

Essays on the Strategic Discretion of Prosecutors in the Legal System

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FOREWORD

The central tenet of this thesis is an exploration of the discretionary strategies social control agents exert within the legal environment. This exploration contains three methods, each complementary.

In the first chapter, I present a quantitative study that addresses the association between statutes that have many (poly) meanings (semantic) and the conviction rate of prosecutors. I contend that prosecutors are social control agents in the legal realm and that their discretion affects managers and other actors. I also justify the reasons why I use white collar crime cases instead of violent crime cases or a combination of both. Next, I explain the meaning of polysemantic laws and how they differ from others. The analysis in this chapter consists of the merging of two data sets. One is a dataset of prosecutorial district characteristics and the other is one of cases including the laws used and outcome of the trial. I run several regressions after which I conclude that there is an association between the nature of laws and conviction.

The second chapter contains an experiment. Here, we have mock prosecutors act out a trial situation in the lab. This chapter attempts to answer a question left unresolved in the first chapter, thus complementing it. It asks if prosecutors follow justice or pursue their career and other interests by using laws that let them win more often. We pursue this question using different contexts, introducing at the end a context where participants become aware that they are indeed a prosecutor, a manager who may or may not commit fraud and a shareholder that is harmed by the fraud. In this final context, we find that mock prosecutors do indeed follow justice more than when they are faced only with economic incentives.

The third chapter presents a qualitative study that is meant to complement both previous chapters, especially the first one. I interviewed 22 prosecutors to determine their opinions on three aspects of the central tenet of this dissertation. Firstly, I attempted to determine whether prosecutors view laws in terms of being more or less polysemantic. Prosecutors view these laws as being more useful and effective or often being used. Although they do not point to the polysemantic nature of statutes, they do make claims about the nature of statutes. Secondly, I asked about whether a correlation between polysemantic laws and conviction exists and attempted to determine some degree of causality. I find that prosecutors indeed attempt to further their careers or serve the People by seeking higher conviction rates. Further, I asked about career motivations and whether these affect discretionary decisions about which statutes to apply. Here, I find a surprising result, namely that Assistant District Attorneys (as opposed to District Attorneys) often try cases and are not motivated by furthering their career. They seem to be driven by justice and the will to serve the People but they also attempt to win as much as possible.

Together, the chapters contained in this dissertation come to the conclusion that social control agents use symbolic codes to further strategic performance. Hopefully this will create a fruitful realm of further study in the future.

CHAPTER 1: STRATEGIES OF SOCIAL CONTROL ACTORS IN THE LEGAL ENVIRONMENT: SELECTING POLYSEMANTIC LAWS

Alicja Reuben

Abstract: All of the institutions with which corporations interact are housed within the legal system. Due to this, it is crucial to study not only business strategy but also legal strategy. We study the setting of the U.S. legal system and focus on the prosecutor as the focal actor. The prosecutor selects the statute or statutes used in a case and possesses the ability to switch statutes between the indictment and trial stage, which is crucial to her discretionary abilities. The corporate world is rife with examples of prosecutors using polysemantic statutes, defined here as legal statutes that have several potential interpretations. We explore this type of behavior and attempt to disentangle the processes that it involves. To do so, we employ a dataset of nearly 73,000 criminal cases in order to explore the relationship between polysemantic laws and conviction. We confirm our hypotheses that more polysemantic laws are associated with higher levels of conviction, controlling for the skill of the prosecutor. Further, this relationship is moderated by the amount of fine involved in the case.

INTRODUCTION

Historically, the strategy literature tended to examine strategy from the point of view of a focal business organizations adapting to their environments. The senior managers of these focal organizations considered organizations populating these environments as representing strategic threats or providing strategic opportunities.

Starting in 1997, the strategy literature began considering the strategy of competitors populating focal organizations and their competitive interaction with focal organizations (c.f. Ingram and Baum 1997). Research in the sub-field of political strategies also considered the strategies of organizations such as political action committees or PACs (Kroszner and Stratmann 1998) or social movement organizations (Cho, Patten et al. 2006) for instance, and focal organizations strategic reactions to these organizations' political strategies.

Scholars have paid less attention to what Greve, Palmer et al. call “social control agents” strategies directed at business organizations. They define “social control agents” as acting on behalf of their constituents to delineate punishment for potential wrongdoers and include under this label organizations such as prosecutorial offices, judicial bureaus and environmental agencies. They create misconduct and by defining it establish who is a wrongdoer and how they can be punished.

Indisputably, the rule of society, particularly the rule of law, governs business organizations in and across many countries globally constraining and enabling their strategies and thereby influencing greatly influencing their performance. Certain legislative rulings, for instance, can drive a corporation into bankruptcy or lead to the prosecution of one of its senior managers. Strategy scholars, however, have not yet turned

their attention to whether legislative organizations can act strategically, influencing whether and how they succeed in influencing focal organizations profitability and strategies. Perhaps this lack of focus on legal strategies stems from the assumption that in law rules are simply applied.

This article rejects the notion that legislative organizations have little discretion in how they exert legal sanction over organizations and the individuals employing them. The organizations don't simply mechanically apply the law. This article's central thesis is that legislative-control organizations have considerable strategic discretion with respect to which statutes they apply, how they apply them, how they influence judges' ruling, and the financial sanctions imposed on business organizations pursuant these rulings. More generally, this article argues that the strategic actions of legislative-control organizations deserve much more attention by scholars as they can have a major impact on their strategies, their financial performance, and on their very survival as ongoing entities.

The state cannot police the corporate world alone. Therefore, it enlists businesses to act as auxiliary law enforcement agents in forestalling violations of criminal law. As the governments entrust corporations to self-police, so to speak, it grants prosecutors in legal-control organization a great deal of discretion in the strategy they pursue in policing organizations. The standards that prosecutors must uphold are explicit. According to the Criminal Justice Standards of the American Bar Association, "[t]he duty of the prosecutor is to seek justice, not merely to convict." The expectation for the prosecutor is the same as that of the defence and the judge: to identify and appropriately manage the facts of the case compliant with justice.

In this study, we focus on white collar crime because it is the primary area of the law affecting corporations and because has a major impact on corporations and society as a whole (Zahra, Priem et al. 2005). The inherently influential nature that the prosecutor has in this particular subset of criminal discourse provides an interesting subject to study. We define white collar crime as “[i]llegal or unethical acts that violate fiduciary responsibility or public trust, committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain” (Hamelkamp, Ball et al. 1996).

