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## Prosecutorial Misconduct in Serious Cases: Theory and Design of a Laboratory Experiment Can You Study a Legal System in a Laboratory?

*Jeffrey W. Lucas, Corina Graif, and Michael J. Lovaglia*

**M**orris Zelditch, Jr. published his classic paper, "Can You Really Study an Army in a Laboratory?" in 1969. In it, he explained how experimental research involving small groups of participants can inform understandings of interactions in groups both small and large. As Zelditch explained, this is achieved through designing experimental studies that meet the scope conditions and operationalize the key elements of well-established theories. Generalization of experimental findings then happens through theory. Zelditch's paper played a key role in spurring more than thirty-five years of experimental work on group processes that has contributed to understandings of how fundamental social processes play out in groups of any size. We now question the role that experiments can play in contributing to our knowledge base on the legal system. What can experimental studies with idiosyncratic samples and in artificial settings tell us about criminology and other aspects of the legal system?

We propose that experimental research can play a role in explaining prosecutorial misconduct in cases involving severe crimes. Legal scholars in recent years have begun to discuss prosecutorial misconduct as a serious issue confronting the legal system, one that may go relatively unchecked (Dunahoe 2005; Gershman 1992; Hime 2005; Johns 2005; Meares 1995; Schoenfeld 2005). Moreover, evidence indicates that misconduct becomes increasingly likely as crimes become more severe (Bedau and Radelet 1987). Investigating the relationship between crime severity and misconduct, however, presents challenges.

One approach to testing the relationship between crime severity and prosecutorial misconduct is to investigate misconduct among working prosecutors. This may take the form of analyzing case records or perhaps interviewing

prosecuting attorneys. These approaches have significant limitations. Research taking the strategy of examining case records finds a relatively higher rate of overturned convictions for murder cases than for less severe cases, indicating that misconduct may be more likely in these cases. For example, although less than 5 percent of criminal convictions are for murders, about half of identified wrongful convictions are for murders. Interpreting this result is difficult, however, because more attention is focused on identifying wrongful convictions in murder cases than in less severe cases. In other words, it may be that there are no more wrongful convictions for murder than for other cases, but rather simply that more of these wrongful convictions are identified. Further, wrongful convictions and prosecutorial misconduct do not perfectly align.

Interviewing prosecuting attorneys also presents difficulties. One is that we might expect prosecutors who engage in misconduct to be less than forthcoming in interviews. Also, prosecutors especially committed to a conviction in a particular case may not define a behavior as misconduct that others, or even themselves under different circumstances, would define as such. Further, even if prosecutors were completely honest and entirely cognizant of misconduct, and if prosecutors indicated that they engaged in misconduct more often in trials involving more serious cases, determining cause and effect would be impossible due to the multiple complexities of the legal system. Perhaps more serious cases, for example, engender more misconduct not directly because the crimes are more severe but instead because the trials are longer and more complex and provide more opportunities for misconduct.

An alternative research approach is to experimentally test the relationship between crime severity and misconduct. Experiments assign different groups to different levels of an independent variable before a dependent variable is measured. An experiment on misconduct might randomly assign one group of student participants to act as prosecutors for a case involving a serious crime and another to act as prosecutors for a case involving a less serious crime. Participants in each group could then be given an opportunity to engage in misconduct. If participants assigned the more serious case are more likely to engage in misconduct, then we have evidence of a relationship between crime severity and misconduct.

Common sense and conventional logic tell us that such a study would reveal little about the behaviors of actual prosecutors working in real trials. Empirical investigations of any type in the social sciences always represent indirect efforts to measure social reality, and the goal of investigators is typically to use measures and design questions and settings that approximate reality as closely as possible. A survey researcher who cannot directly measure income, for example, will ask respondents to self-report their income levels. We gen-

erally accept these representations of income as accurate reflections of income. Similarly, ethnographic investigations will use researchers' observations of behaviors as indicators of behaviors themselves, indicators that we generally accept as accurate representations.

