

— TOPIC LEVEL CREDIBILITY PENALTY · DISCREDIT BY SATURATION · TESTIMONIAL INJUSTICE · EPISTEMIC INJUSTICE ·
CREDIBILITY DEFICIT · PERSUASION KNOWLEDGE · CONCEALMENT WITHOUT A CONCEALER · CHILD SEXUAL ABUSE ·
ADJUDICATED RECORD · THRESHOLD FORECLOSURE · INSTITUTIONAL ATTENTION · FALSIFIABILITY · CHILLING EFFECTS

Discredit by Saturation

Topic level credibility penalty as a concealment mechanism

A subject can be simultaneously well documented and unspeakable, and the second condition can be produced by the first.

THE MOVE, AND THE CONDITION THAT MAKES IT MATTER

A speaker raises a subject and the room does not evaluate the claim. It evaluates the speaker for having raised the subject.

WHERE THE SUBJECT IS FABRICATED

A penalty attaching to anyone who raises it is a rough but serviceable heuristic. It economizes on attention, which is the function heuristics serve.

WHERE THE SUBJECT HAS AN ADJUDICATED CORE

The same penalty suppresses inquiry into matters a court has already found to be true. The heuristic is then doing the opposite of its job.

| *And it does so invisibly, because a filter that operates before evaluation leaves no trace of the evaluation it prevented.*

II

Method

Three criteria, fixed before the cases were

A paper that reached for the cultivated answer would be performing the move it is trying to analyze.

THREE CRITERIA, THREE CASES

The set contains its own negative case, which is better than a comparison in which every instance confirms the thesis.

CRITERION ONE

A substantial adjudicated core

So that the reception of well evidenced claims within the subject can be observed rather than assumed.

THE THREE THAT QUALIFY

The federal proceedings arising from the conduct of Jeffrey Epstein and his associates. The MKULTRA program. And COINTELPRO. Each is treated only through its adjudicated record.

CRITERION TWO

Sustained saturation

To the point where invoking the subject carries a credibility cost independent of what is asserted.

EXCLUSIONS, RECORDED

Institutional child abuse in religious organizations has the core and the rulings but is not saturated in the relevant sense, since raising it does not ordinarily discredit the speaker. Vaccine safety is saturated but lacks an adjudicated core on the contested claims. The Tuskegee study has the core and produced a settlement, but invoking it confers credibility rather than costing it, which makes it a future control.

CRITERION THREE

At least one threshold ruling

A decision resolving whether a claim or a record could be reached at all, which is where foreclosure becomes visible on the face of a published document rather than inferred from silence.

TWO ABSOLUTE LIMITS

No claim about any person who has not been adjudicated, and no claim about the contents of any record that has not been unsealed. The argument depends on the reader accepting that a substantial core of each subject is uncontested, and that acceptance is unavailable to a paper that has speculated past the record.

III

The Adjudicated Record

Convictions, appellate holdings, and unsealed filings only

Nothing in the remainder of the paper depends on any fact beyond this section.

WHAT COURTS HAVE ADJUDICATED

A finding of concealment, and a holding that no forum existed in which the question could be litigated.

2007	A non prosecution agreement was entered in the Southern District of Florida. Its existence, provenance, and scope were later established in litigation over whether it barred a prosecution in another district. Federal charges were never filed in that district.
Doe 1 v. United States	The district court granted partial summary judgment: the government violated the Crime Victims' Rights Act by negotiating the agreement without conferring with the victims, rights under the Act attach before formal charges are brought, and the government must give notice of an intention to enter such an agreement before binding itself. The court identified as particularly problematic the decision to conceal the agreement's existence and to mislead the victims into believing federal prosecution remained possible while telling them to be patient during a supposedly continuing investigation.
In re Wild	Sitting en banc, the Eleventh Circuit held the Act does not authorize a freestanding civil action and permits a motion only within a preexisting proceeding. Because no charges had been filed, there was no proceeding and therefore no forum, which abrogated the district court's ruling. The court reasoned that implying a pre charge private right of action would seriously impair prosecutorial discretion contrary to the Act's own terms. A dissent read the same statute to grant two pre charge rights and a private remedy where no prosecution is underway.
United States v. Maxwell	Ghislaine Maxwell was convicted of conspiracy to transport minors with intent to engage in criminal sexual activity, of transportation of a minor with that intent, and of sex trafficking of a minor. The Second Circuit affirmed, holding that the 2007 agreement did not bind prosecutors in a district that was not party to it, and that the extended limitations period for offenses involving the sexual abuse of a child applies to pre enactment conduct.