This definition stresses the “fiduciary responsibility or public trust” of organizations and the executives and their employees. This takes place due to the sheer number of business organizations and the magnitude of potential violations of corporate laws.

For all the reasons above, we focus on prosecutors populating legal-control organizations as they enforce white collar laws and statutes over business organizations that fail to police themselves. The central objective of this article is to begin understanding the strategic action of such prosecutors. Whereas legal-control organizations and their prosecutors litigate against companies often employing criminal statutes, we know little about these prosecutors strategies.

As we argued above, because prosecutors police those that should police themselves, the state gives prosecutors considerable discretion in their application of criminal statutes governing these organizations. A second central argument in this article is that prosecutors act strategically to interpret the wording of statutes.

Actors facing decisions often encounter symbolic codes to which they can ascribe many (poly) meanings (semantic). Symbolic codes, because of their inherent ambiguity, could appear to present an obstacle to precise strategizing. I argue instead that this very ambiguity gives actors the discretion to act strategically, whereas monosemantic symbolic codes, as they lack such ambiguity, force actors to pursue predetermined courses of action. Polysemantic symbolic codes include complicated cognitive and linguistic categories to guiding these organizations' strategies, plans in a corporation, investment vehicles in finance, or statutes in the U.S. legal code. In order to understand the strategic process governing prosecutorial behavior, one must clearly delineate the area on which they exercise discretion. Prosecutors decide which statutes to apply in trials. An extreme example of this is the *Pottawattamie* case where prosecutors allegedly falsified evidence to convict two defendants of murder (Brink 2009).

Specifically, prosecutors exploit the polysemantic nature of legal statutes. We define "polysemantic statutes" as those statutes open to several potential interpretations. We focus on polysemantic statutes as they provide the strategic discretion that allows for the strategic choices necessary for prosecutors to gain higher conviction rates. Strategic discretion enables prosecutors to exploit polysemantic legal statutes in order to obtain higher conviction rates and more substantial judgments.

This article has six sections. The next provides the theoretical framework, which explains why I select white collar crime as the main focus of this article, how prosecutors act as social control agents, how prosecutors exercise discretion, and introduces types of laws. The third section contains hypotheses bearing on the relationship between conviction and type of law. In the fourth section, we describe our data, the

operationalization of the variables and the method we apply. The fifth section describes the analysis, the results and discussion. The final section concludes and suggests that prosecutors utilize polysemantic laws to their favor as a part of their organizational strategy.

THEORETICAL BACKGROUND

In this article I place the question of prosecutorial discretion at the front and center and focus on white collar crime. White collar crime has certain characteristics that render it more applicable to the discretion of prosecutors because white collar crime is more subject to that discretion. The first subsection of this part of the article explains why I select white collar crime. Particularly in white collar crimes such as fraud, combinations of statutes cover different aspects of the crime such as financial transaction violations and forgery. Moreover, the prosecutor has the ability to change the set of statutes being tried in the case that some charges are less likely to result in conviction or simply have lower sentencing guidelines.

In order to understand the idiosyncracies of the U.S. legal system one must clearly understand the particular office of the U.S. District Attorney. The process does not always function perfectly, and often convictions come about from simple infractions (i.e. turnstile jumping) where the monosemantic nature of the law does not allow the prosecutor to exercise discretion. Rather, the process through which the prosecutor selects the statute used in the charge against the defendant is relatively consistent across District Attorney's offices in the United States. In the second subsection of this part of the article, I discuss how prosecutors act as social control agents.

Social control agents rely on the investigating authority, such as a police department. The authority enters a charge into the District Attorney's record system before prosecutors enter it into the court system. This occurs once the police or investigating authority identifies a defendant and suggests a charge. It is then up to the discretion of the prosecutor to judge whether the charge should be made at all and which statutes to utilize in trying the case. Additional charges are added to those determined by police investigators about 50% of the time.

The prosecutor attempts to be as accurate as possible with respect to the facts presented. However, for typical cases, combinations of statutes the prosecutor applies in conjunction with one another exist.

Prosecutors are also very concerned with their careers because they are typically extremely ambitious. Extensive evidence exists of prosecutors' concentration on their conviction rates, due to the fact that it is the conviction rate determines much of the individual's success in later career stages (c.f. Gordon and Huber 2009). Because of the discretion prosecutors have, they are able to avoid cases that are difficult to convict or that challenge a highly politicized status quo. Studies find a relationship between conviction rates and prosecutorial budgets, which tends to suggest that the decisions to pursue cases are not dependent strictly on accuracy considerations (Rasmusen, Raghav et al. 2009).

Despite their dedicated attempts, prosecutors face the possibility of not only Type I but also Type II error. Namely, they can wrongly convict the innocent or wrongly acquit the guilty. It is important to acknowledge that while adverse to both types of errors, the risk of committing Type I error is not accompanied by potential backlash from the public

in the same way that committing Type II error is. It is difficult to determine which is more egregious; however, much evidence exists that elected politicians go to extreme measures to secure votes (Ashworth 2005), and it is possible that prosecutors procure a larger amount of convictions precisely for this reason.

WHY WHITE COLLAR CRIME?

I hypothesize that actors predictably select a particular type of law in the realm of white collar crime. In this section, I present the reasons why white collar crime is specifically characterized in order to suit the type of inquiry provided in this article. White collar crime is uniquely situated within the realm of criminal law making it suitable for study of the particular discretion prosecutors possess. Despite its roots in civil libertarianism, it denies the individuals subject to its indictments certain guarantees that other categories of criminal law possess inherently. These include the *mens rea* requirement, the absence of vicarious criminal liability and the principle of legality (Hasnas 2005). All of these unique characteristics allow prosecutors discretion over the fate of the defendant that is not present in other portions of the body of criminal law.

The *mens rea* requirement, or having a “guilty” mind, signifies that it is the burden of the prosecution to demonstrate that the defendant acted consciously and purposefully in contrast to the law. In white collar criminal charges, it is sufficient to demonstrate that the defendant was acting contrarily to the law without the requirement of proof of intentionality in wrongdoing. The lack of the *mens rea* requirement allows prosecutors greater discretion because they need to prove less in order to convict.

The laws governing white collar crime also introduce a new concept: corporate criminal liability. This characteristic goes directly against the absence of vicarious criminal liability, which dictates that the state can only punish an individual for their personal infractions and not those of others. Because corporations are defined as dispersely-owned entities under the oversight of managers who bear fiduciary responsibility comprised of many responsible individuals, it is inherent that involved parties may be held responsible for actions of others. Once more, this gives prosecutors more leeway in terms of what can be charged and thus provides them with more discretion.