Drawing conclusions about the behaviors of actual working prosecutors from the experimental design described above, however, requires a much greater logical leap than concluding that self-reports of income represent income or that ethnographers' recordings of behavior reflect behaviors themselves. Conventional logic tells us that several elements of the experiment would limit what it could tell us about actual prosecutorial misconduct in the real legal system. One such element is that participants in the experiment would not be real working prosecutors, persons who have undergone significant training in the responsibilities associated with their jobs. Another is that the setting would not be one faced by real prosecutors: The trial would be shorter than an actual trial, there would not be a real defendant facing actual prison time, the "prosecutors" in the study would not be subject to the same costs and benefits associated with misconduct as real prosecutors, and so on.

An obvious approach to dealing with these problems, and one that follows the logic of other types of empirical investigations, would be to design the experimental setting to be as much as possible like an actual trial in the real legal system. One step the experimenter might take would be to select participants as much as possible like real working prosecutors, perhaps recruiting law students with ambitions to be prosecutors. The experimenter also might design a trial containing as many of the elements as possible that are faced by real prosecutors. This could include a trial that lasts several hours or days, training for the prosecutor in ethical conduct, a defendant, a jury, exhaustive legal procedures, significant benefits to the prosecutor for attaining a conviction, costs to the prosecutor for being caught in misconduct, and so on. With these steps, we might better be able to generalize the results of the experiment to misconduct among working prosecutors in real trials.

Such an approach to designing an experiment with implications for trials in natural settings would surely fail. It would fail because no matter how many steps a researcher took to make an experiment approximate a naturally occurring trial, numerous differences would necessarily remain. Each of these differences would exist as possible foils to any findings produced by the experiment. In other words, if participants prosecuting a more severe trial engaged in more misconduct than participants prosecuting a less severe trial, we would not be able to rule out the effect disappearing with the elimination of any or all of the differences between the experimental design and a naturally occurring trial.

## THE COUNTERINTUITIVE LOGIC OF EXPERIMENTAL INVESTIGATIONS

Because experiments are always approximations of natural settings, we can never rule out differences between the experimental setting and natural settings being responsible for effects found in experimental investigations. This is a significant problem if the goal of experiments is similar to other research investigations in attempting to construct settings and measures that approximate social reality as closely as possible. The logic of experimental investigations, however, is completely different. In essence, rather than attempting to design settings that approximate the natural world as closely as possible, experimentalists do just the opposite; they attempt to create conditions as unlike natural settings as possible.

An effective use of experiments to study the relationship between severity of crime and prosecutorial misconduct would be to draw from or develop a theory of why prosecutors may become more likely to engage in misconduct as crimes become more severe. If the elements of the theory could be recreated in an experimental laboratory, an experiment could then test the theory. Rather than attempting to *include* as many elements of trials in natural settings as possible, the experimenter would attempt to *exclude* all aspects of trials in natural settings not directly relevant to the theory.

The goal of the experimenter in this situation would not be to produce results that can be applied to trials in natural settings. Rather, the objective would be to find support for the theory. The experiment would be designed to test an *explanation*, not to establish an empirical generalization. Support for the theory would suggest a process that may or not play out when the many complexities of natural settings are introduced. In other words, experimental tests of theory can identify basic social processes that arise when the complexities of natural settings are controlled. Further research using other methods can identify whether elements of natural settings aggravate or mitigate those processes.

We developed a theory proposing that more serious cases would lead to greater perceptions of guilt, greater perceived importance of attaining a conviction, and more misconduct than less serious cases. We then designed an experiment to test that theory. The experiment produced results that well supported our theoretical propositions.