SOURCES *Doe 1 v. United States*, 359 F. Supp. 3d 1201 (S.D. Fla. 2019); *In re Wild*, 994 F.3d 1244 (11th Cir. 2021) (en banc), and *id.* (Branch, J., dissenting); *United States v. Maxwell*, 118 F.4th 256 (2d Cir. 2024).

THE FLOOR

Four things happened, in this order.

- 1 A jury convicted.
- 2 A court of appeals affirmed.
- 3 A district court found that the government had violated a victims' rights statute and had concealed the agreement while telling the victims to wait.
- 4 A court of appeals sitting en banc held that no forum existed in which that finding could be made, because no one had charged the principal.

| *Nothing in the remainder of this paper depends on any fact beyond those.*

IV

The Penalty

Pre evaluative, sorting by subject, attaching by transfer

What is systematic is the topic, not the person.

THREE PROPERTIES

A topic level credibility penalty, stated in three parts.

It is pre evaluative

It resolves before the content of the claim is assessed, and therefore does not depend on the content being weak.

It sorts by subject, not by claim

Two assertions differing only in subject matter, matched for evidentiary quality, receive different reception. And two assertions within the same subject that differ sharply in quality receive similar reception, since the sorting has already occurred at the level they share.

It attaches to the speaker by transfer

The penalty is incurred by raising the subject, so it operates as a cost on speech acts rather than as a judgment about propositions, and a speaker anticipating it may decline to raise the subject at all. That anticipatory element is the standard signature of a chilling effect.

The taxonomy this needs already exists in an unrelated field. The persuasion knowledge model distinguishes three knowledge structures whose interaction determines how a target receives a persuasion attempt: persuasion knowledge, agent knowledge, and topic knowledge. The claim here is that topic knowledge can come to dominate the other two, so that what an audience believes about a subject determines its response before anything about the speaker or the message is processed.

SOURCES Friestad, M., & Wright, P. (1994). The persuasion knowledge model. *Journal of Consumer Research*, 21, 1-31; Isaac, M. S., & Calder, B. J. (2024). Thirty years of persuasion knowledge research. *Consumer Psychology Review*, 8, 3-14; Penney, J. (2019). Chilling effects and transatlantic privacy. *European Law Journal*, 25, 122-139.

DISTINGUISHED FROM ORDINARY SKEPTICISM

Skepticism is self correcting. This is not, because better evidence never reaches the stage at which it would operate.

PROPERTY	ORDINARY SKEPTICISM	TOPIC LEVEL PENALTY
Level	Claim level.	Topic level.
Timing	Post evaluative. The skeptic hears the claim, weighs the evidence, and discounts.	Pre evaluative. The sorting completes before the evidence is consulted.
Response to better evidence	Self correcting. Weakly evidenced claims are discounted and well evidenced ones are not.	Unmoved. Conviction and affirmance are evidence of the highest ordinary quality, and exactly the sort that cannot repair a sorting that happens first.

Empirical work applying the persuasion knowledge model finds that the dominant coping outcome is avoidance of the persuasion attempt rather than engagement with it, driven by beliefs about the tactic rather than by the content of the message. Avoidance is the behavioral form a pre evaluative filter takes.

DISTINGUISHED FROM THE CANONICAL ACCOUNT

The deficit is caused by the subject, not by the speaker's social identity, so it does not track the speaker across contexts.

THE CANONICAL ACCOUNT

Fricker locates the wrong in a credibility deficit caused by identity prejudice, and treats the systematicity of the deficit as following from the fact that identity prejudice tracks a person across contexts. The remedy the account suggests is the cultivation of a virtuous hearer who corrects for prejudice.

TWO DEPARTURES THAT MAKE ROOM

Voigt argues that we can fail in duties of testimonial justice in ways that do not wrong any particular individual. Perrine argues that prejudice is not necessary for the harm, and proposes that testimonial injustice occurs where a speaker's capacity as a giver of knowledge is interfered with in important ways. On that proposal the effect here qualifies without modification, because interference with the capacity to give knowledge is exactly what a pre evaluative topic filter accomplishes.