Next, traditional criminal law operates under the guise of the principle of legality, which forbids not only retroactive law making but also the creation of new laws. However, white collar crimes often violate this principle, because they are updated with laws (whose nature may be subject to many interpretations) that allow for greater discretion of the prosecutor. Thus, these three characteristics allow for more discretion to prosecutors and white collar crime is the ideal setting for the type of inquiry made in this article.

White collar crime also violates the guarantees of the presumption of innocence and attorney-client privilege, as investigation takes place in a fashion that treats potential defendants already as potential criminals and much of the evidence that is acquired during the course of the investigation may be confidential correspondence between employees and their managers.

Thus, potential white collar criminals are more liable to receiving convictions that depend more on the willful pursuit of prosecutors rather than strictly on their guilt or

unlawful conduct. Finally, white collar crime is particularly pertinent to issues that face managers because the way in which it plays out greatly affects businesses, corporate performance, and the business world as a whole. Generally, it is fundamental to learn much about the inner workings of white collar crime in order to be able to interact with the government utilizing non-market strategies that benefit the corporation or produce optimal results. The most important use of white collar crime, however, comes with the understanding that prosecutors have the most discretion in this realm.

PROSECUTORS AS SOCIAL CONTROL AGENTS

The environment in which managerial actors operate is the only environment in which prosecutors are able to exercise discretion. For corporations, the legal environment, which houses all of the institutions with which corporations interact, has the most significance. Moreover, the influential actors that bear down on the business of companies by intervening in their operations are most likely to be prosecutors. It is the control of misconduct that often delineates a lot of the activities of firms. In the legal environment, prosecutors behave as social control agents (Greve, Palmer et al. 2010), as defined above. The extent to which prosecutors follow their constituents' wishes depends greatly on their career aspirations for reelection (Wiesenfeld, Wurthmann et al. 2008).

We attempt to disentangle the process they use.

Importantly, prosecutors are boundedly rational and select from a portfolio of statutes that is available and familiar to them. Thus, a certain consistency and redundancy of selection occurs. Thanks to this, I am able to identify laws that occur often and together. This allows for statistical analysis. In addition, this follows moral seduction theory, which dictates that actors depend on decision-making biases (Moore, Tetlock et

al. 2006). The primary difference between the behavior of prosecutors, however, is that their decisions result in success (i.e. conviction). They do not face pitfalls such as commitment to a failing course of action or the biased proposal of another actor because they have discretion to switch from a law that does not seem effective.

Social control agents exercise their discretion in the ways described above in the explication of the sources of white collar crime. For example, they can create new laws that delineate tolerated behavior from that that is not tolerated (Greve, Palmer et al. 2010). Moreover, social control agents can create conditions where deviance is more likely and easier. For example, certain specific regulatory conditions enabled Enron to create measures to employ the energy market in (at least) unethical ways (McLean and Elkind 2003). Additional conditions include those that often provoke potential defendants to break laws in the process of being investigated to cover up wrongdoing (Eichenwald 2005). Further, social control agents define the delineation between right and wrong, which is often fuzzy. Potential defendants, deprived of the requirement of *mens rea* for their guilt to be determined, may inadvertently cross this line.

Finally, it is important to recognize the limitations of social control agents, elaborated on particularly for prosecutors in following section. Social control agents are subject to their own interests, the abilities of their organization and prospects (Greve, Palmer et al. 2010). Prosecutors represent the power of the state over the corporation. Just as an individual's relationship with the government is complex, the relationship corporations engage in often must bear the consequences of a prosecutor's discretion.

PROSECUTORS' MOTIVATION

At this point, we may want to ask, why prosecutors make choices, which may not be clear, under polysemantic conditions. The motivation of social control agents is how we see that they utilize their discretion. Whatever drives prosecutors creates the desire for using discretion to gain convictions. Prosecutors can only apply their control over symbolic codes if they are properly motivated.

Three distinct possibilities present themselves. They may desire victory or it may be the mandate of their office, namely to pursue justice, that drives them. Finally, a more cynical view may be that they seek to enhance their status by receiving a reappointment or even a promotion to a higher elected position such as a judge or a senator. Status denotes a relative position in society that provides satisfaction at one's level or allows for advancement into another, more desirable position. In order to enhance their status, prosecutors may seek to please their constituents, satisfy the media and operate within the limited pecuniary resources of their office.

Additionally, mediating the preferences of their constituents is a key task that prosecutors complete. The media play a particularly significant role in the operation of social control actors, by bringing potential wrongdoing to public scrutiny (Adut 2005). Finally, limited government monies often cause cases to bear higher pressure for conviction so that no one perceives waste.

Due to these potential motivations we observe that prosecutors seek high conviction rates. Thus, it is important to understand the behavior of prosecutors and the incentives that they face when selecting different types of laws (Felkenes 1975). This construct is important because it allows us to judge whether the prosecutor has been

successful in achieving her goal and whether the process of the polysemantic selection has gone according to plan.

A polysemantic law that has been used inefficiently violates the model's prediction. A further measure of the prosecutor's behavior is her influence. Influence is the extent to which the prosecutor has an impact on her constituents and co-workers and is based on her ability (Kassin, Meissner et al. 2005). In addition to analyzing the information the police or investigating agency provides, the prosecutor identifies legal attributes of the evidence that can point to which statutes to apply. Once she is fully familiar with the case, she selects from the U.S. Code, a statute or statutes that will be used in the case. The ability of the prosecutor to select the appropriate application of the statute she has selected depends on her influence (Hessick 2001). The successful performance of the prosecutor is measured simply by conviction.

TYPES OF LAWS

In this section, we introduce the primary constructs we will utilize to explain the phenomena we test empirically. A prosecutor receives a case and faces a set of statutes from which to prosecute. Specifically, State district attorneys select from the U.S. Code or the full set of state-level mandated laws and statutes that govern judicial cases. Similarly, state prosecutors select from the Code of the state in which she operates. The State and U.S. Codes can differ with respect to sentencing guidelines but generally address the same questions. Prosecutors select a law according to the facts presented to them in the charge from the investigating authorities, usually the police. They can often select more than one statute to prosecute. Although no official delineation of the statutes

currently exists, one can arrange them according to the complexity of their elements. This classification according to semantics is at the core of this inquiry.

