**6.2: Exceptions to the Duty of Confidentiality**

*Tell me at least six things you may or may not consider personal. I’m not talking about jet ski accidents, rather truly things you’d never thought you’d tell.*[[1]](#footnote-0)

*This very secret you’re trying to conceal, is the very same one you’re dying to reveal.*[[2]](#footnote-1)

1. **Exceptions to the Professional Duty of Confidentiality**

There are many state variations in the scope of the duty of confidentiality. As a result, a practicing lawyer should be particularly attentive to local law. The lawyer should be attentive to the distinction between a permission to disclose and a requirement to disclose. This distinction is indicated by the use of “may” or “shall” in the language. Remember that the ethical duty of confidentiality covers a broader range of information than the privilege. The ethical duty also covers the *use of information* to the disadvantage of a client, a prospective client, or a former client.

The third-party doctrine (the presence of a nonprivileged third person) does *not* necessarily destroy an attorney’s duty of confidentiality. Confidential information remains confidential even if it is known to others, *unless the information becomes generally known*.

There are eight exceptions to the Duty of Confidentiality: client’s consent, dispute concerning attorney’s conduct, disclosure to obtain legal ethics advice, disclosure required by law or court order, disclosure to prevent death or substantial bodily harm, disclosure to prevent or mitigate substantial financial harm, and disclosure to detect and resolve conflicts of interest.

1. **Client’s Informed Consent**

Model Rule 1.6 implicitly says that an attorney may reveal or use confidential information if the client gives informed consent. “Informed consent” means that the client agrees to a proposed course of action after the lawyer has adequately explained the risks and reasonable alternatives.

Model Rule 1.6(a)

Model Rule 1.0(e)

**Restatement (Third) of the Law Governing Lawyers § 62 (2000): Using or Disclosing Information with Client Consent**

A lawyer may use or disclose confidential client information when the client consents after being adequately informed concerning the use or disclosure.

**b. Implied Authority**

An attorney has implied authority from the client to use or disclose confidential information when appropriate to carry out the representation, unless the client gives specific instructions to the contrary.

**Restatement (Third) of the Law Governing Lawyers § 61 (2000): Using or Disclosing Information to Advance Client Interests**

A lawyer may use or disclose confidential client information when the lawyer reasonably believes that doing so will advance the interests of the client in the representation.

**c. Dispute Concerning Attorney’s Conduct**

An attorney may reveal a client’s confidential information to the extent necessary to protect the attorney’s interests in a dispute that involves the conduct of the attorney. An attorney wishing to use this exception should reveal only what is necessary, attempt to limit the disclosure to those who need to know it, and obtain protective orders or take other steps to minimize the risk of unnecessary harm to the client.

**d. Disclosure to Obtain Legal Ethics Advice**

A lawyer may disclose enough of the client’s confidential information as is necessary to obtain legal ethics advice for the lawyer.

**e. Disclosure Required by Law or Court Order**

ABA Model Rule 1.6(b)(6) permits a lawyer to reveal her client’s confidential information to the extent that she is required to do so by law or court order.

**Restatement (Third) of the Law Governing Lawyers § 63 (2000): Using or Disclosing Information When Required by Law**

A lawyer may use or disclose confidential client information when required by law, after the lawyer takes reasonably appropriate steps to assert that the information is privileged or otherwise protected against disclosure.

**f. Disclosure to Prevent Death or Substantial Bodily Harm**

ABA Model Rule 1.6(b)(1) permits a lawyer to reveal the client’s confidential information to the extent that the lawyer reasonably believes necessary to prevent *reasonably certain death or substantial bodily harm*. This exception applies to death or bodily harm whatever the cause; it does not need to be caused by the client, and the cause need not be a criminal act. It also does not need to be imminent, just reasonably certain.

The exception also gives the lawyer discretion to disclose the confidential information-- it does not require disclosure. Some states may require disclosure if they have not accepted the Model Rules.

**Restatement (Third) of the Law Governing Lawyers § 66 (2000): Using or Disclosing Information to Prevent Death or Serious Bodily Harm**

(1) A lawyer may use or disclose confidential client information when the lawyer reasonably believes that its use or disclosure is necessary to prevent reasonably certain death or serious bodily harm to a person.

(2) Before using or disclosing information under this Section, the lawyer must, if feasible, make a good-faith effort to persuade the client not to act. If the client or another person has already acted, the lawyer must, if feasible, advise the client to warn the victim or to take other action to prevent the harm and advise the client of the lawyer's ability to use or disclose information as provided in this Section and the consequences thereof.

(3) A lawyer who takes action or decides not to take action permitted under this Section is not, solely by reason of such action or inaction, subject to professional discipline, liable for damages to the lawyer's client or any third person, or barred from recovery against a client or third person.

**g. Disclosure to Prevent or Mitigate Substantial Financial Harm**

The Model Rules permit a lawyer to reveal the client’s confidential information to the extent necessary to prevent the client from committing a crime or fraud that is reasonably certain to result in *substantial financial harm* to someone if the client is using or has used the lawyer’s services in the matter. The exception also applies if the client has already acted, and the lawyer’s disclosure can prevent or mitigate the consequent financial harm.

**Restatement (Third) of the Law Governing Lawyers § 67 (2000): Using or Disclosing Information to Prevent, Rectify, or Mitigate Substantial Financial Loss**

(1) A lawyer may use or disclose confidential client information when the lawyer reasonably believes that its use or disclosure is necessary to prevent a crime or fraud, and:

(a) the crime or fraud threatens substantial financial loss;

(b) the loss has not yet occurred;

(c) the lawyer's client intends to commit the crime or fraud either personally or through a third person; and

(d) the client has employed or is employing the lawyer's services in the matter in which the crime or fraud is committed.

(2) If a crime or fraud described in Subsection (1) has already occurred, a lawyer may use or disclose confidential client information when the lawyer reasonably believes its use or disclosure is necessary to prevent, rectify, or mitigate the loss.

(3) Before using or disclosing information under this Section, the lawyer must, if feasible, make a good-faith effort to persuade the client not to act. If the client or another person has already acted, the lawyer must, if feasible, advise the client to warn the victim or to take other action to prevent, rectify, or mitigate the loss. The lawyer must, if feasible, also advise the client of the lawyer's ability to use or disclose information as provided in this Section and the consequences thereof.