A HAZARD, NAMED RATHER THAN AVOIDED

Almagro and colleagues describe cases in which public figures cultivate a persona for whom the conditions of testimonial injustice appear to apply, and exploit the appearance strategically. A speaker who raises a saturated subject and is discounted can claim the mantle of the unjustly disbelieved, and some will do so in bad faith. That is a real hazard for this argument. It is not a refutation, because the existence of parties who exploit an effect presupposes that the effect exists.

SOURCES Almagro, M., Osorio, J., & Villanueva Fernández, N. (2021). Weaponized testimonial injustice. *Las Torres de Lucca International Journal of Political Philosophy*, 10, 29-58; Voigt, K. (2017). Testimonial injustice and speakers' duties. *Journal of Social Philosophy*, 48, 402-420; Perrine, T. (2023). Prejudice, harming knowers, and testimonial injustice. *Logos & Episteme*, 14, 53-73.



Mechanism

How a subject acquires the property

The factual core sustains the saturation, the saturation sustains the penalty, and the penalty suppresses inquiry into the factual core.

FOUR STAGES

A wholly fabricated subject eventually exhausts itself. A subject with real convictions cannot.

1

Volume without resolution

A subject generating sustained public attention and no terminal institutional answer accumulates commentary faster than adjudication. Since most of what circulates on any high volume subject is low quality, the observable average quality falls, and falls further as the gap persists.

2

A lay heuristic forms

Observers do not track quality claim by claim. They form a summary judgment about the class, and it is not irrational: it is a reasonable response to a genuinely degraded average, and it economizes on attention.

3

Transfer

The judgment about the class becomes a judgment about anyone who invokes it. The audience evaluates the inferred motive rather than the message. Ordinarily protective, since it is what allows an audience to discount advertising. Destructive when the inferred motive is derived from the subject.

4

The trap

An adjudicated core keeps the subject in circulation. A fabricated subject exhausts itself because nothing new attaches to it. A subject with real convictions, real victims, and real unresolved questions cannot, because the underlying facts keep producing occasions to speak.

An adjacent literature on child maltreatment allegations describes the institutional consequence directly. Where a category of allegation acquires a reputation for tactical deployment, investigating bodies begin treating incoming reports in that category as presumptively suspect, and valid cases are discarded before they are assessed. That is the same sorting, observed inside an institution rather than in public discourse, which establishes that the mechanism is not confined to lay audiences.

SOURCES Saini, M., Laajasalo, T., & Platt, S. (2020). Gatekeeping by allegations. *Family Court Review*, 58, 417-431; Friestad, M., & Wright, P. (1994). *Journal of Consumer Research*, 21, 1-31.

WHY BETTER EVIDENCE MAKES IT WORSE

Better evidence strengthens the filter rather than weakening it.

AN IDENTITY PREJUDICE

Can in principle be corrected by evidence about the group, and correcting for a prejudice one holds is tractable.

A TOPIC FILTER

Is reinforced by evidence about the topic, because every new adjudicated fact produces new occasions to speak, most of which will be low quality for the same reasons the original ratio was unfavorable. Correcting for a base rate one has correctly observed is not tractable in the same way.

The factual core sustains the saturation, the saturation sustains the penalty, and the penalty suppresses inquiry into the factual core.

VI

The Concealment Function

No agent, no intention, no plan required

A mechanism can be produced entirely by the aggregate of individually reasonable responses, and it will still have the effect.

THE DEFINITION

Any regular feature of an information environment that reduces the probability of inquiry below what the matter's evidentiary standing would otherwise support.

Nothing in that definition requires an agent, an intention, or a plan.

IF THE SATURATION IS EMERGENT

The mechanism is a collective action failure.

IF IT IS CULTIVATED

The mechanism is a strategy.

EITHER WAY

The predicted observable is identical, which means the observable cannot discriminate between them, which means any paper claiming to have discriminated is claiming more than its evidence supports.

STRUCTURAL, NOT ANECDOTAL

The foreclosure did not fall on an untested allegation. It fell on a finding a court had already made.

The holding rested on a construction of a statute Congress wrote to protect crime victims, and it produced a result in which the protection is unavailable precisely where the executive has chosen not to proceed. A dissenting opinion read the same text the other way. That is an ordinary and legitimate outcome of statutory construction, and this paper takes no position on whether it was correctly decided.

THE OBSERVATION IS ABOUT WHAT FOLLOWED

A holding of that shape, on a statute of that purpose, with a dissent of that kind, is the sort of thing that ordinarily generates sustained legislative attention, a corrective amendment, or at minimum a durable scholarly literature on the gap it opened.