A prosecutor can select a monosemantic statute, that is a statute open to only one relatively fixed interpretation, or in other words a low variance outcome. Each monosemantic statute has the same mean and variance. This is akin to low discretion. In other words, monosemantic statutes provide low discretion to prosecutors. The actors must comply with the singular interpretation of the statute for the proceedings of the trial. Examples of such laws are jumping a turnstile or insider trading. A prosecutor may select this type of construct for several reasons. Firstly, she may not possess skills proficient enough to prosecute a more complicated case. Additionally, she may not have enough information to convincingly charge additional statutes. This construct serves as a basis for creating and understanding the polysemantic construct.

Prosecutors are able to exploit the meanings of a statute in different ways due to the polysemantic nature of the statutes they select. Polysemantic laws differ from monosemantic ones. The way to think of this idea is as a group of monosemantic statutes, each with the same mean and variance. The parallel between discretion and statute characteristics is reasonable here as well. With high discretion, prosecutors can utilize polysemantic statutes to derive more convictions because of the different ways laws can be exploited. The prosecutor selects between the different monosemantic laws to find the optimal one that will convince the judge or jury, by attempting to utilize the different meanings of the law she selected. Each meaning has a potential of leading to a conviction, but the ability of the prosecutor to select from many meanings gives the statute this particular quality. An example of this is obstruction of justice because justice

has many interpretations and can be shown in many ways. Others include conspiracy and false statements. We intend to show that players utilize statutes of this nature over others in order to maximize conviction.

As a case in point, consider the example of Martha Stewart. Starting in January 2002, the well-known homemaker and talk-show host, faced investigation, prosecution, trial, and conviction. Martha Stewart sold stock of a company called ImClone right before the value of the stock plummeted, thus avoiding losses of close to \$45,000. A revelation that a new cancer drug was not approved by the Food and Drug Administration caused the 18% plummet in stock value. Peter Bacanovic admitted to conversations with Stewart but not at the time they actually happened or in the form that they occurred. Initially, Stewart was charged for insider trading. The statutes used to convict her changed throughout her trial. Martha Stewart was convicted on more predictably winnable conspiracy charges, despite she was initially indicted for insider trading as mentioned above. Due to the fact that a conspiracy charge was present Bacanovic was tried together with Martha Stewart. Because insider trading is complicated, it may have been easier to simply provide jurors a simple binary decision: did she lie or not? This ability to switch is crucial to the discretionary abilities of the prosecutor of Martha Stewart. The public and media often pay much attention to high status individuals such as Stewart and often attribute culpability to them with greater vehemence (Fragale, Rosen et al. 2009). The primary goal of the prosecution was to convict Stewart, and prosecutors tailored the case to allow for this conviction to occur. This illustrates the strategic action of legal-control organizations and their prosecutors. The concept of polysemy has its roots in other evaluations of objects' semantic nature. In cultural sociology, the audience

perceiving the object may dictate its interpretation. By introducing the concept of multivocality, Griswold (1987) explains how one novel possesses different interpretations in accordance with the group that receives it. While Griswold explores the cultural power and ambiguity of the works she assesses, she does not make claims about the performance derived from the use of the objects. In our case, we seek to propose that focal actors may exploit polysemantic objects. Another field that incorporates multiple interpretations of objects is organizations and markets. Phillips (2011) measures the uniqueness of the use of an instrument through combinatorial uniqueness in the context of Jazz music. He discusses how actors impute value and meaning to unusual objects in a network context. This idiosyncrasy spurs improved performance. Similarly, polysemantic objects may initially seem to complicate the contexts they populate. Prosecutors derive utility from polysemantic objects, by applying them to contexts where they can produce higher conviction rates.

HYPOTHESES

Based on our analysis, we arrive at several hypotheses relating the constructs described above. We find the choice of polysemantic laws serves as a driver for conviction.

Polysemantic laws allow prosecutors to exploit their many meanings to convince judges or juries of defendants' potential guilt utilizing skilled lawyering. Skilled prosecutors receive cases with weak evidence, because cases with strong evidence never make it to court since both parties agree on a plea since the verdict of the case is predetermined. Prosecutors take advantage of polysemantic laws time after time in

conjunction with other laws and select these laws once they receive a case for precisely the reason of winning a case in order to pursue their interests. Thus, we hypothesize:

H1: Prosecutors who invoke laws that are more polysemantic will have a higher conviction rate.

Certain features of the conviction are salient as well. Particularly, the amount of money in question may influence the rate of conviction. If more money is involved, the value of the conviction rate may be higher to the prosecutor and she may further her cause to a greater degree. From this, it follows that:

H2: The relationship between the extent to which a law is polysemantic and the conviction rate is moderated by monetary penalties.

One thing that is important to note, however, is that prosecutors may be winning for different reasons. For example, they may be choosing low mean polysemic clusters to get a high conviction rate. In other words, they may be selecting laws that all tend to have high levels of polysemy and succeed in that way. It is the characteristic of the prosecutor that influences the selection of the polysemantic law and thus the conviction rate. It is a key feature of the equation. Thus,

H3: The more skillful a prosecutor, the more her use of polysemantic laws will correlate with a higher conviction rate.

DATA AND METHODS

Data Collection

Data was collected from the National Archive of Criminal Justice Data (NACJD). The NACJD is created in order to help researchers who study crime-related subjects by organizing and preserving data related to fields of criminology and justice. We combine two data sets: the 2001 Prosecutors Survey with the Justice Statistics Program: Defendants in Criminal Cases in District Court – Terminated, 2001 [United States] dataset.

The 2001 Prosecutors Survey was conducted for 2300 prosecutorial districts and contains data for each district attorney's office. For each district, data about the budget (% from state, whether it includes social services, etc.), the number of years the district attorney has been in office, the number of terms served, the salary of the district attorney and demographic variables will be used in the analysis. The data is rich in providing differentiation between districts which will allow for a hierarchical data analysis when combined with case level data. As is the with the case data, this data does not contain individual identifiers and does not contain data outside of what is publically available.

The Justice Statistics Program: Defendants in Criminal Cases in District Court – Terminated, 2001 [United States] dataset contains approximately 100,000 publically available cases from across the United States. It contains data for each district, including the county in which the case took place. It also contains data about appeal and case status. The dataset is rich in time level data variables, which include date filed, date arrest made, date complaint received, date of offense, disposition date, and sentencing date. It also states who has the litigating responsibility, which justice department division was

involved, and which investigative agency took part. Most importantly, the data has a rich differentiation between what type of crime are being charged. The dataset contains several levels of depth for this differentiation, mainly several categories but also a detailed offense category which is used to differentiate between polysemantic and clear-cut laws. Moreover, the analysis excludes violent, drug related and other non-white collar crime related observations, in order to concentrate on the portion of the defendant population of interest in management theory.

