rated the evidence as only moderately supporting the prosecution's case (M = 4.02, SD = 1.72), so it is likely that the evidence was not strong enough to weigh heavily

in a jurors' mind and case judgments. This finding is similar to what was found in Study 1, and is rational when considered in the literature of attitudes and belief adjustment (e.g., Bayesian updating, James, 2021; salience theory, Kahneman et al., 1982). When provided in isolation in the pilot study, participants were likely influenced by the prejudicial evidence because it was the only information to go off of. Whereas, in the final study, they had additional evidence to consider, and the prejudicial evidence did not seem strong enough to heavily influence their beliefs and attitudes towards defendant guilt.

Moral Foundations Theory: Authority/Respect

One finding in this study that was not hypothesized was the effect of authority/respect on judgments in the control condition. In the control condition, those who scored higher on authority/respect tended to find the defendant guiltier than those who scored lower on this measure (dependent variables: guilt, guilt Likert, likelihood of guilt, and defendant responsibility); whereas, when given prejudicial evidence in the remaining conditions, there were no significant effects on judgments. This was not hypothesized since those in the control condition were not given prejudicial evidence of the defendant's anti-protestor police organization affiliation, so it was not expected that they would be more or less biased against the defendant. However, authority/respect is theorized to relate to attitudes towards obedience, which would translate into those who value this domain wanting others to obey the law and be held responsible for their lack of obedience (e.g., Graham et al., 2012; Graham et al., 2011).

Research supports this theory, findings that authority/respect values are correlated with more punitive attitudes towards crime (e.g., Silver & Silver, 2017). Based on this correlation, without the added evidence that the defendant was a police officer,

participants who valued authority/respect would have no reason to be lenient, and likely would be inclined to be harsher on the defendant and more punitive towards the defendant's potential deviance. If this relationship is actually the case in true legal issues, defense attorneys may seek to prevent people who value this domain from being on a jury, since they may be overall more punitive towards their clients (e.g., Silver & Silver, 2017). This is one theorized explanation for this finding, and while supported by the current literature on authority/respect, the effect was also relatively small, so the conclusions drawn from this need further support.

Bias Blind Spot

Lastly, Study 2 replicated the findings from Study 1 regarding bias blind spot. Participants displayed bias blind spot, rating their own susceptibility to moral biases as lower than the average person's. However, this pattern could be an accurate rating of their bias, as bias blind spot was for the most part not predictive of making biased judgments. The pattern found could also be due to the general lack of biased decisions in general, since there were relatively few significant findings that would suggest participants were overall biased by their morals. Interestingly, for the one variable where the morally charged prejudicial evidence of police anti-protestor affiliation did seem to have some biasing potential (defendant blame attribution), the bias blind spot predicted more biased judgments.

This finding is similar to Pronin and colleagues' (2002) finding that participants who made biased self-enhancement judgments were blind to this bias and felt their judgments were less affected by self-enhancement bias than others' judgments. Taken altogether this finding supported current literature and the hypothesis that being "blind"

to biases would be associated with biased judgments – since these participants may not have been actively working to correct for their moral bias. However, this was a small effect, with only 3% of the variance in biased judgments towards defendant blame being explained by bias blind spot, and this was not replicated across any of the variables, so could be a spurious finding. The bias blind spot overall was found in this study, but similar to Study 1, may not necessarily relate to more or less biased judgments, leaving future studies to further analyze the more practical implications for being blind to one's biases.

This study altogether provided little support for the hypotheses that prejudicial evidence related to the defendant's police anti-protestor affiliation would impact judgments, and that jury instructions and authority/respect endorsement would mitigate this. There was partial support that those who valued authority/respect would be less influenced by the prejudicial evidence than those who don't endorse this moral value, but these findings were limited and may fail to replicate. And, while authority/respect seemed to have an effect on judgments in the control condition, indicating that without this prejudicial evidence they were more guilt driven (i.e., likely to find the defendant guilty and responsible), it again was a small effect, and jury instructions across all measures failed to improve biases that the evidence may have induced. As is, this study then lends some support to the growing literature on jury instruction ineffectiveness (e.g., Steblay et al., 2006), and some limited support for prejudicial evidence and authority/respect endorsement impacting case judgments (e.g., Silver & Silver, 2017). There were several limitations to this study that may contribute to the lack of findings and strong conclusions in this study.

Limitations and Future Directions

The prejudicial evidence in this study was perceived as relatively moderate, rather than in strong support of the prosecution as intended. With this being the case, and similar to Study 1, it was difficult to draw strong conclusions on whether jury instructions were or were not effective. Instead, this study arguably has stronger external validity, with the evidence being irrelevant to the case and thus inadmissible, but was too weak to accurately assess jury instruction effectiveness (aside from one variable that indicated instructions were ineffective). In order to reliably test jury instructions, future studies would need to design evidence that would influence judgments enough to detect differences across conditions.

The prejudicial evidence used in this study was also very specific based on a real case of police encouraging violence against protestors in the wake of the BLM protests (Biscobing, 2021). The relation to police officers had authority/respect underpinnings that made it relevant to this theory, but also made it difficult to assess whether it would be biasing. No prior experimental literature exists to our knowledge on whether defendant's are perceived less harshly if they are officers, and this was too specific of an affiliation to strongly base off of prior stimuli. The closest studied issue related to this is gang affiliation, and likely did not accurately reflect the impact that this specific prejudicial evidence would have. It is nonetheless an interesting arena to study moral biases in since it relates to prominent social issues that may be emotionally charged as well. Future studies may continue to base stimuli off of this police anti-protest evidence – modifying it to make it more salient to jurors in order to detect any effects being studied.

Additionally, similar to Study 1, other questions should have been asked to get a more complete picture of how the prejudicial evidence was being perceived. For example, asking whether participants felt the prejudicial evidence was relevant would help assess whether it was not strong enough because it was not biasing, or just not relevant enough for them to consider it in their judgments. These types of questions would help parse out the relevance of the evidence vs. the biasing potential of the evidence. In other words, if it is biasing but not relevant, this would suggest that participants mostly appropriately ignored it in their judgments. Whereas, if it is not viewed as biased against the defense it would indicate that the manipulation didn't work as intended and should be worded more strongly against the defense to detect significant biasing effects and create a need for jury instructions to disregard it.

Similar to Study 1, the blame attribution scale in this study has limitations. These questions were based on measures used in prior studies (e.g., Grubb & Harrower, 2009); however, largely were modified and created for this specific case. This was mainly due to assault and battery cases not being as common in research, so there was less prior constructs to model the scale after. Nonetheless, the questions then may not measure blame as much as just general attitudes towards the parties involved. For example, asking whether the defendant is aggressive was intended to relate to an assault case and whether he is viewed as aggressive could make him more to blame for the assault. However, it more so measures general attitudes towards the defendant's character and does not mean that this makes the defendant blameworthy. To better measure blame attribution, future studies should delve deeper into blame as a construct to ensure that the questions are operationalizing blame rather than potentially character traits.

Overall, Study 2 had similar limitations as Study 1 that limited the conclusions that could be drawn from the study. There was some evidence that the prejudicial evidence had an effect on individuals' perceptions of defendant blame, and that this was dependent on whether they strongly or weakly endorsed authority/respect. This was a limited finding though, and for a majority of case judgments, prejudicial evidence did not have a significant influence. Rather, in line with moral foundations literature, without the added prejudicial evidence (i.e., for those in the control condition), higher authority/respect was instead predictive of more punitive judgments towards the defendant. Although in different ways, these findings suggest that moral foundations can have significant implications for how a juror perceives certain types of evidence and cases as a whole, but need to be further replicated due to the limited effects and consistency throughout the study.

Lastly, while these experimental studies are important for testing novel theories and stimuli, they often lack ecological validity. This was similar to Study 1, with online samples introducing the potential for bots, less participant engagement, and experimental stimuli that may not represent actual trial proceedings. With these limitations in mind, it is equally important to think of these issues in real legal contexts to assess the prevalence and scope of prejudicial evidence in real cases. Unfortunately, access to legal cases is understandably limited; however, legal practitioners are a valuable source having first-hand experience with prejudicial evidence and how these phenomena play out in real cases. By gathering their perceptions of prejudicial evidence and jury instructions, Study 3 aimed to offer a more complete picture of the issues so far discussed in the project.

Study 3

Study 3 complemented Studies 1 and 2 by surveying attorneys for their perceptions of, and experience with, prejudicial evidence (see E1 for IRB approval), in order to gauge the scope and prevalence of prejudicial evidence issues in real cases. The survey asked attorneys questions related to how often they encounter prejudicial evidence and objections to it, and their perceptions of admissibility and how effective jury instructions typically are. The survey also collected information regarding the area of law they practice, their years of experience, and the types of cases they manage. The purpose of this study was to shed light on whether prejudicial evidence and jury instructions are perceived as issues to those who encounter it in actual cases. Researching this is important because if attorneys do not see it as an issue in their own cases, they may not be as receptive to suggested changes to address it. Due to the lack of prior research on this type of sample and topic, and that many questions were descriptive, the study was mostly exploratory so was not pre-registered. This was also in order to keep flexible data plans depending on the type of data obtained.

Study 3 Method

Study 3 Participants

Attorneys (N = 138; 46.36% Female, 39.73% Male, 0.66% Non-binary, 13.24% N/A; M_{Age} = 42.87) were recruited via Prolific Academic (n = 102) and through e-mail and personal connections (n = 36). Prolific Academic is a survey platform that allows researchers to recruit participants from certain professional sectors that are eligible to take part in the study, by only showing the study to those who meet the qualification of working in the specified sector (in this case, law). However, one limitation is that there is

no pre-screening option for participants who are specifically attorneys (our intended sample), and Prolific Academic does not allow pre-screening and eligibility requirements to be embedded into a study. Therefore, participants were recruited in two phases.

First, those who work in the legal sector were invited to complete a very brief survey. This asked them what role they have in the legal sector (e.g., attorney, legal secretary, paralegal), and if they are, or ever have served as an attorney (see Appendix E2 and E3 for pre-screening recruitment and consent). Those who answered yes to the latter were then invited through their Prolific Academic account to take part in the second, actual survey of interest (see Appendix E4 for survey recruitment script). In addition, the survey was sent out to attorneys and judges through convenience sampling and snowball methods via e-mail and newsletters. Individuals recruited through this method were provided with the direct Qualtrics link and did not go through Prolific Academic.

Across the two samples, participants were excluded for not confirming they were an attorney (n = 6), not completing the consent form (n = 16), and not actually completing any survey questions (n = 13), which left us with the final sample of 138 attorneys. Participants were primarily white, and identified as 73.91% White, 4.35% African American, 3.62% Asian, 2.17% Hispanic (non-white), 5.80% Hispanic (white), 2.90% mixed race, and 0.72% Middle Eastern (5.96% N/A). Participants tended to lean towards politically liberal, with 68.12% identifying as weakly-strongly liberal, 9.42% centrist/middle of the road, and 15.94% weakly-strongly conservative (6.52% N/A).

Years of experience ranged from less than a year (n = 9) to fifty years (n = 122; M = 14.10, SD = 11.70). Thirty-nine states of primary practice jurisdiction were represented in our sample, and a variety of areas of practice, with on average 8.85% of their cases

going to trial (*SD* = 13.57, Range: 0-100%; 3rd Quartile: 10%). The most common area of practice was civil law (36.23%), followed by criminal (28.98%), family (7.25%), juvenile (4.35%), corporate (3.62%), and 14.49% practiced a form of law not listed (e.g., bankruptcy). About forty-four percent of attorneys practiced at a private firm, 21.74% practiced in the local government sector, 7.24% at a 5.80% at a nonprofit. See Table 8 for legal practice information.

Table 8

Attorney's Legal Practice Descriptive Data

	n	%	*M* (*SD*)
Area of Practice			
Civil	50	36.23	
Criminal	40	28.98	
Family	10	7.25	
Juvenile	6	4.35	
Corporate	5	3.62	
Other	20	14.49	
Practice Sector			
Private Firm	61	44.20	
Nonprofit	8	5.80	
Corporation	10	7.25	
Federal Gov	9	6.52	
Local Gov	30	21.74	

Other	13	9.42	
Years of Practice			
< 1 Year	9	6.52	
> 1 year	122	93.48	14.10 (11.70)
Percent of Cases that go to Court			8.85 (13.57)

Study 3 Design and Procedure

This study was done entirely online through Prolific Academic and Qualtrics, using a survey design. The recruitment methods were due to Prolific Academic offering ways to invite only attorneys to participate in surveys and offering higher compensation. Whereas MTurk was used in the experimental studies due to budgetary concerns and needing larger sample sizes. Participants viewed the study on Prolific Academic and were then redirected to the Qualtrics survey if they chose to participate. Participants who were recruited via e-mail were sent directly to the Qualtrics link. After consenting to the survey (see Appendix E5), they filled out a series of questions on their perceptions of prejudicial evidence and jury instructions. It was hypothesized that overall, attorneys would report a low prevalence of prejudicial evidence, and would have relatively positive views towards the efficacy of gatekeeping protocols (e.g., expressing that prejudicial evidence is dismissed prior to trial in the evidence discovery phase and depositions). Aside from this, the purpose of this study was to provide a preliminary outlook on this issue and consisted mainly of descriptive data and exploratory analyses.

Study 3 Measures

Pre-Screening Survey

Participants were asked if they currently, or ever have, served as an attorney (yes/no), to indicate what best described their current or prior role in the legal sector ("check all positions that you currently, or in the past have held": attorney, judge, legal secretary, records clerk, paralegal, legal assistant, other/please describe), and whether they have ever worked on a case that went to trial (yes/no).

Survey

Participants were asked to answer a series of questions related to their perception of, and experience with, prejudicial evidence and jury instructions. These questions included, for example: what type of prejudicial evidence they have experienced in court (if any) (e.g., gruesome photographs, gang membership, sexual predisposition/history, prior criminal history); how often they believe prejudicial evidence is introduced in court; how influential they believe prejudicial evidence is; how often they believe prejudicial evidence meets grounds for inadmissibility; whether they have themselves, or witnessed another lawyer, raise on objection to prejudicial evidence being admitted; and how effective they believe jury instructions to disregard evidence are. Some questions were open-ended to allow for more range in responses (e.g., "Think back to your last experience with prejudicial evidence. What type of case was it?"; "Please describe your perspective on, and experience with, prejudicial evidence"). The survey also asked them questions specific to their demographics and type of legal practice (e.g., what type of law they practice, how long they have been an attorney, what percent of their cases go to trial). All measures can be found in Appendix E6.

Study 3 Results

In relation to FRE 403 in general, 61% of participants identified unfair prejudice as the most common FRE 403 issue, and 31% identified undue delay as the least common issue. Contrary to our hypothesis, prejudicial evidence seemed to be common in these attorneys' cases. Just over three-quarters of our sample reported prejudicial evidence being used at least once throughout their cases (77%), with prejudicial evidence being observed most commonly in sexual assault, assault and battery, and domestic violence cases (see Table 9 for percentages). Attorneys were also asked to rank different types of prejudicial evidence from most to least common, with gruesome photos, sexual predisposition/history, and possession of weapons or drugs at time of arrest rated as the most common types of prejudicial evidence (see Table 10 for the distribution of rankings for each piece of evidence).

Table 9

Prejudicial Evidence Across Cases

	Case Type						
	Sexual Assault/ Rape	Assault and Battery	Domestic Violence	Drug Related	Theft	Aiding and Abetting	Arson
% of Attorneys reporting observing prejudicial evidence	35.51%	34.78%	34.78%	31.88%	22.46%	5.07%	3.96%

Note. The percent of attorneys who indicated that they had observed prejudicial evidence across different types of cases. "*Think back to all of your experiences with prejudicial*

evidence. Please indicate what types of cases you have ever observed prejudicial evidence in (select all that apply)."

Table 10

Ranking of Evidence Prevalence

	Most Common (1)	2	3	4	5	6	Least Common (7)
Possession of Weapons or Drugs	24.22	21.88	14.06	17.19	15.63	6.25	0.78
Gruesome Photos	20.31	18.75	25.78	17.19	13.28	4.69	0
Sexual Predisposition/ History	19.53	21.88	18.75	17.97	10.94	10.16	0.78
Sympathetic Victim Photos	10.94	17.19	15.63	11.72	25.00	16.41	3.13
Wealth, Poverty, and Worldly Conditions	10.16	5.47	5.47	8.59	14.06	50.78	5.47
Gang Membership	8.59	12.50	19.53	26.56	21.09	10.16	1.56
Other	6.25	2.34	0.78	0.78	0	1.56	88.28

Note. Percent of individuals who rated each piece of evidence each ranking. For example, 20.31% of participants rated gruesome photos as most common, whereas 25.78% rated it as 3rd most common. Participants were instructed to rate the "other" category as least common unless they felt a common type of evidence was left out, in which they were

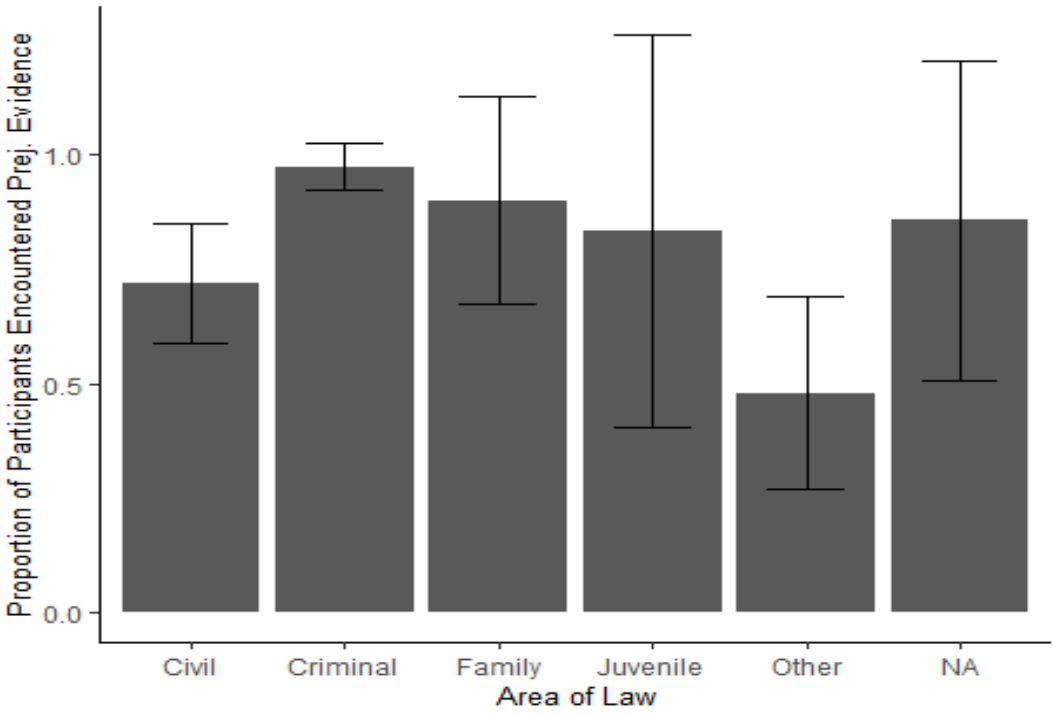
asked to rank this accordingly and indicate what the evidence was. Responses to this included: social media posts, criminal history, among others.

Although prejudicial evidence seemed overall prevalent, whether someone had ever encountered prejudicial evidence in a case differed based on the area of law participants practiced, $F(4, 126) = 6.79$, $p < .001$, $\eta_p^2 = 0.18$. Performing Tukey pairwise comparisons, with critical value 4.55 (adjusted for 10 comparisons).those who practice civil law on average were less likely to encounter prejudicial evidence than those who practice criminal law, $p = .02$. Those who identified as practicing an "other" area of law outside of the ones provided (e.g., did not identify as practicing criminal, civil, family, juvenile, probate, or tax law) were also less likely to encounter prejudicial evidence as those who practiced criminal law, $p < .001$, and family law, $p = .03$ (see Figure 7).

Over 80% of the attorneys that practiced criminal, family, and juvenile law reported encountering prejudicial evidence in their cases. With almost all of those practicing criminal law encountering it (97%). Even for those that identified as "other" area of practice, almost half (48%) had still encountered it in their cases. This shows that even though some areas are more likely than others to encounter prejudicial evidence, it seems to appear in a variety of cases.

Figure 7

Prejudicial Evidence by Area of Law



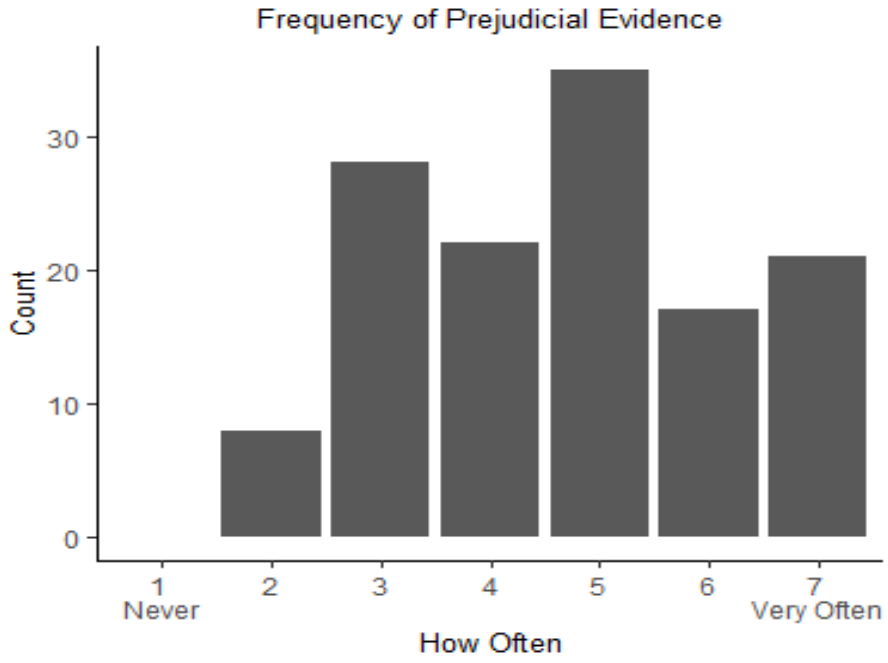
Note. The proportion of participants who experienced prejudicial evidence being brought up in a case based on the area of law that they primarily practice. Error bars represent 95% CI.

Although a majority of participants had themselves experienced prejudicial evidence in at least one case, participants had mixed perceptions of how often prejudicial evidence is brought up in cases and how often it meets ground for inadmissibility (see Figures 8 and 9). There was relatively high agreement among participants that it is most often brought up during pre-trial evidence hearings (35% felt this was the most common) and during trial (35% felt this was the most common). Looking specifically at prejudicial evidence pre vs. during trial, 36% of participants expressed that the most likely scenario would be that prejudicial evidence is introduced before trial takes place and is excluded

before a jury hears it. Only 11% rated prejudicial evidence being introduced during trial and ruled inadmissible as the most likely scenario (rated on average the 4th likely scenario out of 5).

Figure 8

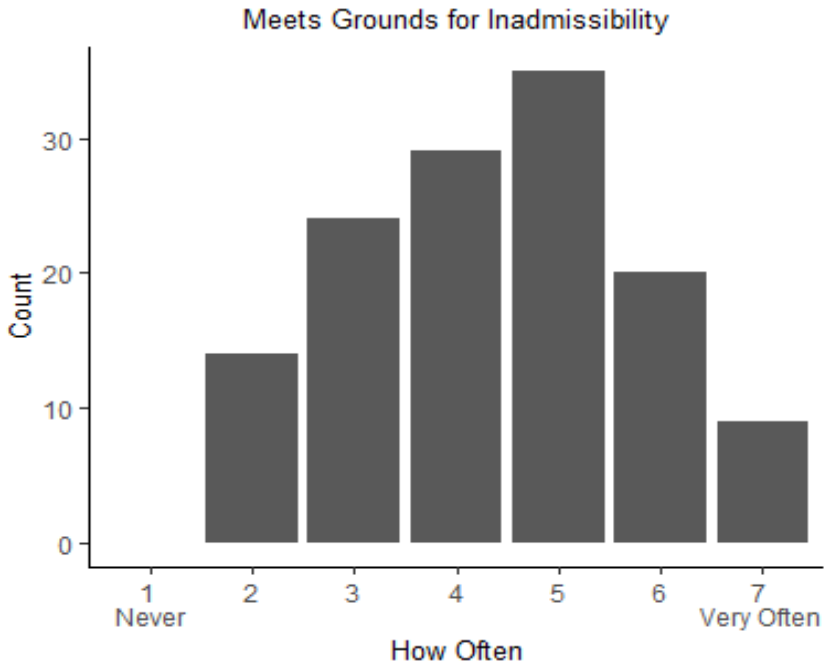
Prejudicial Evidence Frequency



Note. Participant responses to how often prejudicial evidence is brought up in cases.

Figure 9

Prejudicial Evidence Admissibility



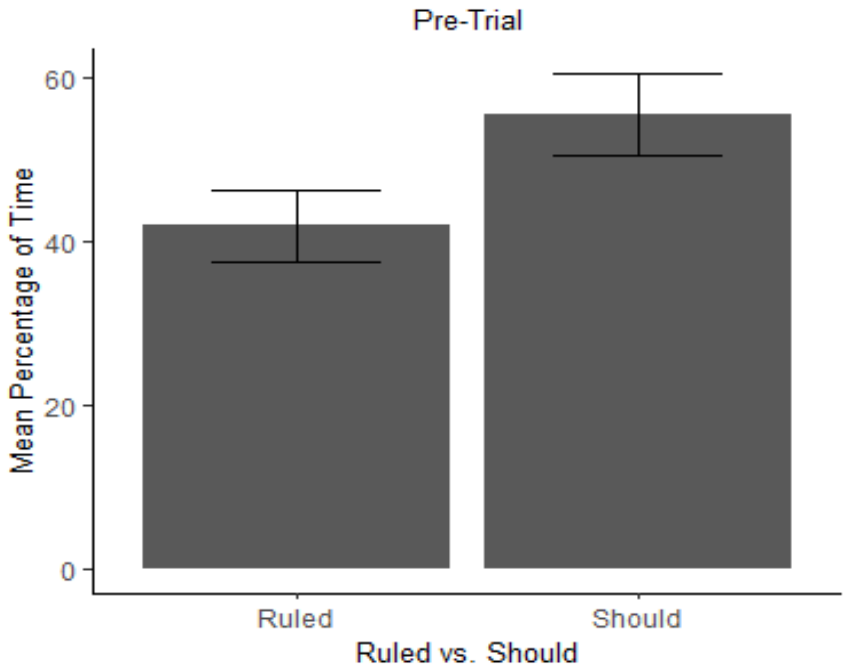
Note. Participants' responses to how often prejudicial evidence meets grounds for inadmissibility (1 = *prejudicial evidence never meets grounds for inadmissibility*, 7 = *prejudicial evidence very often meets grounds for inadmissibility*).

