Cognitive Cleansing:
Experimental Psychology and the Exclusionary Rule*

Avani Mehta Sood+

Imagine that police officers illegally search a car and discover evidence of a crime. What if that evidence consists of large quantities of heroin that is being sold to high school students? Alternatively, what if that evidence consists of marijuana that is being sold to cancer patients to ease their pain? The exclusionary rule dictates that, in either case, the evidence is “contaminated” by the illegality of the search and is thus inadmissible in court. Yet, the doctrinal analysis, cognitive theories, and series of original experiments presented in this Article suggest a more complicated picture.

The empirical findings herein demonstrate that when decision makers are faced with illegally-obtained evidence of a morally repugnant crime, which triggers a strong motivation to punish, they will unknowingly construe the circumstances of the case in a manner that enables them to “cognitively cleanse” the tainted evidence and thereby admit it with a clear conscience. By contrast, when exactly the same type of illegal search uncovers evidence of a less blameworthy crime, decision makers are significantly more likely to suppress the evidence as called for by the law. Even the extent to which people perceive the investigating police officers as deserving of negative consequences for conducting the illegal search depends on the egregiousness of the crime that the search happens to uncover.

Critically, the experimental results further reveal that simply making people aware that the nature of the defendant’s underlying crime might drive their judgments about the admissibility of evidence significantly curtails the influence of that legally irrelevant factor. This important finding highlights why the legal system should not turn a blind eye to outcome-driven applications of the exclusionary rule or other such legal doctrines: decision makers do not choose to let their own punishment objectives trump the dictates of the law when they are equipped to prevent it, and this is a normative value worth respecting. The Article therefore draws upon its own experimental findings to propose policy reforms aimed at facilitating more informed, mindful, and objective applications of the law. In so doing, this research illustrates how the tools of social psychology can be mobilized to stimulate data-driven prescriptions for legal change.

* This article has been accepted for publication in Volume 103 of the Georgetown Law Journal, forthcoming in 2015.
+ Assistant Professor, University of California Berkeley School of Law; Ph.D. (Psychology, Princeton University), J.D. (Yale Law School).
## CONTENTS

**INTRODUCTION** ........................................................................................................... 3

I. **DOCTRINAL OBSERVATIONS** .............................................................................. 6
   A. The Exclusionary Rule ......................................................................................... 6
   B. The “Inevitable Discovery” Exception .............................................................. 8
   C. Key Historical Precedents .................................................................................. 10
   D. Recent Rulings by the Roberts Court ............................................................... 15

II. **PSYCHOLOGICAL FRAMEWORK** ...................................................................... 17
   A. The Theory of Motivated Cognition .................................................................. 18
   B. A Motivated Justice Hypothesis ....................................................................... 19

III. **EXPERIMENTAL DEMONSTRATIONS** ......................................................... 21
    A. Study 1: Cognitive “Cleansing” .......................................................................... 22
    B. Study 2: Robustness and Reasoning ............................................................... 31
    C. Discussion of Findings ...................................................................................... 35
    D. Legal Applications ............................................................................................ 37

IV. **A POTENTIAL SOLUTION** .................................................................................. 41
    A. Proposed Legal Alternatives ............................................................................ 42
    B. Study 3: Cognitive “Correction” ...................................................................... 46
    C. Discussion of Findings ...................................................................................... 50

V. **USING EXPERIMENTAL PSYCHOLOGY TO STIMULATE LEGAL CHANGE** ...... 54
    A. Normative Implications .................................................................................... 54
    B. Policy Implications ........................................................................................... 55

CONCLUSION .................................................................................................................... 57

APPENDIX ....................................................................................................................... 58
INTRODUCTION

Suppose police officers illegally search a car and discover evidence of a morally repugnant crime: large quantities of heroin that the car owner has been selling to high school students. Now imagine another more sympathetic scenario, in which the illegal police search uncovers large quantities of marijuana that the car owner has been selling to terminally ill cancer patients to ease their suffering. The exclusionary rule holds that the evidence in both scenarios is “contaminated” by the illegality of the police search and should not be admitted in a criminal case, regardless of the nature of the crime it uncovers. Or at least that is the law on the books. The law in action is a different story; judges’ decisions about whether to suppress evidence or to invoke one of the exclusionary rule’s legal exceptions to avoid exclusion may be unknowingly influenced by their desire to see more egregious crimes brought to justice. This Article discusses doctrinal observations of this phenomenon, offers original experimental evidence to support a cognitive explanation of decision making in such cases, and proposes a potential solution—all of which more broadly illustrate how experimental psychology can be used to propel legal change.

The exclusionary rule is one of the most controversial legal doctrines in the American criminal justice system. Designed to deter unlawful police searches, the rule has been the subject of prominent judicial decisions and ardent academic debate.1 Furthermore, the Supreme Court’s recent holdings in regard to the rule indicate that this is an active area of law that continues to be in tremendous flux.2 Legal scholars and practitioners have often made anecdotal observations of the severity of defendants’ alleged crimes driving judgments about the suppression of evidence on a widespread, informal basis.3 Yet, the process underlying this phenomenon has never been empirically demonstrated and explained, without which it cannot be remedied.

Drawing upon theories and methodologies from the field of social psychology, this Article seeks to fill that gap. It begins by framing the issue within a general cognitive hypothesis of legal decision making that is applicable across many realms of law: When people’s ethical commitment to objectively comply with a legal rule—in this case, the exclusionary rule—clashes with their moral desire to see an egregious crime brought to justice (which may be possible only by admitting crucial but illegally obtained evidence), they may unknowingly

construe the circumstances of the case in a manner that allows them to admit the
evidence with a clean conscience. The underlying psychological process here, a
less-than-conscious tendency to reason toward one’s preferred outcome, is known
as motivated cognition or motivated reasoning. This Article suggests that the
malleable and continually expanding exceptions to the exclusionary rule—such as
the “inevitable discovery” exception, which allows illegally obtained evidence to
be admitted if a judge concludes that it eventually would have been discovered
through lawful means—create fertile entry points for motivated cognition in the
suppression context.

To support this hypothesis, the Article presents a series of original
doctrinally based experiments that demonstrate motivated applications of the
exclusionary rule through the inevitable discovery exception. In the first set of
studies, two groups of participants were presented with a scenario of an illegal
police search that was exactly the same except for one feature: the search
uncovered evidence of either heroin being sold to high school students or
marijuana being sold to cancer patients. The participants who judged the more
morally egregious heroin case were more motivated than those who judged the
marijuana case to see the crime punished, and were therefore more likely to
recommend that the contaminated evidence be admitted in the case. However, the
heroin scenario participants did not simply disregard the law. Rather, they were
significantly more likely to construe lawful discovery of the evidence as
inevitable, which enabled them to invoke the inevitable discovery exception to the
exclusionary rule. Through their “cognitive cleansing” of the tainted evidence,
the participants judging the more repugnant crime were able to pursue their
punishment goals within the terms of the given legal doctrine.

Because the Supreme Court’s most recent decisions on the exclusionary
rule have turned on the degree of police illegality, the present experiments also
test whether the egregiousness of the defendant’s underlying crime influences
people’s perceptions of the investigating police officers’ misconduct. Even
though the illegal search was exactly the same in both the heroin and marijuana
scenarios, decision makers saw the officers as less morally culpable and less
deserving of negative consequences when their illegal search uncovered evidence
of the more repugnant crime.

The Article then goes a crucial step further to address what can be done to
ensure neutral applications of the exclusionary rule in situations where individuals
are motivated both to follow the law and to see their personal moral instincts
vindicated. A third and final experiment reveals that simply making people
aware that the egregiousness of a defendant’s alleged crime could color their

---

This Article favors the term “motivated cognition” (to “motivated reasoning”) for its more
inclusive description of the range of cognitive processes involved in this psychological
phenomenon—including not just reasoning, but also more immediate forms of cognition, like
perception. See Avani M. Sood, Motivated Cognition in Legal Judgments – An Analytic Review, 9
admissibility judgments significantly reduces the influence of this legally irrelevant factor, thereby curbing the motivated cognition effect. This important finding highlights why the legal system should no longer ignore motivated applications of the exclusionary rule: when armed to prevent it, decision makers do not choose to let their own punishment objectives trump the dictates of the law—which is a normative value worth recognizing in any legal arena.

This Article is therefore about more than just the exclusionary rule. Given that the cognitive process it highlights can pervade countless areas of law, the broader goal of the piece is to use the exclusionary rule as a testing ground for applying the tools of social psychology as a guiding force for data-driven legal change. It concludes by proposing policy reforms aimed at facilitating more informed and objective applications of the exclusionary rule or other laws that may be susceptible to the motivated cognition effect.

The Article proceeds in five Parts. Part I provides a brief introduction to the exclusionary rule and its “inevitable discovery” exception, and reviews legal scholars’ anecdotal observations that judges apply the doctrine differently depending on the egregiousness of the defendant’s crime. The first Part also analyzes the role that this legally irrelevant factor may have played in the key Supreme Court cases that gave rise to the exclusionary doctrine, and discusses the relevance of the current Court’s most recent holdings on the rule. Part II then lays out a psychological explanation for how and why the egregiousness of a defendant’s underlying crime might motivate applications of the exclusionary rule.

Part III presents the methodology and results of two experiments that provide empirical confirmation of the proposed hypothesis. Decision makers presented with tainted evidence of a morally repugnant crime were significantly more likely to “cognitively cleanse” that evidence in order to admit it within the terms of the exclusionary rule as compared to those who were presented with evidence of a less egregious crime, even when the police’s illegal search was exactly the same in both cases. Given that the present studies were conducted using lay decision makers, Part III also addresses the applicability of the present findings to the real adjudicators on questions of admissibility: judges. It reviews studies on judicial decision making that suggest judges are also likely to less-than-consciously engage in the motivated cognition process illustrated in these experiments. Furthermore, this Part discusses how lay people’s responses to the exclusionary rule may in some cases more consciously impact judicial applications of the exclusionary rule. Judges, who care about public opinion,5 are

----

5 Legal scholars have noted that “the pressure to circumvent the exclusionary rule is not confined to state courts or elected judges.” Dripps, Contingent Rule, supra note 1, at 21. Although federal courts “may be, at times, ‘insulated’ and ‘countermajoritarian,’ . . . majorities elect Presidents, and Presidents, with the advice and consent of Senators, pick federal judges.” Akhil Reed Amar, Future of Constitutional Criminal Procedure, 33 AM. CRIM. L. REV. 1123, 1125 (1995). Even the Supreme Court is “only temporarily isolated from public opinion,” because “it is clear that the Presidents who appoint Supreme Court Justices follow the election returns.” Kaplan, supra note 3, at 1040.
likely to be good intuitive psychologists who understand that the egregiousness of a defendant’s underlying crime can be critical to society’s acceptance of their suppression judgments.

Part IV offers a solution to the problem of “cognitive cleansing.” It begins by explaining how the present experimental findings bear on amendments and alternatives to the exclusionary rule that other legal scholars have put forth. However, given that any substantive revisions to the law will entail a long and politically controversial process, this Part proposes and experimentally tests a psychological route to addressing the problem that would not require any changes to the legal doctrine itself: the use of awareness-generating instructions. The final experiments shows that after receiving “corrective” instructions, participants who were asked to judge the more morally egregious crime no longer attempted to cognitively cleanse the tainted evidence.

Finally, Part V discusses the normative and policy implications of the experimental findings. Upon reading the doctrinal observations and results of the first two studies, there is a plausible argument to be made for why the motivated cognition phenomenon they reflect is not necessarily a problem. Having a strict rule that disregards criminal egregiousness in order to broadly deter illegal police searches, and that is then applied by the judiciary in a flexible manner to accommodate widespread justice intuitions, may be regarded as a response that the legal system is right to implicitly permit. However, the final study’s critical finding that people did not let criminal egregiousness drive their admissibility judgments when they were made aware of this potential influence presents a strong counter-argument. When equipped to choose, decision makers apply the law according to its neutral terms, even if it thwarts their personal desire for retribution, and there are ways in which the legal system can facilitate this commitment. Part V concludes by drawing on the Article’s findings to propose concrete reforms that aim to facilitate more informed and mindful applications of legal doctrines, in either the exclusionary context or any other realm of law.

I. DOCTRINAL OBSERVATIONS

A. The Exclusionary Rule

The judicially created exclusionary rule, which stems from the Fourth Amendment’s protection against unreasonable searches and seizures by the government, prohibits illegally obtained evidence from being admitted in a criminal trial.\(^6\) Two rationales have been put forth to support this suppression of “tainted” evidence: (1) to protect the “integrity” of the judicial process from being “contaminated” by the illegally obtained evidence,\(^7\) and (2) to deter police officers from conducting illegal searches in the first place “by removing the incentive” to


\(^7\) Elkins, 364 U.S. at 222; Olmstead v. United States, 277 U.S. 438, 484 (1928) (Brandeis, J., dissenting).
do so. Of these two goals, the Supreme Court has embraced deterrence as the “prime purpose” of the doctrine. The exclusionary rule is a “trans-substantive” law. “Either by virtue of the Supreme Court’s explicit rejection of crime severity as a valid Fourth Amendment consideration, or the Court’s pointed omission of that consideration from its analysis,” the rule has been doctrinally established as governing illegal searches independent of the target’s alleged crime. Illegally obtained evidence must therefore be suppressed in criminal cases “regardless [of] whether the defendant is charged with shoplifting or skyjacking, bookmaking or bomb throwing.” But are human decision makers cognitively capable of applying the rule in this neutral manner?

The studies presented in this Article put that question to the test, providing experimental affirmation of what lawyers have thus far anecdotally observed:

It is hard to read the mass of appellate search and seizure decisions without getting a distinct feeling that a police action which the courts would uphold that produced heroin would not always be held valid when only marijuana was found. Indeed this practice is much clearer in trial courts, where every defense lawyer knows that his chances on a motion to suppress will depend to a great extent on whether his client has been apprehended with marijuana or with heroin. Trial court judges may be inclined to “tilt fact-finding against exclusion” in cases where egregious crimes are alleged because, as one commentator put it, they “have an eyewitness seat and get splattered with the blood.” Appellate judges have more distance from the facts and characters of a case, but their judgments about the suppression of evidence may be just as influenced by the egregiousness of the underlying crime because a jury or trial judge in the court below would already have found the defendant guilty of committing that crime.

Such judicial responses are often assumed to be purposeful, but some scholars’ observations are consistent with the less-conscious psychological

---

8 Elkins, 364 U.S. at 217.  
13 Kamisar, Comparative Reprehensibility, supra note 3, at 9.  
15 Dripps, Contingent Rule, supra note 1, at 2.  
17 See Dripps, Contingent Rule, supra note 1, at 2; Barnett, supra note 3, at 965.  
18 Orfield, supra note 1, at 83.
explanation that this Article proposes. William Stuntz noted that it “requires no assumption of judicial dishonesty” to “suppose that the character of the claimant in an exclusionary rule proceeding tends to exacerbate bias that is naturally present in all after-the-fact proceedings.” And Myron Orfield, who interviewed judges, public defenders, and prosecutors in Chicago courts about the exclusionary rule, observed:

[I]t is not clear whether judges’ unwillingness to suppress evidence in serious cases in an entirely conscious process. As [one] public defender . . . explains, ‘The seriousness of the crime has a powerful subconscious effect on the way one evaluates testimony—it is inescapable. I can attest to this by sitting in the back of many courtrooms and watching trials, hoping that the judge would put the defendants away.’

Given that the egregiousness of the defendant’s underlying crime is doctrinally not supposed to matter in judgments about the suppression of tainted evidence, applications of the exclusionary rule have thus been described as suffering from “a serious psychological problem.”