These two datasets are aggregated at the district level, as each prosecutorial district has a unique identity that can be matched to data within each case. The dataset is cross-sectional, for the single year because the Prosecutors Survey is only available in this great detail for one year.

VARIABLES

Dependent Variable

In the initial scenario that I examine, the dependent variable I measure is the conviction rate, or win, that the prosecutor experiences. Thus, the dependent variable is the conviction rate. This can be measured in several ways. The first way is simply by measuring a judgment win, or a conviction. From a practical perspective, a conviction rate on the level of the district attorney's office may be used as a proxy. Data about the convictions is available in the District Cases dataset and indicates whether the defendant was convicted, not convicted or if the results is unknown. The conviction is rate is constructed by measuring the number of convictions and dividing by the total number of cases per district. Thus, the conviction rate is on the district level of analysis.

Independent Variable

The measure of polysemy is fundamentally complex, thus containing many different facets that can be measured in several ways. For the purposes of our analysis, we employ one of these measures. We measure polysemy by using the degree centrality measure often employed in social network analysis. Namely, we look at how many other laws a particular law instantiates within a case within our dataset. The intuition behind using degree centrality is that a law that is often appended to a case and used in conjunction with other laws, or is “tacked-on,” has multiple meanings that can be applied in a wide variety of context. For example, a typically polysemantic law is conspiracy (polysemy level of 86%), which is often tagged on with other allegations such as fraud, extortion or bribery. The only violation that is required for conspiracy is the involvement and communication between parties. This provides the law with multiple meanings because any interaction between defendants can be interpreted as malicious. In order to be able to make reasonable comparisons, this degree centrality is converted to a rate and aggregated to appear on the district level.

Additional Variables

The additional variables applied in the analysis are utilized as control variables. The amount of money gained by the win is available in the District Cases dataset because the fine imposed and collected is listed. For the amount of money variable, we create a categorical variable for a range of fines imposed. The tenure listed in the Prosecutors Survey dataset can account for the skill of the lawyer. In order to ensure the robustness of our results, we employ several control variables in the regressions. We append these sequentially, and report the full set. The coefficients of our explanatory variables do not change significantly. The control variables include prosecutorial budget for the District

Attorney's office, the salary of the chief prosecutor, and the type of counsel selected by the defendant. Variables are scaled in order to allow for consistent comparisons.

Table 1 provides descriptive statistics for the variables used in the analysis.

----- TABLE 1 ABOUT HERE-----

REGRESSION METHODS

We selected to utilize a tobit and linear regression specifications to test the hypotheses described above. For the analysis at the district level, we use a tobit regression because the limited dependent variable takes on a value that is censored but is also continuous. For the analysis at the case level, we use a linear specification. We expect these regressions to impose the appropriate functional form. When we used logit and probit specifications, results were not different.

One issue that bears significantly on this analysis is one of causality. As one of the greatest obstacles to statistical inference that we currently face, the identification of the effect of invoking polysemantic rules on conviction may be confounded. It is extremely important to address the question of causality when looking at the relationship between conviction and polysemy. We make an initial attempt at addressing the issue by looking at the district level and aggregating the result of the conviction for each prosecutorial office. Moreover, we cluster on the district level in the case level analysis, so the results consider the internal effect of each office separately. Still, the fact that conviction may result from the fact that polysemantic laws are used with very specific types of cases, cases that inherently result in higher convictions, may be an issue. To

address this concern, I take several approaches, and plan to do so in further developing this paper. Particularly, we can compare those laws that coinstantiate with polysemantic laws, see if their conviction rates differ, and if they do, see if conviction rates go up when a polysemantic law is used. Additionally, we may seek to introduce more variables that account for the conviction rate, such as type of judge, length of trial and experience of defense. These variables can help to isolate the effect of polysemy. Nonwithstanding, the identification issue is an extremely challenging one that will not be able to be fully overcome using statistical inference. It will also be important to argue that while it is not possible to fully satisfy any questions regarding this issue, I come as close as possible.

RESULTS AND DISCUSSION

----- TABLES 2 & 3 ABOUT HERE-----

Analysis at the Case Level

Table 2 summarizes the regression results the analysis at the case level. The first regression demonstrates how the control variables impact conviction. We see a statistically significant relationship between the variables, although salary and budget appear to have no impact. Then we introduce the explanatory variables one by one. This analysis confirms our predictions for hypotheses 1 – 3. Firstly, we find support for hypothesis 1: prosecutors that apply polysemantic laws are more likely to gain convictions. We see a positive and statistically significant relationship between the two variables in question.

These results indicate that prosecutors who select laws that are more polysemantic obtain a larger number of convictions. The multiple meanings of this law help skilled

lawyers maneuver the trial into a favorable outcome. The impact of the amount of money in question during the trial, or the fine, is also significant and positive related to conviction. In support of hypothesis 2, we find that the higher the fine, or the amount of money involved in the trial (prior to conviction) and in a way sequestered by the prosecutor, the higher the probability of conviction. This supports our initial contention.

In terms of reputation, we also see positive results. The relationship between tenure and conviction is also positive and significant. This means that prosecutors who have a greater reputation are more likely to have higher probability of conviction. It is important to see that the impact of the polysemantic law is not swayed with this result. The impact of reputation is not enough to explain conviction, albeit it is positive. So far, we have shown that polysemy is related to conviction. This may imply that prosecutors purposefully utilize polysemantic laws in order to increase their success rates.

Analysis at the District Level

The results in Table 3 confirm our predictions as well. When we observe the results from the district level perspective, we see very similar results. The analysis parallels that of the case level.

The primary difference here is that the dependent variable is no longer a binary conviction but instead a conviction rate aggregated at the district level. The first regression runs the control variables only, again creating significant results. Additionally we once more see support for hypothesis 1. The conviction rate is positively correlated with the measure of polysemy. Further, in terms of hypothesis 2 we see a positive and significant relationship between the fine amount and the conviction rate. The hypothesis is supported. Finally, we find support for hypothesis 3, the reputational hypothesis.

Due to the cross-sectional nature of the data, we find it important to point out that it is not likely that using longitudinal data would render differing results¹. A time trend graph of how often the word “conviction” was utilized in publishing during the period 1980 – 2011 suggests this. It is displayed in Figure 1.