## THEORETICAL DEVELOPMENT

Recent years have seen numerous incidents of procedural errors in the prosecution of serious crimes (Dunahoe 2005; Gershman 1992; Meares 1995). This

has been evidenced by a high incidence of overturned convictions for rape and murder. One study, for example, found more erroneous convictions in capital murder cases than had been reported in published collections for all other kinds of cases (Bedau and Radelet 1987). Rattner (1988), in an overview of all known erroneous convictions, found that although homicides represent less than 2 percent of all criminal convictions, they represent 45 percent of known erroneous convictions.

These discoveries raise the question of whether serious criminal cases encourage prosecutorial misconduct (Gross 1996; Meares 1995). Prosecutors may face increased pressure to convict in trials involving serious crimes, and rewards for high conviction rates in serious cases obtained by prosecutors could lead to higher rates of misconduct in the prosecution of severe crimes. Moreover, if attaining a conviction is more important to prosecutors and there is a tendency to believe that defendants are guilty in serious cases, then prosecutors may be able to more easily justify their misconduct.

Research indicates that more severe crimes may be accompanied by greater belief in a defendant's guilt, irrespective of evidence tying the defendant to a crime (Bornstein 1998; Myers 1980). In a meta-analysis of research on the relationship between severity of outcomes and perception of responsibility to a possibly accountable individual, Robbenolt (2000) found significantly greater blame attributed to potential offenders of more severe crimes than of less severe crimes. In other words, as the consequences of an act become more severe, the responsibility attributed to a perceived perpetrator becomes greater. Other research has found that in cases with similar evidence of a person's guilt, the person is more likely to be considered guilty when the consequences are more severe (Howe 1991; Sanderson, Zanna, and Darly 2000).

The first proposition of our theory, then, is that more severe crime will be accompanied by stronger perceptions of a potential perpetrator's guilt. More specifically, we propose that when a crime is more severe, prosecutors will be more likely to believe that a suspect is guilty. Further, greater perceptions of a defendant's guilt may provide justification for misconduct.

Research on dishonest behavior finds that persons develop situation-specific attitudes on the relative appropriateness of behavior. In other words, ethical considerations of the situation mediate the relationship between one's potentially dishonest behavior and one's perceptions of that behavior (Birbeck and LaFree 1993; LaBeff, Clark, Haines, and Dieckhoff 1990). An example in the legal system is "noble cause corruption," in which illegal acts violate the legal rights of citizens for moral considerations (Delattre 1989; Harrison 1999). Based on this research, it seems likely that perceptions of the immorality of misconduct among prosecutors will decrease as perceptions of the defendant's guilt increase. We thus further propose that prosecutors attaching

higher perceptions of guilt to defendants in cases involving more serious crimes will make more likely and provide justification for misconduct.

Our goal is not to attempt to determine the prevalence of misconduct in the prosecution of crimes in natural settings. Such an effort would be beyond the goals of an experimental investigation. Moreover, the extensiveness of prosecutorial misconduct in criminal trials in the United States has been well documented in research using other investigative techniques (Harmon 2001; Lofquist 2001; Nidiry 1996; Radelet and Bedau 2001), and some argue that it is becoming more widespread (Gershman 2001; Johns 2005; Lawless and North 1984). Our goal is also not to determine whether prosecutorial misconduct is more likely for more severe crimes. Rather, we assume that it is, based on the accumulated evidence from research using other methods. Our goal is to understand the factors that produce misconduct in trials involving serious crimes, an important task (Meares 1995). The theory we develop and test proposes that perceptions of a defendant's guilt may be one such factor.

### EXPERIMENTALLY INVESTIGATING MISCONDUCT

To test our theory, we employ an experimental methodology. Experimental studies of the legal system are uncommon. This is largely because empirical studies of the legal system are usually designed to test for the prevalence or likelihood of some phenomenon. Experiments are not well-suited to this purpose. Instead, experimental studies are designed to test theories that explain why established social phenomena might occur. Assuming that misconduct occurs more frequently in the prosecution of severe crimes, we use the scientific control possible in a laboratory experiment to test our theory with the potential to explain why more serious cases may generate more prosecutorial misconduct than minor ones.