(4) A lawyer who takes action or decides not to take action permitted under this Section is not, solely by reason of such action or inaction, subject to professional discipline, liable for damages to the lawyer's client or any third person, or barred from recovery against a client or third person.

**h. Disclosure to Detect and Resolve Conflicts of Interest**

Lawyers may disclose limited client information, such as client names and a summary of general issues, when a lawyer changes firms, when two firms merge, or when a law practice is being purchased. This is allowed in order to detect and resolve conflicts of interest. This exception is subject to four conditions:

1. The disclosure may be made only after substantive discussions regarding the new relationship have occurred
2. The disclosure must be limited to the minimum necessary to detect any conflicts of interest
3. The disclosed information must not compromise the attorney-client privilege or otherwise prejudice the clients; and
4. The disclosed information may be used only to the extent necessary to detect and resolve any conflicts of interest

**i. Protecting Confidential Information**

A lawyer must make reasonable efforts to protect a client’s confidential information from inadvertent or unauthorized disclosure by the lawyer and those under the lawyer’s supervision, and from unauthorized access by third parties. The reasonableness of the lawyer’s efforts is determined by considering such factors as the sensitivity of the client’s information, the cost of additional safeguards, and the difficulty of implementing the safeguards.

[**Model Rule of Professional Conduct 1.6: Confidentiality of Information, Comment [3]**](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6/)

The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law.

[***United States v. Franklin*, 598 F. 2d 954 (5th Cir. 1979)**](https://scholar.google.com/scholar_case?case=3148349018699827769)

**Summary:** Attorney Robert Senor represented Morton Franklin in relation to various criminal charges. Senor offered confidential client information to the government in an unsuccessful attempt to obtain more lenient treatment. Franklin filed a motion to dismiss his indictment, on the ground that Senor improperly disclosed confidential information. The district court denied the motion, and the circuit court affirmed, because Senor disclosed the information in order to benefit Franklin, among other things.

PER CURIAM:

Appealing his false loan application and obstruction of justice convictions, defendant contends that the indictment should have been dismissed because it was based on information obtained by the Government from his attorney. Concluding that the facts of this case do not support the relief requested, we affirm.

Defendant was charged with assisting in the submission of a materially false statement to a federally insured bank to obtain financing for a gun smuggling operation and with obstructing justice by preventing an investigation into these financial arrangements.

DISMISSAL OF INDICTMENT

Prior to trial, defendant moved to dismiss the indictment on the ground that the Government had improperly obtained information from his attorney, Robert Senor. Senor had contacted Government agents for the purpose of arranging leniency for the defendant on a marijuana charge. Without detailing the evidence in relation to these contacts and the information revealed to the Government by Senor, it appears from the record that defendant cannot prevail under any theory presented.

In *Weatherford v. Bursey*, the Supreme Court held it fatal to a conviction for the Government to obtain defense strategy from an attorney only where there was “a realistic possibility of injury to defendant or benefit to the State.”

Senor testified he had discussed defense strategy with his friend Edward Ragen, a Supervisory Customs Air Officer. Since Ragen did not communicate this information to his superiors and was not officially assigned to this case, and the Government did not purposely infiltrate the defense camp, there was no realistic possibility of harm to defendant or benefit to the Government. Senor's statement to Government agent Philip Zisk that Franklin maintained his innocence cannot be regarded as a disclosure of the defense strategy.

Defendant further contends that the Government had made Senor its undercover agent. Although the affidavit for warrants to search codefendants’ premises and automobiles had listed Senor as a “confidential source” and contained information relayed by Senor, the facts do not support the contention here made.

Acting on defendant’s behalf in seeking to barter information for leniency on the marijuana charge, defendant's attorney initiated the contact. It appeared to the Government that he was acting with the approval of his client in his client’s best interests. Throughout these communications Senor insisted that his client was innocent of any wrongdoing in the gun smuggling operation and only wished to exchange information incriminating others for leniency. This case is thus fundamentally different from *Messelt v. Alabama*, in which an “utter perversion of the attorney-client relationship” resulted from the defense attorney’s effort to gain leverage for the payment of his fee by suggesting to the prosecution that his client be charged with more serious offenses, and his proposal to his client that they participate together in a drug scheme.

The Government’s response to Senor’s efforts was restrained and proper. Zisk told Senor he was not interested in bargaining and already had access to information about the smuggling operation. Although Zisk did list Senor as a source of information in the application for the search warrants, he testified that the information on which the affidavit was based came primarily from undercover officers, that Senor was only one of four sources, and that the information provided by him was merely cumulative. Defendant had no interest in the property searched, was without standing to challenge the validity of the search, and did not attempt to do so. Senor thus was not, as claimed, a confidential agent in the service of the Government.

Basically, Senor communicated three items of information to Zisk: (1) defendant’s role in arranging the financing of what he thought was to be a legitimate gun operation; (2) trips to Cleveland by a codefendant to secure financing; and (3) details concerning Franklin’s later discovery of gun smuggling. That Senor communicated information given by his client to the Government does not taint his conviction for several reasons. First, the information was available to the Government from other sources and not based on Senor’s communications. Second, the information did not incriminate defendant. Third, the information was communicated voluntarily as an inducement to a plea bargain. Fourth, at a later meeting defendant himself communicated substantially the same information to the Government through Senor, thereby waiving any privilege he may have had and ratifying Senor’s communication, if he had not in fact approved it from the outset. Fifth, neither the information communicated by Senor nor the fact the communication took place was introduced at trial.

The only evidence introduced at the trial that implicated defendant and which related to Senor’s communication was a codefendant’s diary seized during the search. Even assuming that evidence was obtained by the Government in an illegal manner, the proper remedy would be suppression, not dismissal of the prosecution. Suppression was not sought. In any event, the evidence had minimal impact.

Therefore, the district court did not err in denying the motion to dismiss the indictment.

**Questions:**

1. Why did Franklin think he was entitled to relief?
2. Was any of the information disclosed by Senor confidential? If so, why didn’t disclosure violate Senor’s duty of confidentiality?
3. Did disclosure of the information materially impact Franklin’s trial? Should it matter?