----- FIGURE 1 ABOUT HERE-----

The above results indicate that prosecutors’ conviction results are positively associated with their selection of polysemantic statutes. When prosecutors use polysemantic states, the results of the trial is more favorable for them. They do this consistently and across districts. Also, they are motivated by their tenure and by the monetary value of the trial. All of these results support the central tenet of this article.

CONCLUSION

When faced with the choice to select a polysemantic symbolic code, prosecutors often choose to do so. Driven by their desire to further their careers, please the media and constituents and comply with economic constraints, they attempt to achieve the highest possible conviction rates. Due to their extensive discretion over which laws are applied in trials, they are able to utilize the flexible nature of polysemantic laws to their advantage.

¹ Another aspect of the data that we chose to explore is the rate at which cases were brought to the stage of conviction. Cases that are concluded more expeditiously are more beneficial to the prosecutor and a correlation exists between speed of conclusion and success. Thus, we found it interesting to test whether cases that involved polysemantic laws were more likely to conclude more quickly. In order to test this claim, we employed a survival analysis. The results indicate that laws with high (above-average) levels of polysemy result in conviction more expeditiously than laws with comparatively lower levels of polysemy. The difference is significant using a Kaplan-Meier specification. See appendix for table.

Using a dataset of district cases within prosecutorial districts, we present results that suggest a link between the extent to which a law that is applied is polysemantic and the success of a prosecutor's effort. Further, we see how this relationship is moderated by the monetary value of the trial as well as the prosecutor's idiosyncratic skill.

The managerial implications of our findings are extensive. When optimizing performance, managers may view their employees in the same way we view prosecutors. They perform best when they can select from multiple meanings, thus when they have more discretion. Employees can perform better with more autonomy, or at least more options regarding how they operate. This can have a large impact on professional organizations.

The paper allows for the creation of multiple extensions. Among them is the potential use of path analysis to examine the selection of polysemantic law to the power (or influence or reputation) of the prosecutor to the final outcome of conviction. The individual relationships between these variables may be telling when combined with regression results. Another extension is the application of a broader range of definitions of polysemantic. Firstly, the number of precedents that a law has in case law, or clusters of precedents, may be an indication of how polysemantic a law can be. Practically, one could count the number of times a statute appears in cases and if clusters of co-occurrence are observed, they can be grouped together. Then, one could check the mean and variance of said clusters and see if there are any groupings that stand out to see if any particular group is more polysemantic than another. Secondly, one may look at the size of the lexicon of the statute itself, by counting the number of tokens in the elements of the law. A larger variety of words may mean that a law is more polysemantic because it

contains more meanings. Moreover, one may seek to examine readability scores, a law that is more readable may be less polysemantic because it may be less prone to lawyering. Further, the number of levels a law has within the U.S. Code may be an indication of its polysemy. A law with many subsections may have more meanings. Operationalizing these views and applying a similar analysis is an avenue of further research.

Polysemantic laws provide beneficial output to prosecutors who utilize them to their benefit. Understanding the process through which polysemantic laws provide convictions allows us to gain insight into the strategies that actors utilize to enhance performance. The organization of the district attorney's office is a telling one and provides implications well beyond the legal field.

TABLES & FIGURES

Table 1. Summary Statistics

Variable	Mean	Min	Percentile			Max
			25 th	50 th	75 th	
Conviction Rate (%)	83	0.082	79	90	96	100
Polysemantic Rate (%)	65	10	53	75	79	99
Amount of money gained by win*	5398	0	0	0	0	73000000
Chief Prosecutor's Salary (\$1,000s)	79	11	54	85	101	190
Years in Office	9	0	4	7	14	40
Prosecutorial Budget	26100	7	1490	5015	28200	373000

*Converted to categorical variable

Table 2. Explaining Convictions - Case Level

Dependent Variable: Conviction	(1)	(2)	(3)	(4)
Polysemantic Rate		5.765 *** (2.333)	5.724 ** (2.364)	4.443 ** (1.978)
Amount of Fine			10.928 *** (1.347)	10.875 *** (1.451)
Years in Office				0.069 * (0.049)
Chief Prosecutor's Salary (\$1,000s)	2.081 *** (0.769)	1.961 *** (0.747)	1.601 * (0.721)	1.061 * (0.700)
Prosecutorial Budget (millions)	-0.003 (0.672)	0.025 (0.658)	0.394 (0.631)	1.000 *** (0.561)
Type of Counsel	Fixed Effects	Fixed Effects	Fixed Effects	Fixed Effects
Constant	84.586 *** (0.816)	80.706 *** (2.088)	78.561 *** (2.202)	79.411 *** (1.799)
R-Squared	0.051	0.053	0.084	0.081

Table 3. Explaining Convictions - District Level

Dependent Variable: Conviction Rate	(1)	(2)	(3)	(4)
Polysemantic Rate		0.079 *** (0.004)	0.081 *** (0.004)	0.073 *** (0.004)
Amount of Fine			0.035 *** (0.002)	0.033 *** (0.002)
Years in Office				0.001 ** (0.000)
Chief Prosecutor's Salary (\$1,000s)	0.000 *** (0.000)	0.000 *** (0.000)	0.000 *** (0.000)	0.000 *** (0.000)
Prosecutorial Budget (millions)	0.000 *** (0.000)	0.000 *** (0.000)	0.000 *** (0.000)	0.000 *** (0.000)
Type of Counsel	0.007 *** (0.000)	0.008 *** (0.000)	0.009 *** (0.000)	0.009 *** (0.000)
Constant	0.749 *** (0.005)	0.701 *** (0.005)	0.696 *** (0.005)	0.686 *** (0.005)
R-Squared	0.020	0.025	0.030	0.029