Laboratory experiments do not capture the complexities of naturally occurring environments, and they are a valuable complement to studies in natural settings precisely because they control for those complexities. Basic social science experiments recreate only a limited number of theoretically relevant elements found in natural settings, controlling for extraneous factors that may mask fundamental processes, and thus increasing our understanding of fundamental social processes (Lucas 2003; Webster 2003; Zelditch 1969). An experimental test of our theory can create identical conditions for all participants except the severity of the crime that participants prosecute. Participants then can be assigned at random to prosecute either a more severe crime or a less severe one, controlling for individual differences among participants. Significantly greater misconduct among participants prosecuting the more se-

vere crime would constitute strong evidence that severity of crime encourages prosecutorial misconduct.

An experiment that operationalizes only theoretically relevant elements can thus foreclose the many possible alternative explanations that studies of the legal system generate. An alternative plausible explanation for finding more errors in the prosecution of severe crimes, for example, is that more effort is spent trying to discover errors in serious cases. More media attention is focused on them and the legal system provides more checks to prevent the conviction of innocent defendants in cases where penalties are more serious (Pritchard 1986; Hoeffel 2005). For this reason, researchers might find more errors in the prosecution of serious cases even if errors actually occur just as frequently in minor ones (Gross 1996).

Laboratory research makes it possible to discover whether more serious cases are accompanied by increased belief in the defendant's guilt and whether that increased belief could help justify misconduct. If laboratory research supports the theory, then it can be used to guide future research to investigate conditions in naturally occurring settings that would exacerbate or mitigate the process found to increase prosecutorial misconduct in the laboratory. Thus, a laboratory experiment investigating prosecutorial misconduct will not provide direct evidence of the extent or frequency of misconduct by working prosecutors in criminal trials. It can, however, help us understand the conditions that encourage it. Research using other methods can then investigate the conditions faced by working prosecutors that may affect the occurrence of misconduct.

### HYPOTHESES

We propose that more severe crimes will be accompanied by greater perceptions of guilt than will be less severe crimes. Research is consistent with this proposition in finding that in cases of identical law violations, perceivers are more likely to believe potential offenders are guilty when outcomes are more severe. An alternative explanation for these findings is that individuals are predisposed to believe a defendant for a more serious crime is guilty due to a belief that the defendant would not be charged for a serious offense unless there was overwhelming evidence of his or her guilt. Research on mock juries (for example, Freedman, Krisher, MacDonald, and Cunningham 1994), however, finds evidence against these sorts of predispositions. Nevertheless, we carefully constructed our experimental protocol so that participants in experimental conditions could see the process that led from the identification of the defendant as a suspect through his being charged with a crime. This

process was identical across our experimental conditions. We predict that given identical evidence of a defendant's guilt, participants prosecuting a trial for a more serious crime will be more likely to believe the defendant is guilty than will participants prosecuting a less severe crime:

*Hypothesis 1:* Participants prosecuting a murder will be more likely to believe the defendant is guilty than will participants prosecuting an assault.

We further propose that increased perceptions of guilt will increase the likelihood of misconduct as prosecutors attach greater importance to the attainment of a conviction. We thus predict that the personal importance of attaining a conviction will increase as severity of crime increases:

*Hypothesis 2:* Participants prosecuting a murder will view the attainment of a conviction as more personally important than will participants prosecuting an assault.

We also propose that misconduct will become more likely as severity of crime increases. Our theoretical account indicates that higher perceptions of guilt and a higher perceived importance of attaining a conviction will provide justification for misconduct. This leads to the following prediction:

*Hypothesis 3:* Participants prosecuting a murder will be more likely to engage in misconduct than will participants prosecuting an assault.