The comparison the paper invites is between the institutional response this holding received and the response received by comparable gaps identified in statutes of comparable purpose in subjects that are not saturated. That is proposed as a study, and stated as a test the thesis should be made to pass rather than as a result.

TWO FURTHER CASES, AND ONE THAT WENT THE OTHER WAY

Two threshold rulings closed the door. One opened it.

MKULTRA · CLOSED

The program's existence, scope, and character are not contested. The Supreme Court recorded that the research concerned the use of drugs and other biological, chemical, or physical agents in warfare or intelligence operations, and that the Agency had destroyed records. On a request for researcher names, the Court held that the National Security Act qualifies as a withholding statute, that the Director's authority extends to all sources of intelligence information rather than only those promised confidentiality, that MKULTRA researchers are intelligence sources, and that even superficially innocuous information such as institutional affiliation may be withheld where disclosure might permit an observer to deduce a source's identity. A concurrence would have confined the term to sources under an express or implied promise of confidentiality. The Court expressly did not reach whether the destruction of the files had been lawful.

COINTELPRO · OPENED

A district court held that disruption operations against a lawful political party were patently unconstitutional and without statutory or regulatory authority, that surreptitious entries to obtain documents from the party's offices were obvious Fourth Amendment violations, and that the use of informants to gather private information about lawful political meetings was incompatible with the First Amendment. It awarded damages under the Federal Tort Claims Act.

The plaintiffs reached the merits because of how the court resolved timeliness. The two year administrative filing period did not begin until they had discovered, or with reasonable diligence should have discovered, the critical facts of both the injury and its cause, and where a defendant deliberately conceals material facts relating to its wrongdoing the clock does not start until the basis of the lawsuit is or should be known.

SOURCES *Central Intelligence Agency v. Sims*, 471 U.S. 159 (1985), and *id.* (Marshall, J., concurring in the judgment); *Socialist Workers Party v. Attorney General of the United States*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

THE COMPARATIVE FINDING

What varies is not the strength of the record or the degree of saturation. It is what the doctrine at the threshold does with concealment.

CASE	WHAT THE THRESHOLD DOCTRINE DID WITH CONCEALMENT	RESULT
The federal proceedings	Treated its consequence as a bar. No charges meant no proceeding, and so no forum.	Closed, on a finding of concealment the court below had already made.
MKULTRA	Treated its consequence as a bar. The need to protect sources meant no names, and so no record.	Closed, with the lawfulness of the destruction expressly not reached.
COINTELPRO	Treated it as a tolling event. The clock did not start while material facts were deliberately concealed.	Opened. Merits reached, damages awarded.

That is a property of the doctrine rather than of the subject, which is why saturation alone does not determine the outcome and why the effect described here operates on the margin rather than absolutely.

The structure matched at every joint. An adjudicated core. A saturated subject, to the point where a program's name now functions in ordinary speech as a marker of unseriousness. A threshold ruling that resolved access rather than merits. A separate opinion reading the same text narrowly. And a question the court noted it was not deciding, which no other body took up.

SOURCES *Doe 1 v. United States*, 359 F. Supp. 3d 1201 (S.D. Fla. 2019); *In re Wild*, 994 F.3d 1244 (11th Cir. 2021) (en banc); *Central Intelligence Agency v. Sims*, 471 U.S. 159 (1985); *Socialist Workers Party v. Attorney General of the United States*, 642 F. Supp. 1357 (S.D.N.Y. 1986).

WHAT THE PENALTY FORECLOSES

Four things, in rough order of tractability.

Journalistic follow up

An editor allocating scarce attention discounts a story by the reception its subject will receive.

Discovery and unsealing motions

The political cost of filing them is a function of how the filing will be characterized.

Legislative inquiry

The same reason, at higher amplitude.

An institution's willingness to answer

The least visible of the four and probably the most consequential, because an institution that anticipates the questioner will be discounted has little incentive to answer.

Each operates through anticipation rather than through any completed act of suppression, which is why the effect leaves so little evidence of itself. The unwritten story, the unfiled motion, and the unasked question are not events, and an information environment cannot be audited for things that did not happen.

THE SAME STOCK, DRAWN FROM TWO SIDES

These are not analogies. They are two withdrawals against one account.