There have been some prior findings that corroborate anecdotal observations of this problem in an evidence-based manner. For example, the Orfield study was based on interviews with a range of legal actors, who consistently noted, “[P]olice testimony that would not pass muster in a small case suddenly becomes believable in a big case . . . ‘If the same facts lead an officer to find a stick of marijuana in a trunk as a body, the marijuana will be suppressed, the body will not.’” Another study examining cases that had been “lost” due to the suppression of illegally obtained evidence found that over 85% of such cases involved possession of controlled substances and marijuana, whereas the “more serious crimes . . . account for a very small portion (less than 2%) of the cases with successful motions to suppress evidence.” Although these findings are helpful in supplementing purely informal observations, there has never been an attempt to experimentally confirm, explain, and retrench the manner in which criminal egregiousness appears to drive applications of the exclusionary rule. This Article draws upon a combination of doctrinal analysis and the tools of social psychology to fill that gap.

B. The “Inevitable Discovery” Exception

A primary way in which the exclusionary rule can be psychologically and “legally” circumvented is through its several judicially created exceptions. The

---

19 The Article also, however, acknowledges the existence of more strategic judicial motives in this regard, as discussed in Part III-D, infra.
21 Orfield, supra note 1, at 121.
22 Dripps, Contingent Rule, supra note 1, at 2.
23 Id.
Supreme Court has held that evidence obtained through an illegal search can be admitted, *inter alia*, if the chain of causation between the illegal search and the tainted evidence is too “attenuated,”25 if the police relied reasonably and in “good faith” on an invalid search warrant,26 or if the evidence “inevitably” would have been discovered through lawful means.27 These pliable and continually expanding exceptions can serve as prime vehicles for motivated applications of the legal doctrine.

The experimental paradigm used in this Article focuses on the “inevitable discovery” exception, which the Court adopted in *Nix v. Williams* (a case that will be discussed at greater length in Part I-C below) under the reasoning that suppressing illegally obtained evidence has little deterrent value if that evidence would have been discovered, as a matter of course, through lawful means.28 The Court asserted that this exception “involves no speculative elements, but focuses on demonstrated historical facts capable of ready verification or impeachment.”29 However, dissenting from the majority opinion, Justice William Brennan pointed out that “the inevitable discovery exception necessarily implicates a hypothetical finding.”30 Federal circuits and legal commentators have also observed that the exception by its very nature requires speculation about “what the government *would have discovered* absent the illegal conduct,”31 since any potential path of discovery “only hypothetically, not actually, leads to the evidence.”32

Prosecutors invoking the inevitable discovery exception need only meet a “preponderance of the evidence” standard33—i.e., the “lowest legal standard of proof in American law,”34 which requires that it be more likely true than not true that lawful discovery of the evidence was inevitable. Moreover, there is currently no federal (or state) judicial consensus on how “inevitable discovery” should be established under this standard. Some circuits have an “active pursuit” requirement that requires the prosecution to “show that the police possessed and were actively pursuing the lawful avenue of discovery when the illegality occurred.”35 Whereas other circuits have held that “there is no requirement that the independent line of investigation that would have led to the inevitable

---

28 *Williams II*, 467 U.S. at 445.
29 *Id.* at 445, n.5.
30 *Id.* at 459 (Brennan, J. dissenting).
33 *Williams II*, 467 U.S. at 444.
discovery be already underway at the time of the illegal discovery.” These ambiguities and inconsistences make the inevitable discovery exception a very malleable legal principle; Tracey Maclin has described it as “a virtual cure-all device for admitting evidence obtained in violation of the Fourth Amendment.” The studies presented in this Article investigate the role that the moral egregiousness of the defendant’s alleged crime might play in less-than-consciously triggering the use of the exception in this manner.

C. Key Historical Precedents

Carol Steiker noted that “the development of American criminal procedure is driven by stories, by the individual Supreme Court cases that have left a lasting imprint on the doctrines that manage the interactions between citizens and law enforcement agents and that structure the adjudicative process.” Could a factor not recognized as relevant by the exclusionary rule—the egregiousness of the defendant’s underlying crime—have played a role from the outset in the high-profile Supreme Court cases that established the doctrine? This question invites an inquiry into the stories behind some of key legal precedents on the exclusionary rule.


The first time the Court held that evidence should be excluded because of the unlawful manner in which it was obtained was in *Boyd v. United States*, an 1886 case involving the seizure of an individual’s private papers in a customs revenue investigation. “Plainly the 1886 Supreme Court would not have suppressed a package of heroin capsules, counterfeit money or smuggled goods,” Chief Justice Warren Burger speculated decades later. *Weeks v. United States*, the 1914 case that fully established the exclusionary rule based on the Fourth Amendment alone, also involved the warrantless seizure of private papers from the home of a defendant who was convicted of using the mail to transport lottery tickets—again, not a *malum in se* crime that would trigger a strong motivation to punish. But the extent to which the egregiousness (or lack thereof) of the defendant’s alleged crime may have influenced the development of the exclusionary rule is perhaps best illustrated by *Mapp v. Ohio*, the 1961 case that

---

36 United States v. D’Andrea, 648 F.3d 1, 12 (1st Cir. 2011); accord United States v. Larsen, 127 F.3d 984, 986-87 (10th Cir. 1997); United States v. Kennedy, 61 F.3d 494, 498-500 (6th Cir. 1995); United States v. Thomas, 955 F.2d 207, 210 (4th Cir. 1992); United States v. Boatwright, 822 F.2d 862, 864 (9th Cir. 1987).

37 *MACLIN, supra* note 34, at 287.

38 Carol S. Steiker, *Introduction, CRIMINAL PROCEDURE STORIES* vii (Carol S. Steiker, ed. 2006).

39 114 U.S. 616 (1886).


41 232 U.S. 383 (1914).


extended this legal doctrine to state courts and “elevated [it] to the status of a constitutionally derived policy.”

Mapp involved a relatively sympathetic defendant, Dollree Mapp, and unsympathetic behavior by the police officers who conducted the search in question. Mapp stood convicted of possessing four books and a hand-drawn picture that were “obscene” in violation of an Ohio statute—a victimless (and arguably unconstitutional) crime. Furthermore, the manner in which these materials were seized was unnecessarily harsh and invasive. Police officers demanded entry into Mapp’s residence while she was at home alone with her daughter; when she refused to let them in without a search warrant, they returned with four additional officers and “forcibly opened” a back door to enter her home. Mapp’s attorney arrived at the scene, but the police would not permit him to enter the house or to see his client. Moreover, Mapp’s request to see a search warrant resulted in a physical altercation, during which the Court described the police as “[r]unning roughshod over appellant” and “forcibly” taking her upstairs in handcuffs, where they proceeded to search through personal belongings in her bedroom and in her child’s bedroom. Critically, the Court observed that “at the trial, no search warrant was produced by the prosecution, nor was the failure to produce one explained or accounted for.”

These underlying circumstances of Mapp may have played a role in the Court’s expansive ruling in the case: that the exclusionary rule applies not just in federal courts, but in state courts too. The justices might have been less disposed to so significantly expanding the constitutional regulation of state law enforcement through this case if it had involved a more morally egregious crime that triggered a strong motivation to punish. Relatedly, the underlying factual context of Mapp may have influenced its acceptance by society at the time. The Court’s decision did of course invoke strong reactions from the law enforcement community, but early responses from the general public and scholars “never reached the quantitative or emotional crescendo” that occurred following more controversial criminal procedure decisions of that decade, like Miranda v. Arizona. In fact, one commentator noted that Mapp initially “evoked considerable support, including occasional praise from otherwise vehement critics.

---

45 MACLIN, supra note 34, at 86. The Supreme Court justices unanimously agreed during their conference discussion of the case that the statute under which Mapp had been convicted violated the First Amendment. Id. at 87.
46 Mapp, 367 U.S. at 644.
47 Id. at 644-45.
48 Id. at 645.
of the high court,” and was “rather calmly accepted if not universally applauded.”

However, given that Mapp’s far-reaching holding called for the suppression of tainted evidence in all state courts regardless of the defendant’s underlying crime, public and judicial responses to the rule were bound to change as fact patterns arose involving defendants who more clearly “ought” to be brought to justice. For example, in Coolidge v. New Hampshire, Mapp required the Supreme Court to reverse the conviction of a man who a jury had found guilty of brutally murdering a fourteen-year-old girl, because the police had seized sweepings of hair and fiber samples from his car using a search warrant that was later found to be defective. The factual context of this case aroused sympathies opposite to those invoked by Mapp. One legal scholar asserted, “[T]he police practices revealed in Coolidge v. New Hampshire are hard to reconcile with a moral society; yet letting the defendant in that case go free perhaps is.” In a partial dissent in Coolidge, Chief Justice Burger stated, “This case illustrates graphically the monstrous price we pay for the exclusionary rule in which we seem to have imprisoned ourselves.”

It bears noting that the Court did have opportunities to extend the exclusionary rule to state courts in cases prior to Mapp that arguably involved greater disparities between the aggressiveness of the police misconduct and the egregiousness of the defendant’s underlying offense. However, perhaps some

---

51 Canon, supra note 44, at 683, 696.
52 See Amar, Future, supra note 5; Orfield, supra note 1, at 77; Slobogin, Way Out, supra note 11, at 352.
54 Kaplan, supra note 3, at 1036.
55 Coolidge, 403 U.S. at 493 (Burger, J., dissenting).
56 Despite having established the exclusionary rule for federal courts in 1914 (Weeks, 232 U.S. at 383), the Supreme Court originally declined in Wolf v. Colorado to extend the rule to state courts. 338 U.S. 25, 33 (1949). And, in the dozen-year period that followed before Mapp, the Court upheld Wolf in several memorable cases. For example, in Rochin v. California, decided nine years before Mapp, the Court addressed a search and seizure that it acknowledged “shocks the conscience.” 342 U.S. 165, 166 (1952). The case involved three state police officials who had a doctor “force an emetic solution through a tube into [the defendant’s] stomach against his will” in order to seize from his “vomited matter” two capsules he had swallowed—which contained morphine in an amount “so small that it was less than 1 milligram, not even enough to balance the chemist’s scale.” Petitioner’s Reply Brief, Rochin v. State of California, No. 83 (Oct. 1951). Rochin was convicted of the relatively minor offense of violating the California Health and Safety Code, while the Court noted that the officers were guilty of “unlawfully assaulting, battering, torturing and falsely imprisoning the defendant.” Rochin, 342 U.S. at 166-67. Nevertheless, rather than overturning Wolf by suppressing the evidence that had been illegally seized from the defendant’s body, Rochin “studiously avoided” the search and seizure question and instead reversed the defendant’s conviction on due process grounds. Irvine v. California, 347 U.S. 128, 133 (1954).

Two years later, in Irvine v. California, the Court was again confronted with the question of suppressing tainted evidence in a state case in which police officers made a duplicate key to the defendant’s home, repeatedly entered the dwelling to install secret microphones, and monitored the defendant’s conversations with his wife for over a month—all because they suspected him of “horse-race bookmaking.” 347 U.S. at 129-32. Although the Irvine Court recognized that the
unjust outcomes resulting from the status quo were necessary to build the momentum that triggered Mapp’s sweeping extension of the exclusionary rule to state courts. Inconclusively.

Similarly, the incapacity of Mapp’s expanded exclusionary rule to meet the problem of suppressing evidence of egregious crimes, like the hair and fiber samples of the murder victim illegally recovered from the defendant’s car in Coolidge, seem to have paved the way for the Court’s establishment of exceptions like inevitable discovery. Although empirical studies have found that reports of “lost” arrests resulting from the suppression of tainted evidence are “misleading and exaggerated,” especially in regard to violent crime, the wide publicity garnered by even a few particularly egregious cases took a heavy and long-lasting toll on public and judicial responses to the exclusionary rule.


Given the controversies evoked by seemingly unjust and unpopular outcomes that the exclusionary rule could produce, it is not surprising that the Supreme Court eventually began “narrowing the thrust” of the doctrine by both limiting its scope and “chip[ping] away” at the rule itself through the development of exceptions. The inevitable discovery exception used in this Article’s experiments was adopted during the Court’s 1984 term, a term in which the Court is described as having “put aside its whittling knife, and [gone] after the exclusionary rule with a machete.” The case that established the exception, Nix v. Williams, involved underlying facts that, in contrast to the relatively sympathetic defendant in Mapp, were particularly unfavorable for the defense.

Robert Anthony Williams was accused of sexually assaulting and murdering a ten-year-old girl whom he allegedly snatched from a YMCA bathroom in Iowa on Christmas Eve. Williams turned himself in to the police, who agreed to drive him to a police station in Des Moines and not question him until he met with his attorney there. During the car ride, however, one of the officers’ conduct “flagrantly, deliberately, and persistently violated the fundamental principle declared by the Fourth Amendment,” it abided by Wolf in holding that the illegally seized evidence in question (wagering stamp and documents) was admissible in state court. Id. at 132.

57 In his concurring opinion in Irvine (supra, note 6), Justice Tom Clark—who would later author Mapp—wrote: “In light of the ‘incredible’ activity of the police here, it is with great reluctance that I follow Wolf. Perhaps strict adherence to the tenor of that decision may produce needed converts for its extinction.” 347 U.S. at 347 (Clark, J., concurring); see also Kamisar, First Shot, supra note 49, at 73-74 (“In retrospect, the demonstrated incapacity of the Wolf doctrine to meet the problem of the egregious [police] wrong must be regarded as an important milestone on the road to Mapp.”).

58 See MACLIN, supra note 34, at 139; Slobogin, Way Out, supra note 11, at 352.


60 Bloom, supra note 32, at 80.


62 Williams II, 467 U.S. at 434-40.

63 Id. at 452 (Stevens, J., dissenting).
detectives made a plea to Williams to help the child’s parents give her “a proper Christian burial,” and Williams directed the officers to her corpse.\(^{64}\) Meanwhile, there was a large-scale search underway with 200 volunteers looking for the child, and one of the search teams was only two-and-a-half miles from where her smothered body was frozen to a cement culvert—“one of the kinds of places the teams had been specifically directed to search.”\(^{65}\) However, “the largely snow-covered body” was “barely discernable,” and the officers had difficulty finding the corpse even after Williams led them to the spot.”\(^{66}\) As legal commentators observed, “A novelist could hardly have come up with a more wrenching scenario for a dispute over fundamental legal issues and basic social values.”\(^{67}\)

Williams’ attorney moved to suppress all evidence relating to the child’s body because it had been discovered through the detective’s unlawful conduct, but the trial court denied the motion and a jury convicted Williams of first-degree murder. The Eighth Circuit then granted Williams’ habeas corpus motion on the basis that the evidence had been wrongly admitted.\(^{68}\) The case made its way to the Supreme Court, which initially affirmed in favor of Williams.\(^{69}\) However, a footnote in the majority opinion stated that in the event of a retrial, although Williams’ incriminating statements must be suppressed, “evidence of where the body was found and of its condition might well be admissible on the theory that the body would have been discovered in any event, even had incriminating statements not been elicited from Williams.”\(^{70}\) That the discovery of the corpse in this case was not obviously inevitable, however, is suggested by the fact that in his vigorous dissent to Williams I, Chief Justice Burger criticized this “loophole” in the majority’s footnote as “an unlikely theory . . . [that] renders the prospect of doing justice in this case exceedingly remote.”\(^{71}\)

Williams was retried, evidence of the body’s condition and post-mortem test results were admitted under the argument alluded to by the Court, a second jury found the defendant guilty, the Eighth Circuit again reversed, and the Supreme Court once again agreed to hear the case. This time, the Court ruled in favor of the State by applying—and thereby establishing as national precedent—the inevitable discovery exception: “[I]f the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible.”\(^{72}\)

---


\(^{65}\) Id. at 435-36.