Although there were mixed opinions on the frequency of prejudicial evidence being inadmissible, 69% reported having been part of, or observed, a case where a lawyer raised an objection the prejudicial evidence, and that the attorney was fairly justified in raising the objection (M = 5.95, SD = 1.14). This was slightly lower than the number of attorneys who themselves had raised objections to prejudicial evidence (44%), but suggests that attorneys are seemingly raising objections to the evidence when it is brought up.

However, admissibility is ultimately up to the judge, so to further probe the admissibility of prejudicial evidence, participants were asked what percent of the time prejudicial evidence is ruled inadmissible during pre-trial proceedings, compared to how often they felt that it should be ruled inadmissible. They were also asked this question for when the evidence is introduced during trial. In a paired samples t-test, participants rated pre-trial prejudicial evidence as being ruled inadmissible (M = 41.89, SD = 24.39) significantly less than they believe it should (M = 55.50, SD = 28.04), $t(122) = -7.80$, $p < .001$. This pattern was also found when looking at prejudicial evidence brought up during trial, $t(125) = -8.30$, $p < .001$, with prejudicial evidence being rated as being ruled inadmissible (M = 45.11, SD = 24.35) less than it should (M = 63.38, SD = 27.31) (see Figures 10 and 11.

Figure 10

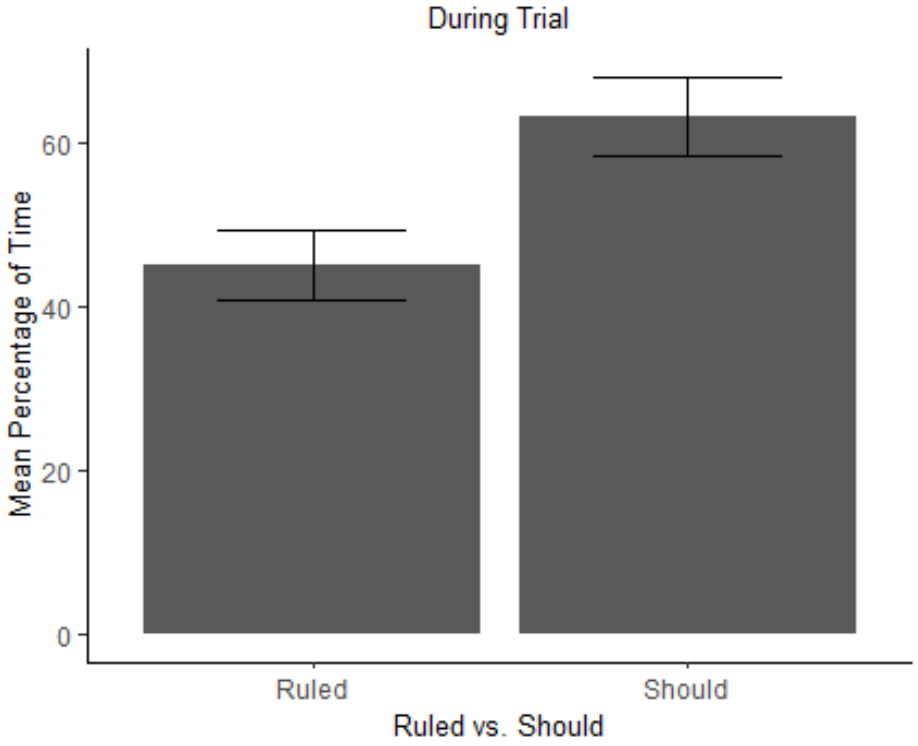
Admissibility Pre-Trial



Note. The mean percentage of time that participants believe prejudicial evidence is ruled as inadmissible vs. how often they believe the evidence should be ruled inadmissible, for evidence brought up pre-trial. Error bars represent 95% Confidence Intervals.

Figure 11

Admissibility During Trial



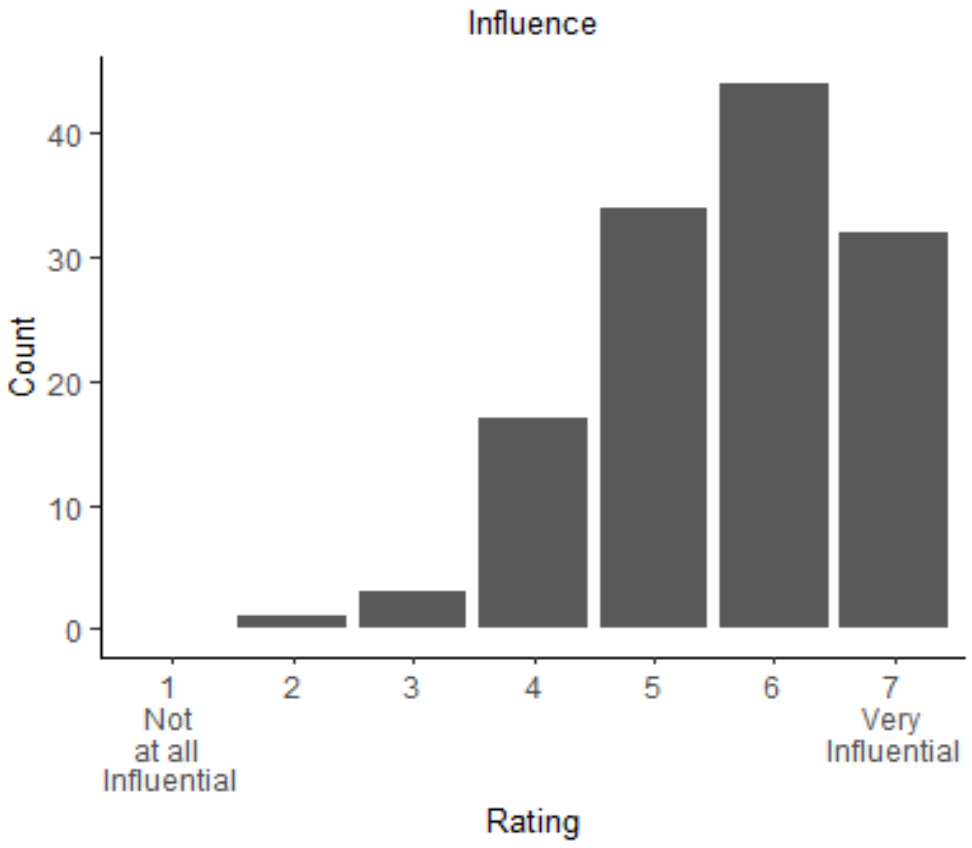
Note. The mean percentage of time that participants believe prejudicial evidence is ruled as inadmissible vs. how often they believe the evidence should be ruled inadmissible, for evidence brought up during trial. Error bars represent 95% Confidence Intervals.

The prevalence and admissibility of prejudicial evidence is important to consider, given how influential it can be. Of the participants in this study, 23% felt prejudicial evidence was very influential, with a majority of participants (80%) rating it above the middle range (M = 5.63; 1 = *not at all influential*, 7 = *very influential*) (see Figure12).

More alarmingly, participants on average rated jury instructions to disregard evidence as fairly ineffective (M = 2.55, SD = 1.35) (see Figure 13). When asked why they felt jury instructions to disregard evidence were ineffective, many attorneys (n = 47) expressed sentiments that it is difficult for jurors to unhear evidence once it is given (e.g., "You can't unring the bell," "Once a jury hears something, it is out there"). These sentiments are in line with what psychological empirical studies have shown, and how difficult it is to get jurors to refrain from being impacted by any type of inadmissible evidence (e.g., Steblay et al., 2006).

Figure 12

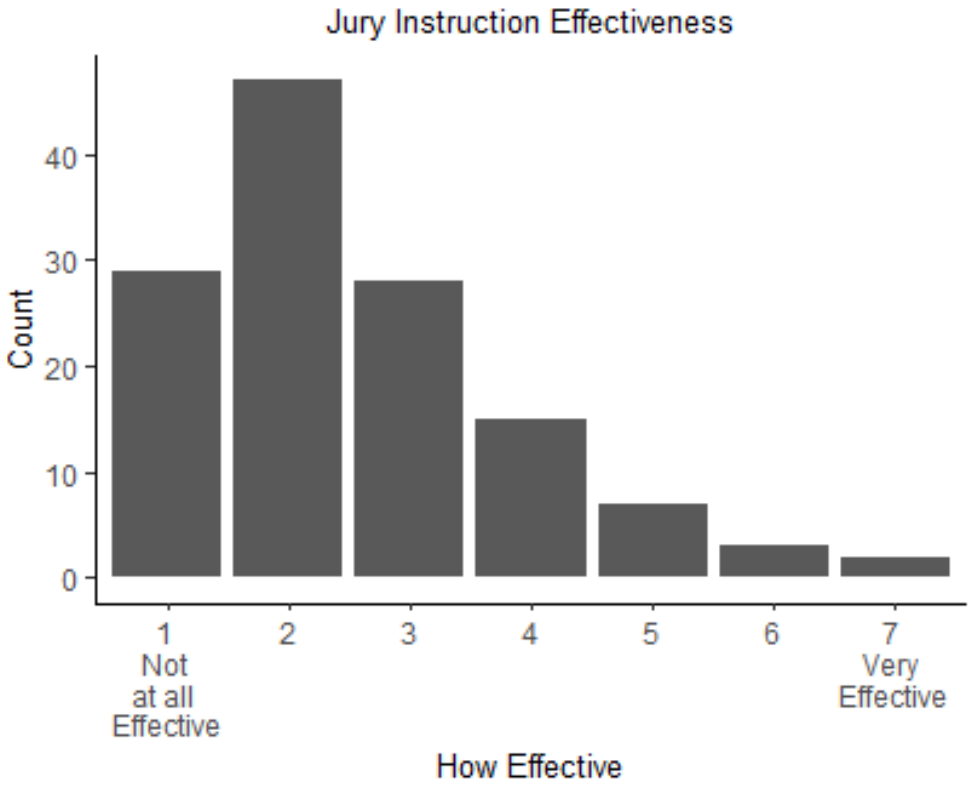
Influence of Prejudicial Evidence



Note. Frequency distributions of responses to how influential prejudicial evidence is (1 = *not at all influential*, 7 = *very influential*). Y-axis represents how many participants responded with each rating.

Figure 13

Jury Instruction Effectiveness



Note. Frequency distributions of responses to how effective jury instructions to disregard evidence are (1 = *not at all effective*, 7 = *very effective*). Y-axis represents how many participants responded with each rating.

Study 3 Discussion

Overall, the findings from Study 3 offer a unique and rare insight into the court system, addressing the prevalence, scope, and potential issues surrounding prejudicial evidence and jury instructions in real cases. This study builds on Studies 1 and 2, and the current literature of prejudicial evidence and jury instructions, by exploring it in a non-controlled context to gauge whether results found in the experimental literature seem to be an accurate representation of how it is perceived by attorneys who encounter it in their cases. Although there were mixed responses from attorneys in this study on how often prejudicial evidence is brought up in cases, a majority (just over 75%) of attorneys in the sample had encountered prejudicial evidence in their cases, with almost all of criminal attorneys encountering it. This data suggests that it may be brought up more often in certain case contexts, and since criminal attorneys also made up a large proportion of the sample though (~30%), this could overinflate the prevalence of the evidence that Study 3 showed. Overall though, numerous attorneys (n = 38) reported that it was either often or very often brought up, which further justifies the need for continued literature on prejudicial evidence and the implications the existing literature can have.

The experimental literature on prejudicial evidence and jury instructions points to the biasing potential of prejudicial evidence and the challenges jurors face when tasked with trying to disregard evidence once it has been presented to them (e.g., Oakes et al., 2021; Schuller & Hastings, 2002). These experiments have the benefit of being able to control for variables to directly test for certain variables of interest. They are limited in that it fails to consider how these cases are handled and observed in real cases that research presumably aims to extend and apply to. Specifically, evidence and jury

instructions do not happen in a vacuum, and while it is important to have experiments that do in fact control for potential confounding variables to isolate effects, it limits the external validity.

Study 3 findings lend support for the external validity and overall literature on prejudicial evidence. Attorneys in this study reported gruesome photos and sexual predisposition/history as some of the most common types of prejudicial evidence they encounter – which are also commonly studied types of evidence in the psychological research (e.g., gruesome photos: Bright & Goodman-Delahunty, 2006; Salerno, 2017; sexual history: Schuller & Hastings, 2002; Schuller & Klippenstine, 2004). These judgments are a positive indication that research is focusing on evidence that does in fact appear in court and would have implications for actual cases. Moreso, attorneys expressed that it was more influential than not, which supports the literature on the biasing potential of prejudicial evidence (e.g., Eisen et al., 2013; Osborn et al., 2018; Sommers & Ellsworth, 2000). This study only asked about prejudicial evidence influence as a whole though, so certain types may be more impactful to jurors than others, which was not captured in this study.

This study further adds to the literature on jury instructions and the need for better safeguards against prejudicial evidence that is brought up in court. In support of what experiments have found on jury instruction ineffectiveness (e.g., Cook et al., 2004; Oakes et al., 2021), attorneys in this sample perceived jury instructions to be ineffective and that "once you ring the bell it can't be unrung." A handful (n = 8) even expressed sentiments that support the notion of ironic processes of mental control theory (Wegner, 1994), and that instructions can be especially detrimental due to drawing excess attention to the

evidence (e.g., “once they have been instructed to disregard evidence, it gets highlighted in their minds”). Jury instruction ineffectiveness was also captured partially in Study 2, and prior research underlines the limitations of instructions and the need for attorneys and judges to be diligent in what type of evidence gets admitted into court − which is important to consider given that attorneys in this sample recalled prejudicial evidence being ruled inadmissible during trial in around 60% of their cases. Assuming that after being ruled inadmissible, instructions were provided to disregard the evidence, this suggests that jury instructions are also relatively prevalent and necessary in cases.

Altogether, this study supports the research on prejudicial evidence impact and jury instruction ineffectiveness (e.g., Salerno, 2017; Steblay et al., 2006), and contributes to the literature with additional insight into the prevalence and scope of prejudicial evidence and admissibility issues. The study not only calls attention to the need for continued research on the topic, but can also inform future research. Since a common concern in research is the broader implications it will have, based on this study researchers may aim to focus on the evidence that was seen as most prevalent and potentially problematic (e.g., gruesome photos, sexual history).

It also suggests that attorneys are aware of the limitations to evidence and jury instructions, so likely are receptive to proposed solutions to these issues. Collaboration among the fields can help ensure that research properly addresses prejudicial evidence issues and presents it in externally valid scenarios that attorneys may help inform. By continuing to shed light on the negative effects that prejudicial evidence can have, researchers and legal experts can work towards limiting the prevalence and influence of prejudicial evidence when appropriate.

Limitations

With respect to jury instructions, one potential limitation to research based on this study is that the research on jury instructions works under the assumption that prejudicial evidence is in fact being admitted into court. This is a possible scenario, but there are also several stages to a case before going to trial (e.g., evidence hearings, depositions) that present opportunities for judges and attorneys to gatekeep prejudicial evidence prior to being heard by a jury. According to attorneys in this sample, this may be the case – as the most likely scenario for prejudicial evidence from their perspective was that it would be introduced before trial took place and excluded before a jury could hear it. If this finding is a true reflection of prejudicial evidence proceedings, it provides important information for researchers to consider and an optimistic conclusion that maybe attorneys and judges are efficient at gatekeeping this type of evidence and that although prejudicial evidence has biasing potential once heard, it optimistically might not get to that point.

There were several limitations to Study 3 that stem from the recruitment and methods inherent in a survey-based design. Foremost, there was the probable limitation of self-selection bias in participants. Based on the recruitment and consent form, attorneys would have been aware that the purpose of the survey was related to prejudicial evidence. Those who did not have any experience with this type of evidence may have opted out of participating if they had felt they wouldn't have much opinion to contribute to the matter (e.g., Khazaal et al., 2014). This self-selection could over-estimate how prevalent the prejudicial evidence is if those who participated were more likely to have experience with this evidence and hold stronger opinions on the matter.

Additionally, there was recruitment bias since the study utilized personal connections to send out the survey to the non-Prolific sample that may result in less diverse demographics and opinions (e.g., Woodley & Lockard, 2016). It is likely that as academics, attorneys recruited via these connections would be more receptive to acknowledging the limitations of prejudicial evidence and what research shows about jury instructions being less effective. This recruitment then could lead to a sample that was more likely to view prejudicial evidence as problematic and aware of research on jury instructions. Unfortunately, without being able to get demographic information about those who received the recruitment form and did not participate, and the entire population of attorneys as a whole, the study was unable to determine if they differed significantly from those who completed the study.

The attorney survey was also developed without having much experience with actual legal settings, therefore there is a possibility that situations and types of prejudicial evidence were left out of the survey. For example, future research would benefit from looking at how perceptions differ by defense vs. prosecuting attorneys, a question left out of this particular study. It is likely that defense attorneys have more negative views on certain prejudicial evidence, since it is usually used against their clients (e.g., gruesome photos, prior arrest history). If more defense attorneys took part in this study, it could inflate the perceived biasing potential of prejudicial evidence found in this study. The use of free response questions was one way to try to remedy the possibility of responses and questions being left out, in order to get more extensive answers that allowed attorneys to correct any misconceptions the survey may have presented, and account for questions that did not cover the full range of options that they should have. Regardless, the survey

was relatively short and exploratory, and future studies should continue to build on these findings and get a more complete sense of the issue.

Responses as a whole also could have had some response bias and do not necessarily reflect the true state of the legal system and opinions of legal experts. This possibility is especially true due to the small sample size, so a larger and randomly recruited sample of attorneys should be studied further before drawing strong conclusions from this study. Even if they did represent the larger attorney population, this also does not necessarily mean that the opinions reflect the true nature of prejudicial evidence and jury instructions in court. Self-reporting is susceptible to intentional and unintentional response biases. Attorneys may be motivated to present a more optimistic outlook of evidence safeguarding (e.g., self-serving bias; Myers, 2015). They also may unintentionally recall information differently than how it actually occurs due to memory and recall errors and malleability (e.g., Schacter, Guerin, & Jacques, 2011).

This study also was comprised of a variety of practice areas (e.g., civil, family, juvenile), whereas the literature that this project hoped to largely inform was mainly engrained in the criminal case context. Therefore, the perceptions expressed in this survey are based on a broader range of experience, rather than the mainly criminal context found in the experimental literature. The opinions expressed offer valuable initial insight into this research, but are nonetheless potentially limited and specific to this sample and may not reflect the actual base rates of evidence discussed. Despite these limitations, and the exploratory nature of this work, there are limitations in the information researchers have access to, and this study in part hoped to reconcile some of this. Study 3 was created acknowledging researcher limitations and aiming to draw on the

expertise of those in the legal field to help inform how researchers can better approach and represent the issues studied in lab settings.

Project Conclusion

Across three studies this project investigated the impact of prejudicial evidence and the effectiveness of jury instructions through a novel lens applying moral foundations theory to these concepts. Specifically, Studies 1 and 2 exposed participants to prejudicial evidence with moral underpinnings relevant to purity/sanctity (i.e., evidence of sexual history) and authority/respect (i.e., evidence of defendant's connection to a police anti-protestor organization), respectively. Novel jury instructions inspired by moral foundations theory were also tested against traditional jury instruction safeguards to see whether these novel instructions could provide jurors with rationale for why the prejudicial evidence was inadmissible and help motivate jurors to adhere to instructions. Study 3 expanded on this and the current literature of prejudicial evidence and jury instructions by surveying attorneys for their perspectives on the prevalence and scope of these issues in real cases that they have experienced.

These are important issues to study, and while there is no current study measuring the actual base rate of prejudicial evidence, attorneys in this project perceived this evidence to be fairly prevalent across a variety of cases. Prejudicial evidence is also not limited to sexual history and organization affiliations – it can present in the form of pre-trial publicity, criminal history, and other evidence that affects both defendants and plaintiffs. And, although there are safeguards in place, they are not always effective, and evidence may not be ruled inadmissible as often as it should be, making the impact of

prejudicial evidence and jury instructions especially relevant to the legal system's ability to provide fair trials for all those involved (U.S. Const. amend. VI).

Prejudicial Evidence

Overall, the project lent relatively little support for the hypotheses and current literature on prejudicial evidence. The biasing potential of prejudicial evidence has been well documented in the current literature across a variety of evidence types (e.g., gruesome photos: Salerno, 2017; prior criminal history: Laudan & Allen, 2011; pre-trial publicity: Ruva & McCevoy, 2008). Study 3 attorneys also opined that this evidence does get introduced and biases a jury, creating the need to better understand the impact it can have. Study 2 provided some support for this literature, with prejudicial evidence of the defendant's police anti-protest affiliation being influential to defendant blame, but dependent on participants' moral foundation endorsement.

In line with moral foundations literature on people with authority/respect endorsement being correlated with positive views towards police (e.g., Graham et al., 2011), participants high on this measure were less likely to find the defendant blameworthy when given this evidence of the defendant's police affiliation (compared to those who had lower authority/respect endorsement). This finding adds to the literature with a unique type of evidence that shows the impact that a defendant's police occupation and anti-protest evidence can have on a jury, and the importance of moral foundation endorsements on the way in which this may impact certain individuals differently. Although in support of the literature, this finding was limited to defendant blame and was not replicated across the other dependent variables, so also may not be a strong or true effect.

Evidence of a victim's sexual history, as used in Study 1, has specifically been correlated with victim-blaming attitudes in participants (e.g., Schuller & Klippenstine, 2004). Contrary to this though, the prejudicial evidence of sexual history in Study 1 did not impact judgments, as there were no significant differences across conditions with and without this prejudicial evidence. This finding could add a more encouraging view to the literature and jurors' ability to parse out prejudicial information; however, is more likely due to the evidence not being perceived as strong enough to impact judgments. This could be that the participants were already aware of the potential biases and risk of victim-blaming, given the emphasis on the #MeToo movement in recent years. At the time of decision-making they potentially could have recognized this and made an increased effort to refrain from letting that bias impact their judgments (e.g., awareness as a debiasing technique; Reling et al., 2018).

Overall, across the two experimental studies, there was little support for prejudicial evidence in either context (sexual assault or assault and battery) being particularly influential to participants' case judgments. Given the contradictory nature of these findings to the majority of literature on prejudicial evidence, and the findings from Study 3 that further suggest the impact that prejudicial evidence can have on a jury, it is likely these null findings were a result of the manipulation failing though, and that had the evidence been stronger would have impacted judgments as seen in previous research.

Jury Instructions and Legal Safeguards

Another aim of this project was to advance the literature on jury instructions by applying moral foundations theory to help jurors adhere to instructions to disregard the evidence. This was based on evidence from prior literature that motivation and rationale

for why evidence is inadmissible are potential solutions to remedy the overall ineffectiveness of most jury instructions (e.g., Kassin & Sommers, 1997; Lieberman & Arndt, 2000). Unfortunately, due to the lack of effect of the prejudicial evidence manipulations across Study 1 and Study 2, the project was unable to effectively assess this effect, as without the bias being present it was unclear whether jury instructions would help mitigate it. For the one variable that did show potential prejudicial evidence effects (i.e., defendant blame in Study 2), the jury instructions did not appear effective at mitigating the bias. Although this was only for one variable, so overall there were little conclusions to be drawn from the experimental side, this along with Study 3 support findings from experimental literature that jury instructions are ineffective (e.g., Lee et al., 2005).

Further, attorneys in Study 3 expressed sentiments on jury instructions that lend support to the literature applying ironic process of mental control theory as a rationale for why this is the case (e.g., Oakes et al., 2021), and that not only is it difficult for jurors to unhear evidence, sometimes evidence can add excess attention to inadmissible evidence, making it more salient and influential to judgments. Based on these attorney perceptions, the findings in experimental literature may be an accurate reflection of jury instruction effects in real cases. As discussed previously, this is a perspective of those who encounter the evidence, and not proof of this being a true phenomenon, but offers an insight into the issue that has not been previously looked at. Overall, this information adds to the literature on jury instructions being relatively ineffective, and failed to contribute a potential remedy.

Although jury instructions may be ineffective at addressing prejudicial evidence inadmissibility, fortunately there are other safeguards in place prior to a trial. Prior to a trial there are generally evidence hearings and depositions along the way where evidence is brought up, and at each stage there is the opportunity for inadmissible evidence to be questioned and potentially excluded from being used in the actual trial. According to the attorneys in Study 3, this scenario is most often the case, where prejudicial evidence is brought up at some point pre-trial and either ruled admissible, or ruled inadmissible and excluded before a jury can hear it. However, this is not always the case, and it is important to continue to research this issue and inform ways to help prevent prejudicial evidence from unduly impacting a case.

Moral Foundations Theory

This project also adds to overall moral foundations theory literature, and how different degrees of moral endorsement can account for part of why certain individuals may be more or less likely to find a defendant guilty in cases. In Study 1 this relationship related to purity/sanctity endorsement and the finding that individuals with higher endorsement were more likely to place blame on a complainant in a sexual assault case. Whereas, in Study 2, participants with high authority/respect were more likely to find a defendant guilty and responsible (when not given information that he was a police officer). These findings were relatively small effects (accounting for only about 2-8% of the variances in responses) and not hypothesized, but are nonetheless plausible when considered in context of the broader literature. Specifically, these findings add to the research of purity/sanctity being correlated with rape myth acceptance and victim-blaming in sexual assault cases (e.g., Barnett & Hilz, 2018; Milesi, 2020), and

authority/respect being correlated with more punitive attitudes (e.g., Silver & Silver, 2017). This can inform the voir dire process, with attorneys being more conscious of these moral attitudes when selecting ideal jurors.

Bias Blind Spot

Lastly, the project offers some support for bias blind spot for moral heuristic biases, with participants in both Study 1 and Study 2 rating their own susceptibility to this bias has less than the average persons' susceptibility. This bias didn't seem to translate into actual judgments though, so it is possible that people were accurately rating their own susceptibility as lower or higher, and that although bias blind spot exists, may not predict whether someone is more likely to act on that bias or not. Since there seemed to be little moral heuristic driven biases in this study in general, it is also possible that there weren't enough "biased" judgments to detect any effects of bias blind spot. This was a common limitation throughout the project again brought on by the prejudicial evidence not being influential the way intended.