We created an experimental setting in which participants acted as prosecuting attorneys in contrived criminal trials involving either murders or assaults. We tested our hypotheses by comparing the behaviors and attitudes of individuals across the type of crime. Our hypotheses are predicated on an assumption that participants will view murders as more severe than assaults. If data support our hypotheses but participants do not view murders as more severe than assaults, then our theoretical propositions will not be supported. We thus measure participants' perceptions of severity of crime through a questionnaire item. Consistent with our theoretical account, we expect participants assigned murder trials to indicate higher perceptions of severity of crime than participants assigned assault trials.

### CREATING THE OPPORTUNITY FOR MISCONDUCT IN THE LABORATORY

We constructed an experimental study that allowed us to compare participants' misconduct when prosecuting a contrived case of severe crime (mur-

der) with their misconduct when prosecuting a less severe crime (assault). The design also allowed measurement of participants' assessments of the defendant's guilt. Each study participant was randomly assigned the position of prosecuting a defendant for either murder or assault. Participants first constructed a case against the defendant. In constructing the case, participants had the opportunity to engage in misconduct to increase the likelihood of conviction. Participants then answered a number of questions about their behaviors as prosecutors and their perceptions of the defendant and the crime.

### Methods

Participants in the study were undergraduate students at a large state university. Before each participant arrived for the study she or he was randomly assigned a criminal case, either murder or assault. In the murder condition, a victim died from injuries sustained during an attack. In the assault condition, the victim fully recovered from an attack. Aside from whether or not the victim died or fully recovered, the materials given to all participants were identical.

When arriving for the experiment, each participant was told that as part of the study, she or he would be acting as a prosecuting attorney, a defense attorney, or a judge in a mock criminal trial. The participant was then asked to draw one of three slips of paper from a hat to determine her or his role in the study. Although participants were led to believe that one slip of paper corresponded to the defense attorney role, one to the prosecuting attorney role, and one to the judge role, all slips of paper in fact contained the word *prosecutor*, and participants always acted as prosecuting attorneys in the study.

After learning their role in the study, participants read through a police report on the case and believed that the defense attorney and judge would do the same. The report followed a sequence of events beginning with an emergency call to a police department and concluding with criminal charges against a defendant. In reading the police report, participants learned that police officers traveled to the residence of an individual reported missing and found a ransacked home as well as a body inside the doorway. The police report notes that officers then called medical personnel. Depending on the participant's condition, emergency medical personnel either pronounced the individual deceased (murder condition) or the person fully recovered from his injuries in a matter of days (assault condition).

The police report further noted that fingerprints on the front door of the victim's home matched those of a convicted felon. Participants read that after this individual was interviewed he left the town and was arrested in another city. The police report ended with a description of an indictment against the individual for murder (murder condition) or assault (assault condition).

Participants then read a form titled "Facts Relevant to the Case." Participants again believed that both the judge and defense attorney in the case would read the same form. The form described multiple details of the case, most pointing to the defendant as the most likely suspect. Some materials, however, pointed to an alternative suspect as possibly guilty of the crime.

Participants then read a form specific to their duties in the trial. The form was titled "Your Job—Prosecutor" and explained the duties of the prosecuting attorney during the study. Participants read that prosecuting attorneys, defense attorneys, and judges would be completing the study at different times. Prosecuting attorneys and defense attorneys, they read, assembled cases to present to the judge. If they had been selected as judge, participants learned, they would have received materials put together by prosecuting and defense attorneys at earlier dates. Instructions stressed to participants that their goal in the study was not to attempt to determine who committed the crime against the victim, but only to present the case against the defendant to the best of their ability. They would do this by convincing the judge of the defendant's guilt.

Instructions also informed participants that they would be paid based on how well they presented the case against the defendant. Participants were told that they would receive \$10 in payment for participating in the study regardless of the outcome of the trial, but that they would receive an additional \$5 if the judge later returned a verdict of "guilty."