[***In re Original Grand Jury Investigation*, 89 Ohio St. 3d 544 (Ohio 2000)**](https://scholar.google.com/scholar_case?case=7572376045134474218)

**Summary:** An attorney represented a client in a grand jury investigation. The attorney received a letter written by the client that disclosed a possible crime. The attorney asked the court how to proceed, and ultimately orally disclosed the contents of the letter, without disclosing the letter itself. The Ohio Supreme Court held that the letter was a client “secret,” but that disclosure was required in order to prevent a crime.

FRANCIS E. SWEENEY, SR., J.

The issue presented in this case is whether an attorney can be compelled to disclose to the grand jury a letter written by a client and discovered by an investigator that contains evidence of a possible crime or whether the Ohio Code of Professional Responsibility prohibits such disclosure.

At the outset, we understand that appellant was faced with an ethical dilemma and had the difficult decision of determining how to respond to the competing challenges of maintaining client confidentiality and preserving the safety concerns of the public. We appreciate that appellant confronted the problem head-on by first asking the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court for advice on whether he had an obligation to report a possible crime and then by heeding that advice by reporting the matter to the court and cooperating with the police. Nevertheless, for the reasons that follow, we find that appellant must comply with the grand jury subpoena and relinquish the letter in question.

The concept of client confidentiality, including the attorney's ethical obligations concerning confidentiality, is embodied in DR 4-101. DR 4-101(A) defines the terms “confidence” and “secret” as follows:

“Confidence” refers to information protected by the attorney-client privilege under applicable law and “secret” refers to other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would be likely detrimental to the client.

DR 4-101(B) states, “Except when permitted under DR 4-101(C), a lawyer shall not knowingly reveal a confidence or secret of a client.”

We must first determine whether the letter sought falls within the definition of a client “secret.” Unlike “confidence,” which is limited to information an attorney obtains directly from his or her client, the term “secret” is defined in broad terms. Therefore, a client secret includes information obtained from third-party sources, including “information obtained by a lawyer from witnesses, by personal investigation, or by an investigation of an agent of the lawyer, disclosure of which would be embarrassing or harmful to the client.”

The court of appeals found that the letter was not a secret because it was not information gained in the professional relationship. Instead, the court said that the letter was simply physical evidence, which needed to be disclosed to the authorities. Even though the letter does constitute physical evidence of a possible crime, it also contains information detrimental to appellant. Thus, we find that the letter falls within the definition of a client “secret,” since it was obtained in the professional attorney-client relationship, by appellant’s agent (the investigator), and since it contains detrimental information detailing a possible crime committed by appellant's former client.

Although the letter is a client secret, this does not necessarily mean that disclosure of the letter is absolutely prohibited. An attorney may disclose a client secret if one of the four listed exceptions in DR 4-101(C) applies.

Appellant concedes that DR 4-101(C)(3) permits him to “reveal the intention of his client to commit a crime and the information necessary to prevent the crime.”[[3]](#footnote-2) Nevertheless, appellant contends that this provision is narrow in its scope and permits him to orally disclose the information contained in the letter, but does not permit him to disclose the physical evidence (the letter). Therefore, appellant maintains that DR 4-101(C)(3) did not permit him to reveal more than he did when he orally disclosed the intention of his former client to commit a crime and prevented a crime from occurring.

We agree with appellant that he was authorized by DR 4-101(C)(3) when he chose to reveal the intent of his client to commit a crime, and, actually, went beyond what DR 4-101(C)(3) allows by reading the entire letter to the trial court and police. However, the fact that he revealed this information does not answer the question whether he is obligated to produce the letter itself. Thus, the question that remains is whether appellant is required to relinquish the letter itself and present it to the grand jury. We find that the exception found in DR 4-102(C)(2) governs disposition of this issue.

DR 4-101(C)(2) provides that an attorney may reveal “confidences or secrets when permitted under Disciplinary Rules or required by law or court order.” Although the language contained in DR 4-101(C)(2), like that of DR 4-101(C)(3), is written in permissive terms, courts have interpreted provisions similar to DR 4-101(C)(2) in such a manner as to require disclosure. The exception of DR 4-101(C)(2) for disclosures required by law has been construed so that “the effect of other rules compels disclosures.” Consequently, if a lawyer is “required by law” to disclose information to the authorities, “these legal obligations create ‘forced’ exceptions to confidentiality.” Under these circumstances, a lawyer’s duty “not to use or disclose confidential client information is superseded when the law specifically requires such use or disclosure.”

The exception of DR 4-101(C)(2) for disclosures required by law has been applied in the context of mandating that attorneys relinquish evidence and instrumentalities of crime to law-enforcement agencies. Thus, the rule has emerged that, despite any confidentiality concerns, a criminal defense attorney must produce real evidence obtained from his or her client or from a third-party source, regardless of whether the evidence is mere evidence of a client's crime, or is a fruit or instrumentality of a crime. In either event, the physical evidence must be turned over to the proper authorities. In essence, the confidentiality rules do not give an attorney the right to withhold evidence.

Appellant contends, however, that there are strong policy reasons against mandating disclosure. Appellant believes that mandatory disclosure will discourage attorneys from reporting possible threats made by their clients and will therefore run contrary to the intent of the code, which is to prevent crimes from occurring. Appellant cites the Massachusetts decision of *Purcell v. Dist. Atty. for Suffolk Dist.*, which highlights these concerns.

In *Purcell*, an attorney informed police about his client’s intention to commit arson. The trial court ordered the attorney to testify about the conversation he had with his client concerning his client's intention to commit this crime, and the state defended the order on the basis of the crime-fraud exception to the attorney-client privilege. The Massachusetts Supreme Court vacated the trial court’s order and held that the attorney did not have to testify against his client. In so holding, the court noted:

We must be cautious in permitting the use of client communications that a lawyer has revealed only because of a threat to others. Lawyers will be reluctant to come forward if they know that the information that they disclose may lead to adverse consequences to their clients. A practice of the use of such disclosures might prompt a lawyer to warn a client in advance that the disclosure of certain information may not be held in confidence, thereby chilling free discourse between lawyer and client and reducing the prospect that the lawyer will learn of a serious threat to the well-being of others.