\(^{66}\) Id. at 372-73. Although Williams led the police to the corpse, he pled not guilty to the murder: “The defense theory was that someone else killed the girl and planted the body in Williams’ room at the YMCA. Assuming he would be blamed, Williams panicked and fled with the body.” Id. at 357.

\(^{67}\) Wasserstrom & Mertens, supra note 61, at fn. 324.

\(^{68}\) Williams v. Nix, 700 F.2d 1164, 1173 (8th Cir. 1983).

\(^{69}\) Brewer v. Williams, 430 U.S. 387 (1977) [hereinafter Williams I].

\(^{70}\) Id. at 407, n.12.

\(^{71}\) Id. at 416, n.1 (Burger, C.J., dissenting).

\(^{72}\) Williams II, 467 U.S. at 448.
resulting opinion has been described as containing “multiple ambiguities” and being “unbelievably broad,” thereby creating a wide avenue through which the nature of a defendant’s alleged crime can motivate suppression judgments without technically violating the exclusionary rule. Moreover, lower court judges have since expanded the inevitable discovery exception well beyond the original context of Williams.

D. Recent Rulings by the Roberts Court

The exclusionary rule remains a controversial and evolving doctrine today. The current Roberts Court has continued to retreat from Mapp, stating in its most recent opinion on the rule that “society must swallow this bitter pill when necessary, but only as a last resort.” In fact, in two other relatively recent opinions that declined to suppress illegally obtained evidence—Hudson v. Michigan and Herring v. United States—the Court explicitly invoked the facts of Mapp to explain its departures from that case via a narrowing of the standard for police culpability.

Hudson involved a violation of the knock-and-announce rule that requires law enforcement officers to “knock on a dwelling’s door and announce their identity and purpose before attempting forcible entry,” without which the search or seizure of evidence may be “constitutionally defective.” The police in Hudson seized about twenty rocks of cocaine from Hudson’s home after waiting only three to five seconds between announcing their presence and bursting through the door. The parties agreed that this violated the knock-and-announce requirement, but the Court held that “[r]esort to the massive remedy of suppressing evidence of guilt is unjustified” in this case. Hudson distinguished its present day context from that of Mapp by highlighting “the increasing professionalism of police forces, including a new emphasis on internal police discipline” and the advent of civil damages remedies for targets of illegal searches. The decision thereby concluded that “extant deterrences are substantial—incomparably greater than the factors deterring warrantless entries

---

74 Wasserstrom & Mertens, supra note 61, at 179.
76 Davis, 131 S.Ct. at 2427.
77 547 U.S. at 586.
78 555 U.S. at 135.
81 Hudson, 547 U.S. at 587.
82 Id. at 599.
83 Id. at 598.
when *Mapp* was decided\(^84\) (an assertion that Justice Stephen Breyer’s dissenting opinion and various commentators since have vigorously challenged).\(^85\)

*Herring* further chipped away at the exclusionary rule through an expansion of the rule’s good faith exception.\(^86\) In this case, a police officer seized methamphetamine and an illegally held pistol from the defendant’s vehicle using a warrant that had been recalled without the officer’s knowledge due to an error in the police database. The Court held that this error was too attenuated and did not rise to a standard of “deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence” necessary to suppress the evidence.\(^87\) In so ruling, the Court differentiated the facts in *Herring* from the “flagrant conduct” of the police officers in *Mapp*: “[T]he abuses that gave rise to the exclusionary rule featured intentional conduct that was patently unconstitutional.”\(^88\) By essentially shielding negligent police conduct from the reach of the exclusionary rule, *Herring* seems to have moved the suppression determination from being about whether or not a police search was illegal, to being about *how bad* the police’s illegal conduct was.\(^89\)

The current Court’s heightened standard for police culpability increases the exclusionary rule’s susceptibility to motivated cognition by adding another arguably malleable determination into applications of the doctrine.\(^90\) Therefore, in addition to investigating the effect that a defendant’s alleged crime has on judgments about the admissibility of tainted evidence, the experimental studies in this Article will explore whether the egregiousness of the defendant’s underlying crime influences people’s perceptions of the police officers who conducted the illegal search. As noted by Jeffrey Bellin, omitting the defendant’s crime from formal consideration “does not mean that the underlying intuition—that police

\(^84\) *Id.* (noting that “Dollree Mapp could not turn to 42 U.S.C. § 1983 for meaningful relief”). The shortcomings of Section 1983 actions and other types of civil damages suits as an alternative to the exclusionary rule will be discussed in Part IV-A, *infra*.


\(^86\) *Herring*, 555 U.S. at 137.

\(^87\) *Id.*

\(^88\) *Id.* at 143.

\(^89\) See *id.* at 147; JOSHUA DRESSLER & ALAN C. MICHAELS, UNDERSTANDING CRIMINAL PROCEDURE 372 (6th ed. 2013); Bandes, *supra* note 85, at 6; George M. Dery, Good Enough for Government Work: The Court’s Dangerous Decision, in *Herring* v. United States, To Limit the Exclusionary Rule to Only the Most Culpable Police Behavior, 20 GEO. MASON U. CIV. RTS. L. J. 1, 2 (2009). The Court went on to “embrace and expand” upon *Herring* in *Davis* v. *United States*, its most recent holding on the exclusionary rule, which extended the good-faith exception to a police search that relied on binding judicial precedent that had been subsequently overruled. *MacLin*, *supra* note 34, at 340-42, 344; 131 S.Ct. at 2423.

\(^90\) Although the Court described its *Herring* standard of police culpability as being “objective,” Justice Ruth Bader Ginsburg’s dissenting opinion pointed out, “It is not clear how the Court squares its focus on deliberate conduct with its recognition that application of the exclusionary rule does not require inquiry into the mental state of the police.” *Herring*, 555 U.S. at 159, n.7 (Ginsburg, J., dissenting).
officers act more reasonably (or less intrusively) when, all things being equal, their investigations target grave crime—disappears. To the contrary, the intuition is simply pushed underground, causing courts to gravitate toward other mechanisms for protecting society.91 This Article suggests that motivated cognition is one such mechanism, and the exclusionary rule is an important testing ground for the covert operation of this psychological process in legal decision making.

The judicial retreats from the exclusionary rule in Hudson and Herring were not motivated by evidence akin to the prototypical corpse traditionally cited by critics of the exclusionary rule. However, the outcome in these cases is consistent with observations that the Court’s Fourth Amendment jurisprudence has increasingly reflected the government’s strong pursuit of illegal “hard” drugs.92 Tracking this trend, the scenarios in the present experimental studies used drug crimes, contrasting the sale of heroin (as the more “severe” crime) with the illegal sale of marijuana.93

II. PSYCHOLOGICAL FRAMEWORK

Previous experimental psychology work on the exclusionary rule has shown that people are more likely to support the suppression of tainted evidence when an illegal search offends cherished values (e.g., where a search is motivated by racism), and that people care more about the expressive, integrity-based rationale of the rule than the deterrence goal that the Supreme Court has prioritized.94 The present Article approaches this legal doctrine from a different angle, focusing not on the rationales behind the rule or the motives of the police conducting the search, but rather, on the motivations of decision makers applying the legal doctrine. It seeks to explain how and why the moral egregiousness of a defendant’s alleged crime, a legally irrelevant factor, drives judgments about the admissibility of evidence. This Part draws upon psychological theory to propose a cognitive hypothesis for this phenomenon that applies not just to the exclusionary rule, but also more broadly to legal decision making in any arena. The experimental studies that follow in Parts III and IV provide supporting evidence for the hypothesis and propose a means of curtailing the underlying psychological process it describes.

91 Bellin, supra note 11, at 46.
92 See Tracey Maclin, When the Cure for the Fourth Amendment is Worse than the Disease, 68 S. CAL. L. REV. 31, 33-34 (1994) [hereinafter “The Cure”].
93 On a scale categorizing drugs according to the degree of addiction and physical harm they cause, marijuana is classified as a “soft” drug on the lower end of both these properties, whereas heroin is considered among the most addictive and damaging of “hard” drugs. David Nutt, Leslie A King, William Saulsbury, & Colin Blakemore, Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse, 369 LANCET 1047 (2007).
94 Kenworthey Bilz, Dirty Hands or Deterrence? An Experimental Examination of the Exclusionary Rule, 9 J. EMPIRICAL LEGAL STUDIES 149 (2012).
A. The Theory of Motivated Cognition

The psychological theory of motivated cognition suggests that when people have a preference regarding the outcome of a decision making task, they are more likely to arrive at that conclusion through “reliance on a biased set of cognitive processes—that is, strategies for accessing, constructing, and evaluating beliefs.” For example, when making judgments about the suppression of evidence, legal decision makers who are motivated to admit tainted evidence in order to see a repugnant crime brought to justice may be more likely to conduct an external search through available information to find existing facts or rules that support their preferred outcome—such as a legal exception to invoke. They may also “creatively combine accessed knowledge to construct new beliefs that could logically support the desired conclusion”—for example, construing the circumstances of a case as giving rise to a particular exception to the rule.

Critical to the integrity of legal decision makers, motivated cognition operates under an “illusion of objectivity.”

People do not realize that the process is biased by their goals, that they are accessing only a subset of their relevant knowledge, that they would probably access different beliefs and rules in the presence of different directional goals, and that they might even be capable of justifying opposite conclusions on different occasions.

The non-deliberate nature of the phenomenon—which has been supported by experimental research using a variety of techniques, including behavioral and fMRI studies—distinguishes motivated cognition from more purposeful forms of outcome-driven legal decision making, like jury nullification or the purposeful expression of conscious biases.

---

95 Kunda, supra note 4, at 480.
96 Id. The motivated cognition process operates, however, within certain boundaries. People stretch their cognitive construal of information only to the extent necessary to reach their preferred outcomes. See id. at 482-83; Lindsey G. Boiney, Jane Kennedy, J., & Pete Nye, Instrumental Bias in Motivated Reasoning: More When More is Needed, 72 ORG. BEHAV. & HUMAN DECISION PROCESSES 1, 19-20 (1997). Furthermore, people do not engage in motivated cognition if there is clear evidence to the contrary. See Boiney et al., supra note 96, at 19; Eileen Braman, Reasoning on The Threshold: Testing the Separability of Preferences in Legal Decision Making, 68 J. OF POLITICS 308 (2006).
98 Kunda, supra note 4, at 483.
B. A Motivated Justice Hypothesis

Researchers have drawn upon the theory of motivated cognition to propose and test models of decision making in various legal contexts. Likewise, this theory forms the basis of the present hypothesis, which seeks to explain how people respond when their internal sense of the “right” outcome in a case conflicts with the requirements of an external legal constraint. Judges and jurors are consciously committed to following legal rules in a neutral manner, but they also have a less conscious drive to pursue their own intuitions about justice. When these two goals are incongruent, I suggest that decision makers will neither relinquish their own instincts, nor blatantly flout the law. Instead, they will unknowingly engage in motivated cognition—i.e., processing information in an outcome-driven manner—to achieve their personal justice goals within the terms of the given legal doctrine. I therefore refer to this as a “motivated justice” hypothesis.

Applied to the exclusionary rule context, the motivated justice hypothesis predicts that when people are motivated to admit tainted evidence so that an egregious crime can be punished, they will less-than-consciously construe the case as presenting facts that give rise to an exception to the rule, like inevitable discovery. This will enable them to reach an outcome that is consistent with both their own justice goals and the terms of the relevant law. In short, motivated cognition can unintentionally create a backward reasoning process that leads to different suppression outcomes for the same type of illegal search, based on what that search uncovers. A diagram illustrating this hypothesis is provided in Appendix A. It is applicable not only to judgments about the suppression of tainted evidence, but also to any other area of legal decision making.

A formalist view of the legal system assumes (or at least hopes) that decision makers generally reason forward when making judgments: neutrally evaluating the given facts (e.g., was discovery of the tainted evidence inevitable?), and then applying the given law to reach an “objective” outcome (e.g., if discovery was inevitable, then the evidence is admissible). A realist perspective, by contrast, would expect decision makers to deliberately reason backwards to reach an outcome that satisfies their broader objectives. The present hypothesis suggests that this dichotomy between faithful obedience to the law and conscious policy advocacy through legal decision making is too simple, as legal decision makers may be less-than-consciously susceptible to psychological effects that limit their abilities to be either full formalists or full realists.

Robert Cover described the choices of the “judge caught between law and morality” as follows:

He may apply the law against his conscience. He may apply conscience and be faithless to the law. He may resign. Or he may

---

100 Sood, Motivated Cognition Review, supra note 4, at 307.
101 See Tom R. Tyler, Why People Obey the Law 31 (1990); Braman, supra note 96, at 310.
102 Sood, Motivated Cognition Review, supra note 4, at 308.
cheat: He may state that the law is not what he believes it to be and, thus preserve an appearance (to others) of conformity of law and morality. Once we assume a more realistic model of law and of the judicial process, these four positions become only poles setting limits to a complex field of action and motive.103

The present motivated justice hypothesis adds a fifth pole: legal decision makers may less-than-consciously construe facts and apply law in a way that preserves the appearance—not only to others, but also to themselves—of conforming both to the legal doctrine and to their own sense of justice. In the exclusionary rule context, malleable legal exceptions like inevitable discovery provide easy vehicles through which desired punishment outcomes can influence admissibility decisions without the decision makers’ awareness.

Now one might presume that a purposeful aim to reach the “correct” conclusion under the law (i.e., an accuracy goal) would minimize the influence of a less conscious urge to reach a preferred punishment outcome (i.e., a directional goal). However, this Article’s prediction to the contrary is consistent with psychologist Ziva Kunda’s suggestion that “accuracy goals, when paired with directional goals, will often enhance rather than reduce bias . . . because the more extensive processing caused by accuracy goals may facilitate the construction of justifications for desired conclusions.”104 Dan Kahan has similarly noted that “far from being immune from identity-protective cognition, individuals who display a greater disposition to use reflective and deliberative (so-called System 2) forms of reasoning rather than intuitive, affective ones (System 1) can be expected to be even more adept at using technical information and complex analysis to bolster group-congenial beliefs.”105 Political scientists have also found that people with more expertise and knowledge about an issue at hand are more likely to see and/or draw upon evidence that supports their preferred outcome.106 Moreover, psychologists have pointed out that given the illusion of objectivity under which motivated cognition operates, “the motivation and ability to think, does not necessarily lead to correction, because even highly thoughtful people are not necessarily aware of the impact of any biasing variable(s).”107

The inadvertent operation of motivated cognition does not, of course, rule out the possibility that applications of the exclusionary rule may at times be driven by more deliberate, strategic considerations of the defendant’s underlying crime. When not themselves susceptible to motivated cognition, judges may be

104 Kunda, supra note 4, at 487.
good intuitive psychologists who implicitly understand how the justice motives triggered by the egregiousness of a defendant’s alleged offense will shape the public’s response to their suppression holdings, especially in cases that are likely to garner significant publicity. This type of judicial response, which will be discussed further in Part III-D, is not directly tested in the upcoming studies—but it capitalizes upon the operation of motivated cognition among lay people, which these experiments do demonstrate.

III. EXPERIMENTAL DEMONSTRATIONS

This Part presents two original experiments that investigate how decision makers cognitively respond when their desire to see a particular crime brought to justice clashes with the constraint of the exclusionary rule. Consistent with the motivated justice hypothesis, the studies demonstrate that people are more likely to construe a case as giving rise to a legal exception to the rule—i.e., to conclude that the evidence would inevitably have been discovered through lawful means—when they are faced with evidence of a more morally egregious crime as compared to a crime that they are less motivated to punish, even if the illegal search is exactly the same in both cases. A third experiment, described in Part IV below, will then test a psychology-based means by which to curtail this cognitive response.