Participants were informed that as prosecuting attorneys, they would have special responsibilities in the case. Because the defendant had a court-appointed attorney, participants learned, the prosecution had more resources in collecting evidence than did the defense. Participants read that as prosecuting attorneys, they would have access to all police interviews. Participants also learned that they were obligated by law to turn over to the defense all materials that might have relevance to the guilt or innocence of the defendant. If the participant chose not to turn over any such materials, instructions noted, she or he would likely not be caught. Instructions stressed, however, that such actions were illegal and defined as misconduct. These actions happen to be misconduct in trials in the U.S. legal system. The Brady Rule requires prosecutors to give to defense attorneys summaries of interviews with witnesses that may be exculpatory to the defendant. Some argue that this rule has been laxly enforced (Kurcias 2000; Hoeffel 2005).

Participants then learned their specific duties in the trial. Instructions noted that participants would first read through interviews obtained by police officers. Their first task would be to put together a list of questions from the interviews that they wished to turn over to the defense. Their second task was to select ten interview questions that they thought would be most likely to convince the judge of the defendant's guilt. Participants were told that these

questions would be turned over to the judge at a later date. Finally, participants were to write a one-page closing argument to be read by the judge.

Participants were then given a packet containing the interviews. Participants read six interviews with a total of sixty questions, each individually numbered. Information in the interviews generally pointed to the defendant being guilty of the crime. Four questions, however, identified the victim's wife as a potential suspect. In one question, for example, a neighbor identified the car of the victim's wife's boyfriend as having been in the victim's driveway on the day of the attack.

After reading through the interviews, participants completed their three duties. First, participants indicated pieces of relevant evidence that they wished to turn over to the defense attorney. To carry out this task, participants were given a form titled "Questions for Defense" that contained the identifying number of each interview question. Participants circled each question on the form that they wished to give to the defense attorney. Participants had the option of circling all, none, or any number of questions on this form. We determined misconduct by the number of the four questions pointing to the victim's wife as a suspect that participants chose not to turn over to the defense attorney. The participant's second and third duties in the study were not relevant to our hypotheses and were included only to decrease suspicion about the purposes of the list of questions for the defense.

After turning over questions to the defense, selecting questions for the judge, and writing their closing arguments, participants completed a post-study questionnaire. Items on the questionnaire included how much prison time the participant believed the perpetrator (whether the defendant or not) of the crime deserved, how personally important it was to the participant to attain a conviction in the case, how generally important the participant believed it was to convict the defendant, and how likely the participant believed it was that the defendant would be convicted. After participants answered these questions, the study was complete, and they were debriefed and paid.

## FINDINGS

Participants in the study were eighty undergraduate students, forty in each of the two experimental conditions. Of these, fifty-four were female and twenty-six were male. Data from an additional seven participants were excluded from analyses. Four of these seven participants did not understand the study materials (three of these students were not native English speakers) and three of the seven did not believe that other participants in the study were acting as defense attorneys and judges.

### Manipulation Check

We proposed that as severity of crime increased, participants would be more likely to believe that defendants were guilty and would become more likely to engage in misconduct. Our hypotheses predicted that murder trials would generate greater perceptions of guilt and higher misconduct than assault trials. In order for this hypothesis to accurately reflect our theory, participants must view murder as more severe than assault. To assess the severity with which participants viewed the crime, we asked each participant to rate the extent to which they saw the crime as severe, with 1 indicating very severe and 7 indicating not at all severe. The mean score for participants in the murder condition was 1.28 ( $SD = 0.85$ ). The mean score in the assault condition was 3.03 ( $SD = 1.44$ ). This difference is in the direction of participants viewing murders as more severe than assaults and is significant ( $t = 6.62$ , one-tailed  $p$  of difference in predicted direction  $< 0.001$ ). We thus conclude that participants did perceive murder to be more severe than assault.