Although these may be valid concerns, we find that the *Purcell* decision is distinguishable from the instant case, and that the policy reasons cited in *Purcell* have less validity here. *Purcell* involved direct communications between an attorney and client. The issue in that case was whether the attorney was required to testify against his client. In this case, the attorney-client privilege is not at issue. Nor is appellant being asked to testify against his former client. Instead, the instant case revolves around whether a physical piece of evidence must be relinquished to the grand jury. While we recognize the importance of maintaining a client’s confidences and secrets and understand that an attorney may have concerns in turning over incriminating evidence against his or her client, we do not believe that these concerns should override the public interest in maintaining public safety and promoting the administration of justice by prosecuting individuals for their alleged criminal activity.

Since the letter sought in this case contains evidence of a possible crime, we find that the letter must be turned over to the grand jury. Accordingly, we hold that where an attorney receives physical evidence from a third party relating to a possible crime committed by his or her client, the attorney is obligated to relinquish that evidence to law-enforcement authorities and must comply with a subpoena issued to that effect.

Other provisions of the code support our holding that appellant must relinquish the letter to the grand jury. DR 7-109(A) provides, “A lawyer shall not suppress any evidence that he or his client has a legal obligation to reveal or produce.” Furthermore, DR 7-102(A)(3) provides, “In his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal.” Reading these rules together, we believe that under the facts presented in this case, appellant has a legal obligation to turn the letter over to the grand jury.

We agree with the court of appeals that the sanction imposed against appellant stemming from the contempt proceedings should be vacated, given that appellant challenged the subpoena on confidentiality grounds in good faith. Under these circumstances, we do not believe appellant should be punished and held in contempt. The finding of contempt is vacated on condition that appellant comply with the subpoena. Accordingly, we affirm the judgment of the court of appeals and order appellant to relinquish the letter in question to the grand jury.

PFEIFER, J., concurring in part and dissenting in part.

I agree with the majority that the letter is a client secret and that Helmick was authorized to reveal the intent of his client to commit a crime. DR 4-101(C)(3). Revealing “the information necessary to prevent the crime” should have concluded the matter. Unfortunately, the trial court and now a majority of this court chose to read DR 4-101(C)(2) liberally. That reading of the exception swallows the rule of DR 4-101(B)(1), which states that a lawyer “shall not knowingly reveal a confidence or secret of his client,” and declares open season on defense attorney files.

The majority relies on cases from other jurisdictions in which attorneys were required to turn over to the proper authorities the fruits and instrumentalities, including a gun, of crime. Those cases are not similar factually to this case. *Purcell* is, and we should have taken a similarly cautious approach. Otherwise, “lawyers will be reluctant to come forward if they know that the information that they disclose may lead to adverse consequences to their clients, thereby chilling free discourse between lawyer and client and reducing the prospect that the lawyer will learn of a serious threat to the well-being of others.”

Helmick acted the way all attorneys with an ethical dilemma should: he sought out competent counsel and followed the advice given. He acted in a manner designed to prevent the commission of a crime, which is what the (C)(3) exception to DR 4-101 is all about.

Today’s opinion will likely have two unfortunate results. First, overzealous prosecutors will be more likely to engage in fishing expeditions. Second, attorneys and their clients will be less likely to discuss potential crimes, which will decrease the likelihood that the crimes can be prevented. I concur in part and dissent in part.

**Questions:**

1. What is the difference between a “confidence” and a “secret”?
2. Why did the appellate court and the Ohio Supreme Court disagree about whether the letter was “confidential information” for the purpose of the duty of confidentiality?
3. Why did the court find that the attorney could disclose the contents of the letter? Do you agree?
4. What is the difference between disclosing the information necessary to prevent a crime from occurring and disclosing confidential or secret information?

# [***McClure v. Thompson*, 323 F.3d 1233 (9th Cir. 2003)**](https://scholar.google.com/scholar_case?case=13276561898493461620)

**Summary:** Robert McClure was arrested for the murder of Carol Jones and the disappearance of her two children. Attorney Christopher Mecca represented McClure. In the course of representation, McClure told Mecca the location of the children. Mecca disclosed that information to the police, who found their bodies. McClure was convicted for three murders. He filed a habeas petition, alleging that Mecca improperly disclosed confidential information. The district court denied the petition, and the Ninth Circuit affirmed, holding that McClure had not provided informed consent to disclosure, but Mecca reasonably believed disclosure could save the children.

WILLIAM W. FLETCHER, Circuit Judge:

Oregon state prisoner Robert A. McClure appeals the district court’s denial of his habeas corpus petition challenging his jury trial conviction for three aggravated murders. McClure’s original defense attorney, Christopher Mecca, placed an anonymous telephone call to law enforcement officials directing them to the locations of what turned out to be the bodies of two children whom McClure was ultimately convicted of killing. The district court rejected McClure’s arguments that the disclosure constituted ineffective assistance of counsel, holding there was no breach of the duty of confidentiality and no actual conflict of interest. We affirm.

I. Background

A. Offense, Arrest and Conviction

On Tuesday, April 24, 1984, the body of Carol Jones was found in her home in Grants Pass, Oregon. She had been struck numerous times on the head, arms and hands with a blunt object. A gun cabinet in the home had been forced open and a .44 caliber revolver was missing. Two of Jones’ children — Michael, age 14, and Tanya, age 10 — were also missing. The fingerprints of Robert McClure, a friend of Jones, were found in the blood in the home. On Saturday, April 28, McClure was arrested in connection with the death of Carol Jones and the disappearance of the children.

That same day, McClure’s mother contacted attorney Christopher Mecca and asked him to represent her son. As discussed in more detail below, sometime in the next three days, under circumstances described differently by McClure and Mecca, McClure revealed to Mecca the separate remote locations where the children could be found. On Tuesday, May 1, Mecca, armed with a map produced during his conversations with McClure, arranged for his secretary to place an anonymous phone call to a sheriff's department telephone number belonging to a law enforcement officer with whom Mecca had met earlier.

Later that day and the following day, sheriff’s deputies located the children's bodies, which were in locations more than 60 miles apart. The children had each died from a single gunshot wound to the head. Mecca then withdrew from representation. On May 3, McClure was indicted for the murders of Carol Jones and her children. At trial, the prosecution produced extensive evidence that stemmed from the discovery of the children’s bodies and introduced testimony regarding the anonymous phone call. McClure was found guilty of all three murders and was sentenced to three consecutive life sentences with 30-year minimums. On direct appeal, his conviction was affirmed without opinion.