These sections of the Article diverge from traditional scholarship on the exclusionary rule by drawing upon the empirical methodologies of another discipline, social psychology, to explain and address the thought processes of legal decision makers. The use of the experimental method in the present work additionally allows for the generation of “relatively inexpensive and useful information for consideration by policy makers,” which is of particular value in the realm of criminal justice where “the monetary, administrative, or ethical costs of a new policy are potentially large.”

However, the road from the lab to the courtroom is a long one, with various steps between demonstrating and retrenching an effect in a controlled experimental setting, and then operationalizing those results in real legal contexts. The first stage, seen in the present studies, involves establishing causality and identifying the underlying cognitive phenomenon through methods that prioritize internal validity, such as sparse hypothetical scenarios that minimize the risk of confounding variables and continuous measures (questions asked on scales) that allow for varied statistical analysis.

Follow-up work must then attempt to replicate the original findings with increasing external validity—e.g., by employing dichotomous measures (yes-or-no questions) to better reflect actual legal decision-making options (which was done in Study 2); introducing more complex fact patterns to mirror real legal

109 See id. at 301, 303.
cases; and replicating the experimental results in courtroom settings with actual jurors and judges. Equipped with converging data points from multiple stages of empirical work and a realistic understanding of relevant resource constraints, the legal system can then move toward pursuing concrete changes at large. The studies that follow provide a critical starting point for this process.

A. Study 1: Cognitive “Cleansing”

i. Methodology

The participants in Study 1 were recruited through Mechanical Turk, an on-line crowd-sourcing marketplace for human intelligence tasks. Excluding the data of those who completed the survey too quickly and/or failed the checks on their understanding of the facts and law in the case, the study resulted in a sample size of eighty-seven. These participants were 66% female and ranged in age from eighteen to sixty-nine, with a mean age of thirty-nine.

All the participants were presented with the same factual scenario in which police officers conducted an illegal search of a car. They were then randomly assigned to one of two experimental conditions: (1) those assigned to the “Heroin” case were told that the police discovered many bags of heroin and needles that the defendant had been selling to high school students; (2) those assigned to the “Marijuana” case were told the police discovered many bags of marijuana that the defendant had been selling to terminally ill cancer patients to ease their suffering. Thus, both groups were told that the police illegally uncovered evidence of a drug crime; but while the police conduct was identical in both cases, the defendant’s offense differed in moral egregiousness due to the type of drug (“hard” versus “soft”), the purpose for which the defendant was selling it (recreational versus therapeutic), and the target buyers (high school students versus presumptively older consumers). These conditions were designed with the expectation that the Heroin participants would be more motivated than the Marijuana participants to see the underlying crime punished.

This Article’s experimental scenarios presented drug crimes because the Court’s Fourth Amendment jurisprudence has increasingly reflected the “War on Drugs,” and empirical studies indicate that “motions to suppress physical

---


112 See Nutt, King, Saulsbury, & Blakemore, supra note 93, at 1047.


114 MACLIN, supra note 34, at 33-34.
evidence are most likely to be raised in drug cases.\textsuperscript{115} Although the heroin-marijuana manipulation might appear to be fairly heavy-handed, the difference between these two conditions was not nearly as extreme as the differences in severity that exist in the range of criminal law cases in which tainted evidence may be suppressed. For example, as described in Part I above, the underlying crime in the case that established the exclusionary rule in state courts was possession of a few “lewd” books, whereas the underlying crime in the case that established the inevitable discovery exception was the murder of a thirteen-year-old girl.\textsuperscript{116}

The participants next received a simple explanation of the exclusionary rule and its inevitable discovery exception. It was made clear that although the police had obtained the evidence in the case illegally, the defendant would be unlikely to receive any punishment if the evidence were to be suppressed. All the participants were additionally told that during the illegal search of the defendant’s car, the police discovered that the car’s registration had expired. This information was intended to provide a potential avenue for law enforcement officials to engage with the car outside the context of the illegal search, without necessarily rendering discovery of the evidence inside the car inevitable.

To check that the experimental manipulation had its intended effect (i.e., that the Heroin case triggered a stronger motivation to punish than the Marijuana case did), the participants were asked in their personal capacity (as opposed to in their role as a legal decision maker) to rate the morality of the defendant and the extent to which he should be punished.\textsuperscript{117} The participants were then asked to put themselves in the role of a judge and decide whether the drug evidence should be admitted in the case and whether the evidence would have been discovered through lawful means even if not for the illegal search.\textsuperscript{118} They were also asked to rate the morality of the police officers who conducted the search, as well as the extent of negative consequences those officers should face for their illegal actions.\textsuperscript{119} Finally, the participants were asked to indicate their level of agreement


\textsuperscript{116} Compare Mapp, 367 U.S. at 643, with Williams II, 467 U.S. at 431.

\textsuperscript{117} These variables were measured on seven-point scales ranging from “very immoral” to “very moral,” and from “no punishment” to “severe punishment.”

\textsuperscript{118} These variables were measured on seven-point scales ranging from “no, the drug evidence definitely should not be admitted” to “yes, the drug evidence definitely should be admitted”; and from “no, the drugs definitely would not have been discovered” to “yes, the drugs definitely would have been discovered.” Although the respondents were given perspective-taking instructions to answer the morality/punishment questions in their personal capacity, and then directed to put themselves in the position of a judge when responding to the legal questions that followed, there is a potential risk that having overtly acknowledged a desired punishment outcome could exacerbate its influence on the subsequent admissibility and inevitable discovery judgments (i.e., perhaps causing the predicted motivated cognition effect to be self-fulfilling). This concern can be ruled out in future work by asking the morality and punishment questions toward the end of the experiment instead.

\textsuperscript{119} These variables were measured on seven-point scales ranging from “very immoral” to “very moral,” and from “no consequences” to “severe consequences.” To ensure that this
with the exclusionary rule¹²⁰ and their confidence in the general integrity of police officers and judges in this country.¹²¹

The facts presented to the participants in this experimental paradigm were intentionally sparse as compared to the information that would be available to a judge making a real admissibility decision, in order to maintain the internal validity of the study. This design also enabled a stringent test of whether decision makers who are motivated to admit tainted evidence will invoke the inevitable discovery exception despite having little factual basis for doing so.

Based on the motivated justice hypothesis described in Part II-B above, I predicted that people who had a stronger desire to see the defendant punished would unknowingly construe the circumstances surrounding the case in a manner compatible with that desired outcome. Specifically, I expected that the participants judging the Heroin case would be significantly more likely than those judging the Marijuana case to perceive lawful discovery of the evidence as inevitable, which would enable them to admit the evidence within a legal exception to the exclusionary rule. This “cognitive cleansing” of the tainted evidence would thus facilitate the decision makers’ punishment goals without technically violating the given law. I also expected that the Heroin participants would perceive the actions of the police officers who conducted the illegal search in a more positive light than the Marijuana participants would, which is of particular significance given the extent to which the applicability of the exclusionary rule is increasingly coming to depend on the extent of police illegality perceived by courts.¹²²

ii. Results

(a) Manipulation checks: morality and punishment motives

Analyses of variance¹²³ confirmed that the two experimental conditions triggered different justice motives. As shown in Figure 1, the participants who

¹²⁰ This variable was measured on a nine-point scale ranging from “strongly disagree” to “strong agree.”
¹²¹ These variables were measured on seven-point scales ranging from “no confidence” to “complete confidence.”
¹²² See supra Part I-D (discussing Hudson, Herring, and Davis).
¹²³ An analysis of variance (ANOVA) is a statistical test that examines the relationship between a discrete independent variable (e.g., case: Heroin or Marijuana) and a continuous dependent variable (e.g., morality rating of the defendant) by comparing the variances (averages of the squared deviations from the mean) in order to evaluate the probability of not rejecting the null hypothesis (i.e., that the predicted experimental effect is absent). GEOFFREY KEPPEL & THOMAS D. WICKENS, DESIGN AND ANALYSIS: A RESEARCHER’S HANDBOOK 24 (2004). A p-value of less than .05 is the conventional level of statistical significance used in social psychology. This means that there is a 5% or less chance of obtaining the same results if the null hypothesis is not rejected (i.e., if there is no significant difference between the groups being compared). ARTHUR ARON, ELAINE N. ARON, & ELLIOT J. COUPS, STATISTICS FOR PSYCHOLOGY 112-13 (2009). The η² statistic (eta squared) provides an estimate of the size of the demonstrated effect: a η² of .01 is
judged the Heroin case assigned significantly lower morality ratings to the
defendant and, inversely, significantly higher punishment recommendations
compared to the participants who judged the Marijuana case.\textsuperscript{124}

\textbf{FIGURE 1: Study 1—Morality ratings and punishment recommendations
for defendant, by case (Heroin vs. Marijuana).}

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{figure1.png}
\caption{Study 1—Morality ratings and punishment recommendations for defendant, by case (Heroin vs. Marijuana).}
\end{figure}

Regression\textsuperscript{125} and mediation\textsuperscript{126} analyses confirmed that the experimental
condition to which the participants were assigned predicted their morality and

\textsuperscript{124} ANOVAs for morality of defendant, by case: $F(1, 85) = 364.60, p < .001, \eta^2 = .81$; for
punishment of defendant, by case: $F(1, 85) = 153.72, p < .001, \eta^2 = .64$.

\textsuperscript{125} Regression analysis examines the relationship between two continuous variables (i.e.,
variables measured on a scale) to “predict a score on one variable from a score on another.”
\textsuperscript{126} Regression and mediation analyses confirmed that the experimental
condition to which the participants were assigned predicted their morality and

considered a small effect, a $\eta^2$ of .09 is a medium effect, and a $\eta^2$ of .25 or more is a large effect.
\textbf{BARBARA G. TABACHNICK \\& LINDA S. FIDELL, USING MULTIVARIATE STATISTICS 54-55 (2007).}
punishment ratings for the defendant, and that the morality ratings drove the relationship between condition and punishment ratings. That is, the extent to which the case that people judged (Heroin versus Marijuana) predicted their punishment recommendations for the defendant depended on their moral assessment of his crime. As intended, the participants judging the Heroin case perceived the defendant as more morally egregious and therefore more deserving of punishment.

(b) Cognitive cleansing of tainted evidence

Analysis of the participants’ judgments about the admissibility of the tainted evidence and its likelihood of discovery through lawful means revealed a powerful effect consistent with the motivated justice hypothesis: people’s desire to see the more egregious crime brought to justice motivated their applications of the exclusionary rule. Those who judged the Heroin case were significantly more likely to admit the tainted evidence than those who judged the Marijuana case. Correspondingly, the Heroin participants were significantly more likely to reason that the evidence in question would have been lawfully discovered even if not for the illegal search. These results are illustrated in Figure 2.

126 A mediator is a middle variable that “represents the generative mechanism through which the focal independent variable [IV] is able to influence the dependent variable [DV] of interest.” Reuben M. Baron & David A. Kenny, The Moderator-Mediator Variable Distinction in Social Psychological Research: Conceptual, Strategic, and Statistical Considerations, 51(6) J. PERS. & SOC. PSYCH. 1173, 1173 (1986).

127 Regression analyses indicated that the direct relationships between case and defendant morality (\( B = 4.67, SE = .25, p < .001 \)), defendant morality and punishment (\( B = -.74, SE = .05, p < .001 \)), and case and punishment (\( B = -3.65, SE = .30, p < .001 \)) were all significant. However, when defendant morality was entered as a mediating variable into the case-punishment relationship, the Sobel test of mediation was significant (\( z = -11.60, p < .001 \)) and the direct relationship between case and punishment was reduced to below the .05 level of significance, indicating a complete mediation (\( B = -1.17, SE = .61, p = .06 \)). A perfect, full, or complete mediation occurs when “the relationship between the IV and the DV goes to zero when the mediator is in the equation.” TABACHNICK & FIDELL, supra note 123, at 160. The Sobel method tests the statistical significance of mediations by examining the extent to which the relationship between the IV and the DV (the total effect) is different from the relationship between the IV and the DV once the mediating variable has been controlled for (the direct effect). Id.

128 ANOVA for admissibility of evidence, by case: \( F(1, 85) = 33.94, p < .001, \eta^2 = .29 \).

129 ANOVA for likelihood of discovery, by case: \( F(1, 85) = 25.73, p < .001, \eta^2 = .23 \).
Regression analyses confirmed that the extent to which the participants wanted to punish the defendant’s crime\textsuperscript{130} predicted their judgments about the admissibility of the tainted evidence and its likelihood of lawful discovery even if not for the illegal search.\textsuperscript{131} Critically, the desire to punish fully mediated\textsuperscript{132} the relationships between criminal egregiousness and decisions about admissibility and lawful discovery.\textsuperscript{133} This means that the participants’ stronger desire to

\textsuperscript{130}Regression for case predicting punishment of defendant: $B = -3.65$, $SE = .30$, $\beta = -.80$, $p < .001$.

\textsuperscript{131}Regression for punishment predicting admissibility: $B = .49$, $SE = .08$, $\beta = .57$, $p < .001$; for punishment predicting likelihood of discovery: $B = .41$, $SE = .07$, $\beta = .54$, $p < .001$.

\textsuperscript{132}\textit{See supra} note 127 for an explanation of complete mediation.

\textsuperscript{133} Regressions revealed significant results for case predicting admissibility: $B = -2.08$, $SE = .36$, $\beta = -.53$, $p < .001$, and for case predicting likelihood of discovery: $B = -1.68$, $SE = .33$, $\beta = -.48$, $p < .001$. When punishment was entered as a mediating variable into the case-admissibility relationship, the Sobel test of mediation was significant ($z = -5.48$, $p < .001$) and the
punish in the Heroin case motivated their greater tendency to admit the tainted evidence and to reason that it would have been discovered through lawful means.

In sum, although all the participants were presented with the same legal doctrine and identical facts about the nature of the illegal police search, the type of evidence discovered during the search provoked different intuitions about punishing, which in turn seemed to generate different perceptions about the likelihood of discovering the evidence through lawful means. Those who were motivated to see the more egregious crime brought to justice performed a “cognitive cleansing” of the tainted evidence that rendered it admissible within the terms of the given law. Notably, this finding cut across ideological lines. Participants’ self ratings of political ideology and political party affiliation did not lead to significant differences in their judgments about the admissibility of the evidence or its likelihood of discovery. The results did, however, uncover a main effect of gender whereby female participants perceived lawful discovery of the evidence as more likely than male participants did, across both the Heroin and Marijuana cases.135

(c) Attitudes toward law enforcement

The egregiousness of the defendant’s underlying crime drove not only people’s legal judgments about the evidence in question, but also their judgments about the police officers who illegally seized the evidence. Figure 3 reveals that participants judging the Heroin case saw the investigating officers as more moral and felt they should face less negative consequences as compared to participants judging the Marijuana case—based not on the officer’s illegal actions (which were exactly the same in both scenarios), but rather, on the type of defendant wrongdoing that those actions happened to uncover.136

direct relationship between case and admissibility was reduced to non-significance, indicating a complete mediation: $B = -.03, SE = .02, B = .11, p = .17$. Likewise, when punishment was entered as a mediating variable into the case-likelihood of discovery relationship, the Sobel test of mediation was significant ($z = -5.28, p < .001$) and the direct relationship between case and admissibility was reduced to non-significance, indicating a complete mediation: $B = -.02, SE = .02, B = .07, p = .39$. Appendix B illustrates these relationships.

