

Reducing Prosecutorial Misconduct: The Impact of Two Discovery Policies

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Introduction

When prosecutors do not provide exculpatory information in the context of trials (i.e., *Brady* violations), they commit misconduct and place innocent defendants at risk for wrongful convictions. *Brady* violations, coined after the U.S. Supreme Court case, *Brady v. Maryland* (1963), occur when prosecutors do not turn over exculpatory discovery information to defendants as required. The US Supreme Court requires that potentially exonerating evidence be turned over by prosecutors to the defense prior to trials (*Brady v. Maryland*, 1963). However, the Court has never said that such exonerating evidence be revealed in the context of *pleas*. In fact, the Court has said that exculpatory impeachment evidence (evidence that speaks to the credibility of witnesses) does *not* need to be turned over to the defense in plea deals (*U.S. v. Ruiz*, 2002).

Without clear discovery rules in the context of plea negotiations, varying policies for pre-plea discovery exist. State discovery practices vary widely. Some practice an open-file model in which prosecutors tend to broadly share evidence with the defense early on in the criminal process, whereas others practice a more restrictive closed-file model, in which the prosecution is not required to turn over critical evidence to the defense at all or until close to trial (Turner & Redlich, 2016). Open-file discovery is one of the leading reforms to help combat prosecutorial misconduct in the form of *Brady* violations (Alkon, 2014; Turner & Redlich, 2016).

The objective of the current study was to examine the effect of two current discovery policies: Open file instruction (OFI) and Supreme Court instruction (SCI) on mock prosecutors' behaviors.

Methods

101 University students and employees participated in the study

- ❖ 4 were excluded for failing to complete the study
- ❖ 42.3% White, 33% Asian, 14.4% Black
- ❖ Education level ranged from freshman in college (15.5%) to completed graduate degree (19.6%)
- ❖ Generally even split by gender (56.3% female)
- ❖ Ages ranged from 18-67 years old M=23.11 (SD=8.53)

Participants playing the role of prosecutor were randomly assigned to one of four conditions (no instructions, only OFI, only SCI, and both OFI and SCI) and had to assemble a case against a defendant. In assembling the case, participants had to select information to turn over to the defense and had the opportunity to withhold four exculpatory items.

We assessed mock prosecutor behavior with three outcomes measures:

- ❖ The amount of discovery turned over to the defense (62 items),
- ❖ Whether mock prosecutors withheld potentially exculpatory material (4 items), and
- ❖ Mock prosecutors' decisions to go to trial or plea

Results

Two manipulation check questions were asked (one for each condition)

- ❖ Only 70% (n = 68) of the sample answered both correctly

For analyses, only the 68 participants who passed the manipulation checks were included

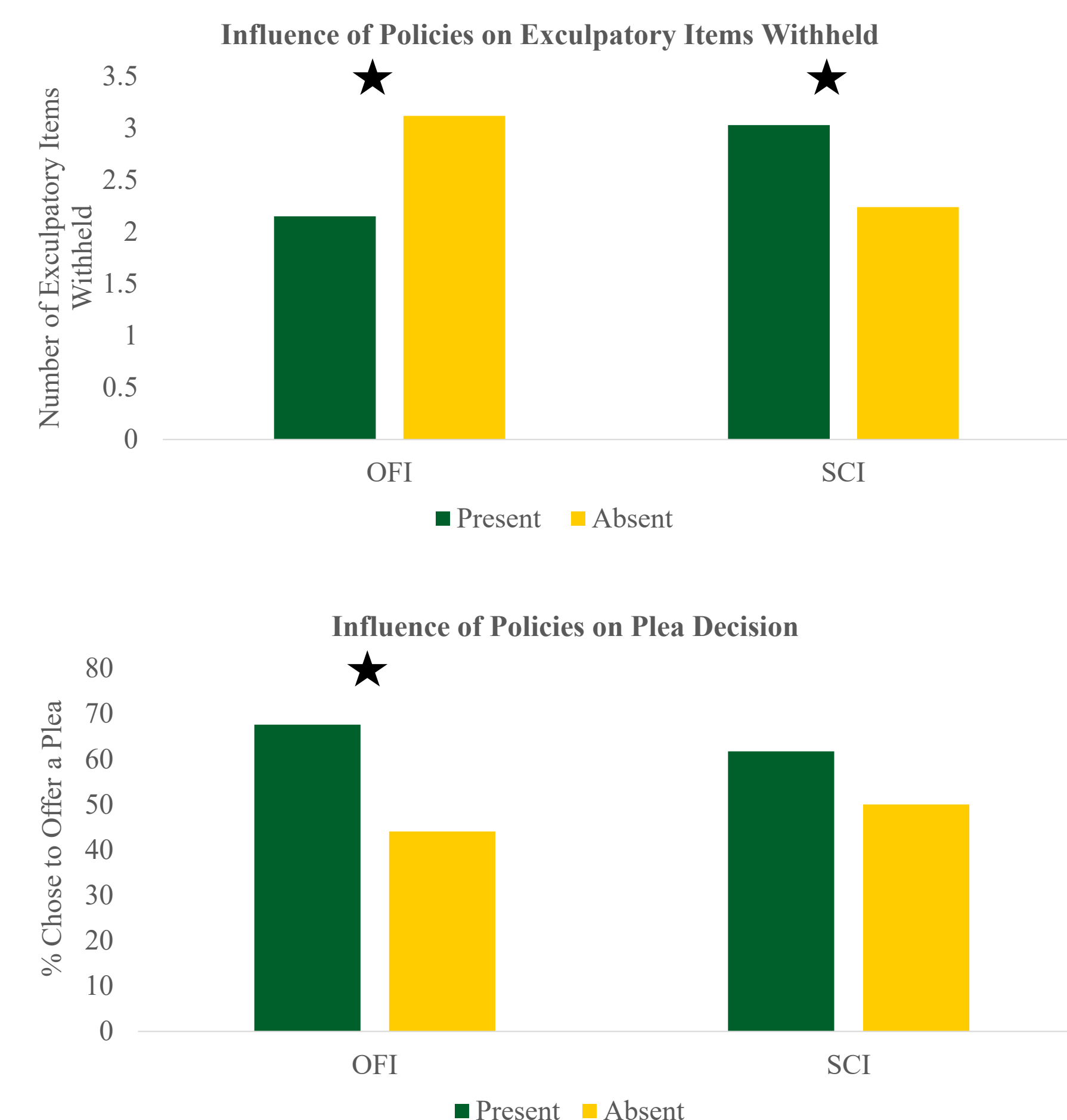
Descriptives	N	%
Turned over all discovery items (62)	9	13.2
Turned over all exculpatory items (4)	15	22.1
Turned over no exculpatory items (0)	33	48.5
Chose trial	30	44.1
Chose plea	38	55.9

Participants who received the OFI instruction:

- ❖ turned over significantly more discovery items
- ❖ turned over significantly more exculpatory items
- ❖ were more likely to offer a plea

Participants who received the SCI instruction:

- ❖ turned over significantly fewer discovery items
- ❖ were significantly more likely to withhold exculpatory information



Discussion

Discovery policies influence mock prosecutor behavior and the amount of information provided to the defense. Findings have implications understanding prosecutorial misconduct in the form of *Brady* violations. Our results also lend support for an open-file model of discovery as a reform against prosecutorial misconduct.

References

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