B. Disclosure of the Children's Whereabouts

The parties agree that Mecca and McClure met at the jail and spoke on the telephone on a number of occasions between April 28 and May 1. However, the substance of the conversations between McClure and Mecca are the subject of significant dispute.

Mecca recorded his account in notes that he wrote immediately after the children's bodies were discovered. Mecca also gave deposition testimony for McClure’s state post conviction proceeding, submitted an affidavit prior to McClure's federal habeas proceeding, and gave testimony at the federal district court evidentiary hearing in the habeas proceeding. In his notes, Mecca wrote that McClure had initially claimed that he was “being framed” for the murder, but that he was nervous about his fingerprints being in the house. He had asked Mecca to help him remove some other potential evidence, which Mecca declined to do.

According to the notes, on the Sunday night after McClure’s Saturday arrest, Mecca received a “frantic phone call” from McClure's sister, who was convinced that McClure had murdered Jones, but had reason to believe that the children were alive and perhaps “tied up or bound someplace.” In response, Mecca set up a meeting with McClure, his sister and his mother at the jail, at which McClure’s sister “directly confronted McClure and begged him to divulge information about the whereabouts of the kids.” McClure and his sister discussed how McClure sometimes did “crazy things” when he was using drugs, but McClure strongly maintained his innocence as to Carol Jones’ murder and the children’s disappearance.

According to his notes, when Mecca next spoke with McClure on Monday, McClure was less adamant in his denial. Mecca described how, when they met on Monday afternoon, McClure began to tell him of his “sexual hallucinations and fantasies” involving young girls and about “other situations that happened in the past involving things he would do while under the influence of drugs.” “It was at that time,” Mecca wrote, “when I realized in my own mind that he had committed the crime and the problem regarding the children intensified.” Mecca wrote that he “was extremely agitated over the fact that these children might still be alive.”

After a Monday night visit to the crime scene, Mecca returned to the jail to speak with McClure again, at which time he “peeled off most of the outer layers of McClure and realized that there was no doubt in my mind that he had killed Carol Jones.” McClure told Mecca he wanted to see a psychiatrist, then launched into “bizarre ramblings.” “Each time as I would try to leave,” Mecca recalled in his notes, “McClure would spew out other information, bits about the children, and he would do it in the form of a fantasy.” Mecca wrote that he “wanted to learn from him what happened to those children.” He told McClure “that we all have hiding places, that we all know when we go hiking or driving or something, we all remember certain back roads and remote places,” and that McClure “related to me one place where a body might be” and then “described where the other body would be located.” Mecca wrote that he “wasn't going to push him for anything more,” but “when I tried to leave, he said, and he said it tentatively, ‘would you like me to draw you a map and just give you an idea?’ and I said ‘Yes’ and he did.” Mecca recorded that “at that time, I felt in my own mind the children were dead, but, of course, I wasn’t sure.”

Very late on Monday evening, McClure telephoned Mecca at home and said, “I know who did it.” Mecca recorded in his notes that the next morning he went to meet with McClure, and asked him about this statement. McClure told Mecca that “Satan killed Carol.” When Mecca asked, “What about the kids?” McClure replied, “Jesus saved the kids.” Mecca wrote in his notes that this statement “hit me so abruptly, I immediately assumed that if Jesus saved the kids, that the kids are alive.” Mecca wrote that he “kind of felt that McClure was talking about a sexual thing, but, in any event, I wasn’t sure.”

Mecca’s notes indicate that on Monday, before McClure made the “Jesus saved the kids” comment, and again on Tuesday, immediately after the meeting at which he made that comment, Mecca had conversations with fellow lawyers, seeking advice regarding “the dilemma that he faced.” After the second of these conversations, which took place Tuesday morning, Mecca arranged for a noon meeting with the undersheriff and the prosecutor. At the meeting, he “mentioned to them that I may have information which would be of interest to the State” and attempted to negotiate a plea. When the prosecutor responded that there would be no deal, Mecca recorded in his notes, “I had made up my mind then that I had to do the correct thing. The only option I had, as far as I was concerned, was to disclose the whereabouts of the bodies.” (Recall that by the time Mecca wrote these notes, he had learned that the children were dead.) A law enforcement official testified in a federal court deposition that, after both the state bar association and the attorney general “recommended that it would be unwise for Mr. Mecca to provide us information,” Mecca “indicated that, even though there might be sanctions, that he still was wanting to provide information that he had regarding the children.” Mecca stated that when he spoke with McClure’s sister and mother, they were adamant that he do whatever he could to locate the children, and that “they were still under the impression that one or both of the children were alive, or at least there was a chance they were alive.”

Mecca then returned to the jail Tuesday afternoon and, according to his notes, “advised McClure that if there was any possibility that these children were alive, we were obligated to disclose that information in order to prevent, if possible, the occurrence of what could be the elevation of an assault to a murder, for instance. I further indicated that if he really requested psychiatric help, to help him deal with his problem, that this perhaps was the first step.” “In any event,” Mecca recorded in his notes, “he consented.” “I arranged to have the information released anonymously to the Sheriff’s Department with directions to the bodies.” He noted that there was “no provable way to connect” McClure to the information, “but I think it’s rather obvious from those in the know, who the information came from.”

In the deposition conducted in conjunction with McClure’s state habeas proceeding, Mecca gave a similar account of the events surrounding disclosure of the locations of the children. He emphasized that “it all happened relatively quickly” and that there was a public “hysteria about these kids, whether the kids were dead, whether the kids were alive.” Mecca reiterated that much of the later conversations with McClure consisted of hypotheticals and fantasies — “like he was playing a game with me” — but that it was clear that McClure wanted to tell him where the children were. Mecca stated in his deposition that “the condition of the children was never discussed,” but that the insistence by McClure's mother and sister that McClure wouldn’t hurt the children put him “in this mode of thinking these kids might be alive someplace.”