134 Political ideology was measured on a seven-point liberal-conservative scale.
135 ANOVA for likelihood of discovery, by gender: $F(1, 86) = 4.94, p = .03, \eta^2 = .07$.
136 ANOVAs for morality of police officers, by case: $F(1, 85) = 21.32, p < .001, \eta^2 = .20$; for negative consequences, by case: $F(1, 85) = 6.86, p = .01, \eta^2 = .08$. The participants were asked about the extent of negative consequences the police officers should face for their illegal search, and this data was reverse coded to graphically represent the participants’ leniency toward the police officers in Figure 3.
Interestingly, the differences in perceptions of the investigating officers triggered by the egregiousness of the defendant’s crime also carried over to ratings of law enforcement officials more generally. As shown in Figure 4, the participants who judged the Heroin case expressed significantly greater confidence in the overall integrity of police officers in this country as compared to those who judged the Marijuana case.¹³⁷

¹³⁷ ANOVA for general confidence in integrity of police, by case: $F(1, 85) = 5.72, p = .02, \eta^2 = .06$. 

**Figure 3:** Study 1—Morality ratings of police officers and leniency toward them, by case (Heroin v. Marijuana).
(d) Agreement with the law

Finally, the egregiousness of the defendant’s underlying crime also influenced levels of agreement with the exclusionary rule itself. As reflected in Figure 5, the participants who judged the Heroin case expressed significantly less agreement with the exclusionary rule than those who judged the Marijuana case.\(^{138}\) Moreover, the extent to which the Heroin participants wanted to admit the tainted evidence and punish the defendant predicted their level of agreement with the exclusionary rule.\(^{139}\) When people were more motivated to see the defendant punished for a morally egregious crime, they expressed less agreement with the law that constrained this goal. Nevertheless, the mean level of agreement with the exclusionary rule was fairly high, even among participants who judged the Heroin case (i.e., 5.76 on a 9-point scale).\(^{140}\) As predicted by the motivated justice hypothesis, this general agreement—in conjunction with people’s inherent commitment to complying with the law\(^{141}\)—helps explain why participants engaged in the motivated construal of facts that enabled them to invoke a legal exception to the rule, rather than blatantly flouting the law.

\(^{138}\) ANOVA for agreement with the rule, by condition: $F(1, 85) = 10.41, p = .002, \eta^2 = .11$.

\(^{139}\) Regression for admissibility predicting agreement with the rule: $B = -.58, SE = .11, \beta = -.50, p < .001$; for punishment predicting agreement with the rule: $B = -.44, SE = .10, \beta = -.44, p < .001$.

\(^{140}\) Standard deviation = 2.61. The mean level of agreement with the rule in the Marijuana condition was 7.26 (standard deviation = 1.60).

\(^{141}\) See supra note 101 and accompanying text.
B. Study 2: Robustness and Reasoning

Study 1 asked participants to rate the admissibility of the tainted evidence and its likelihood of lawful discovery on seven-point scales in order to allow for broad use of statistical techniques, like mediation analysis, to demonstrate causality. In the real legal world, however, applications of the exclusionary rule and its inevitable discovery exception require definitive answers: the evidence must either be admitted or be suppressed; its discovery through lawful means is either deemed inevitable or not. The next experiment was therefore designed to increase the external validity of the findings by replicating Study 1’s results with dichotomous yes-or-no questions.

Study 2 also introduced an important variation to rule out the possibility that the motivated cognition effect resulted from the order in which the questions were asked. The participants in Study 1 had been asked first about the admissibility of the tainted evidence and then about its likelihood of discovery through lawful means. If the participants were reasoning in a cognitively sequential way, perhaps they would respond differently (i.e., not admitting tainted evidence even when motivated to punish) if asked to commit first to the inevitability-of-discovery judgment. To test for this, Study 2 counter-balanced the order in which the participants were asked about applying the exclusionary rule and its inevitable discovery exception.

i. Methodology

Participants for Study 2 were again recruited through the Mechanical Turk website. After excluding the data of those who completed the survey too quickly and/or failed the checks on their understanding of the facts and law in the case, the study resulted in a sample size of 119. These participants were 71% female and ranged in age from eighteen to eighty-one, with a mean age of fifty-five.
The design and measures of Study 2 were similar to those of Study 1, with two main differences: (1) the admissibility and inevitability-of-discovery questions were asked using dichotomous yes-or-no choices rather than continuous scales; and (2) half the participants answered the admissibility question first, whereas the other half answered the inevitable discovery question first. Therefore, participants in this experiment were randomly assigned to one of four conditions: Heroin Admissibility-first, Heroin Inevitability-first, Marijuana Admissibility-first, or Marijuana Inevitability-first. The participants were also asked to explain why they thought discovery of the tainted evidence was or was not inevitable. In addition, the participants were asked toward the end of the experiment to report how they felt about the selling of heroin and marijuana as depicted in the experimental scenarios, and the extent to which they thought their judgments had been influenced by their feelings about the defendant’s underlying crime in the case that they judged.

ii. Results

(a) Manipulation checks: morality and punishment motives

As expected, the participants in all four conditions expressed much greater disapproval of the heroin crime (mean of 6.86 on a 7-point scale) than the marijuana crime (mean of 3.09). Furthermore, as in Study 1, those who judged the Heroin case rated the defendant as significantly more immoral and recommended more severe punishment for him as compared to the participants who judged the Marijuana case. The experimental manipulation of justice motives thus once again had its intended effect.

(b) Absence of order effects

The order in which the admissibility and inevitability-of-discovery questions were asked made no difference on people’s legal judgments. Chi-square analyses on the order variable were insignificant within each case and across both cases, indicating that there was no relationship between the order in which the admissibility/inevitability questions were asked and the participants’ responses to those questions. Thus, the order variable could be collapsed across the four conditions to consider the data simply by case (i.e., Heroin versus Marijuana), as in Study 1.

---

142 This variable was measured on a seven-point scale ranging from “strongly in favor” to “strongly against.”
143 This variable was measured on a seven-point scale ranging from “not at all” to “very strongly.”
144 Standard deviations: heroin = 0.53; marijuana = 1.72. Significant t-test for difference between the two crimes: t(119) = -23.09, p < .001.
145 ANOVAs for morality of defendant, by case: F(1, 117) = 209.54, p < .001, η² = .64; for punishment of defendant, by case: F(1, 117) = 190.17, p < .001, η² = .62.
146 A chi-square test is a statistical analysis used to examine the relationship between two discrete variables (e.g., questions with yes-or-no answers). The null hypothesis generates expected frequencies that are tested against the observed frequencies. If the frequencies are similar, the null hypothesis is not rejected; if they are sufficiently different, the null hypothesis can be rejected. TABACHNICK & FIDELL, supra note 123, at 58-59. Phi is the measure of effect size in a 2x2 chi-square analysis.
Replication with dichotomous variables

Echoing the results of the first experiment, the participants who judged the Heroin case in Study 2 were significantly more likely than those who judged the Marijuana case to see the tainted evidence as admissible and discoverable through lawful means—even though they now had to commit definitively to admitting the evidence and to the finding that its discovery through lawful means was not just highly likely but inevitable. As shown in Figure 6, approximately 60% of the Heroin participants categorically admitted the tainted evidence, compared to only about 15% of the Marijuana participants. Correspondingly, approximately 55% of the Heroin participants stated that discovery of the tainted evidence was inevitable, whereas only about 15% of the Marijuana participants reached this conclusion.

**Figure 6: Study 2—Frequency of affirmative admissibility and inevitable discovery responses, by case (Heroin n = 62, Marijuana n = 57).**

Chi-square analyses for both the admissibility and inevitability-of-discovery measures were significant, indicating a dependent relationship between the case to which the participants were assigned (Heroin versus Marijuana) and their responses to these questions.\(^{147}\) Furthermore, binary logistic regression analyses\(^{148}\) revealed that the egregiousness of the defendant’s crime significantly predicted the participants’ decisions to invoke the inevitable discovery exception

\(^{147}\) Chi-squares for admitting tainted evidence, by case: \(\chi^2 (1, N = 119) = 22.57, p < .001, phi = .44\); for inevitable discovery, by case: \(\chi^2 (1, N = 119) = 21.07, p < .001, phi = .42\).

\(^{148}\) Logistic regression is a type of analysis that allows for the prediction of discrete outcomes, such as yes-or-no answers rather than answers on a scale. *See* Tabachnick & Fidell, *supra* note 123, at 437. There is a categorical outcome for each predictor and the predictors can be categorical, continuous, or mixed.
and to admit the tainted evidence.\textsuperscript{149} Study 2 also replicated the first study’s important findings in regard to how the egregiousness of the defendant’s underlying crime influenced people’s perceptions of the police officers and the legal constraint. The participants who judged the Heroin case gave significantly higher morality ratings to the investigating officers, recommended greater leniency for their illegal actions, and expressed less agreement with the exclusionary rule as compared to the participants who judged the Marijuana case.\textsuperscript{150}

In sum, the results of the second study provided further support for the motivated justice explanation for outcome-driven applications of the exclusionary rule, with more definitive measures. Even when people had to unequivocally commit to admitting the tainted evidence and to the inevitability of its discovery through lawful means, they were significantly more likely to do so when motivated to see the defendant punished because of the egregiousness of his crime. However, when the participants in this experiment were asked to rate on a 7-point scale the extent to which their judgments in the case may have been influenced by their feelings about the defendant’s crime, 1 ("not at all") was the most common response.\textsuperscript{151}

Of course, not all the participants who judged the Heroin case were susceptible to the motivated cognition effect. As noted above, approximately 60% of the Heroin participants admitted the tainted evidence and construed its lawful discovery as inevitable, which created a strong contrast with the mere 15% of Marijuana participants who did so, but it was not a uniform response among those judging the more egregious crime. Thus, even in circumstances that trigger a high motivation to punish, not all legal decision makers are equally likely to be influenced by outcome-driven construal and reasoning. This suggests that the egregiousness of a defendant’s underlying crime can lead to different suppression judgments even in cases that involve comparably illegal searches of defendants who committed similar crimes.

\textsuperscript{149} Binary logistic regressions for case predicting admitting of tainted evidence: $B = -2.00$, $S.E. = .45$, Wald = 20.17, $p < .001$; for case predicting finding of inevitable discovery: $B = -1.93$, $S.E. = .44$, Wald = 18.92, $p < .001$.

\textsuperscript{150} ANOVAs for morality of police officers, by case: $F(1, 117) = 37.07$, $p < .001$, $\eta^2 = .24$; for leniency toward police officers, by case: $F(1, 117) = 8.10$, $p = .005$, $\eta^2 = .07$; for agreement with exclusionary rule, by case: $F(1, 117) = 4.02$, $p = .05$, $\eta^2 = .03$.

\textsuperscript{151} Mode $n = 27$. The mean objectivity score was 3.66 on a 7-point scale ($S.D. = 2.00$). Notably, the extent to which the participants who judged the Marijuana case thought they had been influenced by the defendant’s crime significantly predicted their morality and punishment judgments for the defendant, whereas this was not true for the Heroin participants (who actually engaged in motivated cognition). Regressions (in Marijuana case) for influence predicting morality of defendant: $B = .42$, $S.E. = .11$, $\beta = .48$, $p < .001$; for influence predicting punishment of defendant: $B = -.22$, $S.E. = .10$, $\beta = -.27$, $p = .04$. 
(d) Inevitable discovery explanations

The written explanations of the Heroin participants who said the evidence inevitably would have been discovered focused most frequently on the fact that the defendant’s car registration had expired: 43% of these participants asserted that the police would inevitably pull the defendant over for his expired registration and thereby lawfully find the evidence in his car. However, that this factor did not necessarily render discovery of the evidence inevitable, even for decision makers unfamiliar with the relevant legal standard for vehicular searches, was reflected in the finding that 22% of the participants in the Marijuana condition specifically mentioned the expired registration as an insufficient basis for inevitable discovery of the evidence. Similarly, among the minority of Heroin participants who did suppress the illegally obtained evidence, 26% spontaneously stated that the expired registration did not render lawful discovery of the evidence inevitable.\footnote{For example, one such participant wrote, “The drugs could have been discovered if [the defendant] was subsequently stopped for a traffic violation or because his registration was expired and police officers then . . . found the drugs. But this is a highly contingent rather than certain chain of events. What if [the defendant] decides to renew his registration tomorrow?”}

All these participants were presented with identical facts about the police investigation. Therefore, the different ways in which those who exhibited the motivated cognition effect perceived the implications of the car’s expired registration as compared to those who did not cognitively cleanse the tainted evidence is consistent with the underlying theory’s prediction that people will use the same facts to “access different beliefs and rules in the presence of different directional goals, and that they might even be capable of justifying opposite conclusions on different occasions.”\footnote{Kunda, supra note 4, at 483.}

C. Discussion of Findings

The results of Studies 1 and 2 provide experimental confirmation that the moral egregiousness of a defendant’s crime cognitively matters in judgments about suppressing illegally obtained evidence. The participants who were more motivated to see the defendant brought to justice (i.e., those judging the Heroin case as compared to the Marijuana case) were more likely to construe lawful discovery of the evidence as inevitable, which supported their decision to admit the tainted evidence within a legal exception to the exclusionary rule. This result held true regardless of whether people were asked first about the admissibility of the evidence or its likelihood of discovery, indicating that the cognitive cleansing process was more global than sequential.

Given that the experimental scenarios presented an unambiguously illegal search and a paucity of facts for construing lawful discovery of the evidence as inevitable, the default response in this experimental paradigm should have been to exclude the evidence. The finding of motivated cognition was therefore driven by the data of the participants in the Heroin condition, which is consistent with the hypothesis that this psychological process is triggered when decision makers’ own
justice intuitions conflict with a legal constraint with which they also want to comply. Meanwhile, the participants judging the Marijuana case were significantly more likely to recommend suppressing the evidence as called for by the exclusionary rule because this suited their inclination against punishing the defendant for an act that many believe should not even be criminalized. So, when the law furthered an outcome that was perceived as just (i.e., letting the Marijuana defendant “off the hook”), people were significantly more likely to suppress tainted evidence and to express agreement with a rule that in different circumstances they might less-than-consciously circumvent.

Of particular relevance to the Supreme Court’s most recent rulings on the exclusionary rule in Hudson, Herring, and Davis (discussed in Part I-D above) is the finding that participants judging the Heroin case rated the offending police officers as more moral and expressed greater leniency toward them than those judging the Marijuana case, even though the illegal search was exactly the same in both scenarios. Although “what matters” in applications of the exclusionary rule “is the extent to which the police have deviated from prescribed norms, not the extent to which the defendant has”—and the Court’s recent decisions have more narrowly “confin[ed] the exclusionary rule to egregious police misconduct”—the present experimental results suggest that moral judgments about the defendant’s alleged crime may actually drive people’s judgments about the egregiousness of the police’s conduct. If decision makers are inclined to make positive assumptions about police officers, especially relative to the suspected criminals they are pursuing, they may be cognitively unlikely in cases of serious crime to perceive unlawful behavior by investigating officers as meeting the heightened culpability standard of “deliberate, reckless, or grossly negligent conduct” called for by Herring. This standard thus makes “neutral” applications of the exclusionary rule without regard to the defendant’s underlying crime even more unlikely. It would be fruitful for future experimental studies to further explore this by manipulating not only the egregiousness of the defendant’s crime, but also the egregiousness of the police misconduct.