### Hypothesis Tests

Our three hypotheses predicted that participants in the murder condition, compared to participants in the assault condition, would be more likely to believe the defendant was guilty, would attach greater personal importance to the attainment of a conviction, and would be more likely to engage in misconduct. We discuss findings on each hypothesis in turn.

#### *Guilt Perceptions*

Hypothesis 1 predicted that although participants in both conditions received identical evidence tying the defendant to the crime, participants in the murder condition would be more likely to view the defendant as guilty than would participants in the assault condition. We tested this hypothesis through a questionnaire item that asked participants to rate on a scale the extent to which they believed that the defendant was guilty (with 1 indicating definitely not guilty and 7 indicating definitely guilty). The mean score on the question for the murder condition was 5.25 ( $SD = 1.33$ ) and for the assault condition was 4.40 ( $SD = 2.09$ ). This difference is in the predicted direction and significant ( $t = 2.17$ , one-tailed  $p = 0.017$ ), supporting Hypothesis 1. Participants in the murder condition were more likely to believe the defendant was guilty than were participants in the assault condition.

#### *Personal Importance of Attaining a Conviction*

We predicted with Hypothesis 2 that participants in the murder condition would view attaining a conviction as more important than would participants in the assault condition. A questionnaire item asked participants to indicate the extent to which they felt that attaining a conviction was personally important (with 1 indicating not at all important and 7 indicating very important). The mean answer on the scale for participants in the murder condition was 5.63 ( $SD = 1.61$ ) and for the assault condition was 4.75 ( $SD = 1.94$ ). This difference is in the direction of participants in the murder condition viewing conviction as more personally important and is significant ( $t = 2.19$ , one-tailed  $p = 0.031$ ). This supports Hypothesis 2.

In addition to the question on personal importance of a conviction, we asked participants the extent to which they believed that attaining a conviction in the trial was generally important (with 1 indicating very important and 7 indicating not at all important). The mean score on the scale for participants in the murder condition was 2.70 ( $SD = 1.68$ ) and in the assault condition was 2.83 ( $SD = 1.78$ ). This difference is not significant ( $t = 0.323$ , two-tailed  $p = 0.748$ ). This result does not bear on Hypothesis 2, which concerns the personal importance of a conviction as a potential motivating factor in misconduct, but it was unexpected. Participants in the murder condition expressed that attaining a conviction had significantly more personal importance but no more general importance than did participants in the assault condition.

#### *Misconduct*

Our third hypothesis predicted that participants in the murder condition would be more likely to engage in misconduct than would participants in the assault condition. We had a behavioral operationalization of misconduct, measuring it by the number of four questions pointing to an individual other than the defendant as a potential suspect that participants withheld from the defense. The mean number of the four questions withheld from the defense by participants in the murder condition was 2.15 ( $SD = 1.51$ ) and in the assault condition was 1.50 ( $SD = 1.45$ ). This difference is in the predicted direction and significant ( $t = 1.96$ , one-tailed  $p = 0.027$ ), supporting Hypothesis 3. Because we only had four levels of misconduct, we also ran a non-parametric Mann-Whitney U-Test on the difference in items withheld. The U-Test also produced a significant result ( $U = 609.00$ , one-tailed  $p = 0.03$ ). Participants in the murder condition were more likely to engage in misconduct than were participants in the assault condition.

In addition to our behavioral measure, a questionnaire item asked participants whether they had withheld relevant material from the defense. Participants were asked to rate (with 1 indicating that they did turn over all relevant information and 7 indicating that they did not turn over all relevant information) the extent to which they believed they had turned over all relevant facts to the defense. The mean score on the scale for participants in the murder condition was 2.70 ( $SD = 1.94$ ) and for participants in the assault condition was 1.93 ( $SD = 1.31$ ). This difference is in the direction of participants in the murder condition being more likely to withhold relevant information and is significant ( $t = 2.116$ , one-tailed  $p = 0.019$ ). Thus, our behavioral and self-report measures were consistent in finding greater misconduct in the murder condition, and the self-report finding indicates that participants in the murder condition made conscious decisions to withhold exculpatory evidence.