Mecca testified in his deposition that he thought that if the children were alive, it might relieve McClure of additional murder charges, but that the children were his main concern. When asked if he was “primarily concerned with the children’s welfare or with Mr. McClure’s welfare” at the time he disclosed the location of the bodies, Mecca replied, “At that point I was concerned with the children’s welfare.” When asked if he explained to McClure that “if they were in fact dead, that revealing the location of the bodies would lead to evidence which could implicate Mr. McClure in their murders,” Mecca answered: “No. I don't think I had the presence of mind to sit down and analyze every single detail and go over with him, ‘Geez, you know, if they are really dead, why don't you tell me.’” However, he testified, “McClure knew I thought there was a chance those kids were alive.”

Mecca testified in the deposition that the plan to place the anonymous telephone call was his, but that McClure knew that he planned to do it, and that, in his late-night call, McClure had made clear that he “absolutely wanted to disclose where those kids were.” When asked, “Did he give you permission to reveal this information?” Mecca responded, “Oh, yes.”

In a 1999 affidavit submitted in conjunction with McClure’s federal habeas proceeding, Mecca gave an additional statement regarding McClure's consent: “Mr. McClure did not orally or expressly consent to the disclosure. I inferred consent from the circumstances, specifically, the fact that Mr. McClure called me at home on several occasions with the request that I see him at the jail, and the fact that he drew a map of the location of the bodies of the victim in his own handwriting and gave me the map.”

In addition to reviewing Mecca’s notes, his state-court deposition testimony, and his federal-court affidavit, the federal district court heard testimony from Mecca at an evidentiary hearing. In this testimony, Mecca emphasized that he generally takes a low-keyed approach to questioning his clients. He also emphasized that McClure was “fully engaged in his defense” and “was running the show.” Every time they met or conversed, he said, it was at McClure’s request. He said that he and McClure “discussed at various times various methods of what I was going to do with this information.” Mecca testified that McClure never expressly said that he consented to the disclosure, and that Mecca never asked for such consent. He confirmed his earlier testimony that he inferred consent, and added for the first time that this inference was based on McClure’s nodding, saying “okay,” and otherwise manifesting assent. He said this was what he had meant when he had written in his notes that McClure consented. Mecca also reiterated that he never told McClure of the legal risks involved in disclosing the children's locations.

Mecca testified that after the Monday conversation with McClure, “the conclusion I came to was that, without telling me, he told me he had killed three people.” But he stated that he did not confirm that conclusion by directly asking McClure if it was the case. Instead, he said, he emphasized to McClure that if there was a chance the children were alive, they needed to save them, and in response McClure “never said they were dead.” After the “Jesus saved the kids” comment on Tuesday, Mecca testified, “I allowed myself to believe that these kids might somehow be alive.” When asked on cross examination whether, at the time he decided to make the anonymous call, he thought there was “a strong possibility the kids still may be alive,” Mecca responded that he “felt that it was a possibility. I wouldn’t say a strong possibility.” One of the reasons he felt this possibility existed, he said, was that his “client had not indicated anything differently.” He testified that the possibility of saving his client from additional murder charges “was something that was going through his mind” during his decisionmaking. He noted that the weather at that time of year was “warm” and “pleasant,” and that if the children had been left in the woods it was possible that the weather would not have contributed to their death.

McClure disagreed with Mecca’s account of the events leading up to the anonymous call. In testimony in both the state and federal district court proceedings, he repeatedly insisted that he did not give Mecca permission to disclose any information and that he was reassured that everything he told Mecca would remain confidential. He said Mecca pressured him into disclosing information by setting up the meeting with his sister and mother, and then disseminated that information to his detriment without his knowledge or consent.

McClure testified that Mecca never asked him directly if the children were alive or dead, but that the hypothetical conversations that they had were about where Mecca might find dead “bodies,” not live “children.” He said his disclosure of those locations was his way of admitting to having killed them. He testified that Mecca never told him that he intended to make an anonymous telephone call.

III. Discussion

McClure’s single claim is that habeas relief is appropriate because he received ineffective assistance of counsel under the Sixth Amendment. He asserts three independent grounds on which ineffectiveness could be found. The first two are based on alleged breaches of Mecca’s professional duty to maintain client confidentiality. McClure argues that this duty was breached both by a failure to obtain informed consent prior to the disclosure of confidential information and by a failure to inquire thoroughly before concluding that disclosure was necessary to prevent the deaths of the children. The third ground is that the primacy of Mecca’s concern for the victims constituted a conflict of interest that rendered Mecca's counsel constitutionally ineffective.

The Duty of Confidentiality

McClure contends that Mecca’s disclosure of McClure’s confidential statements about the location of the children violated McClure’s Sixth Amendment right to effective assistance of counsel. ABA Model Rule of Professional Conduct 1.6 sets forth a widely recognized duty of confidentiality: “A lawyer shall not reveal information relating to representation of a client.” Our legal system is premised on the strict adherence to this principle of confidentiality, and “the Supreme Court has long held attorneys to stringent standards of loyalty and fairness with respect to their clients.” There are few professional relationships “involving a higher trust and confidence than that of attorney and client,” and “few more anxiously guarded by the law, or governed by sterner principles of morality and justice.”

As critical as this confidential relationship is to our system of justice, the duty to refrain from disclosing information relating to the representation of a client is not absolute. The ABA Model Rule provides a list of well-established exceptions to the general principle of confidentiality, two of which are pertinent to the present case. First, a lawyer may reveal confidential information if “the client consents after consultation.” Second, “a lawyer may reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm.” The relevant provisions of the Oregon Code of Professional Responsibility echo both the general principle of confidentiality and these particular exceptions.

The duty of an attorney to keep his or her client’s confidences in all but a handful of carefully defined circumstances is so deeply ingrained in our legal system and so uniformly acknowledged as a critical component of reasonable representation by counsel that departure from this rule “makes out a deprivation of the Sixth Amendment right to counsel.” With this uncontested premise as our starting point, we examine whether the circumstances surrounding Mecca’s revelation of a confidential client communication excused his disclosure, such that his performance could have been found by the state court and the district court to be constitutionally adequate. Specifically, we look to see if Mecca’s client “consented after consultation” or if Mecca “reasonably believed the revelation was necessary to prevent the client from committing a criminal act that Mecca believed was likely to result in imminent death or substantial bodily harm.” We conclude that the first of these exceptions does not apply to justify Mecca's behavior, but that the second does.