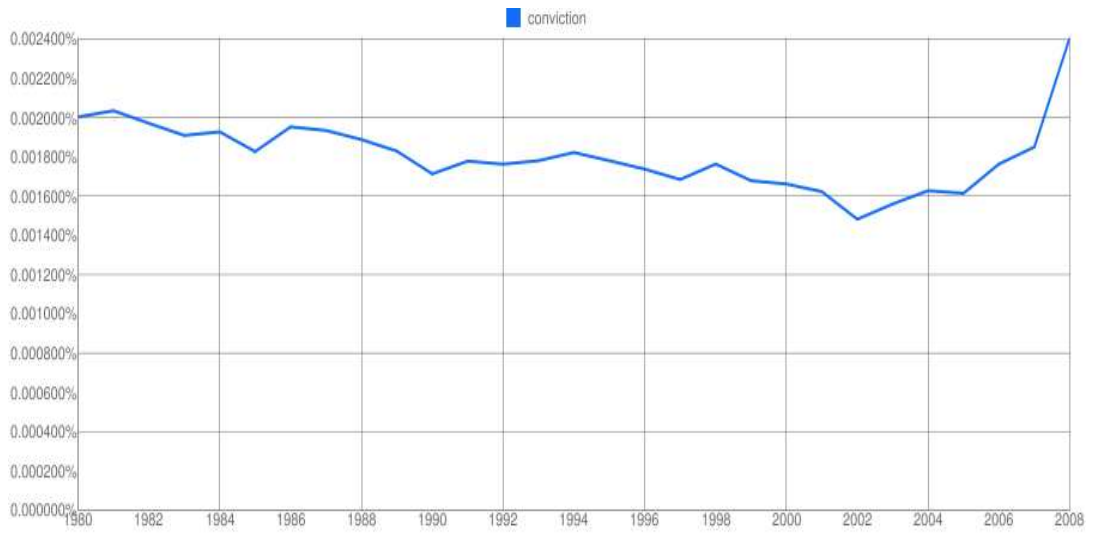


FIGURE 1
STABILITY OF THE CONCEPT OF CONVICTION IN LITERATURE OVER TIME

Note: The percentage of use of the word “conviction” in literature from 1980 to 2008.
 Source: Google ngram

Table 4. Survival Analysis

Effect on speed of conviction	Hazard Ratio
Polysemantic Rate	1.279 (0.023)
Amount of Fine	1.000 (.008)
Years in Office	1.000 (0.000)
Chief Prosecutor's Salary (\$1,000s)	1.000 (0.000)
Prosecutorial Budget (millions)	1.000 (0.001)
Type of Counsel	0.990 (0.001)

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**CHAPTER 2: THE PEOPLE’S HIRED GUNS? EXPERIMENTALLY
TESTING THE INCLINATION OF PROSECUTORS TO ABUSE THE
VAGUE DEFINITION OF CRIMES**

Christoph Engel and Alicja Reuben

Abstract: Legal realists expect prosecutors to be selfish. If they get the defendant convicted, this helps them advance their careers. If the odds of winning on the main charge are low, prosecutors have a second option. They can exploit the ambiguity of legal doctrine and charge the defendant for vaguely defined crimes, like “conspiracy”. We model the situation as a signaling game and test it experimentally. If we have participants play the naked game, at least a minority plays the game theoretic equilibrium and use the vague rule if a signal indicates that the defendant is guilty. This becomes even slightly more frequent if a misbehaving defendant imposes harm on a third participant. By contrast if we frame the situation as a court case, almost all prosecutors take the signal at face value and knowingly run the risk of losing in court if the signal was false. Our experimental prosecutors behave like textbook legal idealists, and follow the urge of duty.

Introduction

The institution of the prosecutor in U.S. criminal law holds a great deal of esteem. Prosecutors are fighting for a noble cause: the People's desire to see criminals convicted, for the sake of deterring future crime, but also to restore justice and to alleviate victims' sufferings. Yet for prosecutors, losing in court is quite likely, given the standard of proof in criminal matters is "beyond a reasonable doubt". The legal order is much more willing to accept that a guilty defendant is acquitted, rather than tolerating that an innocent is convicted. If there is serious doubt, the presumption of innocence trumps society's wish to convict criminals. Consequently the law expects prosecutors to endure frequent failure, given prosecutors are obliged to go to court if it is only "sufficiently likely" that the defendant will eventually be convicted.²

Legal orders differ in the way in which they impose respect for the presumption of innocence on prosecutors, however most are nominally consistent in providing limitations to their discretion. We emphasize the nominal nature of these regulations because in practice, we claim that prosecutors possess the highest degree of discretion of all of the players in the courtroom. This explains why, in the U.S., prosecutors as individuals are largely immune to legal action (Brink 2009). Other legal orders also nominally undermine prosecutors. For instance, the United Nations, based on the Universal Declaration of Human Rights, stipulate that all member states should guarantee

² See for instance § 152 II German Code of Criminal Procedure: "Prosecution is [...] obliged to accuse the defendant for all crimes provided evidence is sufficiently suggestive", or in the German original „Sie [prosecution] ist, soweit nicht gesetzlich ein anderes bestimmt ist, verpflichtet, wegen aller verfolgbarer Straftaten einzuschreiten, sofern zureichende tatsächliche Anhaltspunkte vorliegen“.

the impartiality of prosecutors.³ In Germany as well as the United States, prosecutors may even be prosecuted themselves if they are guilty of perversion of justice, or prosecutorial misconduct, respectively.⁴

Yet to what extent does the office of the prosecutor inspire incumbents to follow the call of duty? Criminal procedure is organized as a tournament. Prosecutors have the right of initiative. They select charges and choose which evidence is presented not only during the trial but already during the investigation. Psychologically, prosecutors are most likely committed to their side of the case. The litigant spirit may be exacerbated by the feeling that the counsel for the defense, or the defendant himself, have behaved strategically. Straightforward incentives combine with the psychology of the conflict. Prosecutors have a better chance to be promoted in the event of successful performance, i.e. if the defendant is convicted. They may come under pressure from the district attorney who wants to be re-elected, or from the press who urges prosecutors “to be tough on crime”. If prosecutors give in to such temptations, they become “the People’s hired guns.” In this study, we investigate empirically to which degree they do, and to which degree, in contrast, their sense of duty and responsibility prevails. By introducing three different contexts, we determine precisely how the manner in which a situation is framed affects the behavior of subjects. We claim that our experimental setting suffices as a testing ground in terms of external validity because the phrasing in the instructions inspires a sense of duty in our subjects.

³ Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www2.ohchr.org/english/law/pdf/prosecutors.pdf>.

⁴ Under § 339 Criminal Code, see BGHSt 32, 357.

A subtle but potentially very effective strategy for changing the odds of winning relies on the precision of the law. While crimes like fraud, embezzlement, insider trading or forgery are reasonably well defined in legal doctrine, another set of criminal offenses is laid down in very vague terms. Prominent examples include “obstruction of justice” (18 U.S.C.S. § 1503), “conspiracy” (21 U.S.C. § 846) and “false statements” (18 U.S.C. § 1001). Observers have repeatedly suspected prosecution to replace a charge for a more narrowly defined crime by one of these vaguely circumscribed delicts, hoping that the ambiguity of these terms would help them get a defendant convicted who would otherwise escape conviction. We type these laws as “polysemantic,” due to the multiple meanings that they may ascribe.