154 See Drug Poll Results, supra note 113.
155 Hudson, 547 U.S. at 586; Herring, 555 U.S. at 135; Davis, 131 S.Ct. at 2423.
156 This finding seems consistent with previous work suggesting that people take crime dangerousness into account in assessing the privacy interests implicated in police investigations, because an investigative method is rated as relatively less intrusive when used to pursue a more dangerous crime. Christopher Slobogin, Reasonable Expectations of Privacy and Autonomy in Fourth Amendment Cases: An Empirical Look at ‘Understandings Recognized and Permitted by Society,’ 42(4) DUKE L. J. 727, 767-78 (1993).
157 Kamisar, Comparative Reprehensibility, supra note 3, at 9.
160 Herring, 555 U.S. at 144.
The present findings also make a contribution to the literature on procedural justice, which has shown that “people care enormously about the process by which outcomes are reached—even unfavorable outcomes.” ¹⁶¹ In the Fourth Amendment context, Tom Tyler has argued that the fairness and legality of police conduct shapes the perceived legitimacy of the legal system, which in turn can influence people’s general willingness to cooperate and comply with the law. ¹⁶² The present studies add a new perspective to that body of work by showing that how people perceive the conduct of law enforcement officials may be shaped not only by that conduct itself (which in the present experiments was unambiguously illegal), but also by people’s feelings about the nature of criminal wrongdoing that the police conduct targets.

D. Legal Applications

Do the present experimental illustrations of motivated applications of the exclusionary rule by ordinary citizens provide affirmation for this category of decision making being in the hands of professional adjudicators? One might suppose that legal training, repeat experience with large numbers of cases, and the institutional constraints of precedent and appellate review would better equip judges to suppress tainted evidence regardless of the egregiousness of the crime it uncovers. If so, the present bifurcated system in which judges decide on the admissibility of criminal evidence in a trial, followed by jurors generally deciding whether or not the defendant should be punished, arguably provides an inbuilt safeguard against the motivated cognition effect demonstrated in these studies.

Yet, judges too are human beings with moral intuitions of their own, as well as strategic considerations based on the justice goals of the public. The present findings are therefore relevant to judicial applications of the exclusionary rule in two ways: Ongoing work on judicial decision making, discussed below, suggests that judges may also be unknowingly susceptible to motivated cognition when their desired punishment outcomes clash with the constraints of the law. Alternatively, especially in cases that are likely to attract public attention, judges may more consciously consider the egregiousness of the defendant’s alleged crime in their admissibility rulings due to an intuitive understanding that lay people respond to the suppression of evidence in the manner confirmed by the present experiments.

i. Judicial Susceptibility to Motivated Cognition

Prior experimental studies on judicial decision making have revealed that judges are vulnerable to many of the same less-than-conscious cognitive biases as lay decision makers, but may be better able to resist the influence of extra-legal

factors in some types of judgments. For example, one experiment comparing lay people’s, law students’, and state court judges’ evaluations of social science evidence in a death penalty case found that the judges’ personal views on capital punishment were less likely to influence their preliminary admissibility and relevance decisions, but did influence their judgments about how to weigh the evidence once it was admitted in the case, which the authors noted can be critical to the ultimate outcome.

Another series of studies found that although judges were unable to resist being inappropriately influenced by “demands disclosed during a settlement conference, conversation protected by the attorney-client privilege, prior sexual history of an alleged rape victim, prior criminal convictions of a plaintiff, and information the government had promised not to rely upon at sentencing,” they were able to disregard inadmissible information that implicated a defendant’s constitutional rights, such as a reliable confession that was obtained two hours after a defendant in a robbery case asked for and was denied legal counsel. The judge participants’ “anecdotal comments,” however, suggested that the nature of the defendant’s underlying crime may have played a role in that experiment too: “Judges noted that the crime was ‘only a robbery,’ no one was hurt, and that not much cash was stolen. Thus, the cost of suppressing the evidence—a lost conviction for a relatively minor crime—was lower than it would have been for a more serious crime.”

Studies have additionally indicated that judges hold stronger illusions of objectivity about their decision making as compared to lay people. One experiment that tested the ability of decision makers to disregard inadmissible information in a civil case found that the inadmissible material comparably influenced the judgments of both judges and jurors; but while jurors recognized their “cognitive limitations” in this regard, “judges and jurors shared an almost identical confidence in the superior judicial capacity to remain unbiased.” This stronger illusion of objectivity could ironically lead to less objective decision making: “[T]here is evidence that believing ourselves to be objective puts us at

---

particular risk for behaving in ways that belie our self-conception.” Moreover, as noted in Part II-B above, the motivated cognition effect tends to be stronger among decision makers who have a more sophisticated degree of knowledge about the issue at hand and “who display a greater disposition to use reflective and deliberative forms of reasoning—characteristics that are seen in judges.

Jeffrey Rachlinski and colleagues recently tested variations of this Article’s heroin-marijuana experimental paradigm upon samples of judges, and their findings replicated the results described herein—thereby providing direct support for applying this Article’s hypothesis and findings to judicial actors. In addition, political scientist Jeffrey Segal has sought to complement this Article’s experimental findings by applying a statistical model to Court of Appeals’ search and seizure decisions to test for whether the egregiousness of a defendant’s underlying crime predicts the outcome of a suppression decision after controlling for the intrusiveness of the police search. The preliminary results of that project are also consistent with the findings presented in this Article. Further research stemming from the Article should investigate whether the interpersonal dynamic of group decision making, as seen in juries or panels of appellate judges, exacerbates or ameliorates the motivated cognition effect demonstrated here at the individual level.

ii. Public Responses to the Rule, Judicial Responses to the Public

Over and above judges’ own susceptibility to motivated cognition, the motivated way in which members of the general public respond to the exclusionary rule, as demonstrated in Studies 1 and 2, is likely to indirectly influence judicial engagement with the doctrine. Strong criticisms against the exclusionary rule tend to be especially relevant to cases involving egregious crimes that trigger a strong motive to punish. Writing in his personal capacity, Judge (later Chief Justice) Warren Burger cautioned: “If a majority—or even a

169 Taber & Lodge, supra note 106, at 755; Taber, Cann, & Kucsova, supra note 106, at 137.
170 Kahan, Supreme Court, supra note 105, at 1.
171 Jeffrey Rachlinski et al., Emotion in Judges (unpublished data).
172 Jeffrey Segal, Motivated Cognition on the Bench (study design on file with author).
173 Most relevant to the psychological desire for justice, Judge (later Justice) Benjamin Cardozo famously stated, “The criminal is to go free because the constable has blundered.” People v. Defore, 242 N.Y. 13, 21, 24 (1926). An added “affront to popular ideas of justice” may be the perceived “disparity in particular cases between the error committed by the police officer and the windfall given by the rule to the criminal.” Kaplan, supra note 3, at 1036. These arguments against the rule have rational and persuasive counterpoints. See, e.g., Dripps, Contingent Rule, supra note 1, at 11-22; Maclin, When the Cure, supra note 92, at 54-56; Carol S. Steiker, Second Thoughts About First Principles, 107 HARV. L. REV. 820 (1993-94) [hereinafter “Second Thoughts”]. However, the general public is unlikely to be familiar with the nuances of the debate. See Burger, supra note 40, at 12.
174 See Kaplan, supra note 3, at 1035; Scott E. Sundsby, Everyone’s Exclusionary Rule: The Exclusionary Rule and The Rule of Law (or Why Conservatives Should Embrace the Exclusionary Rule), 10 OHIO ST. J. CRIM. L. 393, 393 (2013).
substantial minority—of the people in any given community . . . come to believe that law enforcement is being frustrated by what laymen call ‘technicalities,’ there develops a sour and bitter feeling that is psychologically and sociologically unhealthy.”

Indeed, psychologists have found that “every deviation from a desert distribution can incrementally undercut the criminal law’s moral credibility” and lead to diminished levels of legal compliance. Paul Robinson and John Darley described the consequences of this response as follows: “A system that is perceived as unjust is in danger of being subverted and ignored. On the one hand, it risks jury nullification and martyrdom that rallies resistance to its commands. On the other, it risks vigilantism.” The empirical findings in the present Article have uncovered a less deliberate but equally significant response: People may reason their way toward outcomes that feel “right” and are within the technical boundaries of the law, but that undermine the intention of the doctrine and, as Part IV-B will show, arguably the intentions of the decision makers themselves.

Even when judges do not themselves respond in this unconsciously motivated manner, they are likely to be good intuitive psychologists who understand what will make their holdings cognitively palatable to the general public. And judges of all kinds—trial or appellate, state or federal, appointed or elected—care about public opinion. Legal scholars have noted that judges show “a remarkable ability in the most serious cases to stretch legal doctrine to hold doubtful searches and seizures legal” not only when applying the exclusionary rule would “offend their own sense of proportionality,” but also when it would “reach beyond the view of what the public would tolerate.” Myron Orfield’s interview-based study of judges, public defenders, and prosecutors found that the “most frequent explanations for judge’s failing to suppress evidence in serious cases” included not only the judge’s “personal sense of ‘justice,’” but also “fear of adverse publicity” experienced by both state judges

---

175 Burger, supra note 40, at 2, 23, 12.
179 National polling data reveals that people support the Fourth Amendment in the abstract, but not necessarily when it obstructs conviction of suspected criminals via the exclusionary rule. When asked directly about whether illegally obtained evidence should be allowed in court if it helps prove someone is guilty, 64% of respondents in one poll said that the evidence should be admitted. Law and the Media Survey (Feb. 2000), iPOLl Databank, ROPER CENTER FOR PUBLIC OPINION RESEARCH, http://www.ropercenter.uconn.edu/data_access/ipoll/ipoll.html. This figure is coincidentally consistent with the percentage of participants in the Heroin condition who recommended admitting the tainted evidence.
180 See, e.g., Amar, Future, supra note 5, at 1125; Dripps, Contingent Rule, supra note 1, at 21; Kaplan, supra note 3, at 1040; Orfield, supra note 1, at 121.
181 Kaplan, supra note 3, at 1037 (emphasis added).
who face future elections and federal judges who are appointed for life but nevertheless “respond to headlines and public pressure.” The “tremendous pressure” to “find a way” to admit tainted evidence is especially high in “heater” cases involving serious crimes, which have “the potential to arouse public ire if the defendant goes free for procedural or technical reasons.” Even though suppression of evidence in egregious cases might be rare, the stakes in such instances are particularly high.

For example, the Williams case that established the inevitable discovery exception (discussed in Part I-C above) involved “one of the most infamous and closely scrutinized crimes of its era.” The Supreme Court’s original decision reversing the defendant’s first murder conviction due to illegally obtained evidence was therefore “one of the most written-about criminal procedure decisions in U.S. history . . . instigat[ing] wide discussion in both the academic literature and the popular media.” When the case came before the Court once again, the public outcry over its initial ruling may have contributed toward the impetus to embrace the inevitable discovery exception as national law. Thus, in addition to the cognitive difficulties inherent in applying a legal doctrine that clashes with their personal sense of justice, judges may be more strategically reluctant to suppress evidence in cases where the outcome would severely clash with the justice intuitions of the community at large.

IV. A Potential Solution

The Article has thus far shown that there exists a broad and controversial rule that requires judges to exclude illegally obtained evidence in criminal cases regardless of the nature of the underlying crime; but doctrinal observations, psychology theory, and the present experimental results indicate that in cases of morally egregious crimes, the exclusionary rule is likely to be circumvented in a motivated manner. This gives rise to the following questions: First, what can be done about this phenomenon? And second, why should we believe that this is a “problem” that needs to be addressed?

Focusing on the first question, this Part begins by considering some substantive revisions and alternatives to the exclusionary rule that other scholars have proposed. It is not intended to be a comprehensive review of all such proposals and it does not purport to identify the “best” approach. Instead, the discussion highlights ways in which the Article’s experimental findings speak to some of the proposed remedies. One of the advantages of using empirical data to assess proposals for law reform is that it can “stimulate proponents of reform to

182 Orfield, supra note 1, at 121, 123.
183 Kamisar, In Defense, supra note 115, at 132.
184 Orfield, supra note 1, at 115-17 (1992).
185 See Davies, Hard Look, supra note 59, at 631; Nardulli, Societal Cost, supra note 59, at 585; Nardulli, Revisited, supra note 24, at 232, 236.
186 Williams II, 467 U.S. at 445.
187 Hessler, supra note 73, at 247.
188 Wasserstrom & Mertens, supra note 61, at 131; see Williams I, 430 U.S. at 387.
specify more clearly the processes by which they believe their proposals are likely to produce expected consequences.”

This Part then proceeds to present original evidence from a third and final experiment that aims not to amend or replace the exclusionary rule as other scholars have suggested, but rather, to directly curtail decision makers’ motivated responses to the rule. Study 3 is critical not only because it proposes a novel psychology-based solution for eliminating motivated cognition, but also because it helps answer the second question of why the legal system should be concerned about the widespread operation of phenomenon—which will be addressed in greater detail in Part V.

A. Proposed Legal Alternatives

i. Revising the Rule

Some have argued that the egregiousness of a defendant’s alleged crime, the factor that motivated applications of the exclusionary rule in Studies 1 and 2, is a sound basis on which to base decisions about the admissibility of evidence. Decades ago, Justice Robert Jackson urged that “judicial exceptions to the Fourth Amendment . . . should depend somewhat upon the gravity of the offense,” and that judges should “be human enough to apply the letter of the law with some indulgence” in cases of severe criminal wrongdoing—which he noted that courts are doing anyway, “albeit covertly.” Similarly, legal scholars have described the notion that more serious crimes justify a different standard for searches and seizures as “a global truth that makes intuitive sense to police officials and citizens alike,” and suggested that “explicit consideration of crime severity would minimize doctrinal distortions that inevitably arise (and favor the state) when courts must judge all searches and seizures by the same standard.”

Indeed, various other countries that exclude illegally obtained evidence (although this is a much rarer practice outside the United States), explicitly consider the seriousness of the defendant’s crime as a factor in suppression judgments.

Legal scholars have put forth various proposals to reframe the American exclusionary rule in ways that explicitly take crime severity into account. Critics of this approach, however, have raised concerns about what kind of message it would send, and whether “a short list of ‘serious crimes’ is likely to

---

189 Casper, Benedict, & Perry, supra note 108, at 303.
192 Amar, Fourth Amendment, supra note 5, at 802.
193 Bellin, supra note 11, at 6.
194 Christopher Slobogin, A Comparative Perspective on the Exclusionary Rule in Search and Seizure Cases, unpublished manuscript, at 8, 18 (http://ssrn.com/abstract=2247746) [hereinafter “Comparative Perspective”].
stay short.” 196 Formally factoring the nature of a defendant’s underlying crime into suppression judgments could also “result in a symbolic but impotent exclusionary rule that would defeat the rule’s justifying purpose of deterring future police misconduct.” 197 Furthermore, as one commentator noted, a rule that fails to suppress illegally obtained evidence in cases of serious crime would mean that “a defendant’s rights decrease as the length of the potential sentence he is facing increases.” 198

For these reasons, there are also arguments to be made in favor of strengthening the exclusionary rule to close the entry points for motivated cognition. The present demonstration of the cognitive malleability of concepts like “inevitable discovery” suggests, for example, that perhaps the standard of proof for exceptions to the rule should be raised. Although Williams II held that the prosecution need only show by a “preponderance of the evidence” that the tainted evidence would eventually have been discovered through lawful means, 199 Justice Brennan’s dissenting opinion called for the government to be held to a higher “clear and convincing” standard of proof, 200 which some state courts have chosen to adopt. 201

Other legal actors support cutting back on the exceptions to the exclusionary rule altogether. 202 In regard to the inevitably discovery exception, one could argue that if there was a lawful way in which the evidence would ultimately be discovered, “the police are even more culpable for acting illegally, at least if they should have known of the legal option.” 203 Canadian courts have embraced this argument, suggesting that the suppression of illegally obtained evidence should be more strictly enforced in cases where there is reason to believe the police could have obtained the evidence without violating the law. 204 And in the United States, some states have chosen to apply a stronger exclusionary rule by eliminating the good faith exception. 205 The Roberts Court’s recent rulings on the rule and its good faith exception (discussed in Part I-D above), however, suggest that the doctrine is currently moving in a more conservative direction. It is therefore not a good time for proponents of a stronger exclusionary remedy to litigate test cases at the national level, for they might find themselves with a binding precedent that is opposite to what they were seeking.