In all, due to shortcomings of the prejudicial evidence manipulation strengths across both experimental studies, there were limited conclusions that could be confidently drawn from whether prejudicial evidence and jury instructions were impactful. The null findings throughout this project potentially offer a more positive outlook on juror decision-making than expected, finding that even when their judgments towards the defendant and complainant were affected (e.g., defendant blame attribution), it didn't necessarily translate into guilt judgments (e.g., verdicts and likelihood of guilt). And, the fact that the prejudicial evidence was not seen as strong against the complainant

(Study 1) or defendant (Study 2) could mean that jurors are able to recognize that this type of prejudicial evidence isn't strong evidence for or against a case and rate it as such.

This possibility may be especially true for cases involving sexual assault – where due to increased attention (e.g., #MeToo Movement), jurors might be more cautious of victim-blaming tendencies and correct for their biases when applicable (e.g., Levy & Mattsson, 2020). It also could likely be a study limitation that the evidence was not as strong as evidence in real cases and the manipulation was not written in a way that would invoke biases the way other studies have found. Aside from prejudicial evidence , the little evidence that was found throughout the project indicated jury instructions were ineffective and spoke more towards overall juror attitudes influenced by moral foundations theory. Given these mainly null findings and the prevalence and scope of prejudicial evidence discussed in Study 3, there is need for further research on ways to combat biases through jury selection and preventing prejudicial evidence from being admitted into court.

Limitations

As discussed in Study 1 and Study 2, the stimuli limited the inferences that could be drawn from this project. While the stimuli may have realistic implications for actual cases, the prejudicial evidence may not have been strong enough to influence judgments and allow for differences between conditions in order to test different jury instructions' effectiveness. In the sexual assault case this could be due to individuals being more sensitized to victim-blaming tendencies since the #MeToo movement, and more cognizant of not making biased judgments (e.g., Szekeres et al., 2020). It also could be that the evidence was not perceived as relevant, and jurors were thus able to separate this

information from their judgments. Due to researcher oversight, the surveys did not measure how relevant participants felt the prejudicial evidence was to the case. However, it was evident that participants tended to not rate the prejudicial evidence strongly prejudiced against the prosecution (in the sexual assault case) or defendant (in the assault and battery case), providing some support that the prejudicial evidence was not prejudicial enough to influence participants.

This could be a realistic representation of real cases though, since jurors are presented with a variety of evidence that works for and against both sides. Although prejudicial evidence might be perceived as influential and shown to be in controlled experiments, individuals do not make decisions based only on that singular piece of evidence. Rather, they take information in throughout trial, and likely update their beliefs and attitudes towards the case given each additional claim (e.g., Bayesian theorem, James, 2021). Attorneys are also trained to be able to recognize whether evidence is admissible, so it is unlikely that they would introduce prejudicial evidence into court unless it truly held probative value that would make it admissible. For this reason, in real cases any evidence stronger than the stimuli used in this project would be arguably more likely to be clearly prejudicial and excluded prior to trial or not brought up at all.

There were internal validity concerns though with the ability to measure what the project intended (i.e., jury instruction effectiveness), which in this case was lacking. Although using more extreme evidence and testing it in isolation is not always indicative of what happens in a real case, it is sometimes necessary in order to control for other variables and accurately test for variables of interest. For example, in this case, the study was unable to properly address jury instruction effectiveness because the evidence was

not strong enough to prompt biased decision-making that the instructions would have served to reduce. Future studies should modify these stimuli and make it more prejudicial against the respective parties in order to parse out effects of jury instructions.

The jury instructions used also carry limitations. The novel moral foundations theory instructions were applied to two cases with prejudicial evidence that had specific moral foundation ties. While there are several situations where moral biases may come into play, it is equally likely that prejudicial evidence is introduced that does not have moral implications. For example, gruesome photographs are prejudicial for eliciting extreme emotions in jurors that carry its own biasing potential, it doesn't necessarily have a direct relation to moral foundation domains. Thus, the instructions only apply to a select type of prejudice that conflicts with morality. In order for it to be implemented effectively a judge would have to recognize situations in which moral heuristics are applicable to the evidence, which may not be a high priority during trial or cross their mind to use when in the moment.

Therefore, the implications of this jury instruction mainly extend to looking at how moral foundations theory can be used to help jurors recognize their biases but may not realistically get implemented as they were in the project. The wording of the instructions also may be difficult to implement especially given the length. In a real trial, judges may in the moment give brief instructions to disregard the evidence in order to keep the trial moving forward. These instructions were based on jury instructions regarding general implicit biases provided at the end of a California civil case (CACI No. 113) so has some external validity, but may be too specific and long to expect a judge to give mid-trial. Across all studies, sampling was a limitation.

This project relied on online samples, and therefore generalizability is a concern worth noting. While online samples are commonplace in research, and COVID-19 places increased difficulty in obtaining in person samples, they may not be as representative of the actual juror population (the population of interest for Studies 1 and 2) and can include bots (e.g., U.S. Census Bureau; Ahler, Roush, & Sood, 2021). The sample demographics were generally consistent of the U.S. jury eligible population with a variety of gender, races, and political ideology, but may over-represent Caucasians and liberal political ideology. Given that participants completed the study online they may have also been paying less attention and not have given it as much thought and consideration as a real juror would had there been an actual conviction at stake.

In addition, while the survey included attention checks to try to limit bots and those not paying attention, there is still the possibility that these efforts did not completely safeguard against these problems. Study 3 also relied on self-reporting, so it is possible that attorneys would not report an accurate picture of prejudicial evidence and could be motivated to make the law appear more objective than it is. Given the opinions expressed, however (e.g., that prejudicial evidence is prevalent and instructions ineffective), it does not seem that attorneys were providing a false positive perspective on the issue. Without having enough actual cases to examine, relying on attorneys to talk about their experience is a feasible alternative and nonetheless important method.

Response bias is also a prevalent issue throughout many experimental studies, including Studies 1 and 2 in this project. People may answer in socially desirable ways, have different experiences than others, and all around unintentionally respond with an answer that doesn't reflect their true character or attitudes (e.g., social desirability bias;

Allen, 1957). Unfortunately, although anonymized responses helps reduce this potential issue, it is nonetheless a concern that is difficult to control for, and should be considered when drawing conclusions from the project. Future studies though should continue to address these limitations to provide robust conclusions and insight into prejudicial evidence and jury instructions in the legal system.

Future Directions

Despite factors that may limit the implications of the project, it can still inform ways to address prejudicial evidence. A particular limitation is the difficulty in having judges use new jury instructions to disregard evidence. Future projects can explore other avenues for how to apply moral foundations theory in order to mitigate the biasing potential of prejudicial evidence. For example, another safeguard used in court is having experts testify on psychological phenomenon, which has been used with experts testifying on the limitations of eyewitness memory among other issues (e.g., *State v. Guilbert*, 2012). It can be proposed that expert witnesses be allowed to present testimony on the underpinnings of moral foundations theory and why certain evidence may unduly influence jurors based on these moral values when relevant to the case.

Time of encoding and debiasing techniques has also been a topic of concern. Some studies that show that debiasing techniques presented after a biasing stimuli is presented can still reduce the impact that biasing information has (e.g., Walter & Murphy, 2018). However, others demonstrate the persistent effect that biases have on judgments, and that biases are difficult to correct for once formed (e.g., Brydges, Gignac, & Ecker, 2018). The latter would suggest that jury instructions address biases too late, and could be why they tend to be ineffective (e.g., Steblay et al., 2006). Future research

may look into this issue by looking at alternative debiasing techniques that target biases prior to encoding in order to prevent the bias from forming and influencing subsequent case judgments.

Another way to explore the prevalence of prejudicial evidence would be to look at real case transcripts to assess the types of cases and prejudicial evidence that is brought up most. Looking at real cases would provide a more accurate and objective base rate of how prevalent this evidence is. Looking at cases with prejudicial evidence and jury instructions would also allow researchers to compare case outcomes involving these issues. One limitation of this is that the cases would not be controlled so there would be several variables that could be accounting for any differences among cases. This also is a difficult avenue to explore though, as many times a case transcript costs money, and researchers would first have to have the case information and know what trial dates they were seeking transcripts from. By looking at real cases though, researchers would not have to rely on attorney's perceptions and could provide an objective stance on the issue.

Future research may also focus on real cases of sexual assault that involve prejudicial evidence and sexual history/predisposition. This evidence was perceived as one of the most common types of evidence in Study 3, which as discussed can have direct implications for victims testifying in court. Studies may look to further explore the effect that this evidence has by surveying victims who have testified and whether it is correlated with secondary victimization as shown in prior research (e.g., Campbell & Raja, 2005). Introducing this evidence therefore can impact not only the objectiveness of a jury (e.g., Schuller & Klippenstine, 2004), but also the well-being of a victim, making it important to understand the prevalence and wider implications of it.

Future projects should also aim to replicate any findings from this project with more robust stimuli. While Studies 1 and 2 draw on different moral foundations, there are several other case contexts that this can apply to, and it is important to see if these theories generalize to several cases. In order to address the limitations of this project though, future studies should aim to create prejudicial evidence that is more biasing in order to be able to detect whether certain jury instructions or safeguards are more effective at mitigating the bias. In addition, future studies should expand on the scope of the surveys used in this project, asking more questions related to the prejudicial evidence relevance and why it may or may not have been considered in judgments. Expanding the measures and questions asked would provide a more extensive look at how prejudicial evidence is perceived and be able to test for jury instructions' effectiveness. These studies overall would help contribute to the literature and expand on the impact of prejudicial evidence and jury instructions in more robust contexts.

Conclusion

Overall, this project sheds light on the potential biasing effect of some prejudicial evidence, and further supports other research showing that jury instructions to disregard evidence are ineffective. There are also a number of positive outcomes that can be looked at from the results of this project. Although prejudicial evidence at times biased a participant against the defendant, it didn't significantly impact verdicts. This finding is likely due to the evidence not being strong enough to sway judgments, but if this evidence is a realistic representation of the strength of evidence in real cases, it could translate to mean jurors will appropriately parse out prejudicial information. And, while it might make someone view a defendant as more or less likeable or to blame, won't

jeopardize the objectivity of their final verdict. In addition, when it does, it seems to be influenced by people's moral foundations, which attorneys can then be aware of and try to mitigate during voir dire and trial proceedings.

Lastly, although jury instructions appear ineffective there are alternative ways to reduce the impact of prejudicial evidence that are already in place. The best-case scenario would be to prevent jurors from ever hearing the prejudicial evidence, which according to the attorneys surveyed in this project, is the most likely scenario to happen. Attorneys are also aware of the limitations of instructions and prejudicial evidence admissibility, leaving room for researchers, legal professionals, and other fields to collaborate and continue addressing the issue and work towards a more just and objective system for all parties involved.

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APPENDIX A

PILOT STUDY A

Appendix A1.

Pilot A IRB Approval

ASU Knowledge Enterprise Development

EXEMPTION GRANTED

Tess Neal
NCIAS: Social and Behavioral Sciences, School of (SSBS)
602/543-5680
Tess.Neal@asu.edu

Dear Tess Neal:

On 11/23/2021 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Decision Making in Criminal Cases Pilot Study
Investigator:	Tess Neal
IRB ID:	STUDY00015021
Funding:	None
Grant Title:	None
Grant ID:	None
Documents Reviewed:	• Consent Form-Updated, Category: Consent Form; • IRB Protocol-Clean, Category: IRB Protocol; • Measures, VIgnettes, and Debrief.pdf, Category: Participant materials (specific directions for them); • Recruitment V2, Category: Recruitment Materials;

The IRB determined that the protocol is considered exempt pursuant to Federal Regulations 45CFR46 (2) Tests, surveys, interviews, or observation on 11/23/2021.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

If any changes are made to the study, the IRB must be notified at research.integrity@asu.edu to determine if additional reviews/approvals are required. Changes may include but not limited to revisions to data collection, survey and/or interview questions, and vulnerable populations, etc.

Appendix A2.

Pilot A Recruitment Script:

(Posted on Sona Subject Pool, Arizona State University's online student subject pool to recruit participants.)

Study Name: Decision Making in Criminal Cases

Brief Abstract:

A study on decision-making in a criminal legal case. Participation will take an estimated 40-60 minutes to complete.

Description: We invite you to take part in a research study examining how jurors make decisions in criminal legal cases. This particular case focuses on judgments about a criminal sexual assault case against the defendant. Participants will spend approximately 40-60 minutes reading a summary of the case and answering a short questionnaire and surveys related to their judgments of the case.

Eligibility Requirements: Must be 18 years or older.

Duration: 40-60 minutes total

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at kmmccowa@asu.edu.

Appendix A3.

Pilot A Consent Form:

Decision-making in Criminal Cases

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to participate if you are at least 18 years of age.

Why is this research being done?

The purpose of this study is to examine how jurors make decisions in criminal legal cases.

What happens if I say yes, I want to be in this study?

Participation includes reading a case of a criminal lawsuit against a defendant charged with sexual assault. You will be asked to fill out a short questionnaire and surveys regarding your judgments of the cases, as well as a brief demographic survey.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may skip questions, or stop participation at any time. There is no penalty for withdrawing from the study at any point.

How long will the research last?

We expect that individuals will spend a total of 40-60 minutes involved in the research study.

Are there any potential risks in taking part in this study?

The case summary is about sexual assault allegations, a sensitive topic that may be uncomfortable for some individuals. The case itself recounts evidence of that night, and thus has details pertaining to the assault that may be distressing. This is no more though than what jurors in real cases would be exposed to, or what one might see in news and media outlets. Your participation in this study is voluntary. If you choose not to participate or to withdraw from the study at any time, there will be no penalty. However, the study can be done virtually anywhere, so there is little inconvenience apart from the time it takes to complete.

Will being in this study help me in any way?

Participants will be given 2 SONA psychology research participation credits for their time spent on the study. Credits will be granted and recorded through the SONA system.

Aside from this, there are no direct benefits, other than possible interest in the case material.

What happens to the information collected for the research?

All responses will be kept confidential. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information aside from general information collected through a demographic survey (e.g. age, gender). The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

If you agree to take part in this study please indicate in the box provided below, and proceed to the next page.

[Qualtrics question: "I agree to take part in the study" with a check box response]

Appendix A4.

Pilot Study A Case Transcript and Evidence.

Groups 1 + 2: No prejudicial evidence, and full case conditions

The base of this transcript was displayed in both conditions. One block was only shown within the full case condition –this block was part of the cross examination of the complainant, Jane Doe, and contained prejudicial evidence. This block is bolded and specified within the transcript which condition it applies to.

Case: State v. Nathan Smith

Start of Block: Judge's Opening Instructions

Judge's Opening Instructions

Judge: First, a word of welcome to our jurors. I am Judge John Munson and will be presiding over the case you will hear and decide.

The defendant, Nathan Smith, is charged with sexual assault. Now that the trial is beginning, there are some important matters to share with you so that you will better understand what will happen during the trial.

As jurors, you have three major duties. The first is to carefully listen to and look at the evidence of what happened in this case. Second, you must carefully listen to and follow the law that applies in the case. Finally, you will reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged.

Every defendant is presumed innocent by law. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt. The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, based on the evidence or lack thereof, if you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Under Arizona law, ARS 13 1406, sexual assault or rape requires the prosecutor prove that:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and
2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;
2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;
3. The victim is intentionally deceived as to the nature of the act;
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

All of the witnesses took their oaths before the jury was seated. I'll now call on the two attorneys for their opening statements. The prosecutor, Mr. Paul McReed, will go first, followed by the defendant's attorney, Mr. David Wharton.

The prosecution may now deliver its opening statement.

End of Block: Judge's Opening Instructions

Start of Block: Prosecution's Opening Statement

Prosecution's Opening Statement

Mr. McReed: Thank you your honor. Members of the jury, my name is Paul McReed. I am a prosecutor with the District Attorney's Office.

Let me take a brief moment to give you an overview of the case. The state has charged the defendant, Nathan Smith, with sexual assault. On the evening of December 18th, the victim, Jane Doe attended her friend, Molly Wright's, holiday party. It was there that she ran into the defendant, a man she had met before. You will hear that Jane Doe spent the night talking with the defendant, Nathan, and the other guests, but what the evidence will show is that during that night the defendant followed Jane upstairs where he raped her and engaged in nonconsensual sex. Given the evidence, the defendant was arrested and charged with sexual assault. Over the course of this trial, you will hear evidence that will prove the defendant is responsible for this tragic event that occurred that night.

You will hear testimony supporting the case of rape through physical evidence presented by a nurse examiner. As well as accounts and evidence supporting a sexual act occurring, and the defendant being upstairs with the complainant at the time the assault would have occurred. At the end of the trial I ask you to return a verdict of guilty. Thank you.

Judge: The defense may now give its opening statement.

End of Block: Prosecution's Opening Statement

Start of Block: Defense's Opening Statement

Defense's Opening Statement

Mr. Wharton: Thank you. Members of the jury, my name is David Wharton, and I practice law here in Grand Oak County. My client, Nathan Smith, is seated next to me.

After you have heard all the witnesses in this case, I will ask you to find Nathan not guilty of sexual assault, since the government will not be able to prove his guilt beyond a reasonable doubt. As the judge just explained, when the prosecution fails to meet its heavy burden of proof, it is your duty as the jury to acquit the defendant.

First, the evidence you will hear from Dr. Hart offers nothing conclusive tying my client to any acts of sexual violence that may occurred that night, let alone whether an assault occurred at all. If anything, you will hear statements confirming the lack of evidence found in this case, and witnesses that attest to my client's respectful nature and upstanding history.

You will see that the circumstances relied on by the prosecution, even when considered all together, create nothing more than a mere speculation and will not resolve reasonable doubt about whether my client committed the crime in question.

Judge: Thank you counsel. Now, we'll begin with the evidence. The prosecution may call its first witness.

End of Block: Defense's Closing Statement

Start of Block: Direct Examination of Dr. Hart

Prosecution's Direct Examination of Dr. Hart

Mr. McReed: Your honor, the state calls Dr. Hart to the stand.

Mr. McReed: Dr. Hart, would you please tell the judge and jury your full name and employment?

Dr. Hart: My name is Abigail Hart, and I am a Nurse Practitioner at the Grand Oak Medical Center. I received my Doctorate of Nursing Practice and am a trained Sexual Assault Nurse Examiner, sometimes called a SANE nurse.

Mr. McReed: Would you please explain what a SANE nurse does?

Dr. Hart: We are nurses who are trained to perform forensic medical exams for patients who have experienced sexual assault or abuse. We go through specialized education and clinical training to become certified.

Mr. McReed: So would you say you are highly experienced and familiar with the proper protocols and recognizing signs of rape?

Dr. Hart: Yes, I've performed numerous rape kit exams in my 16 years as a Nurse, and I regularly follow the standards set and include all recommended content that a victim consents to.

Mr. McReed: Can you briefly describe your exam with Jane Doe?

Dr. Hart: Yes, she had come to the clinic after reporting the abuse. We often get patients who come in after being referred by police in order to collect any evidence for their case. I began by collecting some general information about her physical state and the night of the event. The patient seemed pretty distressed when she first came in.

Mr. McReed: Thank you Dr. Hart. What about her physical state?

Dr. Hart: Since it had been a few days since the reported event took place, I wasn't able to collect much external evidence.

Mr. McReed: Why is that?

Dr. Hart: Unfortunately, since the patient had showered, any external bodily fluids would likely have been washed off, especially with the amount of time between the night of the alleged assault and the exam. Again, this is not uncommon though. We get victims who come in days after an assault.

Mr. McReed: What evidence were you able to collect then in this exam?

Dr. Hart: We collected swabs of suspected semen and performed an anogenital exam.

Mr. McReed: Can you explain to the jury what the purpose of the physical and anogenital exam is?

Dr. Hart: We do this to detect signs of trauma and evidence of assault. This includes looking at any tissue injury, physiologic changes, foreign materials, redness, bruising, swelling, lacerations, and other signs of trauma to the area.

Mr. McReed: What did you find from this exam?

Dr. Hart: There were initial signs of redness and swelling in the vaginal area, and the patient had mentioned pain and tenderness, so we decided to use a dye staining technique often used to detect trauma that may not otherwise be immediately visible to the naked eye. This turned some of the cervical tissue white, which indicates abnormal tissue that was inflamed.

Mr. McReed: Did you form an opinion regarding the presence of injury or trauma based on this?

Dr. Hart: Yes, from my experience and based on the exam, it was consistent with injury to the cervix and vaginal opening that can indicate signs of assault.

Mr. McReed: Thank you, Dr. Hart. No further questions.

Judge: Please be seated, Mr. McReed. Cross-examination?

End of Block: Direct Examination of Dr. Hart

Start of Block: Cross Examination of Dr. Hart

Defense's Cross Examination of Dr. Hart

Mr. Wharton: Dr. Hart, you mentioned that you collected swabs of suspected semen. What were you able to conclude from this?

Dr. Hart: We were able to confirm the presence of semen at the time of collection, but couldn't extract enough quality DNA to confirm a single source of the semen.

Mr. Wharton: So you were not able to confirm that my client, Nathan Smith was the source?

Dr. Hart: No.

Mr. Wharton: What about the cervical tissue injury? Can this be present after consensual sex as well?

Dr. Hart: Yes, but with the extent of damage, it likely would have been from very rough or rigorous sex if it was consensual.

Mr. Wharton: Was there any other signs of bruising that would indicate resistance?

Dr. Hart: At the point of the exam, no we did not find any bruising or lacerations to the body.

Mr. Wharton: Thank you, that's all I have, your honor.

Mr. McReed: Your honor, the prosecution asks for a re-direct.

Judge: Proceed, Mr. McReed.

End of Block: Cross Examination of Dr. Hart

Start of Block: Re-Direct of Dr. Hart

Prosecution's Re-Direct of Dr. Hart

Mr. McReed: Dr. Hart, you stated that there were no signs of bruising on the complainant at the time of the exam. Are bruises commonly found in cases of force or resistance?

Dr. Hart: Not always. If someone is being held down, bruising would likely depend on the individual and extent of force used on them. In this case, given the lapse in time between when the event would have occurred and the exam the bruising also could have subsided.

Mr. McReed: So this does not conclusively prove that there was no force or resistance?

Dr. Hart: Correct.

Mr. McReed: Thank you. That's all, your honor.

End of Block: Re-Direct of Dr. Hart

Start of Block: Direct Examination of Officer Stark

Prosecution's Direct Examination of Officer Stark

Judge: The state may call its next witness to the stand.

Mr. McReed: Please state your name and describe your employment.

Officer Stark: My name is James Stark. I am a police officer at the Grand Oak police department. I was assigned to Jane Doe's case when she came in.

Mr. McReed: Would you please tell the jury your department's work, the day that the report was made?

Officer Stark: Yes, Jane Doe had come in on a Tuesday afternoon, three days after the reported assault took place. I was one of the officers on duty that day, so I was assigned to her case and took her statement.

Mr. McReed: Can you briefly describe to us what Jane told you in her statement?

Officer Stark: She wanted to report a rape she said happened on the 18th, that previous Saturday. She said she had been at a friend, Molly's house for a holiday party, which is where she saw the defendant. She said she remembered having a couple of drinks and that later in the night her memory got hazy, so she went upstairs to rest. She stated feeling disoriented and weak when the defendant came in the room and started kissing her. She reported that he proceeded to have sex with her without her consent.

Mr. McReed: Did she report any resistance to the act?

Officer Stark: Yes, she said she tried to push him off of her, but he would not stop.

Mr. McReed: Did the complainant say when this would have occurred?

Officer Stark: According to her timeline, the assault would have occurred between 10:00 pm when she remembers feeling dizzy, and midnight when she remembers waking up after the assault.

Mr. McReed: What happened next?

Officer Stark: I had referred her to Grand Oak Medical Center if she wanted to get a physical exam for a rape kit. This is fairly standard for when a person makes a report of rape. It would help get any evidence we need to build a case against the suspect.

Mr. McReed: Was there any other evidence you were able to collect outside of the rape kit?

Officer Stark: We were able to get a timeline of events from other people at the party. They confirmed her timeline and reported that they did not see her again that night after

she had went upstairs. Three of the people we talked to also mentioned seeing the defendant go upstairs later that evening.

Mr. McReed: Were you able to collect any evidence from the room she said she was in?

Officer Stark: We found a condom wrapper in the garbage next to the bed, but couldn't find any used condom to try to collect DNA from. Based on the wrapper supporting that a sexual encounter had occurred in that room that night though, we brought the defendant in for questioning.

Mr. McReed: When you interrogated Nathan, did he say anything about that night and seeing Jane Doe upstairs?

Officer Stark: He confirmed that he was at the party, but claimed that he didn't remember being upstairs with the complainant.

Mr. McReed: The defendant later changed his story, correct?

Officer Stark: That's correct. After talking with other witnesses at the party, it came to my attention that others had in fact seen him go upstairs at some point that night. After probing the defendant more on this, he later admitted to being upstairs at around the same time of when the assault would have occurred.

Mr. McReed: Thank you, no further questions your honor.

End of Block: Direct Examination of Officer Stark

Start of Block: Cross Examination of Officer Stark

Defense's Cross Examination of Officer Stark

Mr. Wharton: Officer Stark. At any point did my client, Nathan Smith, admit in any way or imply he had raped the complainant?

Officer Stark: No.

Mr. Wharton: And when you interrogated my client, did he seem nervous or fail to answer any of your questions?

Officer Stark: About average, I guess. And no, he was cooperative throughout the investigation I would say.

Mr. Wharton: What about the complainant, Jane Doe. Did she seem upset or especially emotional when she came in?

Officer Stark: No, I would say she was pretty composed when she was making her report with me.

Mr. Wharton: Aside from a condom wrapper, was there anything else in the room that would suggest signs of resistance and a rape had taken place?

Officer Stark: No, but the room had seemed to be tidied up since the party so we weren't able to find much evidence from it.

Mr. Wharton: That's all, your honor.

Judge: Thank you. Officer Start, you are excused. Mr. McReed, your next witness?

End of Block: Cross Examination of Officer Stark

Start of Block: Direct Examination of Jane Doe

Prosecution's Direct Examination of Jane Doe

Mr. McReed: Your honor, the prosecution now calls the complainant, Jane Doe, to the stand.

Mr. McReed: Please state your full name for the record.

Jane Doe: My name is Jane Doe.

Mr. McReed: Jane, can you tell the jury about what happened the night of the 18th?