1. Consent After Consultation

McClure argues that Mecca rendered constitutionally ineffective assistance because he breached his duty of confidentiality by not obtaining McClure's informed consent before disclosure. The professional standard that allows disclosure of confidential communications when “the client consents after consultation” has two distinct parts: consent by the client, and consultation by the counsel. Our required deference to both the state court’s factual findings and the district court’s credibility determination leads us to hold that the first of these elements was met. However, despite this deference, we hold that the second element was not met.

a. Consent

The state court made the following finding: “Trial counsel received petitioner’s permission to anonymously disclose the whereabouts of the children to the authorities.” AEDPA demands that this finding of consent be presumed correct and accepted as true unless McClure rebuts the presumption with clear and convincing evidence to the contrary. The district court, whose credibility determinations are given great weight, and whose findings of fact are reviewed only for clear error, explicitly accepted that finding, and stated that it did “not find credible petitioner’s assertion that he did not consent to the disclosure of the information contained in the map.” It found that McClure “voluntarily drew the map and gave it to Mecca,” and that, even in the absence of the words “I consent,” Mecca could infer consent from the circumstances and from McClure’s conduct. It stated that it found Mecca’s testimony “entirely credible and corroborated by his contemporaneous notes which state specifically that petitioner consented to the disclosure.”

There is evidence in the record to cast doubt on these consent findings — indeed, enough evidence that if we were sitting as trier of fact, we might find that McClure did not give consent. McClure repeatedly denied that he consented, and certainly would have had good reason not to consent. The state court determination that McClure had consented was made before Mecca clarified that the consent was implied and not express. Moreover, it was based on Mecca’s unconditional affirmative response, in his state-court deposition, to the question of whether permission to reveal the information was granted. Only later, in the federal habeas proceeding, did it come to light that Mecca had merely inferred McClure’s consent.

Further, Mecca’s account of the circumstances from which he inferred McClure’s consent changed over the years. His initial account stated that he inferred consent from the fact that McClure called him at home, drew the map, and gave it to him. It is a significant leap to infer McClure’s consent to disclose the map to law enforcement authorities from the fact that McClure gave the map to Mecca. Virtually all clients provide information to their attorneys, but they do so assuming that the attorneys will not breach their duty of confidentiality. Further, Mecca’s behavior at the time of the disclosure suggested that he thought he lacked the kind of informed consent that would give him the legal authority to act.

However, the findings reached by the state and district courts are not so “implausible” — particularly in light of the district court's credibility determinations — that they produce a “definite and firm conviction that a mistake has been committed.” The district court believed Mecca's account at the evidentiary hearing, disbelieved McClure's, and found the discrepancies in Mecca’s testimony to be “minor.” Because there are “two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous.” We therefore hold that McClure gave his consent to the disclosure.

b. Consultation

However, the mere fact of consent is not sufficient to excuse what would otherwise be a breach of the duty of confidentiality. Consent must also be informed. That is, the client can provide valid consent only if there has been appropriate “consultation” with his or her attorney. Mecca’s consultation with McClure regarding his consent to disclosure was addressed in the state court and district court findings. Both courts found that Mecca did not advise McClure about the potential harmful consequences of disclosure. The state court found that “before petitioner authorized trial counsel to reveal the childrens’ locations to authorities, trial counsel did not advise petitioner that if authorities located the children, he could be further implicated in the criminal activity and the evidence against him would be stronger.” The district court found that “Mecca admits that he did not advise petitioner of all potential adverse consequences.”

Emphasizing that McClure was “fully engaged” in his defense and that he was told that the obligation to disclose the children's location arose only if the children were alive, the district court held that “under the circumstances, Mecca’s failure to advise petitioner of all possible adverse consequences was not unreasonable.” We believe this holding is inconsistent with the consultation requirement because it does not attach sufficient importance to the role that an attorney's advice plays in the attorney-client relationship. It is not enough, as the district court suggests, that McClure “did not dissuade Mecca from his intentions” to share the map with authorities. The onus is not on the client to perceive the legal risks himself and then to dissuade his attorney from a particular course of action. The district court’s statement that Mecca was relieved of his duty to counsel his client because “common sense dictated that petitioner understood the consequences of his actions” fails to acknowledge the seriousness of those consequences and the importance of good counsel regarding them. Even in cases in which the negative ramifications seem obvious — for example, when criminal defendants opt for self-representation — we require that a criminal defendant's decision be made on the basis of legal guidance and with full cautionary explanation. We disagree with the district court’s conclusion that this case was so exceptional that the attorney’s basic consultation duties did not apply. It is precisely because the stakes were so high that Mecca had an obligation to consult carefully with his client. In the absence of some other exception to the duty of confidentiality, his failure to obtain informed consent would demonstrate constitutionally deficient performance under the Sixth Amendment.

2. Prevention of Further Criminal Acts

The State contends that, even if Mecca did not have informed consent, his revelation of client confidences did not amount to ineffective assistance of counsel because he reasonably believed that disclosing the location of the children was necessary in order to prevent further criminal acts. That is, Mecca reasonably believed that revealing the children's locations could have prevented the escalation of kidnapping to murder. This is not a traditional “prevention of further criminal acts” case, because all of the affirmative criminal acts performed by McClure had been completed at the time Mecca made his disclosure. Mecca was thus acting to prevent an earlier criminal act from being transformed by the passage of time into a more serious criminal offense. Nonetheless, we believe that where an attorney’s or a client’s omission to act could result in “imminent death or substantial bodily harm” constituting a separate and more severe crime from the one already committed, the exception to the duty of confidentiality may be triggered.

This exception, however, requires that an attorney reveal confidences only to the extent that he “reasonably believes necessary to prevent” those criminal acts and imminent harms. In assessing the effectiveness of McClure’s counsel in light of this standard, the first step is to determine what a constitutionally effective counsel should be required to do before making a disclosure. That is, we must determine what basis the attorney had for believing that the precondition to disclosure was present, and how much investigation he or she must have undertaken before it was “reasonable” to “believe it necessary” to make the disclosure to prevent the harm. The second step is to apply that standard to the facts surrounding Mecca's decision to disclose.