We also had a questionnaire item that asked participants to indicate the extent to which they thought a guilty conviction in the case was likely (with 1 indicating very likely and 7 indicating not at all likely). Although we did not predict a difference on the item, we might expect participants in the murder condition to attach a higher likelihood to eventual conviction of the defendant because they withheld more relevant information from defense attorneys. The mean answer on this scale for participants in the murder condition was 2.40 ( $SD = 1.28$ ) and for participants in the assault condition was 3.03 ( $SD = 1.58$ ). This difference is in the direction of participants in the murder condition believing that conviction was more likely and approaches significance ( $t = 1.95$ , two-tailed  $p$  of a difference not predicted = 0.055).

Results on our third hypothesis demonstrate that participants in the murder condition were less likely to turn over relevant information to the defense than were participants in the assault condition. We also recorded the total number of all questions—potentially exculpatory or not—that participants turned over to the defense. Participants in the murder condition, on average, turned over 20.28 ( $SD = 12.80$ ) questions while participants in the assault condition turned over an average of 21.40 ( $SD = 15.00$ ) questions. This difference is not significant ( $t = 0.361$ , two-tailed  $p = 0.719$ ). It appears that aside from differences in the four questions pointing to an alternative suspect, participants in the murder and assault conditions made similar decisions about questions to turn over to the defense.

## CONCLUSION

We developed a theory with the potential to explain why prosecutorial misconduct becomes more likely as crimes become more severe. According to

theory, the greater personal importance of attaining a conviction for prosecutors combines with a stronger perception of the guilt of defendants in severe cases, encouraging greater misconduct in the prosecution of severe crimes. Results of a controlled laboratory experiment support the propositions of that theory. We found that participants randomly assigned to prosecute a contrived case of murder attached greater personal importance to attaining a conviction, were more likely to believe defendants were guilty, and were more likely to engage in misconduct than participants randomly assigned to prosecute an assault.

The results of our study provided strong support for the theory, increasing our confidence in it. The results, however, tell us nothing directly about the prevalence of misconduct in naturally occurring trials or whether such misconduct becomes more likely as crimes become more severe. Instead, support for the theory suggests a basic process with the potential to increase misconduct in the prosecution of severe crimes, a process that may be aggravated or mitigated by the complex settings faced by working prosecutors.

Our research, then, discovered a process with the potential to increase misconduct in the prosecution of more severe crimes. That process may or may not produce more misconduct when working prosecutors handle more serious cases. One can argue that the legal system has safeguards in place to counteract the process or that the training of prosecutors mitigates its effects. The results of our study, however, shift the burden to showing how aspects of the legal system limit the processes that our findings suggest give rise to misconduct in the prosecution of severe crimes.

One factor that may limit the prevalence of misconduct in trials in natural settings is fear of reprisals for misconduct among prosecutors. In other words, fear of punishment may make misconduct less likely in cases involving severe crimes. The opposite effect also may occur, with the higher rewards and opportunities earned through obtaining convictions in serious cases increasing the pressure to engage in misconduct. The accumulated literature in fact suggests that prosecutors need fear few costs for engaging in misconduct (Chineson 1986; Dunahoe 2005; Gershman 1992; Johns 2005; Kurcias 2000; Meares 1995). Future research would be valuable in determining how the potential rewards and penalties for prosecutorial misconduct alter its prevalence.

Our research provides support for a theory proposing that presumptions of guilt and actions of misconduct will be greater for more serious crimes. Our experimental research suggests the need for research using different methods in order to determine how aspects of the legal system aggravate or mitigate the processes we find. As discussed, determining the extent to which severity of crime affects misconduct in natural settings is difficult. Support for our



theory, however, provides a compelling reason to investigate misconduct among working prosecutors of serious crimes.

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