196 Kamisar, Comparative Reprehensibility, supra note 3, at 11, 21, 23; see also Steiker, Second Thoughts, supra note 173, at 820.

197 Milhizer, supra note 195, at 236.


199 Williams II, 467 U.S. at 444.

200 Id. at 459 (Brennan, J., dissenting).


202 See Orfield, supra note 1, at 126.

203 Slobogin, Comparative Perspective, supra note 194, at 20-21.


ii. Civil Damages Substitutes

Some critics of the exclusionary rule have suggested eliminating the rule altogether and instead relying on civil damages actions against the police officers who conduct illegal searches and seizures—such as through Section 1983 civil suits against state and municipal actors for constitutional violations,\(^{206}\) *Bivens* actions to hold federal agents personally liable for unconstitutional conduct,\(^{207}\) or common law torts actions.\(^{208}\) Akhil Amar has emphasized the value of jurors being the decision makers in such cases: “Threats to the ‘security’ of Americans come from both government and thugs; the jury is perfectly placed to decide, in any given situation, whom it will fear more, the cops or the robbers.”\(^{209}\)

This Article’s hypothesis and experimental findings, however, suggest that decision makers are likely to be just as susceptible to motivated cognition in civil damages determinations as they are in applications of the exclusionary rule. Indeed, the participants who exhibited the motivated cognition effect in the present studies were lay decision makers, as jurors in a civil trial would be. Although both the experimental scenarios here involved the same illegal search, these lay participants saw the police officers as less deserving of negative consequences when their unlawful search uncovered evidence of a more egregious crime.\(^{210}\)

Tracey Maclin questioned, “If a majority of the public is willing to sacrifice the Fourth Amendment to stop illegal drug use, why should anyone believe that jurors in civil damages cases will protect the Fourth Amendment rights of guilty drug couriers?”\(^{211}\) The targets of illegal searches and seizures are “often despised,”\(^{212}\) “often have prior criminal records . . . [or are] guilty of a crime in the very situation that precipitated the suit,”\(^{213}\) and their reputation “may be called into question simply because the case arises from a confrontation with the police.”\(^{214}\) Meanwhile, members of the public tend to “have great respect for police officers, empathize with them because of the difficulty of their jobs, and want them to have a great deal of discretion to enforce the law.”\(^{215}\) A felonious petitioner who has committed an egregious crime would thus be at as much of a disadvantage compared to an offending police officer in a civil suit as he or she would be in a suppression determination.\(^{216}\) Indeed, statistics on civil suits

\(^{208}\) See Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 786 (1994) [hereinafter “First Principles”].
\(^{209}\) Id. at 818.
\(^{210}\) See supra note 136 and accompanying text
\(^{211}\) Maclin, *When the Cure*, supra note 92, at 31.
\(^{212}\) Id. at 56, 61.
\(^{216}\) See id. at 298 (study on a mock civil damages trial finding that “knowledge of the guilt or innocence of the suspect appears to have an effect on juror decisions about whether to make a damage award and how large it ought to be”).
against police officials arguably reflect this disadvantage: The number of Section 1983 and Bivens actions filed each year is relatively small and the number of cases that result in successful damage awards is even smaller, especially when compared to the number of criminal cases that are dismissed due to the exclusionary rule.\footnote{17}

Another limitation of civil damage remedies as an alternative to the exclusionary rule centers on the difficulty of bringing lawsuits against individual officers due to the expanding doctrine of qualified immunity, which shields government officials from civil damages actions under a reasonableness standard.\footnote{18} The motivated justice hypothesis would predict that judicial determinations of qualified immunity could present as much of an entry point for motivated cognition as the exceptions to the exclusionary rule.

For example, in 2012, the Supreme Court reversed the denial of qualified immunity to police officers in \textit{Messerschmidt v. Millender}, a case involving police reliance on an excessively broad search warrant that the majority concluded was not “objectively unreasonable.”\footnote{19} In a dissenting opinion, Justice Sonia Sotomayor asserted:

\begin{quote}
The Court reaches this result only by way of an unprecedented, post hoc reconstruction of the crime. . . . Police officers perform a difficult and essential service to society, frequently at substantial risk to their personal safety. And criminals like Bowen are not sympathetic figures. But the Fourth Amendment ‘protects all, those suspected or known to be offenders as well as the innocent.’\footnote{20}
\end{quote}

The defendant in \textit{Messerschmidt} was a known gang member who the police were investigating for a domestic assault. Justice Sotomayor’s comments raise the question of whether these unsympathetic but legally irrelevant circumstances may have influenced the Court’s qualified immunity determination and consequent ruling against the defendant. Thus, while civil damages remedies provide an important supplement to the exclusionary rule, they do not adequately alleviate the motivated cognition problem demonstrated in the present Article, and in some cases could even make it worse.


\footnote{20}\textit{Id.} at 1254 (Sotomayor, J., dissenting).
B. Study 3: Cognitive “Correction”

It will not be easy to reach a consensus on how best to effectuate any substantive revisions or alternatives to the exclusionary rule, and the politics surrounding this doctrine will make the process even more challenging. Moreover, revising the rule to include an explicit crime severity exception would significantly weaken its overall deterrent and symbolic value; while replacing the rule with civil damages remedies would continue to allow for, if not exacerbate, the motivated outcomes demonstrated in the present studies. Thus, to the extent that the legal system wants to enforce the suppression of illegally obtained evidence irrespective of the defendant’s alleged crime, is there a psychological means of addressing motivated applications of the rule that would not entail any changes to the doctrine itself?

One answer might lie in piercing the illusion of objectivity under which motivated cognition operates. Given that legal decisions makers are consciously committed to reaching judgments that are consistent with the law, explicitly drawing attention to a legally irrelevant factor that unconsciously interferes with the law’s purpose could curb that factor’s motivating influence. A remedy based on this approach would not be specific to the exclusionary rule, and would therefore have the advantage of being applicable to any legal doctrine that is susceptible to the motivated cognition effect.

The potential for an awareness-based remedy was indicated in previous experimental work I conducted to investigate motivated cognition in a hypothetical legal context involving applications of the harm principle. When participants wanted to criminally punish a “harmless” act, such as public nudity, but were constrained by a legal “rule” that called for a finding of harm in order to punish, they imputed harm to the conduct where harm was not previously reported. These motivated punishment and harm judgments were then exacerbated when the nudist was promoting an ideological message that was contrary to the participants’ own positions on the issue, even though they did not recognize the motivating influence of this legally inappropriate factor. When the ideological aspect of the scenario was made salient, however, by presenting two scenarios of nude activists that differed only in the ideological content of the actors’ messages, people no longer imputed harm to the conduct based on their favored position.

So, making decision makers confront the potential that they might punish the nudist based on their disagreement with his message removed the unconstitutional influence of this factor on their judgments. Similarly, in experimental work on the influence of legally irrelevant moral characteristics on judgments of legal responsibility, Janice Nadler has found that making moral character explicit in a within-subject design—i.e., asking participants to judge

---


222 These were acts that people reported, in a prior study, as harmless but nonetheless deserving of punishment.
individuals of both good and bad character—eliminated the previously motivating influence of this factor on people’s blame and punishment ratings. Building upon these findings, this Article now presents the results of a third and final experiment that sought to identify a method of cognitive “correction” that would be more feasible to implement in real legal settings than presenting decision makers with two contrasting hypothetical scenarios as done in the studies above. The proposed method draws upon Duane Wegener and Richard Petty’s psychological theory of the flexible correction model, which posits that people must be both aware of a potential bias and motivated to correct for it in order for correction to take place. Legal decision makers are already motivated to reach accurate conclusions as called for by the flexible correction model. This is why the present motivated justice hypothesis posits that they less-than-consciously engage in the motivated cognition process, which enables them to achieve their punishment goals within the terms of the given law, rather than blatantly flouting it. So, explicitly warning people about an extra-legal factor that could inappropriately drive their judgments—thereby providing the other critical awareness component called for by the flexible correction model—should help curtail the motivating effect of that factor. Study 3 tested this cognitive remedy in the context of the exclusionary rule. It also tested some other possible instructional interventions to explore the contours of what makes some types of instructions more successful than others.

i. Methodology

The 344 respondents in Study 3 were a combination of Princeton University students and participants recruited through the Mechanical Turk website. They were 54% female and ranged in age from eighteen to eighty-two, with a mean age of thirty-two. This experiment used the same exclusionary rule paradigm as Studies 1 and 2 (described in Part III-A above), with the participants being randomly assigned to judge either the Heroin or the Marijuana case. In addition, the participants in Study 3 were randomly assigned to one of four instruction conditions: “Awareness,” “Law,” “Research,” or “Control.” Inspired by the flexible correction model, the “Awareness” instructions were of primary theoretical interest in this experiment. The participants assigned to this condition were informed that legally irrelevant factors, such as their feelings about the defendant’s crime or their desire to punish (or not punish) the defendant, could influence their judgments about the evidence in the case, but it was important that they guard against this. These instructions were designed to make

---

225 See TYLER, supra note 101, at 31; Braman, supra note 96, at 310.
226 The data of respondents who completed the survey too quickly and/or who failed the checks on their understanding of the facts and law in the case was excluded.
the participants aware of the legally irrelevant criminal egregiousness factor that was found to motivate applications of the exclusionary rule in Studies 1 and 2.

Study 3 also tested two other types of instructions for sake of comparison. The “Law” instructions informed participants of the deterrence and judicial integrity rationales behind the exclusionary rule to see if these explanations would strengthen their commitment to applying the legal doctrine in a neutral manner. The “Research” instructions were designed to educate participants about motivated cognition in the very suppression context of this experiment to see if that would immunize them from falling prey to the effect. The participants assigned to this condition were directly told about the results of Studies 1 and 2—i.e., that people were more likely to admit tainted evidence and see its discovery as inevitable if they disapproved of the defendant’s crime and wanted to make sure he was punished; whereas people were less likely to admit tainted evidence and see its discovery as inevitable if they wanted to let the defendant ‘off the hook.’ Finally, the participants assigned to the Control condition were simply told that they would be asked to make some decisions about evidence in a legal case (which the participants in the other three conditions were also told).

The experiment varied whether the corrective instructions were delivered before or after the facts and law in the case. However, the results revealed no order effects based on the timing of the instructions, so this variable was collapsed across the other conditions. The participants answered the same admissibility and likelihood-of-discovery questions used in Study 1. Additionally, those who received corrective instructions were asked to rate the extent to which they thought the instructions had made them more objective in judging the case.

ii. Results

The results revealed a significant interaction between the case and instruction variables when it came to judgments about whether the tainted evidence should be admitted. That is, the way in which the egregiousness of the case (i.e., Heroin versus Marijuana) influenced people’s admissibility judgments depended on the instruction condition to which they were assigned. The Heroin participants continued to be significantly more likely to admit the tainted evidence than the Marijuana participants if they received either the Law or the Research instructions, just as when they received no instructions at all in the Control condition. So, those instructions did not work. However, the difference in admissibility judgments between the Heroin and Marijuana conditions was markedly reduced when the participants received the Awareness

---

227 See supra notes 7-9 and accompanying text.
228 This variable was measured on a seven-point scale ranging from “not at all” to “very strongly.”
229 ANOVA: $F(3, 343) = 2.86, p = .037, \eta^2 = .03$. An interaction is present when outcomes of a dependent variable are different at each level of an independent variable. Keppel & Wickens, supra note 123, at 197.
230 ANOVA: $F(1, 85) = 17.47, p < .001, \eta^2 = .17$.
231 ANOVA: $F(1, 86) = 24.61, p < .001, \eta^2 = .22$.
232 ANOVA: $F(1, 82) = 31.43, p < .001, \eta^2 = .28$. 
instructions—suggesting that the remedy based on the flexible correction model had its predicted effect.

A closer comparative look at the data of the participants in only the Awareness and Control conditions (i.e., setting aside the data of the “Law” and “Research” conditions) confirmed a strong interaction between the case and instruction variables on people’s admissibility judgments. Post-hoc tests revealed that the Heroin participants who received the Awareness instructions were significantly less likely to admit the tainted evidence than the Heroin participants who did not receive these instructions. Moreover, the Awareness instructions markedly reduced the difference in admissibility judgments between the participants who judged the Heroin case and those who judged the Marijuana case. Whereas, among the participants in the Control condition (who received no corrective instructions), those who judged the Heroin case continued to be significantly more likely to admit the tainted evidence than those who judged the Marijuana case, just as in Studies 1 and 2. Figure 7 illustrates these results.

---

233 ANOVA: $F(1, 87) = 3.88, p = .052, \eta^2 = .04$.

234 Since all the instruction conditions were run independently of each other, omitting the “Law” and “Research” instruction conditions did not impact the integrity of this analysis. The 171 participants in just the Awareness and Control conditions were 60% female and ranged in age from eighteen to eighty-two, with a mean age of thirty-two.

235 ANOVA: $F(1, 170) = 7.69, p = .006, \eta^2 = .64$.

236 When an ANOVA reveals an interaction, post hoc tests are conducted to “look separately at the effects of one factor at the individual levels of the other factor—the simple effects—systematically determining which are significant and which are not.” Keppel & Wickens, supra note 123, at 247.

237 Post hoc test: $p = .02$.

238 Post hoc test: $p = .06$.

239 Post hoc test: $p < .001$.

240 The graph might appear to indicate a difference between the admissibility judgments of the Marijuana participants in the Instruction and Control conditions too, with the Marijuana participants seeming more likely to admit the tainted evidence upon receiving the Awareness instructions, but this difference was not statistically significant. Post hoc test: $p = .15$. 
Once the participants in the Heroin condition who received the Awareness instructions were able to resist the motivation to admit the tainted evidence, it was no longer necessary for them to construe discovery of the evidence as inevitable; there was no significant interaction between the drug and instruction condition on the likelihood-of-discovery measure. Importantly, notwithstanding the influence of the corrective instructions in this experiment, the participants who judged the Heroin case were still intuitively more motivated to see the defendant brought to justice than those who judged the Marijuana case. Just as in Studies 1 and 2, the Heroin participants across all four of the instruction conditions in Study 3 rated the defendant as significantly less moral and more deserving of punishment than the Marijuana participants did.\(^{241}\) This indicates that the Awareness instructions did not change the effect that the criminal egregiousness factor had on people’s underlying punishment motives. The intervention seemed to work, instead, by strengthening people’s guard against letting those motives cognitively color their judgments about the admissibility of the tainted evidence.

C. Discussion of Findings

The results of Study 3 indicate that the Awareness instructions, which were grounded in a theoretical understanding of bias correction, succeeded in curtailing the motivated cognition effect demonstrated in Studies 1 and 2. Participants who were forewarned that they could be influenced by the egregiousness of the defendant’s crime were able to resist the influence of this legally extrinsic factor on their applications of the exclusionary rule. Meanwhile,

\(^{241}\) ANOVAs across all four conditions for defendant morality: $F(1, 343) = 1014.15, p < .001, \eta^2 = .76$; for punishment severity: $F(1, 343) = 458.97, p < .001, \eta^2 = .58$. ANOVAs across just the Awareness and Control conditions for defendant morality: $F(1, 170) = 7.41, p < .001, \eta^2 = .41$; for punishment severity: $F(1, 170) = 27.64, p < .001, \eta^2 = .54$. 

FIGURE 7: Admissibility of evidence, by instruction condition (Awareness vs. Control) and case (Heroin vs. Marijuana).
neither the Law nor the Research instructions were able to curb the cognitive cleansing of tainted evidence.