Jane Doe: I had gone to a holiday party that night at my friend Molly's house.

Mr. McReed: Were you drinking at this party?

Jane Doe: I had a few drinks, but no more than usual.

Mr. McReed: What happened later that night?

Jane Doe: Around four hours into the night I started feeling a bit faint, so I went upstairs to find somewhere to lay down. That's when the defendant walked in and started touching and kissing me.

Mr. McReed: What was your mental state at this time?

Jane Doe: Everything was blurry and I felt like I was struggling to gain control over my body.

Mr. McReed: What happened next?

Jane Doe: The next thing I remember was the defendant on top of me, raping me.

Mr. McReed: In the report you mentioned trying to fight off the defendant, can you tell the jury more about this?

Jane Doe: When I realized what was happening I tried to push him off of me, but he held me down. I felt like I couldn't move, and I was scared he would hurt me if I tried to resist more.

Mr. McReed: Prior to going upstairs, do you remember seeing the defendant at this party?

Jane Doe: Yes, I had met him a couple times before through Molly, so I had recognized him when I got to the party that night.

Mr. McReed: And did you recognize him as the man you saw on top of you later that night?

Jane Doe: Yes.

Mr. McReed: Can you tell the jury what happened when you regained consciousness?

Jane Doe: I remember waking up a couple hours later, around midnight, in the same room. When I woke up the defendant was gone, and my underwear and pants were around my ankles.

Mr. McReed: At this point what were you feeling?

Jane Doe: I felt pain in my abdomen and pelvis.

Mr. McReed: Thank you, Jane. Nothing further your honor.

End of Block: Direct Examination of Jane Doe

Start of Block: Cross Examination of Jane Doe

Defense's Cross Examination of Jane Doe

Mr. Wharton: Jane, can you remind the jurors, at what point did you decide to report what happened as an assault?

Jane Doe: I reported the assault three days later.

Mr. Wharton: So it took you almost three full days for you to think of what happened as rape?

Jane Doe: There was never any part of me that doubted I was raped that night. When I got home Sunday though I wasn't sure if I wanted to go through the legal system, it's been emotional to relive.

Mr. Wharton: You had met the defendant prior to this night though, correct?

Jane Doe: Yes. I last saw him at another one of her parties around this time last year.

Mr. Wharton: And have you ever felt victimized or unsafe in any of your other interactions with my client, Nathan?

Jane Doe: No.

Cross Exam: Prejudicial Evidence – this block was only shown to those in the full case condition, those in the case omitting prejudicial evidence were not shown this block

Mr. Wharton: In fact, you've previously engaged in consensual sex with my client. During which time you were also seeing your current boyfriend, correct?

Jane Doe: Correct, but this was over a year ago, and we have not maintained much contact since. It was a one-time mistake.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

End of Block: Cross Examination of Jane Doe

Start of Block: Direct Examination of Molly Wright

Defense's Direct Examination of Molly Wright

Mr. Wharton: The defense calls its first witness, Molly Wright.

Mr. Wharton: Can you please state your name and relationship to the defendant please?

Molly Wright: My name is Molly Wright, I met Nathan my Senior year of college, we've been friends for almost five years now. It was my party that we were at that night.

Mr. Wharton: Can you tell the jury a little about what Nathans is like from your experiences with him?

Molly Wright: Nathan has always been a great friend, very respectful and caring.

Mr. Wharton: Has he ever made any unwanted sexual advances to you or anyone else of your knowledge?

Molly Wright: No, we've always had a strictly friendship level relationship and his past girlfriends have all ended on good terms to my knowledge.

Mr. Wharton: Did you see the defendant the night of your party with Jane at all?

Molly Wright: Yes, earlier in the night I saw them talking in the kitchen.

Mr. Wharton: Did Jane seem at all uncomfortable during this interaction from what you saw?

Molly Wright: No. They seemed to be talking quite a bit so it seemed they were having a good time.

Mr. Wharton: Did you notice any unwelcomed touching or flirting from the defendant?

Molly Wright: No, if anything it seemed like Jane was encouraging him to flirt at times.

Mr. Wharton: Thank you. Nothing further your honor.

End of Block: Direct Examination of Molly Wright

Start of Block: Cross Examination of Molly Wright

Prosecution's Cross Examination of Molly Wright

Mr. McReed: What was your relationship to Jane Doe?

Molly Wright: I was friends with Jane for around 3 years when she attended my party. We had met through work shortly after college.

Mr. McReed: Did you ever know Jane to get carried away with drinking?

Molly Wright: No, she's always been very put together when we've gone out. As coworkers though we tend to drink in more formal settings though, so I can't speak much to that.

Mr. McReed: Were you surprised though to see her feeling ill later that night?

Molly Wright: Yes, I was the one who suggested she go lay down. I didn't want her trying to get home alone, so I told her to sleep in one of my guest rooms upstairs.

Mr. McReed: After she had gone upstairs, did you see anyone else go up that night?

Molly Wright: Yes, Nathan went upstairs that night, said he had to use the restroom, and that the one downstairs was in use.

Mr. McReed: Did you see him come back downstairs after this?

Molly Wright: No, I didn't see him come back down. But, I saw him around a half hour later when I went into the kitchen.

Mr. McReed: So he could have been up there for a while then?

Molly Wright: I suppose, but I was in the living room entertaining guests most of the night so he could have come down earlier and I just not have noticed it.

Mr. McReed: Do you remember seeing anyone else go upstairs?

Molly Wright: No, but again I was in the living room entertaining guests so I wasn't really paying attention.

Mr. McReed: Nothing further your honor.

Judge. Thank you, you may step down. Defense?

Mr. Wharton: The defense rests your honor.

End of Block: Cross Examination of Molly

Start of Block: Closing Instructions

Closing Instructions

Judge: Members of the jury, you have now heard all the evidence in the case. I want to instruct you on the law that you must follow in deciding this case. I may repeat what I stated at the outset of the trial because of its importance.

You must now reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged. You must not think the defendant is guilty because he has been arrested for or charged with a crime. Those are merely procedures to bring the case and the defendant to court.

Every defendant is presumed by law to be innocent. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt.

The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, if you think, based on the evidence or the lack of it, that there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The defendant in this case is charged with the crime of sexual assault. Before he can be found guilty, the prosecution must prove all of the following four things beyond a reasonable doubt:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and
2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;
2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;
3. The victim is intentionally deceived as to the nature of the act;
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

Judge: With that said, I'll now call on the two attorneys for their closing arguments. The prosecutor, Mr. McReed, will go first, followed by the defendant's attorney, Mr. Wharton.

End of Block: Closing Instructions

Start of Block: Prosecution's Closing Statement

Prosecution's Closing Statement

Mr. McReed: Members of the jury. The evidence today proves that Nathan Smith, the defendant in this case, went to that party that night and raped Jane Doe. There was clear evidence supporting Jane's account that a sexual act occurred that night. Combined with the physical evidence provided by Dr. Hart paints a clear and disturbing image of the pain that Jane suffered at the hands of the defendant. Even Molly Wright, a friend of the defendant, confirmed that she saw the defendant follow Jane upstairs that night.

When you consider all of the evidence in the case, the defendant's guilt has been proven beyond a reasonable doubt.

I ask you for your verdict of guilty.

Judge: Thank you. Mr. Wharton, you may make your closing argument on behalf of the defendant.

End of Block: Prosecution's Closing Statement

Start of Block: Defense's Closing Statement

Defense's Closing Statement

Mr. Wharton: Jurors - what you heard here today was circumstantial evidence at best. The prosecution wants you to put away my client, a young man with no prior record, all based on him being at the same place at the same time, at a party where he happened to be seen talking to the complainant.

Any physical evidence found provides no conclusive evidence that this assault occurred or tying my client to any alleged event.

All the evidence leaves you with, if it adds up to anything at all, is a mere suspicion that the defendant could have, or might have been guilty. But the judge told you that a person cannot be convicted of a crime in this country on the basis of a suspicion. You must be convinced of a person's guilt beyond a reasonable doubt. This evidence leaves substantial room for doubt. You must return a verdict of not guilty.

Judge: Members of the jury, that concludes the trial except for your decision, or verdict. Thank you

End of Block: Defense's Closing Statement

Group 3: Prejudicial Evidence only:

Participants in this condition only saw a brief summary with the prejudicial evidence, without the full case transcript being provided.

You are hereby summoned as a member of the jury for the case of State V. Nathan Smith, who is being charged with sexual assault. The complainant, Jane Doe, has accused the defendant of sexually assaulting her at a holiday party they both attended.

Under Arizona law, ARS 13 1406, sexual assault or rape requires the prosecutor prove that:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and

2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;

2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant; 3. The victim is intentionally deceived as to the nature of the act;

4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

During the trial, the complainant was put on the stand to testify on her recollection of the events of that night. The following information was presented during the cross examination of the complainant.

Prejudicial Evidence (Defendant):

Mr. Wharton: In fact, you've previously engaged in consensual sex with my client. During which time you were also seeing your current boyfriend, correct?

Jane Doe: Correct, but this was over a year ago, and we have not maintained much contact since. It was a one-time mistake.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Prejudicial Evidence (Defendant's Friend):

Mr. Wharton: In fact, you've previously engaged in consensual sex with my client's friend. During which time you were also seeing your current boyfriend, correct?

Jane Doe: Correct, but this was over a year ago, and we have not maintained much contact since. It was a one-time mistake.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Appendix A5.

Pilot Study A Measures

You have now heard evidence pertaining to the case, and the summary of the judge's instructions on the law. If you need a reminder of the legal standards of guilt for sexual assault, please click here to open a PDF of the law in question that you may refer back to (this PDF will be linked, see below).

Under Arizona law, ARS 13 1406, sexual assault or rape requires the prosecutor prove that:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and

2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;

2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;

3. The victim is intentionally deceived as to the nature of the act;

4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

Please answer the following questions as a juror in the case.

Verdict

Do you find the defendant____?

- o Guilty
- o Not Guilty

Confidence

How confident are you in your decision?

- o 1 Not at all Confident
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7
- o 8
- o 9
- o 10 Very Confident

Guilt_Likert

How guilty do you believe the defendant, Nathan Smith is?

- o 1 Not at all Guilty
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7
- o 8
- o 9
- o 10 Very Guilty

Likelihood

In your view, what is the likelihood (percentage wise) that the defendant, Nathan Smith sexually assaulted the complainant, Jane Doe?

0 10 20 30 40 50 60 70 80 90 100

Pros_Strength

Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the prosecution's case?

- o 1 Very Weak
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7
- o 8
- o 9
- o 10 Very Strong

Def_Strength

Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the defense's case?

- o 1 Very Weak
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7
- o 8
- o 9
- o 10 Very Strong

Display This Question (only for those in the full case, and case omitting prejudicial evidence conditions):
If Prosecution’s Direct Examination of Dr. Hart Mr. McReed: Your honor, the state calls Dr. Hart to t... Is Displayed
Evidence_Full

The following statements relate to evidence presented in the trial. Please indicate the extent to which you think each piece of evidence supported the defense's case or the prosecution's case. Where neutral indicates that you felt the evidence did not support one side more than the other. (1 = *strongly supports the prosecution’s case*, 2 = *supports the prosecution’s case*, 3 = *somewhat supports the prosecution’s case*, 4 = *neutral*, 5 = *somewhat supports the defendant’s case,* 6 = *supports the defendant’s case*, 7 = *strongly supports the defendant’s case*)

1 2 3 4 5 6 7

Evidence of cervical tissue damage
Witnesses saw the defendant, Nathan Smith, go upstairs after the complainant, Jane Doe
No evidence of bruising
No DNA evidence
Report of resistance
Condom wrapper found in room
Inconsistent story from the defendant, Nathan Smith
Complainant, Jane Doe's, physical pain
The complainant, Jane Doe, was seen talking and flirting with the defendant, Nathan Smith
The complainant, Jane Doe took 3 days to report the crime

Display This Question (only for those in the prejudicial evidence (related to the defendant) condition):
If Mr. Wharton: In fact, you’ve previously engaged in consensual sex with my client. During which ti... Is Displayed
Evidence_Prejudicial

You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant, Nathan Smith. Did you find this evidence to be in support of the prosecution's case, or the defense's case?

- o Supported the Prosecution's Case
- o Supported the Defense's Case

Display This Question (only display for those who responded that the prejudicial evidence supported the prosecution’s case):

If You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant,... = Supported the Prosecution's Case

Q54 How strong was that evidence in support of the prosecution's case?

- o 1 Very Weak
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Strong

Display This Question (only display for those who responded that the evidence supported the defense's case):
If You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant,... = Supported the Defense's Case

Q55 How strong was that evidence in support of the defense's case?

- o 1 Very Weak
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Strong

Display This Question (only for those in the prejudicial evidence (related to the defendant's friend) condition):
If Mr. Wharton: In fact, at last year's party, you engaged in consensual sex with my client's friend... Is Displayed
Prej_Friend

You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant's friend. Did you find this evidence to be in support of the prosecution's case, or the defense's case?

- o Supported the Prosecution's Case
- o Supported the Defense's Case

Display This Question (only display for those who responded that the evidence supported the prosecution's case):
If You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant'... = Supported the Prosecution's Case

Q77 How strong was that evidence in support of the prosecution's case?

- o 1 Very Weak

- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Strong

Display This Question (only display for those who responded that the evidence supported the prosecution’s case):
If You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant'... = Supported the Defense's Case

Q76 How strong was that evidence in support of the defense's case?

- o 1 Very Weak
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Strong

Resp_D

How responsible do you feel the defendant, Nathan Smith, is for what happened?

- o 1 Not at all responsible
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Responsible

Resp_P

How responsible do you feel the complainant, Jane Doe, is for what happened?

- o 1 Not at all responsible
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Responsible

AC

This question is to ensure you are paying attention to the study. Please select 7 Strongly Agree.

- o 1 Strong Disagree
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Strong Agree

Credibility

How credible do you find the complainant, Jane Doe?

- o 1 Not at all Credible
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Credible

DBA_1

The defendant, Nathan Smith, was fully aware of what he was doing.

- o 1 Strongly Disagree
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Strongly Agree

DBA_2

The defendant, Nathan Smith, did not intend to hurt the complainant.

- o 1 Strongly Disagree
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Strongly Agree

VBA_1

To what extent did the complainant, Jane Doe, act carelessly?

- o 1 Not at All
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Much So

VBA_2

To what extent did the complainant, Jane Doe, lead the defendant on?

- o 1 Not at All
- o 2
- o 3
- o 4
- o 5
- o 6
- o 7 Very Much So

Demographics

Gender

What is your gender?

- o Male
- o Female
- o Another identity (please specify)

_____

Age

What is your age?

_____

Race

What do you consider to be your race or ethnicity? Please check all that apply.

- ▢ African American
- ▢ Asian
- ▢ Hispanic (non-white)
- ▢ Hispanic (white)
- ▢ Native American
- ▢ Pacific Islander
- ▢ White
- ▢ Other (please specify)

_____

Religion

What is your religious preference?

- o Jewish
- o Protestant
- o Muslim
- o Orthodox
- o Roman Catholic
- o Mormon
- o Atheist
- o Prefer not to answer
- o Other (please specify)

_____

Political

Ideologically, which one of the following best describes you?

- o Strongly Liberal
- o Moderately Liberal
- o Weakly Liberal
- o Centrist/Middle of the Road
- o Weakly Conservative
- o Moderately Conservative
- o Strongly Conservative

Q63

Have you ever been summoned for jury duty?

- o Yes
- o No

Q64

Have you ever served on a jury?

- o Yes, Criminal
- o Yes, Civil
- o Yes, Criminal and Civil
- o No

Q65

What do you think was the purpose of this study?

_____

_____

Q66

Do you have any final comments about the cases or study you would like to share?

_____

_____

APPENDIX B

STUDY 1 MATERIALS

Appendix B1.

Study 1 IRB Approval

ASU Knowledge Enterprise Development

EXEMPTION GRANTED

Tess Neal
NCIAS: Social and Behavioral Sciences, School of (SSBS)
602/543-5680
Tess.Neal@asu.edu

Dear Tess Neal:

On 2/17/2022 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Moral Foundations and Prejudicial Evidence: Helping Jurors Adhere to Jury Instructions - Study 1
Investigator:	Tess Neal
IRB ID:	STUDY00015464
Funding:	Name: Arizona State University (ASU)
Grant Title:	
Grant ID:	
Documents Reviewed:	• Consent.pdf, Category: Consent Form; • GPSA Application.PDF, Category: Sponsor Attachment; • GPSA Graduate Research and Support Program Award.pdf, Category: Sponsor Attachment; • Measures.pdf, Category: Measures (Survey questions/Interview questions /interview guides/focus group questions); • Recruitment.pdf, Category: Recruitment Materials; • Study 1 IRB.docx, Category: IRB Protocol; • Transcript Vignettes, Category: Participant materials (specific directions for them);

The IRB determined that the protocol is considered exempt pursuant to Federal Regulations 45CFR46 (2) Tests, surveys, interviews, or observation on 2/17/2022.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

If any changes are made to the study, the IRB must be notified at research.integrity@asu.edu to determine if additional reviews/approvals are required. Changes may include but not limited to revisions to data collection, survey and/or interview questions, and vulnerable populations, etc.

Appendix B2.

Recruitment Script:

(This script will be posted on Amazon's Mechanical Turk online survey platform to recruit participants.)

Title: Decision Making in Criminal Cases

Purpose: The purpose of this study is to examine how jurors make decisions in criminal legal cases. This particular case focuses on decisions about a criminal sexual assault case, looking at the case proceedings and evidence presented for and against the defendant accused of the sexual assault. Participation will include reading the case transcript, and answering a series of questions on your judgments of the case and demographics.

Time Required: This study will last for about 45 minutes of your time.

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at *kmmccowa@asu.edu*.

Appendix B3.

Consent Form:

Decision Making in Criminal Cases

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to participate if you are at least 18 years of age, and a U.S. citizen.

Why is this research being done?

The purpose of this study is to examine how jurors make decisions in criminal legal cases.

What happens if I say yes, I want to be in this study?

Participation includes reading a case of a criminal lawsuit against a defendant charged with sexual assault. You will be asked to fill out a short questionnaire and surveys regarding your judgments of the cases, as well as a brief demographic survey.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may skip questions, or stop participation at any time. There is no penalty for withdrawing from the study at any point.

How long will the research last?

We expect that individuals will spend approximately 45 minutes involved in the research study.

Are there any potential risks in taking part in this study?

The case transcript is about sexual assault allegations, a sensitive topic that may be uncomfortable for some individuals. The case itself recounts evidence of the night of the alleged assault, and thus has details pertaining to events that may be distressing. This is no more though than what jurors in real cases would be exposed to, or what one might see in news and media outlets. Your participation in this study is voluntary. If you choose not to participate or to withdraw from the study at any time, there will be no penalty.

Will being in this study help me in any way?

Participants will receive $2.00 in monetary compensation for their participation. Aside from this, there are no direct benefits, other than possible interest in the case material.

What happens to the information collected for the research?

All responses will be kept confidential. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information aside from general information collected through a demographic survey (e.g. age, gender). The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

If you agree to take part in this study please indicate in the box provided below, and proceed to the next page.

[Qualtrics question: "I agree to take part in the study" with a check box response]

Appendix B4.

Case Transcript

The base of this transcript will be displayed in all conditions, unless specified. Certain blocks are only shown within certain conditions – specifically blocks in the cross examination of the complainant, Jane Doe. These blocks will be bolded and specified within the transcript which conditions they apply to.

Case: State v. Nathan Smith

Start of Block: Judge's Opening Instructions

Judge's Opening Instructions

Judge: First, a word of welcome to our jurors. I am Judge John Munson and will be presiding over the case you will hear and decide.

The defendant, Nathan Smith, is charged with sexual assault. Now that the trial is beginning, there are some important matters to share with you so that you will better understand what will happen during the trial.

As jurors, you have three major duties. The first is to carefully listen to and look at the evidence of what happened in this case. Second, you must carefully listen to and follow the law that applies in the case. Finally, you will reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged.

Every defendant is presumed innocent by law. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt. The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, based on the evidence or lack thereof, if you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Under Arizona law, ARS 13 1406, sexual assault or rape requires the prosecutor prove that:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and
2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;

2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;
3. The victim is intentionally deceived as to the nature of the act;
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

All of the witnesses took their oaths before the jury was seated. I'll now call on the two attorneys for their opening statements. The prosecutor, Mr. Paul McReed, will go first, followed by the defendant's attorney, Mr. David Wharton.

The prosecution may now deliver its opening statement.

End of Block: Judge's Opening Instructions

Start of Block: Prosecution's Opening Statement

Prosecution's Opening Statement

Mr. McReed: Thank you your honor. Members of the jury, my name is Paul McReed. I am a prosecutor with the District Attorney's Office.

Let me take a brief moment to give you an overview of the case. The state has charged the defendant, Nathan Smith, with sexual assault. On the evening of December 18th, the victim, Jane Doe attended her friend, Molly Wright's, holiday party. It was there that she ran into the defendant, a man she had met before. You will hear that Jane Doe spent the night talking with the defendant, Nathan, and the other guests, but what the evidence will show is that during that night the defendant followed Jane upstairs where he raped her and engaged in nonconsensual sex. Given the evidence, the defendant was arrested and charged with sexual assault. Over the course of this trial, you will hear evidence that will prove the defendant is responsible for this tragic event that occurred that night.

You will hear testimony supporting the case of rape through physical evidence presented by a nurse examiner, as well as accounts and evidence supporting a sexual act occurring, and the defendant being upstairs with the complainant at the time the assault would have occurred. At the end of the trial I ask you to return a verdict of guilty. Thank you.

Judge: The defense may now give its opening statement.

End of Block: Prosecution's Opening Statement

Start of Block: Defense's Opening Statement

Defense's Opening Statement

Mr. Wharton: Thank you. Members of the jury, my name is David Wharton, and I practice law here in Grand Oak County. My client, Nathan Smith, is seated next to me.

After you have heard all the witnesses in this case, I will ask you to find Nathan not guilty of sexual assault, since the government will not be able to prove his guilt beyond a reasonable doubt. As the judge just explained, when the prosecution fails to meet its heavy burden of proof, it is your duty as the jury to acquit the defendant.

First, the evidence you will hear from Dr. Hart offers nothing conclusive tying my client to any acts of sexual violence that may occurred that night, let alone whether an assault occurred at all. If anything, you will hear statements confirming the lack of evidence found in this case, and witnesses that attest to my client's respectful nature and upstanding history.

You will see that the circumstances relied on by the prosecution, even when considered all together, create nothing more than a mere speculation and will not resolve reasonable doubt about whether my client committed the crime in question.

Judge: Thank you counsel. Now, we'll begin with the evidence. The prosecution may call its first witness.

End of Block: Defense's Closing Statement

Start of Block: Direct Examination of Dr. Hart

Prosecution's Direct Examination of Dr. Hart

Mr. McReed: Your honor, the state calls Dr. Hart to the stand.

Mr. McReed: Dr. Hart, would you please tell the judge and jury your full name and employment?

Dr. Hart: My name is Abigail Hart, and I am a Nurse Practitioner at the Grand Oak Medical Center. I received my Doctorate of Nursing Practice and am a trained Sexual Assault Nurse Examiner, sometimes called a SANE nurse.

Mr. McReed: Would you please explain what a SANE nurse does?

Dr. Hart: We are nurses who are trained to perform forensic medical exams for patients who have experienced sexual assault or abuse. We go through specialized education and clinical training to become certified.

Mr. McReed: So would you say you are highly experienced and familiar with the proper protocols and recognizing signs of rape?

Dr. Hart: Yes, I've performed numerous rape kit exams in my 16 years as a Nurse, and I regularly follow the standards set and include all recommended content that a victim consents to.

Mr. McReed: Can you briefly describe your exam with Jane Doe?

Dr. Hart: Yes, she had come to the clinic after reporting the abuse. We often get patients who come in after being referred by police in order to collect any evidence for their case. I began by collecting some general information about her physical state and the night of the event. The patient seemed pretty distressed when she first came in.

Mr. McReed: Thank you Dr. Hart. What about her physical state?

Dr. Hart: Since it had been a few days since the reported event took place, I wasn't able to collect much external evidence.

Mr. McReed: Why is that?

Dr. Hart: Unfortunately, since the patient had showered, any external bodily fluids would likely have been washed off, especially with the amount of time between the night of the alleged assault and the exam. Again, this is not uncommon though. We get victims who come in days after an assault.

Mr. McReed: What evidence were you able to collect then in this exam?

Dr. Hart: We collected swabs of suspected semen and performed an anogenital exam.

Mr. McReed: Can you explain to the jury what the purpose of the physical and anogenital exam is?

Dr. Hart: We do this to detect signs of trauma and evidence of assault. This includes looking at any tissue injury, physiologic changes, foreign materials, redness, bruising, swelling, lacerations, and other signs of trauma to the area.

Mr. McReed: What did you find from this exam?

Dr. Hart: There were initial signs of redness and swelling in the vaginal area, and the patient had mentioned pain and tenderness, so we decided to use a dye staining technique often used to detect trauma that may not otherwise be immediately visible to the naked eye. This turned some of the cervical tissue white, which indicates abnormal tissue that was inflamed.

Mr. McReed: Did you form an opinion regarding the presence of injury or trauma based on this?

Dr. Hart: Yes, from my experience and based on the exam, it was consistent with injury to the cervix and vaginal opening that can indicate signs of assault.

Mr. McReed: Thank you, Dr. Hart. No further questions.

Judge: Please be seated, Mr. McReed. Cross-examination?

End of Block: Direct Examination of Dr. Hart

Start of Block: Cross Examination of Dr. Hart

Defense's Cross Examination of Dr. Hart

Mr. Wharton: Dr. Hart, you mentioned that you collected swabs of suspected semen. What were you able to conclude from this?

Dr. Hart: We were able to confirm the presence of semen at the time of collection, but couldn't extract enough quality DNA to confirm a single source of the semen.

Mr. Wharton: So you were not able to confirm that my client, Nathan Smith was the source?

Dr. Hart: No.

Mr. Wharton: What about the cervical tissue injury? Can this be present after consensual sex as well?

Dr. Hart: Yes, but with the extent of damage, it likely would have been from very rough or rigorous sex if it was consensual.

Mr. Wharton: Were there any other signs of bruising that would indicate resistance?

Dr. Hart: At the point of the exam, no we did not find any bruising or lacerations to the body.

Mr. Wharton: Thank you, that's all I have, your honor.