OVERUSE IN PRETEXT

A credibility stock attaching to allegations of child sexual exploitation, held in common by everyone who will ever need to make such an allegation truthfully, depleted by official invocation of the allegation without a predicate. The injured population is diffuse, future, and unidentifiable, which is why no plaintiff can reach it. The pattern is documented independently: such allegations have been invoked to justify expanded information gathering powers directed at particular communities, in circumstances where the allegation was doing work unrelated to the protection of any child.

OVERUSE IN DISCOURSE

The mechanism described in this paper. Each argument standing alone is vulnerable to the objection that the credibility stock is a metaphor rather than a thing. Two independent depletion pathways producing the same predicted degradation, identified from unrelated starting points, is the ordinary form of evidence that the underlying quantity is real.

Together they license a claim neither licenses alone: that the reception of child sexual abuse allegations is a shared resource with observable dynamics, and that it is currently being drawn down from both the official and the discursive side at once.

SOURCES Mokrosinska, D. (2014). Privacy and the integrity of liberal politics: The case of governmental internet searches. *Journal of Social Philosophy*, 45, 369–389.

FOUR RESULTS THAT WOULD REFUTE THIS

Stated as commitments rather than concessions, because the specific failure available to a paper of this kind is unfalsifiability.

If matched claims rate the same

If claims differing only in subject label receive statistically indistinguishable credibility ratings, the topic level sorting is not occurring and the paper is wrong.

Scope. Three cases are not a sample. They were selected against stated criteria, which is a defensible procedure and not a random one, and the set includes its own negative case. It remains too small to support a rate.

If the discount tracks quality

If adjudicated claims within the saturated subject are received better than unadjudicated ones by roughly the margin observed elsewhere, what is operating is ordinary skepticism with a low prior.

Confounds. The comparison holds subject matter and adjudicated standing roughly constant and lets the doctrine vary, but the cases also differ in era, in the identity of the concealing party, in the legal vehicle, and in the remedy sought. Any of those could carry the difference.

If it follows the speaker

If the discount attaches across unrelated subjects, the mechanism is speaker level, the canonical account already covers it, and this paper adds nothing.

Measurement. Severe and general to chilling effects research, where the difficulty of documenting the effect has sustained long standing skepticism among courts and scholars. And leaving the emergent and cultivated hypotheses unresolved means the paper can support no claim about responsibility.

If follow up rates match

If institutional follow up on adjudicated findings within the saturated subject proceeds at rates comparable to findings of similar gravity elsewhere, the concealment function does not obtain.

FUTURE WORK

Two designs, each answering a stated limitation, and one control the present set cannot supply.

A corpus of threshold rulings

Code each ruling that resolved access to an adjudicated record or to a forum for the gravity of the underlying finding, the purpose of the statute construed, the presence of a separate opinion reading the text the other way, and the era and identity of the party resisting disclosure. Code the subject matter for saturation on a measure independent of the ruling, such as the ratio of commentary to adjudication over a fixed window. Then compare rates of legislative follow up, corrective amendment, and scholarly treatment across the saturated and unsaturated groups.

An experiment on matched claims

Present matched claims to matched samples, varying only the subject label, and measure credibility ratings. This tests the first and second disconfirming conditions directly and is the cleanest available design.

The control

The Tuskegee study, excluded because invoking it confers credibility rather than costing it, is the natural control for both designs. It has the adjudicated core and the settlement without the saturation, which is the contrast the argument needs and which no case in the present set supplies.

The first design holds the confounds the paper cannot separate, and it measures events rather than absences, which is the response to the measurement problem.

A DIAGNOSTIC PAPER

A subject can be simultaneously well documented and unspeakable, and the second condition can be produced by the first.

The paper proposes no reform, and should be read with suspicion if it did, because the interventions that suggest themselves are worse than the condition. Exhorting audiences to suspend the heuristic will not work and would not be advisable if it did, since the heuristic exists because the average quality of speech on a saturated subject is in fact low. Elevating credibility within the subject by fiat would import the failure mode the heuristic protects against.

What it supports is narrower. Institutions can be evaluated on a criterion that does not require anyone to change their priors: whether follow up on an adjudicated finding proceeds at a rate explicable by the finding's evidentiary standing, or at a rate explicable by its subject. That is a measurable property of an institution, and it asks the public to be more credulous about nothing.

Where that happens, the ordinary machinery by which a society converts findings into consequences stops turning, and it stops without anyone deciding to stop it.

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