Previous studies on “admonitions to disregard evidence”—which have tended to focus specifically on situations where mock jurors are exposed to inadmissible or limited-use information through pretrial publicity or statements made in court—have uncovered mixed results, with instructions failing more often than succeeding. In a review paper on this subject, Joel Lieberman and Jamie Arendt suggested that the challenges of making such instructions work can best be explained by two theories of social psychology: (1) reactance theory—which predicts that if the instructions “are perceived as restricting a juror’s decision freedom, jurors may be motivated to assert that freedom and attend more strongly” to the off-limits information; and (2) ironic-process theory—which predicts that “the very processes that are engaged to distract the individual from the thought also monitor the possible recurrence of that thought,” which can ironically make the thought more accessible. So how would these theories account for why the Awareness instructions in Study 3 did succeed?

The ironic-process theory is most relevant here because, like the motivated justice hypothesis underlying the present studies, it assumes that legal decision makers are inherently motivated to comply with legal instructions: “the failure of limiting instructions stems not from the juror’s attempt to assert their decision freedom but from the unfortunate and ironic consequences of their attempts to comply with those instructions.” Lieberman and Arendt suggested that one untested way in which to rein in the ironic-process response could be:

[T]o essentially trump the ironic process with further irony, that is, to actually have the individuals focus on the to-be-suppressed thought. In the courtroom context, a judge’s instructions could be altered to acknowledge the impact of the information and to stress that when the jurors think about it, they remember why it is not just to let it influence their judgments . . .

This is precisely what the present Awareness instructions did. They first generated awareness about the potentially motivating factor (e.g., egregiousness of defendant’s underlying crime), before advising decision makers against letting it influence their legal judgments.

To the extent that reactance theory is also applicable here, prior experimental work has found that decision makers are likely to have a resistant response when presented with severe admonitions—such as, being told that inadmissible testimony “must play no role” in their consideration and that they

242 Joel D. Lieberman & Jamie Arndt, Understanding the Limits of Limiting Instructions, 6(3) PSYCH., PUBLIC POLICY, & LAW 677, 691-703 (2000).
243 Id. at 697; see JACK W. BREHM, A THEORY OF PSYCHOLOGICAL REACTANCE (1966); Duane M. Wegener, Ironic Processes of Mental Control, 101 PSYCH. REV. 34 (1994).
244 Lieberman & Arndt, supra note 242, at 700.
245 Id. at 699.
“have no choice but to disregard it.” In contrast, the Awareness instructions in Study 3 were more mildly worded—telling the participants that legally irrelevant factors may influence their judgments and asking them to “please keep this in mind and try to be as objective as possible.” The success of this instruction in Study 3 is therefore consistent with the observation that “it may be more effective to provide a weak soft-sell approach to admonishing jurors to prevent reactance from occurring rather than using a strong and absolute promulgation.”

Lieberman and Arendt also suggested that including “explanations of how inadmissible testimony can influence people” could better prepare decision makers to “defend against” that influence. Yet, the Research instructions in Study 3, which attempted to do this by presenting participants with findings on motivated cognition, did not succeed in curtailing the effect. It is important to note, however, that these Research instructions were written in the third person—i.e., describing how other people had engaged in motivated applications of the exclusionary rule when judging the Heroin case. This may have triggered the psychological phenomenon of naïve realism, whereby people are readily able to see biases in others but not in themselves. By contrast, the Awareness instructions, which did succeed, addressed participants directly in the first person (i.e., “you” may be influenced, rather than describing the behavior of others).

The Law instructions in Study 3, which informed participants of the rationales behind the exclusionary rule, may have ineffective because the recipients were not persuaded by those justifications. This could have resulted from the participants not fully understanding the rationales; as Chief Justice Burger observed, “The [negative] impact of the doctrine is dramatic and easily understood, while the important reasons underlying it are almost beyond comprehension to most laymen.” Alternatively, it could have resulted from people rejecting the rule’s justifications. Indeed, prior experimental work has shown that lay people do not support the deterrence aim of suppressing illegally obtained evidence, even though the Court has embraced this as the main purpose of the exclusionary rule. Generally, the instructions that did not work in curtailing the motivated cognition effect in Study 3 are thus just as noteworthy as those that did work, because they underscore the importance of theoretically based interventions and

247 Lieberman & Arendt, supra note 242, at 704.
248 Id. at 705.
250 Burger, supra note 40, at 12.
252 Bilz, supra note 94, at 149.
illustrate how subtle differences in wording can trigger very different psychological responses. Study 3 also found no effect for the timing of the corrective instructions; whether they were delivered before or after the facts and law in the case made no significant difference. This result is consistent with the flexible correction model’s expectation that “corrections for bias need not occur only following initial reactions to the target, but people might also attempt to avoid an anticipated bias by changing how information about the judgment target is gathered, how information is scrutinized, or by avoiding the biasing factor, if possible.”253 Thus, although the term “correction” usually refers to “adjustment of existing reactions,” people may also engage in “preemptive corrections.”

Of course, since not all people are equally susceptible to being unknowingly motivated by their own punishment goals in the face of a legal constraint to the contrary,255 a potential drawback of the awareness-generating remedy is that decision makers who are warned of a potential bias when none exists might “over-correct” for it.256 Attempts to be completely objective and impervious to one’s intuitions could lead to overly stringent applications of the law. In the context of suppressing tainted evidence, for example, judges who are trying to avoid any risk of being biased against a defendant who committed an egregious crime may be reluctant to invoke an exception to the exclusionary rule even in circumstances when it would be appropriate to do so. Alternatively, over-correction could push judgments in the opposite direction, leading to over-suppression of evidence in cases of mild crimes. Further experimental research needs to better define the parameters of cognitive correction efforts in order to guard against these potential dangers.

This Article did not directly test for the illusion of objectivity that underlies motivated cognition, but the finding that simply making people aware of a potentially motivating factor removes its influence on their admissibility judgments provides indirect evidence for the non-deliberate nature of this phenomenon. More importantly, this critical result from Study 3 shows that regardless of the level of consciousness underlying the motivated applications of the exclusionary rule seen in Studies 1 and 2, people were not willing to let the moral egregiousness of the defendant’s alleged crime influence their legal decision making when instructed about it in the right way. This is ultimately the most crucial finding of the Article, for it speaks not only to how motivated applications of the exclusionary rule can be addressed, but also to why this phenomenon represents a problem that the legal system should address. Part V will elaborate on both these points.

253 Wegener & Petty, supra note 224, at 152.
254 Id.
255 See supra Part III-C.
256 See Petty, Wegener, & White, supra note 107, at 93, 107.
V. Using Experimental Psychology to Stimulate Legal Change

A. Normative Implications

This Article’s doctrinal observations and empirical demonstrations of motivated applications of the exclusionary rule may lead some to question whether this phenomenon should be regarded as a problem. One could argue that the inclination of judges to align their suppression judgments with their own punishment intuitions, or those of the public, is not something that should be “corrected.” Rather than being a deviant process, motivated cognition in this context—or strategic choices that judges make in anticipation of a motivated response among the public—could be regarded as a rational response to a law that would otherwise lead to unjust outcomes. Perhaps having a strict rule that does not factor in crime severity, but is then applied in a motivated manner to covertly take the moral egregiousness of the defendant’s conduct into account, is the best of all possible worlds. It avoids the complete erosion of the exclusionary rule that critics of a formal crime severity consideration fear, while preventing outcomes that would violate widespread notions of justice.

Under this view, the findings of Studies 1 and 2 would seem to indicate that decision makers respond to the clash between their own intuitions and the constraints of the law in precisely the way that we would want them to respond. The motivated cognition effect demonstrated in those experiments could be seen as reminiscent of Karl Llewellyn’s concept of “situation sense,” which describes how the “fact-pattern” of a case “carries within itself its appropriate, natural rules, its right law,” which judges then “uncover[] and implement.” The egregious nature of an underlying crime, although not formally acknowledged by legal doctrine, could be seen as naturally guiding judges toward the “right” suppression judgments.

Motivated applications of the exclusionary rule may also seem to reflect Meir Dan-Cohen’s notion of the potential benefit that can result from an “acoustic separation” between conduct rules, “which are addressed to the general public” to “guide” its behavior, and decision rules, “which are directed to the officials who apply conduct rules.” In the exclusionary context, the “conduct” rule would be the lack of a crime severity distinction, directed toward law enforcement officials in order to broadly deter illegal police searches irrespective of the defendant’s offense; the “decision rule” would be the leeway that judges are given to covertly factor the moral egregiousness of the defendant’s underlying crime into their suppression judgments when called for by their sense of justice. In preemptive response to potential rule-of-law arguments against the “selective transmission” of rules in this manner, Dan-Cohen noted, “[S]ome decision rules may best serve the purposes of the law by remaining concealed from public view . . . [P]ublicity and clarity of decision rules are undesirable when these attributes would dull the

knife and impede its usefulness."\textsuperscript{259} Thus, applying this framework to the results of Studies 1 and 2 would suggest that the motivated cognition response might be exactly what the legal system needs in the context of the exclusionary rule.

The results of Study 3, however, provide a strong argument for why we should not be complacent about letting motivated cognition takes its course in applications of this or arguably any other legal doctrine. The fact that decision makers do not let the egregiousness of the underlying crime drive their suppression judgments when they are made aware of this potential influence suggests a commitment to complying with the law even when it thwarts personally desired punishment outcomes, and this is a normative instinct worth respecting. Motivated cognition can lead to outcomes that are inconsistent with the more objective manner in which decision makers might otherwise choose to respond if they are equipped to do so.

Therefore, in addition to providing a potential solution to the cognitive cleansing demonstrated in Studies 1 and 2, Study 3 shows why this psychological response presents a problem that needs solving. This is not an argument for formalistic obedience to the law over a realist pursuit of broader policy objectives—both of which imply deliberate legal decision making. Instead, this Article challenges the dichotomy between those two poles by showing that decision makers may be susceptible to a psychological effect that drives their legal judgments without their awareness or consent. This finding underscores the need to think seriously about how we can improve the implementation of doctrines like the exclusionary rule that have shown themselves to be significantly susceptible to the motivated cognition effect.

\textbf{B. Policy Implications}

If successfully replicated in real world settings, the demonstration in Study 3 of a cognitive remedy that curtailed motivated cognition could be operationalized through judicial trainings or in the form of instructions that judges read aloud in court before jury or judicial decision making. Although further empirical work is needed before any of these possibilities can be pursued, this section provides some initial thoughts on how the Article’s experimental findings could be put to practical use.

Awareness-generating instructions delivered by judges to juries at the beginning and/or end of a trial, or even incorporated into the \textit{voir dire} process as a “pre-cleansing” of legally extrinsic factors, could help better align the focus of lay decision makers with the goals of the law. Jurors do not apply the exclusionary rule, but there are occasions when they are called upon to make judgments relating to the admissibility (or inadmissibility) of evidence—such as in situations of conditional relevance, where the admissibility of evidence depends on the jury’s determinations of whether or not requisite facts have been proven.

Moreover, the present findings are highly relevant to jury determinations in Section 1983, \textit{Bivens}, and tort actions (discussed in Part IV-A above), in which

\textsuperscript{259} Id. at 669.
petitioners seeking civil damages against police officers are at risk of being ruled against based on the egregiousness of their own criminal activity. The playing field might be leveled for such petitioners if judges deliver awareness-generating instructions to cognitively orient jurors’ attention toward the police officers’ unlawful conduct rather than the defendant’s character or crime. This type of jury directive could also serve a useful purpose in a variety of other civil litigation contexts, such as comparative negligence determinations, which require jurors to decide the relative fault of the parties in torts cases. Although there are currently various types of “debiasing” instructions given to jurors, they are not sufficiently grounded in psychology theory and empirical data, nor systematically and uniformly implemented across courts.

In regard to judicial decision makers, the results of Study 3 suggest that perhaps judges should read awareness-generating instructions aloud in court before making their own judgments too. Prior psychology findings have indicated that people who make a public commitment to acting in a certain way are then more likely to actually act in that particular way. Judges are likely to be resistant, however, to the suggestion that need to be made aware of the motivating influence of legally extrinsic factors. They might assume that their years of legal training and repeated applications of legal rules have made them fully cognizant of irrelevant motivating factors that lay decision makers are less likely to recognize. Indeed, the studies on judicial decision making described in Part III-D above found that judges have stronger illusions of objectivity about their judgments than lay people do, even when such confidence is not warranted.

Thus, a more feasible proposal might be to focus on first educating judges, through judicial conferences and training programs, about their susceptibility to motivated cognition and how this effect can be avoided. Judicial conferences are increasingly offering sessions in which psychologists inform judges about potential cognitive biases in their decision making through a combination of data presentations and experimental exercises with the judges in the audience. Moreover, some state courts have undertaken projects to train court staff and judges “to recognize implicit bias as a potential problem which in turn should increase motivation to adopt sensible countermeasures.” Such venues present good opportunities to start addressing motivated judicial decision-making in regard to specific legal doctrines, like the exclusionary rule.

Finally, the delivery of awareness-generating instructions in court could be “pitched” to judges as serving to bolster public confidence in the judiciary. Evidence that authorities are unbiased is a key component of procedural justice,

---

260 Lieberman & Arndt, supra note 242, at 705.
261 See Redding & Reppucci, supra note 164; Landsman & Rakos, supra note 167.
263 See Kang et al., supra note 168, at 1175.
which inspires “higher levels of trust and confidence in the courts.”\textsuperscript{264} Especially in a controversial area of law that requires a high degree of judicial discretion and may lead to unpopular results, like the exclusionary rule, transparency and concrete legal principles specified in advance are of critical importance.\textsuperscript{265} An oral courtroom practice of proactively reading aloud awareness-generating instructions that explicitly acknowledge and reject the influence of legally extrinsic factors could thus strengthen the perceived legitimacy of the judicial system.

Such efforts are particularly needed today given that recent national polling results reveal the public’s faith in the judiciary is at a new low across ideological lines, with three-quarters of Americans expressing concern that judges’ decisions are influenced by their personal or political views rather than by legal analysis alone.\textsuperscript{266} For judges to openly acknowledge and attempt to increase vigilance against motivated cognition in the court room could thus serve not only to actually curtail its covert influence on the judgments of jurors and judges, but also to symbolically convey an important message to litigants and the public about the legal system’s commitment to informed and transparent decision making.

CONCLUSION

Motivated cognition can covertly operate on a wide scale in any area of law, but its effects are especially important for doctrines that have high-stakes outcomes and are characterized by malleable and continually evolving legal standards. The exclusionary rule is a prime example. Given how much is on the line in the suppression of criminal evidence—for defendants, victims of crime, law enforcement officials, prosecutors, defense attorneys, judges, and society as a whole—this is a legal arena that merits rigorous experimental investigation. Drawing upon both doctrinal analysis and cognitive theory, this Article has sought to empirically confront, explain, and address the unintended but widespread influence of criminal egregiousness on applications of the exclusionary rule, rather than continuing to let this legally irrelevant factor drive admissibility judgments in a surreptitious manner. The findings, which suggest that decision makers do not choose to engage in motivated cognition when equipped to avoid it, shed light on what we can and should do about this phenomenon. This Article thereby illuminates how experimental psychology can highlight new normative dimensions of longstanding legal practices and propel data-driven ideas for legal reform.

\textsuperscript{264} Tyler & Jackson, supra note 159, at 13.
\textsuperscript{265} See Tyler, supra note 101, at 63.
APPENDIX

A. All illustration of the motivated justice hypothesis (Part II-B).

B. Study 1 (Part III-A)—Punishment ratings fully mediated the relationship between egregiousness of the criminal case and (a) judgments about the admissibility of the evidence (upper figure) and (b) judgments about the likelihood of its lawful discovery (lower figure).