Mr. McReed: Your honor, the prosecution asks for a re-direct.

Judge: Proceed, Mr. McReed.

End of Block: Cross Examination of Dr. Hart

Start of Block: Re-Direct of Dr. Hart

Prosecution's Re-Direct of Dr. Hart

Mr. McReed: Dr. Hart, you stated that there were no signs of bruising on the complainant at the time of the exam. Are bruises commonly found in cases of force or resistance?

Dr. Hart: Not always. If someone is being held down, bruising would likely depend on the individual and extent of force used on them. In this case, given the lapse in time between when the event would have occurred and the exam the bruising also could have subsided.

Mr. McReed: So this does not conclusively prove that there was no force or resistance?

Dr. Hart: Correct.

Mr. McReed: Thank you. That's all, your honor.

End of Block: Re-Direct of Dr. Hart

Start of Block: Direct Examination of Officer Stark

Prosecution's Direct Examination of Officer Stark

Judge: The state may call its next witness to the stand.

Mr. McReed: Please state your name and describe your employment.

Officer Stark: My name is James Stark. I am a police officer at the Grand Oak police department. I was assigned to Jane Doe's case when she came in.

Mr. McReed: Would you please tell the jury your department's work, the day that the report was made?

Officer Stark: Yes, Jane Doe had come in on a Tuesday afternoon, three days after the reported assault took place. I was one of the officers on duty that day, so I was assigned to her case and took her statement.

Mr. McReed: Can you briefly describe to us what Jane told you in her statement?

Officer Stark: She wanted to report a rape she said happened on the 18th, that previous Saturday. She said she had been at a friend, Molly's house for a holiday party, which is where she saw the defendant. She said she remembered having a couple of drinks and that later in the night her memory got hazy, so she went upstairs to rest. She stated feeling disoriented and weak when the defendant came in the room and started kissing her. She reported that he proceeded to have sex with her without her consent.

Mr. McReed: Did she report any resistance to the act?

Officer Stark: Yes, she said she tried to push him off of her, but he would not stop.

Mr. McReed: Did the complainant say when this would have occurred?

Officer Stark: According to her timeline, the assault would have occurred between 10:00 pm when she remembers feeling dizzy, and midnight when she remembers waking up after the assault.

Mr. McReed: What happened next?

Officer Stark: I had referred her to Grand Oak Medical Center if she wanted to get a physical exam for a rape kit. This is fairly standard for when a person makes a report of rape. It would help get any evidence we need to build a case against the suspect.

Mr. McReed: Was there any other evidence you were able to collect outside of the rape kit?

Officer Stark: We were able to get a timeline of events from other people at the party. They confirmed her timeline and reported that they did not see her again that night after

she had went upstairs. Three of the people we talked to also mentioned seeing the defendant go upstairs later that evening.

Mr. McReed: Were you able to collect any evidence from the room she said she was in?

Officer Stark: We found a condom wrapper in the garbage next to the bed, but couldn't find any used condom to try to collect DNA from. Based on the wrapper supporting that a sexual encounter had occurred in that room that night though, we brought the defendant in for questioning.

Mr. McReed: When you interrogated Nathan, did he say anything about that night and seeing Jane Doe upstairs?

Officer Stark: He confirmed that he was at the party, but claimed that he didn't remember being upstairs with the complainant.

Mr. McReed: The defendant later changed his story, correct?

Officer Stark: That's correct. After talking with other witnesses at the party, it came to my attention that others had in fact seen him go upstairs at some point that night. After probing the defendant more on this, he later admitted to being upstairs at around the same time of when the assault would have occurred.

Mr. McReed: Thank you, no further questions your honor.

End of Block: Direct Examination of Officer Stark

Start of Block: Cross Examination of Officer Stark

Defense's Cross Examination of Officer Stark

Mr. Wharton: Officer Stark. At any point did my client, Nathan Smith, admit in any way or imply he had raped the complainant?

Officer Stark: No.

Mr. Wharton: And when you interrogated my client, did he seem nervous or fail to answer any of your questions?

Officer Stark: About average, I guess. And no, he was cooperative throughout the investigation I would say.

Mr. Wharton: What about the complainant, Jane Doe. Did she seem upset or especially emotional when she came in?

Officer Stark: No, I would say she was pretty composed when she was making her report with me.

Mr. Wharton: Aside from a condom wrapper, was there anything else in the room that would suggest signs of resistance and a rape had taken place?

Officer Stark: No, but the room had seemed to be tidied up since the party so we weren't able to find much evidence from it.

Mr. Wharton: And this condom wrapper – was there anything actually tying my client to the wrapper? No DNA, no fingerprint analysis?

Officer Stark: We weren't able to get a full enough print to conduct any fingerprint analysis, so neither test was conclusive.

Mr. Wharton: That's all, your honor.

Judge: Thank you. Officer Stark, you are excused. Mr. McReed, your next witness?

End of Block: Cross Examination of Officer Stark

Start of Block: Direct Examination of Jane Doe

Prosecution's Direct Examination of Jane Doe

Mr. McReed: Your honor, the prosecution now calls the complainant, Jane Doe, to the stand.

Mr. McReed: Please state your full name for the record.

Jane Doe: My name is Jane Doe.

Mr. McReed: Jane, can you tell the jury about what happened the night of the 18th?

Jane Doe: I had gone to a holiday party that night at my friend Molly's house.

Mr. McReed: Were you drinking at this party?

Jane Doe: I had a few drinks, but no more than usual.

Mr. McReed: What happened later that night?

Jane Doe: Around four hours into the night I started feeling a bit faint and dizzy, so I went upstairs to find somewhere to lay down. That's when the defendant walked in and started touching and kissing me.

Mr. McReed: What was your mental state at this time?

Jane Doe: Everything was blurry and I felt like I was struggling to gain control over my body.

Mr. McReed: What happened next?

Jane Doe: The next thing I remember was the defendant on top of me, raping me.

Mr. McReed: In the report you mentioned trying to fight off the defendant, can you tell the jury more about this?

Jane Doe: When I realized what was happening I tried to push him off of me, but he held me down. I felt like I couldn't move, and I was scared he would hurt me if I tried to resist more.

Mr. McReed: Prior to going upstairs, do you remember seeing the defendant at this party?

Jane Doe: Yes, I had met him a couple times before through Molly, so I had recognized him when I got to the party that night.

Mr. McReed: And did you recognize him as the man you saw on top of you later that night?

Jane Doe: Yes.

Mr. McReed: Can you tell the jury what happened when you regained consciousness?

Jane Doe: I remember waking up a couple hours later, around midnight, in the same room. When I woke up the defendant was gone, and my underwear and pants were around my ankles.

Mr. McReed: At this point what were you feeling?

Jane Doe: I felt pain in my stomach area and pelvis.

Mr. McReed: Thank you, Jane. Nothing further your honor.

End of Block: Direct Examination of Jane Doe

Start of Block: Cross Examination of Jane Doe

Defense's Cross Examination of Jane Doe

Mr. Wharton: Jane, can you remind the jurors, at what point did you decide to report what happened as an assault?

Jane Doe: I reported the assault three days later.

Mr. Wharton: So it took you almost three full days for you to think of what happened as rape?

Jane Doe: There was never any part of me that doubted I was raped that night. When I got home Sunday though I wasn't sure if I wanted to go through the legal system, it's been emotional to relive.

Mr. Wharton: You had met the defendant prior to this night though, correct?

Jane Doe: Yes. I last saw him at another one of Molly's parties around this time last year.

Mr. Wharton: And have you ever felt victimized or unsafe in any of your other interactions with my client, Nathan?

Jane Doe: No.

Start of Block--Cross Exam Control: only displayed in the Control Condition (No Prejudicial Evidence)

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Start of Block--Cross Exam No Objection: only displayed in the No Objection Condition (Prejudicial Evidence w/o Objection)

Mr. Wharton: In fact, at last year's party, you engaged in consensual sex with my client's friend. During which time you were also seeing your current boyfriend, correct?

Jane Doe: Correct, but this was over a year ago, and I have not spoken much with the defendant or his friend since. It was a one-time mistake.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Start of Block--Cross Exam Standard: only displayed in the Standard Instruction Condition (Prejudicial Evidence + Standard Instructions)

Mr. Wharton: In fact, at last year's party, you engaged in consensual sex with my client's friend. During which time you were also seeing your current boyfriend, correct?

Mr. McReed: Objection your honor, prejudicial evidence, relevance?

Judge: Sustained, Mr. McReed. Jurors, you have heard evidence pertaining to the complainant's prior sexual history. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Therefore, we instruct that you decide this case as if you had never heard the evidence, and ignore it in your deliberations.

Judge: Defense, please proceed.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense, Mr. Wharton?

Start of Block--Cross Exam Moral Foundations: only displayed in the Moral Foundation Instructions Condition (Prejudicial Evidence + Moral Foundation Instructions)

Mr. Wharton: In fact, at last year's party, you engaged in consensual sex with my client's friend. During which time you were also seeing your current boyfriend, correct?

Mr. McReed: Objection your honor, prejudicial evidence, relevance?

Judge: Sustained, Mr. McReed. Jurors, you have heard evidence pertaining to the complainant's prior sexual history. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Each one of us has moral biases or certain perceptions of other people and behaviors that violate morals we value. If someone violates a moral we find important, it can trigger automatic intuitive judgments that may not have any rational basis. We may not be fully aware of this bias we hold, but our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Therefore, decide this case as if you had never heard the evidence, and ignore it in your deliberations. We ask that you evaluate the evidence and resist any urge to reach a verdict that is influenced by moral bias for or against any party or witness.

Judge: Defense, please proceed.

Mr. Wharton: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. McReed?

Mr. McReed: The State rests, your honor.

Judge: Thank you everyone. We now turn to the defense. Mr. Wharton?

End of Block: Cross Examination of Jane Doe

Start of Block: Direct Examination of Molly Wright

<u>Defense's Direct Examination of Molly Wright</u>

Mr. Wharton: The defense calls its first witness, Molly Wright.

Mr. Wharton: Can you please state your name and relationship to the defendant please?

Molly Wright: My name is Molly Wright, I met Nathan my Senior year of college, we've been friends for almost five years now. It was my party that we were at that night.

Mr. Wharton: Can you tell the jury a little about what Nathans is like from your experiences with him?

Molly Wright: Nathan has always been a great friend, very respectful and caring.

Mr. Wharton: Has he ever made any unwanted sexual advances to you or anyone else of your knowledge?

Molly Wright: No, we've always had a strictly friendship level relationship and his past girlfriends have all ended on good terms to my knowledge.

Mr. Wharton: Did you see the defendant the night of your party with Jane at all?

Molly Wright: Yes, earlier in the night I saw them talking in the kitchen.

Mr. Wharton: Did Jane seem at all uncomfortable during this interaction from what you saw?

Molly Wright: No. They seemed to be talking quite a bit so it seemed they were having a good time.

Mr. Wharton: Did you notice any unwelcomed touching or flirting from the defendant?

Molly Wright: No, if anything it seemed like Jane was encouraging him to flirt at times.

Mr. Wharton: Thank you. Nothing further your honor.

End of Block: Direct Examination of Molly Wright

Start of Block: Cross Examination of Molly Wright

Prosecution's Cross Examination of Molly Wright

Mr. McReed: What was your relationship to Jane Doe?

Molly Wright: I was friends with Jane for around 3 years when she attended my party. We had met through work shortly after college.

Mr. McReed: Did you ever know Jane to get carried away with drinking?

Molly Wright: No, she's always been very put together when we've gone out. As coworkers though we tend to drink in more formal settings though, so I can't speak much to that.

Mr. McReed: Were you surprised though to see her feeling ill later that night?

Molly Wright: Yes, I was the one who suggested she go lay down. I didn't want her trying to get home alone, so I told her to sleep in one of my guest rooms upstairs.

Mr. McReed: After she had gone upstairs, did you see anyone else go up that night?

Molly Wright: Yes, Nathan went upstairs that night, said he had to use the restroom, and that the one downstairs was in use.

Mr. McReed: Did you see him come back downstairs after this?

Molly Wright: No, I didn't see him come back down. But, I saw him around a half hour later when I went into the kitchen.

Mr. McReed: So he could have been up there for a while then?

Molly Wright: I suppose, but I was in the living room entertaining guests most of the night so he could have come down earlier and I just not have noticed it.

Mr. McReed: Do you remember seeing anyone else go upstairs?

Molly Wright: No, but again I was in the living room entertaining guests so I wasn't really paying attention.

Mr. McReed: Nothing further your honor.

Judge. Thank you, you may step down. Defense?

Mr. Wharton: The defense rests your honor.

End of Block: Cross Examination of Molly

Start of Block: Closing Instructions

Closing Instructions

Judge: Members of the jury, you have now heard all the evidence in the case. I want to instruct you on the law that you must follow in deciding this case. I may repeat what I stated at the outset of the trial because of its importance.

You must now reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged. You must not think the defendant is guilty because he has been arrested for or charged with a crime. Those are merely procedures to bring the case and the defendant to court.

Every defendant is presumed by law to be innocent. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt.

The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, if you think, based on the evidence or the lack of it, that there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The defendant in this case is charged with the crime of sexual assault. Before he can be found guilty, the prosecution must prove all of the following four things beyond a reasonable doubt:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and
2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;
2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;
3. The victim is intentionally deceived as to the nature of the act;
4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

Judge: With that said, I'll now call on the two attorneys for their closing arguments. The prosecutor, Mr. McReed, will go first, followed by the defendant's attorney, Mr. Wharton.

End of Block: Closing Instructions

Start of Block: Prosecution's Closing Statement

Prosecution's Closing Statement

Mr. McReed: Members of the jury. The evidence today proves that Nathan Smith, the defendant in this case, went to that party that night and raped Jane Doe. There was clear evidence supporting Jane's account that a sexual act occurred that night. Combined with the physical evidence provided by Dr. Hart, a clear and disturbing image of the pain that Jane suffered at the hands of the defendant has been provided. Even Molly Wright, a friend of the defendant, confirmed that she saw the defendant follow Jane upstairs that night.

When you consider all of the evidence in the case, the defendant's guilt has been proven beyond a reasonable doubt.

I ask you for your verdict of guilty.

Judge: Thank you. Mr. Wharton, you may make your closing argument on behalf of the defendant.

End of Block: Prosecution's Closing Statement

Start of Block: Defense's Closing Statement

Defense's Closing Statement

Mr. Wharton: Jurors - what you heard here today was circumstantial evidence at best. The prosecution wants you to put away my client, a young man with no prior record, all based on him being at the same place at the same time, at a party where he happened to be seen talking to the complainant.

Any physical evidence found provides no conclusive evidence that this assault occurred or tying my client to any alleged event.

All the evidence leaves you with, if it adds up to anything at all, is a mere suspicion that the defendant could have, or might have been guilty. But the judge told you that a person cannot be convicted of a crime in this country on the basis of a suspicion. You must be convinced of a person's guilt beyond a reasonable doubt. This evidence leaves substantial room for doubt. You must return a verdict of not guilty.

Judge: Members of the jury, that concludes the trial except for your decision, or verdict. Thank you

End of Block: Defense's Closing Statement

Appendix B5.

Measures

Questionnaire

You have now heard evidence pertaining to the case, and the summary of the judge's instructions on the law. If you need a reminder of the legal standards of guilt for sexual assault, please click here to open a PDF of the law in question that you may refer back to. (PDF displayed below)

Under Arizona law, ARS 13 1406, sexual assault or rape requires the prosecutor prove that:

1. The defendant intentionally or knowingly engaged in sexual intercourse or oral sexual contact with another person; and

2. The defendant engaged in the act without the consent of the other person.

Without consent includes any of the following:

1. The victim is coerced by the immediate use or threatened use of force against a person or property;

2. The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep, or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant;

3. The victim is intentionally deceived as to the nature of the act;

4. The victim is intentionally deceived to erroneously believe that the person is the victim's spouse

Please answer the following questions as a juror in the case.

Verdict: Do you find the defendant____?

- Guilty
- Not Guilty

Confidence: How confident are you in your decision?

1 = *not at all confident* , 10 = *very confident*

Guilt_Likert: How guilty do you believe the defendant, Nathan Smith is?

1 = *not at all guilty*, 10 = *very guilty*

Likelihood: In your view, what is the likelihood (percentage wise) that the defendant, Nathan Smith sexually assaulted the complainant, Jane Doe?

0 10 20 30 40 50 60 70 80 90 100

Pros_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the prosecution's case?

1 = *very weak*, 10 = *very strong*

Def_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the defense's case?

1 = *very weak*, 10 = *very strong*

Evid_Full: The following statements relate to evidence presented in the trial. Please indicate the extent to which you think each piece of evidence supported the defense's case or the prosecution's case. Where neutral indicates that you felt the evidence did not support one side more than the other. (1 = *strongly supports the prosecution's case*, 2 = *supports the prosecution's case*, 3 = *somewhat supports the prosecution's case*, 4 = *neutral*, 5 = *somewhat supports the defendant's case,* 6 = *supports the defendant's case,* 7 = *strongly supports the defendant's case*)

Evid_1: Evidence of cervical tissue damage

Evid_2: Witnesses saw the defendant, Nathan Smith, go upstairs after the complainant, Jane Doe

Evid_3: No evidence of bruising

Evid_4: No DNA evidence

Evid_5: Report of resistance

Evid_6: Condom wrapper found in room

Evid_7: Inconsistent story from the defendant, Nathan Smith

Evid_8: The complainant, Jane Doe's, physical pain

Evid_9: The complainant, Jane Doe, was seen talking and flirting with the defendant, Nathan Smith

Evid_10: The complainant, Jane Doe took 3 days to report the crime

[Display this question if they were not in the control group]
PrejudicialEvidence: You heard evidence related to the complainant, Jane Doe's, prior relationship with the defendant's friend.
How strong was that evidence in support of the defense's case?

1 = *very weak*, 7 = *very strong*

AC: This question is to ensure you are paying attention to the study. Please select seven.

1 = *Strong Disagree*, 7 = *Strongly Agree*

Resp_D: How responsible do you feel the defendant, Nathan Smith, is for what happened?

1 = *Not at all responsible*, 7 = *Very Responsible*

Resp_P: How responsible do you feel the complainant, Jane Doe, is for what happened?

1 = *Not at all responsible*, 7 = *Very Responsible*

Credibility: How credible do you find the complainant, Jane Doe?

1 = *Not at all Credible*, 7 = *Very Credible*

Blame Attribution Scales

Please rate the extent to which you agree or disagree with the following statements:

1 = *Strong Disagree*, 7 = *Strongly Agree*

DBA_1: The defendant is entirely to blame

DBA_2: The defendant was fully aware of what he was doing

DBA_3: The defendant just got carried away (reverse scored)

DBA_4: The defendant did not intend to hurt the complainant" (reverse scored)

DBA_5: The defendant exhibited poor behavior

AC_2: Please respond to this question by typing in the fifth word of this sentence to ensure you are paying attention.

(should respond with "question")

Please answer the following questions on the scale provided

1 = *not at all*, 7 = *very much so*

VBA_1: To what extent did the complainant act carelessly?

VBA_2: To what extent did the complainant lead the defendant on?

VBA_3: To what extent was the complainant's behavior responsible for her sexual encounter with the defendant?

VBA_4: To what extent could the complainant have avoided the situation if she wanted to?

VBA_5: To what extent did the complainant have control over the situation?

Moral Foundations Questionnaire (Graham et al., 2011)

Part 1. When you decide whether something is right or wrong, to what extent are the following considerations relevant to your thinking? Please rate each statement using this scale:

0 = *not at all relevant* (This consideration has nothing to do with my judgments of right and wrong), 1 = *not very relevant*, 2 = *slightly relevant*, 3 = *somewhat relevant*, 4 = *very*

relevant, 5 = *extremely relevant* (This is one of the most important factors when I judge right and wrong)

_____Whether or not someone suffered emotionally

_____Whether or not some people were treated differently than others

_____Whether or not someone's action showed love for his or her country

_____Whether or not someone showed a lack of respect for authority

_____Whether or not someone violated standards of purity and decency

_____Whether or not someone cared for someone weak or vulnerable

_____Whether or not someone acted unfairly

_____Whether or not someone did something to betray his or her group

_____Whether or not someone conformed to the traditions of society

_____Whether or not someone did something disgusting

_____Whether or not someone was cruel

_____Whether or not someone was denied his or her rights

_____Whether or not someone showed a lack of loyalty

_____Whether or not an action caused chaos or disorder

_____Whether or not someone acted in a way that God would approve of

Part 2. Please read the following sentences and indicate your agreement or disagreement:

0	1	2	3	4	5
Strongly disagree	Moderately disagree	Slightly disagree	Slightly agree	Moderately agree	Strongly agree

_____Compassion for those who are suffering is the most crucial virtue.

_____When the government makes laws, the number one principle should be ensuring that everyone is treated fairly.

_____I am proud of my country's history.

_____Respect for authority is something all children need to learn.

_____People should not do things that are disgusting, even if no one is harmed.

_____One of the worst things a person could do is hurt a defenseless animal.

_____Justice is the most important requirement for a society.

_____People should be loyal to their family members, even when they have done something wrong.

_____Men and women each have different roles to play in society.

_____I would call some acts wrong on the grounds that they are unnatural.

_____It can never be right to kill a human being.

_____ I think it's morally wrong that rich children inherit a lot of money while poor children inherit nothing.

_____ It is more important to be a team player than to express oneself.

_____ If I were a soldier and disagreed with my commanding officer's orders, I would obey anyway because that is my duty.

_____ Chastity is an important and valuable virtue.

Bias Blind Spot Questionnaire (based on Pronin et al., 2002)

People use moral heuristics - mental shortcuts – to make inferences about others' morality and make moral judgments about others that can lead to mistaken judgments.

BBS_avg: To what extent do you believe that the average person shows this tendency?

1 = *not at all*, 9 = *strongly*

BBS_self: To what extent do you believe that you show this tendency?

1 = *not at all*, 9 = *strongly*

[conditional on if they were in the control condition or not]

You were shown evidence relating to the complainant's prior sexual history.

BBS_prej_avg: To what extent do you believe the average person would be influenced by this information in forming judgments about this case?

1 = *not at all*, 9 = *strongly*

BBS_prej_self: To what extent do you believe this influenced your judgments in this case?

1 = *not at all*, 9 = *strongly*

Demographics

Gender: What is your gender?

- o Male
- o Female
- o Another identity (please specify)

_____

Age: What is your age? (forced numeric entry)

_____

Race: What do you consider to be your race or ethnicity? Please check all that apply.

- ▢ African American
- ▢ Asian
- ▢ Hispanic (non-white)
- ▢ Hispanic (white)
- ▢ Native American
- ▢ Pacific Islander
- ▢ White
- ▢ Other (please specify)

_____

Religion: What is your religious preference?

- o Jewish
- o Protestant
- o Muslim
- o Orthodox
- o Roman Catholic
- o Latter-day Saints (Mormon)
- o Atheist
- o Prefer not to answer
- o Other (please specify)

_____

Political: Which one of the following best describes you?

- o Strongly Liberal
- o Moderately Liberal
- o Weakly Liberal
- o Centrist/Middle of the Road
- o Weakly Conservative
- o Moderately Conservative
- o Strongly Conservative

Q63: Have you ever been summoned for jury duty?

- o Yes
- o No

Q64: Have you ever served on a jury?

- o Yes, Criminal
- o Yes, Civil
- o Yes, Criminal and Civil
- o No

Purpose: What do you think was the purpose of this study?

_____

_____

Comments: Do you have any final comments about the cases or study you would like to share?

_____

APPENDIX C

PILOT STUDY B MATERIALS

Appendix C1.

Pilot B IRB Approval

ASU Knowledge Enterprise Development

EXEMPTION GRANTED

Tess Neal
NCIAS: Social and Behavioral Sciences, School of (SSBS)
602/543-5680
Tess.Neal@asu.edu

Dear Tess Neal:

On 3/14/2022 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Moral Foundations Study 2 Pilot
Investigator:	Tess Neal
IRB ID:	STUDY00015529
Funding:	Name: Arizona State University (ASU)
Grant Title:	
Grant ID:	
Documents Reviewed:	• Consent.pdf, Category: Consent Form; • IRB.docx, Category: IRB Protocol; • Measures.pdf, Category: Measures (Survey questions/Interview questions /interview guides/focus group questions); • Recruitment.pdf, Category: Recruitment Materials; • Vignette, Category: Other;

The IRB determined that the protocol is considered exempt pursuant to Federal Regulations 45CFR46 (2) Tests, surveys, interviews, or observation on 3/14/2022.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

If any changes are made to the study, the IRB must be notified at research.integrity@asu.edu to determine if additional reviews/approvals are required. Changes may include but not limited to revisions to data collection, survey and/or interview questions, and vulnerable populations, etc.

Appendix C2.

Pilot Study B Recruitment Script

(This script will be posted on Amazon's Mechanical Turk (MTurk), an online platform to recruit participants. The study is only shown to those who already meet the 18 years and older and U.S. citizen requirement, so we omitted this from the study description. In addition, MTurk does not allow to screen within a study so we are not permitted to include any participant requirements in the recruitment. The monetary compensation amount is also automatically provided to participants by MTurk, so we have omitted this from the study description.)

Study Name: Jury Decision-Making
Description: The purpose of this study is to examine how jurors make decisions in criminal legal cases. This particular case focuses on decisions about a criminal assault and battery case, looking at the case proceedings and evidence presented for and against the defendant accused of the sexual assault. Participation will include reading a case transcript, and answering a series of questions on your judgments of the case and demographics. This study is estimated to take approximately 45 minutes.

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at kmmccowa@asu.edu.

Appendix C3.

Pilot Study B Consent Form

Jury Decision-Making

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to participate if you are at least 18 years of age, and a U.S. citizen.

Why is this research being done?

The purpose of this study is to examine how jurors make decisions in criminal legal cases.

What happens if I say yes, I want to be in this study?

Participation includes reading a case of a criminal lawsuit against a defendant charged with assault and battery. You will be asked to fill out a short questionnaire and surveys regarding your judgments of the cases, as well as a brief demographic survey.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may skip questions, or stop participation at any time. There is no penalty for withdrawing from the study at any point.

How long will the research last?

We expect that individuals will spend up to 45 minutes involved in the research study.

Are there any potential risks in taking part in this study?

The case transcript is about an assault and battery allegation, a sensitive topic that may be uncomfortable for some individuals. The case itself recounts evidence of the night of the alleged assault, and thus has details pertaining to events that may be distressing. This is no more though than what jurors in real cases would be exposed to, or what one might see in news and media outlets. Your participation in this study is voluntary. If you choose not to participate or to withdraw from the study at any time, there will be no penalty.