There is remarkably little case law addressing the first analytical step. Citing cases dealing with a separate confidentiality exception allowing attorneys to reveal intended perjury on the part of their clients, McClure argues that a lawyer must have a “firm factual basis” before adopting a belief of impending criminal conduct. However, we are not persuaded that the perjury cases provide the proper standard.

McClure is correct that our inquiry must acknowledge the importance of the confidential attorney-client relationship and the gravity of the harm that results from an unwarranted breach of that duty. However, the standard applied in the professional responsibility code asks only if the attorney “reasonably believes” disclosure is necessary to prevent the crime. Further, the *Strickland* standard likewise focuses on “whether counsel's assistance was reasonable considering all the circumstances.” Accordingly, we hold that the guiding rule for purposes of the exception for preventing criminal acts is objective reasonableness in light of the surrounding circumstances.

Reasonableness of belief may be strongly connected to adequacy of investigation or sufficiency of inquiry in the face of uncertainty. Significantly, as indicated above, *Strickland* explicitly imposes a duty on counsel “to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” In any ineffectiveness of counsel case, “a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” Thus, in determining whether Mecca’s disclosure of confidential client information constituted ineffective assistance of counsel, we must examine whether Mecca “reasonably believed” that the precondition for disclosure existed and whether, in coming to that belief, Mecca conducted a reasonable investigation and inquiry.

The parties vigorously debate both the reasonableness of Mecca’s belief that the children were alive and the reasonableness of his level of investigation and inquiry on that point. McClure argues that any conclusion that Mecca had a reasonable belief is unsupported because Mecca himself indicated that he harbored doubts as to the children's state, and yet failed to inquire further. He points to evidence in the record that Mecca, at least at some stages of his representation of McClure, did not believe the children were alive—or that he, at the least, suspected that they were dead. It is indisputable that this evidence exists, and that most of this evidence is contained in statements by Mecca himself, whom the district court found “highly credible.” Mecca’s notes state that, after McClure drew the map, Mecca “felt in my own mind that the children were dead, but, of course, I wasn’t sure.” He testified in the district court evidentiary hearing that the conclusion he came to was that, “without telling me, McClure had told me he had killed three people.” And he stated in this same testimony that, at the time he had his secretary place the anonymous call, he thought there was a “possibility,” but not a “strong possibility,” that the children were alive.

McClure argues that the statement Mecca says abruptly changed his mind about the status of the children — McClure's comment that “Jesus saved the kids” — was so vague and ambiguous that it was not a sufficient basis for a “reasonable belief” that disclosure was necessary. Despite Mecca’s acknowledgment that this comment led him only to “assume” that McClure was saying the children were alive, Mecca never directly asked a question that could have confirmed or refuted that assumption. Mecca repeatedly testified that he never squarely asked about the condition of the children or whether McClure had killed them. Accordingly, McClure argues, any finding that Mecca believed the children were alive is not sufficient to establish effective assistance of counsel, because Mecca's failure to engage in a reasonable level of investigation and inquiry rendered that belief unreasonable.

Given the implicit factual findings of the state court, and the explicit factual findings of the district court, which are at least plausible in light of the record viewed in its entirety, we disagree. The ultimate question of the reasonableness of Mecca’s belief is a question of law, which we review *de novo*. In answering that question, however, we look to the facts and circumstances of the case, and as to these facts, we give great deference to the findings of the state court and the district court.

The district court made a number of specific findings regarding the factual basis for Mecca’s belief that the children were alive. It found that only McClure knew the true facts and that he deliberately withheld them, leading Mecca to believe the children were alive. It found that McClure controlled the flow of information, and that when Mecca informed McClure that he had an obligation to disclose the children's whereabouts if there were a chance they were alive, McClure did not tell him they were dead. It specifically rejected McClure’s assertion that Mecca in fact believed that the children were dead or that he lacked information that they were alive, noting that at the time there was no evidence, other than their disappearance and the passage of time, that they had been injured or killed.

The district court also made specific factual findings regarding the nature of Mecca’s investigation and inquiry. It found that “Mecca attempted to discern whether the children were alive” and “that Mecca investigated to the best of his ability under extremely difficult circumstances.” McClure argues that these findings are clearly erroneous, and that “arguments that Mr. McClure was manipulative and difficult are essentially irrelevant to the lawyer’s obligations.” But *Strickland* holds otherwise. The *Strickland* Court emphasized that “the reasonableness of counsel’s actions may be determined or substantially influenced by the defendant's own statements or actions.” More specifically, it held that “what investigation decisions are reasonable depends critically” on the “information supplied by the defendant.”

This is a close case, even after we give the required deference to the state and district courts. The choices made by McClure’s counsel give us significant pause, and, were we deciding this case as an original matter, we might decide it differently. But we take as true the district court’s specific factual findings as to what transpired — including what McClure said and did, and what actions Mecca took and why he took them — and we conclude that Mecca made the disclosure “reasonably believing it was necessary to prevent the client from committing a criminal act that Mecca believed was likely to result in imminent death or substantial bodily harm.” Mecca therefore did not violate the duty of confidentiality in a manner that rendered his assistance constitutionally ineffective.

Conclusion

For the foregoing reasons, we conclude that McClure did not receive constitutionally ineffective assistance of counsel. Accordingly, the district court's denial of McClure's petition for writ of habeas corpus is affirmed.

**Questions:**

1. Do you agree with the court’s conclusion that McClure did not provide informed consent to disclosure?
2. Do you agree with the court’s conclusion that Mecca reasonably believed that disclosure could save the children?
3. Should Mecca have disclosed the information under the circumstances? Should Mecca have consulted with McClure about disclosure?

1. The Blow, Jet Ski Accidents. [↑](#footnote-ref-0)
2. Ronald Eldon Sexsmith, *Secret Heart*, Ron Sexsmith (1995). [↑](#footnote-ref-1)
3. Appellant points out that this provision is written in permissive terms, since it states that a lawyer “may” reveal the client's intent to commit a crime. We acknowledge that DR 4-101(C)(3) is permissive. Nevertheless, this has no bearing on the outcome in this case, since appellant concedes that he already disclosed the relevant information to the authorities. [↑](#footnote-ref-2)