Will being in this study help me in any way?

Participants will receive $2.00 in monetary compensation for their participation. Aside from this, there are no direct benefits, other than possible interest in the case material.

What happens to the information collected for the research?

All responses will be kept confidential. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information aside from general information collected through a demographic survey (e.g. age, gender). The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

If you agree to take part in this study please indicate in the box provided below, and proceed to the next page.

[Qualtrics question: "I agree to take part in the study" with a check box response]

Appendix C4.

Pilot Study B Case Transcript and Evidence

Group 1 and 2: Full Case + Case Omitting Prejudicial Evidence

The base of this transcript will be displayed in both conditions. One block is only shown within the full case condition – specifically prejudicial evidence embedded within the cross examination of the witness, Devin Bowen. This blocks will be bolded and specified within the transcript which condition it applies to.

Case: State v. Franklin Holder

Start of Block: Judge's Opening Instructions

Judge's Opening Instructions

Judge: First, a word of welcome to our jurors. I am Judge Sinclair and will be presiding over the case you will hear and decide.

The defendant, Franklin Holder, is charged with assault and battery. Now that the trial is beginning, there are some important matters to share with you so that you will better understand what will happen during the trial.

As jurors, you have three major duties. The first is to carefully listen to and look at the evidence of what happened in this case. Second, you must carefully listen to and follow the law that applies in the case. Finally, you will reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged.

Every defendant is presumed innocent by law. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt. The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, based on the evidence or lack thereof, if you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Assault and battery requires the prosecutor prove that the defendant:

1. Intentionally, knowingly, or recklessly caused any physical injury to another person;
2. Intentionally placed another person in reasonable apprehension of imminent physical injury;
3. Knowingly touched another person with the intent to injure, insult, or provoke that person;
   AND

1. Caused serious physical injury or substantial disfigurement to another person; OR
2. Used a deadly weapon or dangerous instrument to intentionally place somebody in imminent fear of serious physical injury

This does not include acts of self-defense. By law, a person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend himself or herself.

All of the witnesses took their oaths before the jury was seated. I'll now call on the two attorneys for their opening statements. The prosecutor, Mr. Greg Emery, will go first, followed by the defendant's attorney, Mr. Jordan Farrell.

The prosecution may now deliver its opening statement.

End of Block: Judge's Opening Instructions

Start of Block: Prosecution's Opening Statement

Prosecution's Opening Statement

Mr. Emery: Thank you your honor. Members of the jury, my name is Greg Emery. I am a prosecutor with the District Attorney's Office.

Let me take a brief moment to give you an overview of the case. The state has charged the defendant, Franklin Holder, with assault and battery. On the evening of November 6th, the victim, Mr. Jacob Allen, went to meet friends at a local bar he frequently visits. It was there where he encountered the defendant, Mr. Franklin Holder, and made an unintentional, ill-perceived comment at the expense of Mr. Holder's friend. You will hear the accounts of how Mr. Allen provoked the defendant, and how this minor comment sparked an altercation between the two men. The defendant will argue that this was a mutual fight, and that the defendant unintentionally imposed serious harm. Despite what the defense may try to convince you of, this assault escalated beyond what any reasonable person would have done in self-defense, and Mr. Allen suffered severe injuries due to the defendant's behavior.

You will hear testimony supporting the extent of Mr. Allen's injuries through physical evidence and witness observations. At the end of the trial I ask you to return a verdict of guilty. Thank you.

Judge: The defense may now give its opening statement.

End of Block: Prosecution's Opening Statement

Start of Block: Defense's Opening Statement

Defense's Opening Statement

Mr. Farrell: Thank you. Members of the jury, my name is Jordan Farrell, and I practice law here in Amber Creek County. My client, Franklin Holder, is seated next to me.

After you have heard all the evidence and witnesses in this case, I will ask you to find Franklin not guilty of assault and battery, since the government will not be able to prove his guilt beyond a reasonable doubt. As the judge explained, to be guilty of this charge there must be clear intent and absence of self-defense.

The defense clearly had no intent to seriously injure the complainant, Mr. Allen, and only acted out of self-defense and reactance to Mr. Allen's actions and an effort to prevent Mr. Allen from imposing further harm on him. You will hear evidence confirming that Mr. Allen provoked my client, and that my client merely responded to comments in an effort to defend his friend. After the fight became physical, my client had no choice but to continue to physically defend himself from Mr. Allen.

Judge: Thank you counsel. Now, we'll begin with the evidence. The prosecution may call its first witness.

End of Block: Defense's Closing Statement

Start of Block: Direct Examination of Officer Donovan

Prosecution's Direct Examination of Officer Donovan

Mr. Emery: Your honor, the state calls Officer Donovan to the stand.

Mr. Emery: Officer Donovan, please state your name and describe your employment for the jurors please.

Officer Donovan: My name is Will Donovan. I am a police officer at the Amber Creek police department. I was the officer on duty when a call came in about a possible assault at a local bar.

Mr. Emery: Would you please tell the jury your department's work in answering this dispatch?

Officer Donovan: Yes, the bar owner, Carson Medina, called in around just after 10:00 PM that night. He was calling about a fight that broke out at his bar between two men at the place, said it was escalating and asked for an officer to check it out. The call was dispatched to me and my partner who were a few blocks away from the bar.

Mr. Emery: And upon arriving at the scene, what did you find?

Officer Donovan: When we arrived we saw a crowd of people outside and seemingly in a hurry to leave, there was a lot of commotion and noise.

Mr. Emery: Would you say this was out of the ordinary for this bar?

Officer Donovan: Somewhat. I had been in this bar a few times in the past and it's usually filled with locals. Sometimes a fight or two breaks out here and there, but mostly harmless guys from the neighborhood looking to have a few beers after work.

Mr. Emery: And was this fight similar to the ones you just described?

Officer Donovan: No, when we walked in we saw a table was knocked over and there was glass shattered on the floor, seemed to be from a beer cup. It was immediately clear who the two men involved in the fight were.

Mr. Emery: When you say it was clear who the fight was between, can you elaborate on this?

Officer Donovan: Yes, well one of the men had bloody knuckles and a broken nose.

Mr. Emery: Can you identify this man?

Officer Donovan: He is the defendant, Franklin Holder.

Mr. Emery: And what about the other man?

Officer Donovan: Yes, I identified this man as Jacob Allen, the complainant in the case. He was in severely bad shape, his face had already swelled around his eyes and there were clear signs of trauma from my experience. He was taken off in an ambulance.

Mr. Emery: What happened next?

Officer Donovan: I took a statement from Mr. Holder, the defendant. He tried to recount the timeline of events leading up to the fight. He mentioned Mr. Allen making a rude comment to him and his buddy about a woman they were at the bar with. When Mr. Holder called him out the guy got in his face, trying to pick a fight with them. Said Mr. Allen was shoving him, trying to provoke him, so he punched Mr. Allen and it escalated from there.

Mr. Emery: And what about Mr. Allen, were you able to get a statement from him?

Officer Donovan: Yes, after collecting more evidence from the scene and talking to a few of the people that were there, I went over to the hospital. I had to wait a few hours, since Mr. Allen was unconscious and not in a position to give a statement yet. When he woke up, he shared his recollection of the night and asked to press charges against the defendant.

Mr. Emery: What happened that night according to Mr. Allen?

Officer Donovan: It was a similar timeline that Mr. Holder gave. Mr. Allen was there with a few of his friends, who had left around 9:00 PM. After that he was sitting at the bar by himself, when he overheard the defendant talking to his buddy about a woman near them. He said he chimed in, made a remark about a woman not realizing it was one of their friends. He said it was all fun and games in his mind. He didn't realize she was with them, but Mr. Holder got real defensive and started shouting at him. He went over and things started getting physical, at first minor shoving and then a punch was thrown

and he could tell things were getting out of control. Next thing he knew he was on the ground and Mr. Holder had him pinned down beating him.

Mr. Emery: Did Mr. Holder contest to this statement?

Officer Donovan: He admitted to pinning down Mr. Allen, but said it was in self-defense, that Mr. Allen had punched him in the face and he lost control.

Mr. Emery: Did this seem like a fair statement to make?

Officer Donovan: Based on the extent of Mr. Allen's injuries, it seemed unlikely that it was due entirely to self-defense. Mr. Allen was pretty incapacitated by the time we arrived on the scene, so at a certain point, one would expect the person to retreat from the fight when there was no longer any clear threat to them.

Mr. Emery: Thank you, no further questions your honor.

End of Block: Direct Examination of Officer Donovan

Start of Block: Cross Examination of Officer Donovan

Defense's Cross Examination of Officer Donovan

Mr. Farrell: Officer Donovan, you mentioned that the original call was made by Mr. Medina, the bar owner. Can you tell us about his demeanor at the time and the urgency of his call?

Officer Donovan: He didn't appear too shaken up at first, but as a bar owner he likely has witnessed fights in his bar before, so he may not have thought much of it at first.

Mr. Farrell: So, when you got the call, is it safe to say no one seemed to be in any imminent danger then?

Officer Donovan: That is correct.

Mr. Farrell: And when you got to the bar, you mentioned some injuries to my client, Mr. Holder as well. Is it fair to say one cannot rule out self-defense was a motivating factor, and that my client did not intend to severely harm Mr. Allen?

Officer Donovan: Based on the extent of both Mr. Holder's and Mr. Allen's injuries, it is reasonable to think that both men threw a few punches, so no, it is not clear who threw the first punch or whether it could have been self-defense.

Mr. Farrell: Thank you, that's all I have, your honor.

Judge: Thank you. Officer Donovan, you are excused. Mr. Emery, your next witness?

End of Block: Cross Examination of Officer Donovan

Start of Block: Direct Examination of Dr. Novak

Prosecution's Direct Examination of Dr. Novak

Mr. Emery: Your honor, the state calls Dr. Novak to the stand.

Mr. Emery: Dr. Novak, would you please tell the judge and jury your full name and employment?

Dr. Novak: My name is Elizabeth Novak, I am a nurse at the Amber Creek Medical Center. I received my Doctorate of Nursing Practice and have been at the hospital for a couple of years now in the emergency unit.

Mr. Emery: So would you say you are highly experienced and trained in trauma injuries that come in?

Dr. Novak: Yes, I have been with a wide variety of patients who come in, and oversee a lot of their care along with the primary doctor that's in the ER that day.

Mr. Emery: Can you briefly describe what your initial perceptions of the complainant, Mr. Allen were when the ambulance first brought him in?

Dr. Novak: Yes, by the time he arrived to the hospital he was not in critical condition. The Emergency Medical Technicians, EMTs, in the ambulance had addressed his wounds and had him on opioids to help with the pain. His face was badly swollen and beaten up, and his abdomen and ribs seemed bruised as well. We took him to one of the ER beds to take his vitals and further assess his wounds.

Mr. Emery: And can you give us a brief breakdown of what your exam found?

Dr. Novak: His vital signs seemed back to normal. His left eye was bloodshot, and was consistent with acute hyphema, which occurs after blunt trauma to the eye. His ribs were also badly bruised, but there were no signs of broken ribs.

Mr. Emery: What was Mr. Allen's general treatment plan then?

Dr. Novak: We admitted him overnight to keep an eye on his eye pressure and bleeding, but it seemed to be improving. We gave him a bandage and eyedrops to apply regularly for a few weeks, as well as referred him to an optometrist closer to him for regular check-ups to make sure the bleeding and pressure did not return. We also prescribed him Vicodin, a medication to help manage the pain in his ribs until the bruising and swelling had gone down.

Mr. Emery: Vicodin, this is a strong opioid medication, correct? In your professional opinion, would you say then that he had intensive injuries?

Dr. Novak: Yes, we felt it necessary to provide him with prescription for this pain. Mr. Allen was lucky to have had a seemingly speedy recovery, but these types of injuries can create lasting problems in vision.

Mr. Emery: Thank you, Dr. Novak. No further questions.

Judge: Mr. Farrell, cross-examination?

End of Block: Direct Examination of Dr. Novak

Start of Block: Cross Examination of Dr. Novak

Defense's Cross Examination of Dr. Novak

Mr. Farrell: Dr. Novak, you mentioned that you prescribed the complainant, Mr. Allen with Vicodin. Is this an uncommon prescription to give patients who come in with injuries?

Dr. Novak: Not necessarily, opioids can be very addictive, but a useful medication for pain management when prescribed and taken appropriately. Some doctors prescribe them more than others, we generally at the hospital try to limit the prescription of this drug though.

Mr. Farrell: I have medical records from your hospital that show evidence of this being prescribed for a sore back. Would you describe a sore back as a severe injury then?

Dr. Novak: On the surface no, but this specific patient had been in several times with a chronic pain, it was a last resort.

Mr. Farrell: So by this standard, Mr. Allen being given Vicodin is not necessarily an indication of severe injury, as the Prosecution may lead the jury to believe?

Dr. Novak: That is correct.

Mr. Farrell: Thank you Dr. Novak. You mentioned earlier that you also took his vitals and ran blood tests. Can you confirm for the jury the complainant's alcohol content at the time?

Dr. Novak: His blood alcohol content was .09 at the time we tested it.

Mr. Farrell: And that was after a significant time had passed since the ambulance took him, making it likely that at the time of the fight in question, he was under the influence and had impaired judgment?

Dr. Novak: With the time that had passed, yes it is possible that he would have had impaired cognitive reasoning and memory.

Mr. Farrell: Thank you, that's all I have your honor.

Judge: The witness is excused. Mr. Emery, your next witness?

Mr. Emery: The State rests, your honor.

Judge: We now turn to the defense, Mr. Farrell.

End of Block: Cross Examination of Dr. Novak

Start of Block: Direct Examination of Devin Bowen

Defense's Direct Examination of Devin Bowen

Mr. Farrell: Your honor, the defense calls its first witness, Devin Bower to the stand.

Mr. Farrell: Please state your full name for the record and your relation to the defendant.

Devin Bowen: My name is Devin Bowen. I was with the defendant, Franklin, the night of the fight. We live in the same neighborhood, hang out occasionally and have gotten to know each other quite well.

Mr. Farrell: Was there anyone else with you that night?

Devin Bowen: There were a few other people there that he was talking to when I arrived. They live around the neighborhood so we see them there quite a lot.

Mr. Farrell: Can you recall the events that led up to the fight between Mr. Holder and Mr. Allen?

Devin Bowen: Yes, we were sitting at a table near the bar, where Mr. Allen was sitting. He kept making comments throughout the night that seemed to be directed to our table, but we shrugged it off, he seemed like he had a lot to drink. Eventually though he made a comment about one of the women we were with, that's when Franklin, Mr. Holder, started yelling back to him telling him to leave. They both had stood up at this point and were in each other's faces.

Mr. Farrell: At one point did the altercation between them get physical?

Devin Bowen: They both seemed to be shoving each other, but I kept hearing Mr. Allen antagonize my friend, calling him a tough guy and to put his money where his mouth was sort of thing. After a couple minutes of them arguing back and forth, Mr. Holder punched Mr. Allen in the face. Mr. Allen punched him right back though and this went on until they fell over the table and were on the ground fighting. After this it was pretty back and forth until Mr. Holder had pinned down Mr. Allen and things began to escalate. At this point, me along with some other guys around were able to break up the fight and separate the two men. This is when we realized the extent of both men's injuries.

Mr. Farrell: So nobody stepped in until things seemed to have escalated, prior to Mr. Holder pinning him down then, would you say the fight didn't seem concerning?

Devin Bowen: It didn't look that way, both of them seemed to be drunk and just in the heat of the moment. It got to a point where it seemed like self-defense and the only option was to pin him down to stop the fight.

Mr. Farrell: Thank you, Mr. Bowen. No further questions, your honor.

Judge: Mr. Emery, cross examination?

End of Block: Direct Examination of Devin Bowen

Start of Block: Cross Examination of Devin Bowen

Prosecution's Cross Examination of Devin Bowen

Mr. Emery: Mr. Bowen, you said that Mr. Holder had Mr. Allen pinned down. At this point in time, was Mr. Allen still fighting back?

Devin Bowen: He was still showing physical resistance yes.

Mr. Emery: And did the defendant, Mr. Holder stop punching after this resistance slowed down?

Devin Bowen: Well neither man completely stopped, but once Mr. Allen seemed to have lost energy, so did Mr. Holder. Mr. Holder seemed to be acting in reactance to whether Mr. Allen would continue to try to fight again, waiting to see if he'd throw another punch.

Mr. Emery: You eventually had to break up the fight with other men though. Would you say at this point you recognized Mr. Holder was getting out of control?

Devin Bowen: Well, we had tried to break up the fight from the beginning, but yes, it was becoming more clear that both men were injured, so once their energy was down were able to separate them.

Start of Block—Cross Examination Case Omitting Prejudicial Evidence: only displayed in the Case w/o Prejudicial Evidence Condition

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

Start of Block--Cross Examination Full Case: only displayed in the Full Case Condition

Mr. Emery: And have you known the defendant, Mr. Holder, to be an aggressive person in the past?

Devin Bowen: No, this was the first fight I had seen him get into.

Mr. Emery: You first met the defendant from his time as a police officer at your precinct though, correct?

Devin Bowen: Yes.

Mr. Emery: Police organizations sometimes collect and trade commemorative coins, is that correct?

Devin Bowen: Yes, that's correct.

Mr. Emery: And isn't it true that you were part of a police organization together, POST, that encouraged officers to use force against protestors, and traded commemorative coins of this violence as tokens, such as allegedly styled after a neo-Nazi slogan that said "Good Night, Left Nut: Making American Great Again, One Nut at a Time" after a protestor was shot in the testicles with a rubber bullet by an officer?

Devin Bowen: This was not the point of the organization, and I have no knowledge of the coin being a neo-Nazi slogan.

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

End of Block: Cross Examination of Devin Bowen

Start of Block: Direct Examination of Carson Medina

Defense's Direct Examination of Carson Medina

Mr. Farrell: The defense calls its next witness, Carson Medina.

Mr. Farrell: Can you please state your name and employment for the jury.

Carson Medina: My name is Carson Medina, I am the owner of the bar that the fight in question took place at.

Mr. Farrell: We have heard accounts of the night so far from the defendant's friend, Mr. Bowen, and the officer who collected statements from both parties that night. From your understanding of the night, is it correct to say that Mr. Allen started the instigation when he made comments to my client and his friends?

Carson Medina: Mr. Allen yes started the verbal altercation, but I didn't clearly see who started the physical fight.

Mr. Farrell: Based on your observations, how much alcohol had both men consumed that night?

Carson Medina: I wasn't the one directly serving them, but both men had been well above the legal limit, and seemed heavily intoxicated by the time they had any interaction with one another.

Mr. Farrell: In your professional opinion, should they have been served as much as they had been?

Carson Medina: No, in fact I had to put the bartender from that night on probation for overserving on numerous occasions.

Mr. Farrell: So, is it safe to say that both men were in a compromised state of mind during the fight?

Carson Medina: They were both intoxicated, yes.

Mr. Farrell: Thank you, no further questions your honor.

End of Block: Direct Examination of Carson Medina

Start of Block: Cross Examination of Carson Medina

Prosecution's Cross Examination of Carson Medina

Mr. Emery: Mr. Medina, how long have you been in the bar industry?

Carson Medina: I was a bartender for a few years, and been the owner of this bar for almost 10 years now.

Mr. Emery: So you have a lot of experience with drunk people at your bar then. Is this level of intoxication out of the ordinary?

Carson Medina: Their behavior became increasingly out of the ordinary, but no, I'd say we get a lot of people in that we have to kick out for being too drunk.

Mr. Emery: And have you ever kicked anyone out for fighting before this night?

Carson Medina: Yes, our general policy is that once a verbal fight creates a disturbance we warn them that we will have to kick them out. If it escalates to a more physical altercation we will escort them outside.

Mr. Emery: And did you follow this same protocol that night?

Carson Medina: We did give them several verbal warnings, but these men are locals, so we were a bit more lenient and figured it would blow over.

Mr. Emery: And after a physical fight broke out, what did you do then?

Carson Medina: It escalated pretty quickly, there were a few men trying to break up the fight. I decided to call the police since the fight didn't seem to be slowing down. By the time the police got there the fight had been broken up, but both men were pretty badly hurt, and one was taken to the hospital.

Mr. Emery: How did this compare to the other fights you have witnessed as a bar owner?

Carson Medina: This one was by far the worst. I would not allow either of those men back into my bar after what I witnessed that night.

Mr. Emery: Nothing further your honor.

Judge: Thank you, you may step down. Defense?

Mr. Farrell: The defense rests your honor.

End of Block: Cross Examination of Carson Medina

Start of Block: Closing Instructions

Closing Instructions

Judge: Members of the jury, you have now heard all the evidence in the case. I want to instruct you on the law that you must follow in deciding this case. I may repeat what I stated at the outset of the trial because of its importance.

You must now reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged. You must not think the defendant is guilty because he has been arrested for or charged with a crime. Those are merely procedures to bring the case and the defendant to court.

Every defendant is presumed by law to be innocent. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt.

The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, if you think, based on the evidence or the lack of it, that there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The defendant in this case is charged with the crime of assault and battery. Before he can be found guilty, the prosecution must prove all of the following four things beyond a reasonable doubt:

1. Intentionally, knowingly, or recklessly caused any physical injury to another person;
2. Intentionally placed another person in reasonable apprehension of imminent physical injury;
3. Knowingly touched another person with the intent to injure, insult, or provoke that person;
   AND
1. Caused serious physical injury or substantial disfigurement to another person; OR
2. Used a deadly weapon or dangerous instrument to intentionally place somebody in imminent fear of serious physical injury

With that said, I'll now call on the two attorneys for their closing arguments. The prosecutor, Mr. Emery, will go first, followed by the defendant's attorney, Mr. Farrell.

End of Block: Closing Instructions

Start of Block: Prosecution's Closing Statement

Prosecution's Closing Statement

Mr. Emery: Members of the jury. The evidence today proves that Franklin Holder, the defendant in this case, assaulted Mr. Allen at the bar that night, causing severe and potentially life altering physical injuries. There was clear evidence supporting the extent of these injuries, and despite Mr. Holder's mental state at the time, the injuries are more than what one would expect had someone been acting out of self-defense or without intent.

When you consider all of the evidence in the case, the defendant's guilt has been proven beyond a reasonable doubt.

I ask for your verdict of guilty.

Judge: Thank you. Mr. Farrell, you may make your closing argument on behalf of the defendant.

End of Block: Prosecution's Closing Statement

Start of Block: Defense's Closing Statement

Defense's Closing Statement

Mr. Farrell: Jurors – what you heard here today falls short of proving any guilt and intentional harm at the hands of my client. The prosecution wants you to put away my client, a man with no record, all based on a bar fight – provoked by the other man. The physical injuries were suffered by both men, and there is no conclusive evidence of how this fight progressed and who is to blame.

Based on the evidence – and lack thereof - what you have heard today is a clear example of a drunk bar fight gone wrong. Both men got carried away that night, and my client should not bear the responsibility for any injuries that he inflicted based on self-defense and mutual altercations.

The law specifically defines assault as an intentional act, done without self-defense, which the evidence shows was not the case. Therefore, I ask that you return a verdict of not guilty.

Judge: Members of the jury, that concludes the trial except for your decision, or verdict. Thank you.

End of Block: Defense's Closing Statement

Group 3: Prejudicial Evidence Only Condition

Participants in this condition only saw a brief summary with the prejudicial evidence, without the full case transcript being provided.

You are hereby summoned as a member of the jury for the case of State V. Franklin Holder, who is being charged with assault and battery.

Assault and battery requires the prosecutor prove that the defendant:

1. Intentionally, knowingly, or recklessly caused any physical injury to another person;
2. Intentionally placed another person in reasonable apprehension of imminent physical injury;
3. Knowingly touched another person with the intent to injure, insult, or provoke that person;
   AND
1. Caused serious physical injury or substantial disfigurement to another person; OR
2. Used a deadly weapon or dangerous instrument to intentionally place somebody in imminent fear of serious physical injury

This does not include acts of self-defense. By law, a person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend himself or herself.

The complainant, Jacob Allen, has accused the defendant of assaulting him at a bar they were both at. While there was clear evidence that the defendant caused serious injury to Mr. Allen, the defense argues that the fight was out of self-defense and that the defendant did not intend to severely injure the complainant.

Prosecuting Attorney: You first met the defendant from his time as a police officer at your precinct though, correct?

Devin Bowen: Yes.

Prosecuting Attorney: Police organizations sometimes collect and trade commemorative coins, is that correct?

Devin Bowen: Yes, that's correct.

Prosecuting Attorney: And isn't it true that you were part of a police organization together, POST, that encouraged officers to use force against protestors, and traded commemorative coins of this violence as tokens, such as allegedly styled after a neo-Nazi slogan that said "Good Night, Left Nut: Making American Great Again, One Nut at a Time" after a protestor was shot in the testicles with a rubber bullet by an officer?

Devin Bowen: This was not the point of the organization, and I have no knowledge of the coin being a neo-Nazi slogan.

Please answer the following questions based on this evidence presented.

Appendix C5.

Pilot Study B Measures

Verdict: Do you find the defendant____?

- Guilty
- Not Guilty

Confidence: How confident are you in your decision?

1 = not at all confident , 10 = very confident

Guilt_Likert: How guilty do you believe the defendant, Franklin Holder is?

1 = not at all guilty, 10 = very guilty

Likelihood: In your view, what is the likelihood (percentage wise) that the defendant, Franklin Holder, intended to assault the complainant, Jacob Allen?

0 10 20 30 40 50 60 70 80 90 100

Pros_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the prosecution's case?

1 = very weak, 10 = very strong

Def_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the defense's case?

1 = very weak, 10 = very strong

AC: This question is to ensure you are paying attention to the study. Please select seven.

1 = Strong Disagree, 7 = Strongly Agree

Evidence_Full: The following statements relate to evidence presented in the trial. Please indicate the extent to which you think each piece of evidence supported the defense's case or the prosecution's case. Where neutral indicates that you felt the evidence did not support one side more than the other.

1 = *Strongly supports the prosecution's case*, 7 = *strongly supports the defense's case*

Evidence of the complainant, Jacob Allen's injuries

Witnesses saw the complainant, Jacob Allen, antagonize the defendant

The defendant was heavily intoxicated

The defendant had a broken nose

The defendant continued to injure the complainant after pinning him down

The complainant did not listen to efforts to break up the fight

The complainant, Jacob Allen also engaged and continued the fighting

[Display this question if they received prejudicial evidence]

PrejudicialEvidence: You heard evidence related to the defendant's membership to an anti-protest police organization. Did you find this evidence to be in support of the prosecution's case, or the defense's case?

- Supported the Prosecution's Case
- Supported the Defense's Case

Display This Question:
If previous response = Supported the Prosecution's Case
Q160: How strong was that evidence in support of the prosecution's case?
1 = very weak, 7 = very strong

Display This Question:
If previous response = Supported the Defense's Case
Q161: How strong was that evidence in support of the defense's case?
1 = very weak, 7 = very strong

Resp_D: How responsible do you feel the defendant, Franklin Holder, is for what happened?

1 = Not at all responsible, 7 = Very Responsible

Resp_P: How responsible do you feel the complainant, Jacob Allen, is for what happened?

1 = Not at all responsible, 7 = Very Responsible

Please indicate the extent to which you agree with the following statements.

1 = strongly disagree, 7 = strongly agree

The defendant, Franklin Holder, just got carried away (reverse scored)

The defendant did not intend to severely hurt the complainant (reverse scored)

The defendant exhibited poor behavior

The defendant is an aggressive person

The defendant should not have been served as much alcohol as he had (reverse scored)

The complainant provoked the defendant

The complainant exhibited poor behavior

The complainant was not at all to blame (reverse scored)

The complainant could have avoided the situation had he wanted to

The complainant was just in the wrong place at the wrong time (reverse scored)

Gender: What is your gender?

- o Male
- o Female
- o Another identity (please specify)

_____

Age: What is your age? (forced numeric entry)

_____

Race: What do you consider to be your race or ethnicity? Please check all that apply.

- ▢ African American
- ▢ Asian
- ▢ Hispanic (non-white)
- ▢ Hispanic (white)
- ▢ Native American
- ▢ Pacific Islander
- ▢ White
- ▢ Other (please specify)

_____

Religion: What is your religious preference?

- o Jewish
- o Protestant
- o Muslim
- o Orthodox
- o Roman Catholic
- o Mormon
- o Atheist
- o Prefer not to answer
- o Other (please specify)

_____

Political: Ideologically, which one of the following best describes you?

- o Strongly Liberal
- o Moderately Liberal
- o Weakly Liberal
- o Centrist/Middle of the Road
- o Weakly Conservative
- o Moderately Conservative
- o Strongly Conservative

Q63: Have you ever been summoned for jury duty?

- o Yes
- o No

Q64: Have you ever served on a jury?

- o Yes, Criminal
- o Yes, Civil
- o Yes, Criminal and Civil
- o No

Q65: What do you think was the purpose of this study?

_____

_____

Q66: Do you have any final comments about the cases or study you would like to share?

_____

APPENDIX D

STUDY 2 MATERIALS

Appendix D1.

Study 2 IRB Approval

ASU Knowledge Enterprise Development

EXEMPTION GRANTED

Tess Neal
NCIAS: Social and Behavioral Sciences, School of (SSBS)
602/543-5680
Tess.Neal@asu.edu

Dear Tess Neal:

On 4/5/2022 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Moral Foundations Study 2
Investigator:	Tess Neal
IRB ID:	STUDY00015768
Funding:	None
Grant Title:	None
Grant ID:	None
Documents Reviewed:	• Consent.pdf, Category: Consent Form; • IRB.docx, Category: IRB Protocol; • Measures.pdf, Category: Measures (Survey questions/Interview questions /interview guides/focus group questions); • Recruitment.pdf, Category: Recruitment Materials; • Transcript.pdf, Category: Other;

The IRB determined that the protocol is considered exempt pursuant to Federal Regulations 45CFR46 (2) Tests, surveys, interviews, or observation on 4/5/2022.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

If any changes are made to the study, the IRB must be notified at research.integrity@asu.edu to determine if additional reviews/approvals are required. Changes may include but not limited to revisions to data collection, survey and/or interview questions, and vulnerable populations, etc.

Appendix D2.

Recruitment Script

(This script will be posted on Amazon's Mechanical Turk online survey platform to recruit participants. The study is only shown to those who already meet the 18 years and older and U.S. citizen requirement as part of MTurks pre-screening questionnaires, so we omitted this from the study description. In addition, MTurk does not allow to screen within a study so we are not permitted to include any participant requirements in the recruitment. The monetary compensation amount is also automatically provided to participants by MTurk, so we have omitted this from the study description.)

Title: Juror Decision-Making

Description: The purpose of this study is to examine how jurors make decisions in criminal legal cases. This particular case focuses on decisions about a criminal assault/battery case, looking at the case proceedings and evidence presented for and against the defendant. Participation includes reading a transcript of the mock case, and answering a series of questions related to case judgments, individual measures, and demographics.

Time Required: This study will last for about 45 minutes of your time.

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at kmmccowa@asu.edu.

Appendix D3.

Study 2 Consent

Juror Decision-Making

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to participate if you are at least 18 years of age, and a U.S. citizen.

Why is this research being done?

The purpose of this study is to examine how jurors make decisions in criminal legal cases.

What happens if I say yes, I want to be in this study?

Participation includes reading a case of a criminal lawsuit against a defendant charged with assault/battery. You will be asked to fill out a short questionnaire and surveys regarding your judgments of the cases, as well as a brief demographic survey.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may stop participation at any time. There is no penalty for withdrawing from the study at any point, however, to be paid you must reach the end of the survey.

How long will the research last?

We expect that individuals will spend approximately 45 minutes involved in the research study.

Are there any potential risks in taking part in this study?

The case transcript is about an assault/battery allegation, a topic that may be uncomfortable for some individuals. The case itself recounts evidence from the night of the alleged assault/battery, and thus has details pertaining to events that may be distressing. This is no more though than what jurors in real cases would be exposed to, or what one might see in news and media outlets. Your participation in this study is voluntary. If you choose not to participate or to withdraw from the study at any time, there will be no penalty.

Will being in this study help me in any way?

There are no direct benefits, other than possible interest in the case material.

Compensation

Compensation of $2.00 will be granted to those who complete the study, through their Amazon Mechanical Turk account.

What happens to the information collected for the research?

All responses will be kept confidential. For research purposes, an anonymous numeric code will be assigned to your responses. However, your Amazon MTurk worker ID number will be temporarily stored in order to pay you for your time; this data will be deleted as soon as all participants have been compensated. You have the option of making your personal information private by changing your MTurk settings through Amazon. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information aside from general information collected through a demographic survey (e.g. age, gender), and your MTurk ID, which will be deleted after all participants have been compensated. The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

If you agree to take part in this study please indicate in the box provided below, and proceed to the next page.

[Qualtrics question: "I agree to take part in the study" with a check box response]

Appendix D4.

Study 2 Transcripts

The base of this transcript will be displayed in all conditions, unless specified. Certain blocks are only shown within certain conditions – specifically blocks in the cross examination of the witness, Devin Bowen. These blocks will be bolded and specified within the transcript which conditions they apply to.

Case: State v. Franklin Holder

Start of Block: Judge's Opening Instructions

Judge's Opening Instructions

Judge: First, a word of welcome to our jurors. I am Judge Sinclair and will be presiding over the case you will hear and decide.

The defendant, Franklin Holder, is charged with assault and battery. Now that the trial is beginning, there are some important matters to share with you so that you will better understand what will happen during the trial.

As jurors, you have three major duties. The first is to carefully listen to and look at the evidence of what happened in this case. Second, you must carefully listen to and follow the law that applies in the case. Finally, you will reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged.

Every defendant is presumed innocent by law. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt. The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, based on the evidence or lack thereof, if you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

Assault and battery requires the prosecutor prove that the defendant:

1. Intentionally, knowingly, or recklessly caused any physical injury to another person;
2. Intentionally placed another person in reasonable apprehension of imminent physical injury;
3. Knowingly touched another person with the intent to injure, insult, or provoke that person;
   AND
1. Caused serious physical injury or substantial disfigurement to another person; OR

2. Used a deadly weapon or dangerous instrument to intentionally place somebody in imminent fear of serious physical injury

This does not include acts of self-defense. By law, a person with a reasonable fear for his or her own safety by reason of the conduct of another may take reasonable steps to defend himself or herself.

All of the witnesses took their oaths before the jury was seated. I'll now call on the two attorneys for their opening statements. The prosecutor, Mr. Greg Emery, will go first, followed by the defendant's attorney, Mr. Jordan Farrell.

The prosecution may now deliver its opening statement.

End of Block: Judge's Opening Instructions

Start of Block: Prosecution's Opening Statement

Prosecution's Opening Statement

Mr. Emery: Thank you your honor. Members of the jury, my name is Greg Emery. I am a prosecutor with the District Attorney's Office.

Let me take a brief moment to give you an overview of the case. The state has charged the defendant, Franklin Holder, with assault and battery. On the evening of November 6th, the victim, Mr. Jacob Allen, went to meet friends at a local bar he frequently visits. It was there where he encountered the defendant, Mr. Franklin Holder, and made an unintentional, ill-perceived comment at the expense of Mr. Holder's friend. You will hear the accounts of how Mr. Allen provoked the defendant, and how this minor comment sparked an altercation between the two men. The defendant will argue that this was a mutual fight, and that the defendant unintentionally imposed serious harm. Despite what the defense may try to convince you of, this assault escalated beyond what any reasonable person would have done in self-defense, and Mr. Allen suffered severe injuries due to the defendant's behavior.

You will hear testimony supporting the extent of Mr. Allen's injuries through physical evidence and witness observations. At the end of the trial I ask you to return a verdict of guilty. Thank you.

Judge: The defense may now give its opening statement.

End of Block: Prosecution's Opening Statement

Start of Block: Defense's Opening Statement

Defense's Opening Statement

Mr. Farrell: Thank you. Members of the jury, my name is Jordan Farrell, and I practice law here in Amber Creek County. My client, Franklin Holder, is seated next to me.

After you have heard all the evidence and witnesses in this case, I will ask you to find Franklin not guilty of assault and battery, since the government will not be able to prove his guilt beyond a reasonable doubt. As the judge explained, to be guilty of this charge there must be clear intent and absence of self-defense.

The defense clearly had no intent to seriously injure the complainant, Mr. Allen, and only acted out of self-defense and reactance to Mr. Allen's actions and an effort to prevent Mr. Allen from imposing further harm on him. You will hear evidence confirming that Mr. Allen provoked my client, and that my client merely responded to comments in an effort to defend his friend. After the fight became physical, my client had no choice but to continue to physically defend himself from Mr. Allen.

Judge: Thank you counsel. Now, we'll begin with the evidence. The prosecution may call its first witness.

End of Block: Defense's Closing Statement

Start of Block: Direct Examination of Officer Donovan

Prosecution's Direct Examination of Officer Donovan

Mr. Emery: Your honor, the state calls Officer Donovan to the stand.

Mr. Emery: Officer Donovan, please state your name and describe your employment for the jurors please.

Officer Donovan: My name is Will Donovan. I am a police officer at the Amber Creek police department. I was the officer on duty when a call came in about a possible assault at a local bar.

Mr. Emery: Would you please tell the jury your department's work in answering this dispatch?

Officer Donovan: Yes, the bar owner, Carson Medina, called in around just after 10:00 PM that night. He was calling about a fight that broke out at his bar between two men at the place, said it was escalating and asked for an officer to check it out. The call was dispatched to me and my partner who were a few blocks away from the bar.

Mr. Emery: And upon arriving at the scene, what did you find?

Officer Donovan: When we arrived we saw a crowd of people outside and seemingly in a hurry to leave, there was a lot of commotion and noise.

Mr. Emery: Would you say this was out of the ordinary for this bar?

Officer Donovan: Somewhat. I had been in this bar a few times in the past and it's usually filled with locals. Sometimes a fight or two breaks out here and there, but mostly harmless guys from the neighborhood looking to have a few beers after work.

Mr. Emery: And was this fight similar to the ones you just described?

Officer Donovan: No, when we walked in we saw a table was knocked over and there was glass shattered on the floor, seemed to be from a beer cup. It was immediately clear who the two men involved in the fight were.

Mr. Emery: When you say it was clear who the fight was between, can you elaborate on this?

Officer Donovan: Yes, well one of the men had bloody knuckles and a broken nose.

Mr. Emery: Can you identify this man?

Officer Donovan: He is the defendant, Franklin Holder.

Mr. Emery: And what about the other man?

Officer Donovan: Yes, I identified this man as Jacob Allen, the complainant in the case. He was in severely bad shape, his face had already swelled around his eyes and there were clear signs of trauma from my experience. He was taken off in an ambulance.

Mr. Emery: What happened next?

Officer Donovan: I took a statement from Mr. Holder, the defendant. He tried to recount the timeline of events leading up to the fight. He mentioned Mr. Allen making a rude comment to him and his buddy about a woman they were at the bar with. When Mr. Holder called him out the guy got in his face, trying to pick a fight with them. Said Mr. Allen was shoving him, trying to provoke him, so he punched Mr. Allen and it escalated from there.

Mr. Emery: And what about Mr. Allen, were you able to get a statement from him?

Officer Donovan: Yes, after collecting more evidence from the scene and talking to a few of the people that were there, I went over to the hospital. I had to wait a few hours, since Mr. Allen was unconscious and not in a position to give a statement yet. When he woke up, he shared his recollection of the night and asked to press charges against the defendant.

Mr. Emery: What happened that night according to Mr. Allen?

Officer Donovan: It was a similar timeline that Mr. Holder gave. Mr. Allen was there with a few of his friends, who had left around 9:00 PM. After that he was sitting at the bar by himself, when he overheard the defendant talking to his buddy about a woman near them. He said he chimed in, made a remark about a woman not realizing it was one of their friends. He said it was all fun and games in his mind. He didn't realize she was with them, but Mr. Holder got real defensive and started shouting at him. He went over and things started getting physical, at first minor shoving and then a punch was thrown

and he could tell things were getting out of control. Next thing he knew he was on the ground and Mr. Holder had him pinned down beating him.

Mr. Emery: Did Mr. Holder contest to this statement?

Officer Donovan: He admitted to pinning down Mr. Allen, but said it was in self-defense, that Mr. Allen had punched him in the face and he lost control.

Mr. Emery: Did this seem like a fair statement to make?

Officer Donovan: Based on the extent of Mr. Allen's injuries, it seemed unlikely that it was due entirely to self-defense. Mr. Allen was pretty incapacitated by the time we arrived on the scene, so at a certain point, one would expect the person to retreat from the fight when there was no longer any clear threat to them.

Mr. Emery: Thank you, no further questions your honor.

End of Block: Direct Examination of Officer Donovan

Start of Block: Cross Examination of Officer Donovan

Defense's Cross Examination of Officer Donovan

Mr. Farrell: Officer Donovan, you mentioned that the original call was made by Mr. Medina, the bar owner. Can you tell us about his demeanor at the time and the urgency of his call?

Officer Donovan: He didn't appear too shaken up at first, but as a bar owner he likely has witnessed fights in his bar before, so he may not have thought much of it at first.

Mr. Farrell: So, when you got the call, is it safe to say no one seemed to be in any imminent danger then?

Officer Donovan: That is correct.

Mr. Farrell: And when you got to the bar, you mentioned some injuries to my client, Mr. Holder as well. Is it fair to say one cannot rule out self-defense was a motivating factor, and that my client did not intend to severely harm Mr. Allen?

Officer Donovan: Based on the extent of both Mr. Holder's and Mr. Allen's injuries, it is reasonable to think that both men threw a few punches, so no, it is not clear who threw the first punch or whether it could have been self-defense.

Mr. Farrell: Thank you, that's all I have, your honor.

Judge: Thank you. Officer Donovan, you are excused. Mr. Emery, your next witness?

End of Block: Cross Examination of Officer Donovan

Start of Block: Direct Examination of Dr. Novak

Prosecution's Direct Examination of Dr. Novak

Mr. Emery: Your honor, the state calls Dr. Novak to the stand.

Mr. Emery: Dr. Novak, would you please tell the judge and jury your full name and employment?

Dr. Novak: My name is Elizabeth Novak, I am a nurse at the Amber Creek Medical Center. I received my Doctorate of Nursing Practice and have been at the hospital for a couple of years now in the emergency unit.

Mr. Emery: So would you say you are highly experienced and trained in trauma injuries that come in?

Dr. Novak: Yes, I have been with a wide variety of patients who come in, and oversee a lot of their care along with the primary doctor that's in the ER that day.

Mr. Emery: Can you briefly describe what your initial perceptions of the complainant, Mr. Allen were when the ambulance first brought him in?

Dr. Novak: Yes, by the time he arrived to the hospital he was not in critical condition. The Emergency Medical Technicians, EMTs, in the ambulance had addressed his wounds and had him on opioids to help with the pain. His face was badly swollen and beaten up, and his abdomen and ribs seemed bruised as well. We took him to one of the ER beds to take his vitals and further assess his wounds.

Mr. Emery: And can you give us a brief breakdown of what your exam found?

Dr. Novak: His vital signs seemed back to normal. His left eye was bloodshot, and was consistent with acute hyphema, which occurs after blunt trauma to the eye. His ribs were also badly bruised, but there were no signs of broken ribs.

Mr. Emery: What was Mr. Allen's general treatment plan then?

Dr. Novak: We admitted him overnight to keep an eye on his eye pressure and bleeding, but it seemed to be improving. We gave him a bandage and eyedrops to apply regularly for a few weeks, as well as referred him to an optometrist closer to him for regular check-ups to make sure the bleeding and pressure did not return. We also prescribed him Vicodin, a medication to help manage the pain in his ribs until the bruising and swelling had gone down.

Mr. Emery: Vicodin, this is a strong opioid medication, correct? In your professional opinion, would you say then that he had intensive injuries?

Dr. Novak: Yes, we felt it necessary to provide him with prescription for this pain. Mr. Allen was lucky to have had a seemingly speedy recovery, but these types of injuries can create lasting problems in vision.

Mr. Emery: Thank you, Dr. Novak. No further questions.

Judge: Mr. Farrell, cross-examination?

End of Block: Direct Examination of Dr. Novak

Start of Block: Cross Examination of Dr. Novak

Defense's Cross Examination of Dr. Novak

Mr. Farrell: Dr. Novak, you mentioned that you prescribed the complainant, Mr. Allen with Vicodin. Is this an uncommon prescription to give patients who come in with injuries?

Dr. Novak: Not necessarily, opioids can be very addictive, but a useful medication for pain management when prescribed and taken appropriately. Some doctors prescribe them more than others, we generally at the hospital try to limit the prescription of this drug though.

Mr. Farrell: I have medical records from your hospital that show evidence of this being prescribed for a sore back. Would you describe a sore back as a severe injury then?

Dr. Novak: On the surface no, but this specific patient had been in several times with a chronic pain, it was a last resort.

Mr. Farrell: So by this standard, Mr. Allen being given Vicodin is not necessarily an indication of severe injury, as the Prosecution may lead the jury to believe?

Dr. Novak: That is correct.

Mr. Farrell: Thank you Dr. Novak. You mentioned earlier that you also took his vitals and ran blood tests. Can you confirm for the jury the complainant's alcohol content at the time?

Dr. Novak: His blood alcohol content was .09 at the time we tested it.

Mr. Farrell: And that was after a significant time had passed since the ambulance took him, making it likely that at the time of the fight in question, he was under the influence and had impaired judgment?

Dr. Novak: With the time that had passed, yes it is possible that he would have had impaired cognitive reasoning and memory.

Mr. Farrell: Thank you, that's all I have your honor.

Judge: The witness is excused. Mr. Emery, your next witness?

Mr. Emery: The State rests, your honor.

Judge: We now turn to the defense, Mr. Farrell.

End of Block: Cross Examination of Dr. Novak

Start of Block: Direct Examination of Devin Bowen

Defense's Direct Examination of Devin Bowen

Mr. Farrell: Your honor, the defense calls its first witness, Devin Bower to the stand.

Mr. Farrell: Please state your full name for the record and your relation to the defendant.

Devin Bowen: My name is Devin Bowen. I was with the defendant, Franklin, the night of the fight. We live in the same neighborhood, hang out occasionally and have gotten to know each other quite well.

Mr. Farrell: Was there anyone else with you that night?

Devin Bowen: There were a few other people there that he was talking to when I arrived. They live around the neighborhood so we see them there quite a lot.

Mr. Farrell: Can you recall the events that led up to the fight between Mr. Holder and Mr. Allen?

Devin Bowen: Yes, we were sitting at a table near the bar, where Mr. Allen was sitting. He kept making comments throughout the night that seemed to be directed to our table, but we shrugged it off, he seemed like he had a lot to drink. Eventually though he made a comment about one of the women we were with, that's when Franklin, Mr. Holder, started yelling back to him telling him to leave. They both had stood up at this point and were in each other's faces.

Mr. Farrell: At one point did the altercation between them get physical?

Devin Bowen: They both seemed to be shoving each other, but I kept hearing Mr. Allen antagonize my friend, calling him a tough guy and to put his money where his mouth was sort of thing. After a couple minutes of them arguing back and forth, Mr. Holder punched Mr. Allen in the face. Mr. Allen punched him right back though and this went on until they fell over the table and were on the ground fighting. After this it was pretty back and forth until Mr. Holder had pinned down Mr. Allen and things began to escalate. At this point, me along with some other guys around were able to break up the fight and separate the two men. This is when we realized the extent of both men's injuries.

Mr. Farrell: So nobody stepped in until things seemed to have escalated, prior to Mr. Holder pinning him down then, would you say the fight didn't seem concerning?

Devin Bowen: It didn't look that way, both of them seemed to be drunk and just in the heat of the moment. It got to a point where it seemed like self-defense and the only option was to pin him down to stop the fight.

Mr. Farrell: Thank you, Mr. Bowen. No further questions, your honor.

Judge: Mr. Emery, cross examination?

End of Block: Direct Examination of Devin Bowen

Start of Block: Cross Examination of Devin Bowen

Prosecution's Cross Examination of Devin Bowen

Mr. Emery: Mr. Bowen, you said that Mr. Holder had Mr. Allen pinned down. At this point in time, was Mr. Allen still fighting back?

Devin Bowen: He was still showing physical resistance yes.

Mr. Emery: And did the defendant, Mr. Holder stop punching after this resistance slowed down?

Devin Bowen: Well neither man completely stopped, but once Mr. Allen seemed to have lost energy, so did Mr. Holder. Mr. Holder seemed to be acting in reactance to whether Mr. Allen would continue to try to fight again, waiting to see if he'd throw another punch.

Mr. Emery: You eventually had to break up the fight with other men though. Would you say at this point you recognized Mr. Holder was getting out of control?

Devin Bowen: Well, we had tried to break up the fight from the beginning, but yes, it was becoming more clear that both men were injured, so once their energy was down were able to separate them.

Start of Block—Cross Examination Control: only displayed in the Control Condition (No Prejudicial Evidence)

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

Start of Block--Cross Examination No Objection: only displayed in the No Objection Condition (Prejudicial Evidence w/o Objection)

Mr. Emery: And have you known the defendant, Mr. Holder, to be an aggressive person in the past?

Devin Bowen: No, this was the first fight I had seen him get into.

Mr. Emery: You first met the defendant from his time as a police officer at your precinct though, correct?

Devin Bowen: Yes.

Mr. Emery: Police organizations sometimes collect and trade commemorative coins, is that correct?

Devin Bowen: Yes, that's correct.

Mr. Emery: And isn't it true that you were part of a police organization together, POST, that encouraged officers to use force against protestors, and traded commemorative coins of this violence as tokens, such as allegedly styled after a neo-Nazi slogan that said "Good Night, Left Nut: Making American Great Again, One Nut at a Time" after a protestor was shot in the testicles with a rubber bullet by an officer?

Devin Bowen: This was not the point of the organization, and I have no knowledge of the coin being a neo-Nazi slogan.

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

Start of Block--Cross Examination Standard: only displayed in the Standard Instruction Condition (Prejudicial Evidence + Standard Instructions)

Mr. Emery: And have you known the defendant, Mr. Holder, to be an aggressive person in the past?

Devin Bowen: No, this was the first fight I had seen him get into.

Mr. Emery: You first met the defendant from his time as a police officer at your precinct though, correct?

Devin Bowen: Yes.

Mr. Emery: Police organizations sometimes collect and trade commemorative coins, is that correct?

Devin Bowen: Yes, that's correct.

Mr. Emery: And isn't it true that you were part of a police organization together, POST, that encouraged officers to use force against protestors, and traded commemorative coins of this violence as tokens, such as allegedly styled after a neo-Nazi slogan that said "Good Night, Left Nut: Making American Great Again, One Nut at a Time" after a protestor was shot in the testicles with a rubber bullet by an officer?

Devin Bowen: This was not the point of the organization, and I have no knowledge of the coin being a neo-Nazi slogan.

Mr. Farrell: Objection your honor, prejudicial evidence, relevance?

Judge: Sustained, Mr. Farrell. Jurors, you have heard evidence pertaining to the defendant's prior occupation and potential organization membership. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Therefore, we instruct that you decide this case as if you had never heard the evidence, and ignore it in your deliberations.

Judge: Prosecution, please proceed.

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

Start of Block--Cross Examination Moral Foundations: only displayed in the Moral Foundation Instructions Condition (Prejudicial Evidence + Moral Foundation Instructions)

Mr. Emery: And have you known the defendant, Mr. Holder, to be an aggressive person in the past?

Devin Bowen: No, this was the first fight I had seen him get into.

Mr. Emery: You first met the defendant from his time as a police officer at your precinct though, correct?

Devin Bowen: Yes.

Mr. Emery: Police organizations sometimes collect and trade commemorative coins, is that correct?

Devin Bowen: Yes, that's correct.

Mr. Emery: And isn't it true that you were part of a police organization together, POST, that encouraged officers to use force against protestors, and traded commemorative coins of this violence as tokens, such as allegedly styled after a neo-Nazi slogan that said "Good Night, Left Nut: Making American Great Again, One Nut at a Time" after a protestor was shot in the testicles with a rubber bullet by an officer?

Devin Bowen: This was not the point of the organization, and I have no knowledge of the coin being a neo-Nazi slogan.

Mr. Farrell: Objection your honor, prejudicial evidence, relevance?

Judge: Sustained, Mr. Farrell. Jurors, you have heard evidence pertaining to the defendant's prior occupation and potential organization membership. It is clear that the law does not allow it to be used as evidence in this case based on the potential prejudice outweighing any potential value. Each one of us has moral biases or certain perceptions of other people and behaviors that violate morals we value. If someone violates a moral we find important, it can trigger automatic intuitive judgments that may not have any rational basis. We may not be fully aware of this bias we hold, but our biases often affect how we act, favorably or unfavorably, toward someone. Bias can affect our thoughts, how we remember, what we see and hear, whom we believe or disbelieve, and how we make important decisions. Therefore, decide this case as if you had never heard the evidence, and ignore it in your deliberations. We ask that you evaluate the evidence and resist any urge to reach a verdict that is influenced by moral bias for or against any party or witness.

Judge: Prosecution, please proceed.

Mr. Emery: No further questions your honor.

Judge: The witness is excused. Your next witness, Mr. Farrell?

End of Block: Cross Examination of Devin Bowen

Start of Block: Direct Examination of Carson Medina

Defense's Direct Examination of Carson Medina

Mr. Farrell: The defense calls its next witness, Carson Medina.

Mr. Farrell: Can you please state your name and employment for the jury.

Carson Medina: My name is Carson Medina, I am the owner of the bar that the fight in question took place at.

Mr. Farrell: We have heard accounts of the night so far from the defendant's friend, Mr. Bowen, and the officer who collected statements from both parties that night. From your understanding of the night, is it correct to say that Mr. Allen started the instigation when he made comments to my client and his friends?

Carson Medina: Mr. Allen yes started the verbal altercation, but I didn't clearly see who started the physical fight.

Mr. Farrell: Based on your observations, how much alcohol had both men consumed that night?

Carson Medina: I wasn't the one directly serving them, but both men had been well above the legal limit, and seemed heavily intoxicated by the time they had any interaction with one another.

Mr. Farrell: In your professional opinion, should they have been served as much as they had been?

Carson Medina: No, in fact I had to put the bartender from that night on probation for overserving on numerous occasions.

Mr. Farrell: So, is it safe to say that both men were in a compromised state of mind during the fight?

Carson Medina: They were both intoxicated, yes.

Mr. Farrell: Thank you, no further questions your honor.

End of Block: Direct Examination of Carson Medina

Start of Block: Cross Examination of Carson Medina

Prosecution's Cross Examination of Carson Medina

Mr. Emery: Mr. Medina, how long have you been in the bar industry?

Carson Medina: I was a bartender for a few years, and been the owner of this bar for almost 10 years now.

Mr. Emery: So you have a lot of experience with drunk people at your bar then. Is this level of intoxication out of the ordinary?

Carson Medina: Their behavior became increasingly out of the ordinary, but no, I'd say we get a lot of people in that we have to kick out for being too drunk.

Mr. Emery: And have you ever kicked anyone out for fighting before this night?

Carson Medina: Yes, our general policy is that once a verbal fight creates a disturbance we warn them that we will have to kick them out. If it escalates to a more physical altercation we will escort them outside.

Mr. Emery: And did you follow this same protocol that night?

Carson Medina: We did give them several verbal warnings, but these men are locals, so we were a bit more lenient and figured it would blow over.

Mr. Emery: And after a physical fight broke out, what did you do then?

Carson Medina: It escalated pretty quickly, there were a few men trying to break up the fight. I decided to call the police since the fight didn't seem to be slowing down. By the time the police got there the fight had been broken up, but both men were pretty badly hurt, and one was taken to the hospital.

Mr. Emery: How did this compare to the other fights you have witnessed as a bar owner?

Carson Medina: This one was by far the worst. I would not allow either of those men back into my bar after what I witnessed that night.

Mr. Emery: Nothing further your honor.

Judge: Thank you, you may step down. Defense?

Mr. Farrell: The defense rests your honor.

End of Block: Cross Examination of Carson Medina

Start of Block: Closing Instructions

Closing Instructions

Judge: Members of the jury, you have now heard all the evidence in the case. I want to instruct you on the law that you must follow in deciding this case. I may repeat what I stated at the outset of the trial because of its importance.

You must now reach a verdict on the question of whether the defendant is guilty or not guilty of the crime charged. You must not think the defendant is guilty because he has been arrested for or charged with a crime. Those are merely procedures to bring the case and the defendant to court.

Every defendant is presumed by law to be innocent. The prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Proof "beyond a reasonable doubt" is proof that leaves you firmly convinced of the defendant's guilt.

The law does not require proof that overcomes every doubt. If, based on your consideration of all the evidence, in light of the law that applies, you are firmly convinced that the defendant is guilty of the crime charged, a guilty verdict is authorized. However, if you think, based on the evidence or the lack of it, that there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

The defendant in this case is charged with the crime of assault and battery. Before he can be found guilty, the prosecution must prove all of the following four things beyond a reasonable doubt:

1. Intentionally, knowingly, or recklessly caused any physical injury to another person;
2. Intentionally placed another person in reasonable apprehension of imminent physical injury;
3. Knowingly touched another person with the intent to injure, insult, or provoke that person;
   AND
1. Caused serious physical injury or substantial disfigurement to another person; OR
2. Used a deadly weapon or dangerous instrument to intentionally place somebody in imminent fear of serious physical injury

With that said, I'll now call on the two attorneys for their closing arguments. The prosecutor, Mr. Emery, will go first, followed by the defendant's attorney, Mr. Farrell.

End of Block: Closing Instructions

Start of Block: Prosecution's Closing Statement

Prosecution's Closing Statement

Mr. Emery: Members of the jury. The evidence today proves that Franklin Holder, the defendant in this case, assaulted Mr. Allen at the bar that night, causing severe and potentially life altering physical injuries. There was clear evidence supporting the extent

of these injuries, and despite Mr. Holder's mental state at the time, the injuries are more than what one would expect had someone been acting out of self-defense or without intent.

When you consider all of the evidence in the case, the defendant's guilt has been proven beyond a reasonable doubt.

I ask for your verdict of guilty.

Judge: Thank you. Mr. Farrell, you may make your closing argument on behalf of the defendant.

End of Block: Prosecution's Closing Statement

Start of Block: Defense's Closing Statement

Defense's Closing Statement

Mr. Farrell: Jurors – what you heard here today falls short of proving any guilt and intentional harm at the hands of my client. The prosecution wants you to put away my client, a man with no record, all based on a bar fight – provoked by the other man. The physical injuries were suffered by both men, and there is no conclusive evidence of how this fight progressed and who is to blame.

Based on the evidence – and lack thereof - what you have heard today is a clear example of a drunk bar fight gone wrong. Both men got carried away that night, and my client should not bear the responsibility for any injuries that he inflicted based on self-defense and mutual altercations.

The law specifically defines assault as an intentional act, done without self-defense, which the evidence shows was not the case. Therefore, I ask that you return a verdict of not guilty.

Judge: Members of the jury, that concludes the trial except for your decision, or verdict. Thank you.

End of Block: Defense's Closing Statement

Appendix D5.

Measures

Guilt: Do you find the defendant____?

- Guilty
- Not Guilty

Confidence: How confident are you in your decision?

1 = not at all confident , 10 = very confident

Guilt_Likert: How guilty do you believe the defendant, Franklin Holder is?

1 = not at all guilty, 10 = very guilty

Likelihood: In your view, what is the likelihood (percentage wise) that the defendant, Franklin Holder, intended to assault the complainant, Jacob Allen?

0 10 20 30 40 50 60 70 80 90 100

Pros_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the prosecution's case?

1 = very weak, 10 = very strong

Def_Strength: Overall, on a 1 to 10 scale, where 1 is very weak and 10 is very strong, how strong is the defense's case?

1 = very weak, 10 = very strong

AC: This question is to ensure you are paying attention to the study. Please select seven.

1 = Strong Disagree, 7 = Strongly Agree

Evidence_Full: The following statements relate to evidence presented in the trial. Please indicate the extent to which you think each piece of evidence supported the defense's case or the prosecution's case. Where neutral indicates that you felt the evidence did not support one side more than the other. (1 = *strongly supports the prosecution's case*, 2 = *supports the prosecution's case*, 3 = *somewhat supports the prosecution's case*, 4 = *neutral*, 5 = *somewhat supports the defendant's case,* 6 = *supports the defendant's case*, 7 = *strongly supports the defendant's case*)

1 2 3 4 5 6 7

Evid_1: Evidence of the complainant, Jacob Allen's injuries

Evid_2: The defendant was heavily intoxicated

Evid_3: Witnesses saw the complainant antagonize the defendant

Evid_4: The defendant continued to injure the complainant after pinning him down

Evid_5:The defendant did not listen to efforts to break up the fight

[Display this question if they received prejudicial evidence]
PrejudicialEvidence: You heard evidence related to the defendant's membership to an anti-protest police organization. Did you find this evidence to be in support of the prosecution's case, or the defense's case?

- Supported the Prosecution's Case
- Supported the Defense's Case

Display This Question:
If previous response = Supported the Prosecution's Case
PE_pros: How strong was that evidence in support of the prosecution's case?

1 = very weak, 7 = very strong

Display This Question:
If previous response = Supported the Defense's Case
PE_def: How strong was that evidence in support of the defense's case?

1 = very weak, 7 = very strong

Resp_D: How responsible do you feel the defendant, Franklin Holder, is for what happened?

1 = Not at all responsible, 7 = Very Responsible

Resp_P: How responsible do you feel the complainant, Jacob Allen, is for what happened?

1 = Not at all responsible, 7 = Very Responsible

Blame Attribution Scale

Please rate the extent to which you agree with the following statements.

1 = *strongly disagree*, 7 = *strongly agree*

DBA_1: The defendant, Franklin Holder, just got carried away (reverse scored)

DBA_2: The defendant did not intend to severely hurt the complainant (reverse scored)

DBA_3: The defendant exhibited poor behavior

DBA_4: The defendant is an aggressive person

DBA_5: The defendant should not have been served as much alcohol as he had (reverse scored)

AC_2: Please respond to this question by typing in the fifth word of the sentence to ensure you are paying attention.

(answer should be “question”)

Please answer the following questions on the scale provided: 1 = strongly disagree, 7 = strongly agree. The complainant refers to Jacob Allen.

VBA_1: The complainant provoked the defendant

VBA_2: The complainant exhibited poor behavior

VBA_3: The complainant was not at all to blame (reverse scored)

VBA_4: The complainant could have avoided the situation had he wanted to

VBA_5: The complainant was just in the wrong place at the wrong time (reverse scored)

Moral Foundations Questionnaire (Graham et al., 2011)

This will be the same questionnaire as that used in Study 1. See Appendix B5.

Bias Blind Spot Questionnaire

People use moral heuristics - mental shortcuts – to make inferences about others’ morality and make moral judgments about others that can lead to mistaken judgments.

To what extent do you believe that you show this tendency?

To what extent do you believe that the average person shows this tendency?

1 = *not at all*, 9 = *strongly*

You were shown evidence relating to the defendant’s anti-protestor police organization affiliation.

To what extent do you believe this influenced your judgments in this case?

To what extent do you believe the average person would be influenced by this information in forming judgments about this case?

1 = *not at all*, 9 = *strongly*

Demographics

These will be the same as those in Study 1. See Appendix B5.

APPENDIX E

STUDY 3 MATERIALS

Appendix E1.

Study 3 IRB Approval

EXEMPTION GRANTED

Tess Neal
NCIAS: Social and Behavioral Sciences, School of (SSBS)
602/543-5680
Tess.Neal@asu.edu

Dear Tess Neal:

On 1/4/2022 the ASU IRB reviewed the following protocol:

Type of Review:	Initial Study
Title:	Prejudicial Evidence in Court
Investigator:	Tess Neal
IRB ID:	STUDY00015165
Funding:	None
Grant Title:	None
Grant ID:	None
Documents Reviewed:	• Full study Consent, Category: Consent Form; • Full study Survey, Category: Measures (Survey questions/Interview questions /interview guides/focus group questions); • IRB Protocol, Category: IRB Protocol; • Pre-screening Consent, Category: Consent Form; • Pre-screening Survey, Category: Measures (Survey questions/Interview questions /interview guides/focus group questions);

The IRB determined that the protocol is considered exempt pursuant to Federal Regulations 45CFR46 (2) Tests, surveys, interviews, or observation on 1/4/2022.

In conducting this protocol you are required to follow the requirements listed in the INVESTIGATOR MANUAL (HRP-103).

Appendix E2.

Pre-Screening Recruitment

(This script is based on Prolific Academic's standard format. Participants will be presented with this basic study information prior to deciding whether to participate.)

Title: Legal Sector Job Position

The purpose of this study is to collect information on your job position in the legal sector. In the study we will ask you to answer a series of questions about what specific job position you hold in the legal sector. Based on your answers to the current study, you may be invited to a follow-up study that will last 15 minutes.

Time Required: This study will last for about 1 minute of your time.

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at kmmccowa@asu.edu.

Appendix E3.

Pre-Screening Consent Form

Legal Sector Job Position

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to take part in this research study as someone 18 years or older, employed in the legal sector.

Why is this research being done?

The purpose of this study is to collect information on your job position in the legal sector. Based on your answers to the current study, you may be invited to a follow-up study that will last 15 minutes.

What happens if I say yes, I want to be in this study?

Participation includes answering a series of questions about what specific job position you hold (or have held) in the legal sector.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may skip questions, or stop participation at any time. There is no penalty for withdrawing from the study at any point.

How long will the research last?

We expect that individuals will spend approximately 1 minute involved in the research study.

Are there any potential risks in taking part in this study?

Participants may experience minimal risk. The survey asks only about your employment position, so there are no invasive or overly personal questions.

Will being in this study help me in any way?

Participants will receive monetary compensation of $6.50/hour for their time spent on this study. Compensation will be given through participant's Prolific Academic account. Aside from this, there are no direct benefits, other than possible interest in the content of the survey.

What happens to the information collected for the research?

All responses will be kept confidential. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information

aside from general information collected through a demographic survey (e.g. age, gender). The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

Appendix E4.

Survey Recruitment Script

(This script is based on Prolific Academic's standard format. Participants will be presented with this basic study information prior to deciding whether to participate.)

Title: Prejudicial Evidence in Court
Study Overview: The aim of this study is to examine the prevalence of prejudicial evidence and how it is handled in legal settings. In this study we will ask you to complete a brief survey related to your perceptions of, and experience with, prejudicial evidence in court. We will also ask you to complete a brief demographic survey that includes questions related your area of practice and years practicing law.
Requirements: As an attorney, and an expert in the field of law, we invite you to take part in this study.
Time Required: This study will last for about 15 minutes of your time.

Your participation in this study is voluntary. If you have any questions concerning the research study, please contact Kristen McCowan, the primary investigator in this study, at kmmccowa@asu.edu.

Appendix E5.

Consent Form

Prejudicial Evidence in Court

Investigator: Kristen McCowan, PhD student under the supervision of Professor Tess Neal at Arizona State University.

Why am I being invited to take part in this research study?

We invite you to take part in this research study if you are 18 years or older and an attorney. We invite you to participate if you are currently serving as an attorney, or if you have ever been an attorney in legal cases.

Why is this research being done?

The purpose of this study is to examine how attorney's perceive prejudicial evidence, and its prevalence and impact.

What happens if I say yes, I want to be in this study?

Participation includes answering a series of questions related to how often you encounter prejudicial evidence and objections to it, and your perceptions of admissibility and how effective jury instructions typically are. We will also collect information regarding the area of law you practice, years of experience, and the types of cases that you typically handle.

What happens if I say yes, but I change my mind later?

Completion of this study is voluntary. You may skip questions, or stop participation at any time. There is no penalty for withdrawing from the study at any point.

How long will the research last?

We expect that individuals will spend approximately 15 minutes involved in the research study.

Are there any potential risks in taking part in this study?

Participants may experience minimal risk. The survey itself does not ask any invasive or overly personal questions. However, it does ask that you reflect upon certain types of evidence and cases you have handled. As such, if this happens to be related to a case that you found distressing, you may experience discomfort while reflecting upon the case and evidence.

Will being in this study help me in any way?

Participants will receive monetary compensation of $6.50/hour for their time spent on the study. Compensation will be given through participant's Prolific Academic account.

Aside from this, there are no direct benefits, other than possible interest in the content of the survey.

What happens to the information collected for the research?

All responses will be kept confidential. We will not record names, emails, or other identifying information from you, so we will not have access to any personal information aside from general information collected through a demographic survey (e.g. age, gender). The results of this study in aggregate form (i.e., summarizing across people's responses) may be used in reports, presentations, or publications, but no possibly identifying responses will be made public. The data from this study may be analyzed in future analyses as well. De-identified data collected as a part of the current study will be shared with other investigators for future research purposes. De-identified data, for example, will be made available on the Open Science Framework. However, any identifying information will be kept confidential.

Who can I talk to?

If you have any questions concerning the research study, please contact the research team at: kmmccowa@asu.edu, or Dr. Neal at tess.neal@asu.edu.

This research has been reviewed and approved by the ASU Social Behavioral IRB. You may talk to them at (480) 965-6788 or by email at research.integrity@asu.edu if:

- Your questions, concerns, or complaints are not being answered by the research team.
- You cannot reach the research team.
- You want to talk to someone besides the research team.
- You have questions about your rights as a research participant.
- You want to get information or provide input about this research.

Appendix E6.

Measures

Pre-Screening Questions

1. Do you currently serve as an attorney, or have you ever served as an attorney?
    a. Yes, I currently serve as an attorney
    b. Yes, I have in the past served as an attorney
    c. No
2. Which of the following best describes your current and prior roles in the legal sector? Please check all positions that you currently, or in the past, have held.
    a. Attorney
    b. Judge
    c. Legal Secretary
    d. Court Clerk
    e. Paralegal
    f. Legal Assistant
    g. Other
        i. Please describe
3. What is your primary practice area?
    a. Civil
    b. Criminal
    c. Family
    d. Juvenile
    e. Probate
    f. Tax
    g. Other
        i. Please describe
4. Have you ever worked on a case that went to trial?
    a. Yes
    b. No
5. Have you ever worked on (in any capacity), a case involving FRE 403?
    a. Yes
    b. No
    c. Unsure

Survey Questions

Attorney Survey:

Percent_court: What percent of your cases would you estimate go to jury trial?

Percentage response

FRE403: The U.S. Federal Rule of Evidence (FRE) 403 captures a variety of evidence that can be excluded if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Based on your opinion and potential experience, please rank the following types of FRE 403-related evidence issues in terms of how often they arise in cases. To do so, click to drag and drop each item into the order in which you think it appears, where the number one spot represents the most common issue, and the sixth spot the least common issue.

_____ unfair prejudice (1)

_____ confusing the issues (2)

_____ misleading the jury (3)

_____ undue delay (4)

_____ wasting time (5)

_____ needlessly presenting cumulative evidence (6)

FRE_FR: Please use this question as an opportunity to provide context and comments to the previous question if desired.

_____

_____

Q4 The following questions refer to the use of "prejudicial evidence." For the sake of this survey, the term prejudicial evidence is used to broadly capture a variety of evidence that may be excluded on the basis of unfair prejudice under FRE 403 and related rules of evidence.

Prej; Have you ever encountered prejudicial evidence being brought up at any point in a case?

- Yes
- No

Display This Question:
If Have you ever encountered prejudicial evidence being brought up at any point in a case? = Yes
Case: Think back to all of your experiences with prejudicial evidence. Please indicate what types of cases you have ever observed prejudicial evidence in (select all that apply).

☐ Criminal assault and battery (2)

☐ Criminal sexual assault/rape (3)

- ▢ Criminal drug charges (4)
- ▢ Criminal aiding and abetting (5)
- ▢ Criminal arson (6)
- ▢ Criminal domestic violence (7)
- ▢ Criminal theft (8)
- ▢ Criminal (please specify) (14)

_____

- ▢ Civil (please specify) (1)

_____

- ▢ Family (please specify) (9)

_____

- ▢ Juvenile (please specify) (10)

_____

- ▢ Probate (please specify) (11)

_____

- ▢ Tax (please specify) (12)

_____

- ▢ Other (please specify) (13)

_____

Evidence: Have you ever observed prejudicial evidence (admissible or not) in cases relating to the following areas? Please select all that apply:

- ▢ Gruesome photos (1)
- ▢ Gang membership (2)
- ▢ Sexual predisposition/history (3)
- ▢ Possession of weapons or drugs at time of arrest (4)
- ▢ Sympathetic photos of a victim (5)
- ▢ Wealth, poverty, and worldly condition of parties (6)
- ▢ Other (please describe what this evidence entailed) (7)

_____

- ▢ N/A, I have never witnessed prejudicial evidence in any cases (8)

evid_rank: Please rank the following types of prejudicial evidence from most common (1) to least common (7). We understand these options may not be an exhaustive list, if you feel one has been left out please indicate what this evidence entailed in the "other" option. Otherwise, please leave the "other" choice blank and order this last (least common).

_____ Gruesome photos (1)

_____ Gang membership (2)

_____ Sexual predisposition/history (3)

_____ Possession of weapons or drugs at time of arrest (4)

_____ Sympathetic photos of a victim (5)

_____ Wealth, poverty, and worldly condition of parties (6)

_____ Other (please describe) (7)

When: In your experience, when is prejudicial evidence most often brought up in cases?

- Pre-trial evidence hearings (1)
- Evidence discovery (2)
- Depositions (3)
- During trial (4)
- Other (please describe) (5)

often: In general, how often do you believe prejudicial evidence is brought up in cases (at any point)?

1 = *Never*, 7 = *Very often*

Admissibility: In general, how often do you believe prejudicial evidence meets ground for inadmissibility?

1 = *Never*, 7 = *Very often*

AC: Please respond to this question by typing in the fifth word in this sentence to ensure you are paying attention.

_____

Pretrial: How often do you believe prejudicial evidence, regardless of whether it should be ruled admissible or not, is introduced during pre-trial proceedings?

1 = *Never*, 7 = *Very often*

pt_ruled: When prejudicial evidence is introduced during pre-trial proceedings, what percent of the time, on average, do you recall it being ruled inadmissible and excluded from the case?

- Percent

pt_should: When prejudicial evidence is introduced during pre-trial proceedings, what percent of the time do you believe it should be ruled inadmissible and excluded from the case?

- Percent

Trial: How often do you believe prejudicial evidence, regardless of whether it should be ruled admissible or not, is introduced during trial?

1 = *Never*, 7 = *Very often*

trial_ruled: When prejudicial evidence is introduced during trial, what percent of the time, on average, do you recall it being ruled inadmissible and excluded from the case?

- Percent

trial_should: When prejudicial evidence is introduced during trial, what percent of the time do you believe the evidence should be ruled inadmissible and excluded from the case?

- Percent

obj_other Have you been a part of or observed a case where a lawyer raised an objection to prejudicial evidence being introduced during trial proceedings?

- Yes
- No

Display This Question:
If Have you been a part of or observed a case where a lawyer raised an objection to prejudicial evid... = Yes
Justified: On average, how justified do you think the attorney(s) was in raising the objection?

1 = *Not at all Justified*, 7 = *Very Justified*

obj_self: Have you ever raised an objection to prejudicial evidence during trial proceedings?

- Yes
- No

Scenario: Please rank the following scenarios in order from 1 (most likely to take place), to 6 (least likely to take place).

_____ Prejudicial evidence is introduced during trial, an attorney objects, but the judge rules it admissible. (1)

_____ Prejudicial evidence is introduced during trial, an attorney objects, and the judge rules it inadmissible. (2)

_____ Prejudicial evidence is introduced before trial takes place and is excluded prior to jurors hearing it. (3)

_____ Prejudicial evidence is introduced before trial takes place and is admitted into evidence. (4)

_____ Prejudicial evidence is not introduced at all. (5)

_____ Other (please describe) (6)

Influential: On average, how influential do you believe prejudicial evidence is to jurors?

1 = *Not at all influential*, 7 = *Very influential*

SM: Have you ever had prejudicial evidence introduced in a case involving sexual misconduct (e.g., rape, sexual assault, sexual harassment, civil liability/negligence)?

- Yes
- No
- N/A (I have not worked on a case of this nature)

Display This Question:
If Have you ever had prejudicial evidence introduced in a case involving sexual misconduct (e.g., ra... = Yes
SM_free: Think back to the conditions of the last time this evidence was brought up in a sexual misconduct case. Please describe to the best of your ability and memory what the evidence was related to, what made it prejudicial, and whether or not it was ruled admissible or not.

_____

_____

_____

_____

_____

instruction: How effective do you believe jury instructions to disregard inadmissible evidence are?

1 = *Not at all Effective*, 7 = *Very Effective*

rationale: Please use this question to provide rationale (if desired) for why you believe jury instructions are or are not effective.

_____

_____

_____

_____

_____

FR: Please take this time to describe your general perspective on, and experience with, prejudicial evidence.

_____

_____

_____

_____

_____

Demographics:

Q50: How long have you worked as an attorney?

- Less than 1 year (1)
- ___ Years (please indicate the number of years in the box below) (2)

  _____

state: In which state do you primarily practice?

- Drop down menu of all state options

Area: What is the primary area of law in which you work?

- Civil (1)
- Criminal (2)
- Family (3)
- Juvenile (4)
- Probate (5)
- Tax (6)
- Other (please specify) (7)

  _____

practice: Which statement best describes your practice?

- My practice is only litigation (1)
- My practice is mostly litigation (2)
- My practice is an equal amount of litigation and transactional (3)
- My practice is mostly transactional (4)
- My practice is only transactional (5)

setting: What is the setting of your law practice?

- Private firm (1)
- Nonprofit organization (2)
- Corporation or other for-profit company (3)
- Federal government (4)
- Local government (5)
- Other (please describe) (6)

_____

Gender: What is your gender?

- Male (1)
- Female (2)
- Another identity (please specify) (3)

_____

Age: What is your age?

_____

Race: What do you consider to be your race or ethnicity? Please check all that apply.

▢ African American (1)

▢ Asian (2)

▢ Hispanic (non-white) (3)

▢ Hispanic (white) (4)

▢ Native American (5)

▢ Pacific Islander (6)

▢ White (7)

▢ Other (please specify) (8)

_____

Religion What is your religious preference?

- Jewish (1)

- Protestant (2)
- Muslim (3)
- Orthodox (4)
- Roman Catholic (5)
- Latter-day Saints (Mormon) (6)
- Atheist (7)
- Prefer not to answer (8)
- Other (please specify) (9)

_____

Political" Ideologically, which one of the following best describes you?

- Strongly Liberal (1)
- Moderately Liberal (2)
- Weakly Liberal (3)
- Centrist/Middle of the Road (4)
- Weakly Conservative (5)
- Moderately Conservative (6)
- Strongly Conservative (7)

comments: Do you have any final comments about the study you would like to share?

_____

_____

_____

_____

_____