In the field, it is difficult to show whether this suspicion has any merit at all, and next to impossible to measure how frequently this practice is used. One would at best spot a few of the most salient cases, which could just be exceptions that prove the rule of prosecutorial impartiality. At best, one would show correlations between, say, the fact that prosecutors are elected in a jurisdiction and the frequency of convictions for certain crimes, without being able to prove causality. We therefore create a prosecution-like situation in the lab. By our design, we create a tension between incentives and duty.

Under tightly controlled conditions, we measure how often mock prosecutors are willing to trade impartiality for success, by exploiting the vague wording of an imprecise rule in different contexts. Through these treatment manipulations, we disentangle the mere force of incentives, the moderating effect of fighting for a victim, and the additional impact of framing the issue as a court conflict.

To maintain full control, we have designed our experiment as a (sequential) game. We have chosen parameters such that this game has a unique equilibrium in pure strategies. In equilibrium, the prosecutor does not bring the case if she has received a signal indicating that the would-be defendant is likely to be innocent. If she receives the opposite signal, in equilibrium she uses a vaguely defined charge. If she does, her probability of winning in court is 50%, irrespective of the true action of the defendant. By contrast, if she charges the defendant for the actual crime, i.e. selects the clear-cut rule, she loses in court in case this signal was wrong. However, this choice is off the equilibrium path. Anticipating the prosecutor's choice, in equilibrium the defendant always abides by the law. The instructions place the subjects in a court-like situation, giving them roles respective roles of managers, prosecutors and shareholders. These roles correspond to those played by counterparts in real-world situations and we strongly believe that the behavior of the subject is telling of the behavior of individuals in these situations.

We see significant treatment differences, according to the context participants face. It is already clear from the descriptive statistics that prosecutors only very rarely invoke the vaguely defined crime when we call a spade a spade, i.e. when we label the defendant a manager, call his action honesty or fraud, and single out the other player as a prosecutor. The defendant is most frequently charged for the vaguely defined crime when we keep all labels neutral, but invite a third person whose earnings are reduced if the first agent behaves improperly. Prosecutors use vague terms slightly less frequently if they just play the naked two-person game. Moreover, our results do not conclude in the way game theory predicts. Defendants break the law quite frequently. If they receive a signal to the

effect that the defendant likely was well-behaved, a minority of prosecutors charges them under the vague rule. If they receive the opposite signal, again only a minority uses the vague rule, while the large majority relies on the precise rule, although this is more risky and off the equilibrium path. We do not find any significant treatment differences for defendants.

Any experiment in law is the result of a trade-off. It is set up to generate evidence on a problem of legal policy. Yet to make this evidence valid, it must abstract from many features that are likely to matter in the field. Our experiment is no exception to this rule. In the concluding section, we discuss these limitations. We are, however, convinced that our experiment addresses the key feature of the issue in the field: is a person who is entrusted with prosecuting perpetrators willing to rely on vaguely defined charges if this is optimal for her payoff? We have a clear negative answer to this question. Even if the situation is neutrally framed, only a minority of prosecutors uses the vague rule. This number becomes extremely small if we let participants know that they are in the role of a prosecutor. At least the treatment difference must be attributed to prosecutors' sense of responsibility. If they knowingly hold the public office of a prosecutor, they suppress personal incentives and listen to the call of prosecutorial duty. At least in the lab prosecutors are not the People's hired guns. The experiment provides external validity in that we believe subjects' behavior reflects that of prosecutors in the courtroom by the soundness of our design.

In the next section, we develop the legal research question our experiment is meant to answer. We then introduce the design of the experiment (section 3) and derive the

hypotheses to be tested (section 4). We report the results (section 5) and conclude with discussion (section 6).

Legal Research Question

Historically, criminal procedure had been inquisitorial. The judge not only held power to adjudicate. He also was the investigator. It has been one of the major advances of rule of law to separate these functions. In modern (U.S.) criminal procedure the jury is responsible for deciding guilt or innocence and the judge is responsible for sentencing. There is a separate authority representing the government's interest in convicting criminals. It is the responsibility of the prosecution to apprehend alleged criminals, to spot incriminating evidence, and to fight for the People's cause.

Through separating roles, the law acknowledges the inherently partisan character of prosecution. This is not to say, though, that the law just cares about convictions. The presumption of innocence is the cornerstone of criminal procedure. False positives, i.e. convicting an innocent, carry much more weight than false negatives, i.e. acquitting a guilty defendant (leading case: *Addington v. Texas*, 441 U.S. 418, 422 (1979)). The standard of proof is strict. The defendant may only be convicted if her guilt has been established beyond reasonable doubt (see e.g. Pa. SSJI (Crim) 7.01). This translates into rules about prosecutor impartiality (e.g. Rule 3.8 New Jersey Rules of Professional Conduct) or neutrality (Green and Zacharias 2004).

Observers, and prosecutors themselves, are divided over the question to which degree prosecutors live up to the normative expectation of being “litigant but impartial” (Yaroshefsky 1999). There is casual empiricism of prosecutors being unduly wedded to the goal of conviction (*United States v. Shaygan*, No. 08-20112-CR-GOLD-MCALILEY,

2009 WL 980289 (S.D. Fla. Apr. 9, 2009); *Pottawattamie County, Iowa v. McGhee*, 547 F.3d 922 (8th Cir. 2008) (further see the quotes from interviews with prosecutors in Yaroshefsky 1999, and see the case reported by Hoeffel 2004, also see the cases reported in Brink 2009). A considerable number of criminal convictions have been reversed at a later stage, recently in particular due to the availability of DNA evidence (Gross, Jacoby et al. 2004, Garrett 2008). Scholars have wondered to which degree these wrongful convictions were caused by prosecutor zeal (Brink 2009).⁵

Were prosecutors inclined to bend the law in favor of conviction, there would be ample opportunity. Police investigations could be biased (Baldwin 1993, Kassin, Meissner et al. 2005). Prosecutors might choose which cases to litigate (Priest and Klein 1984), what evidence to present (Hoeffel 2004) and when (Podgor 1999), whether to remunerate the defendant for her cooperation by proposing a reduced sentence (Lee 1997, Podgor 1999), which judgments to enforce (Heminway 2002), and which defendants to push into a plea bargain, even if they might well be innocent (Hessick and Saujani 2001).

A particularly important possibility for changing the odds of winning rests in the power of prosecution to determine the charge (Podgor 1999, Gordon and Huber 2002). A prominent case is the one of Martha Stewart. Many observers believe prosecutors actually wanted to convict her for insider trading, but shifted to a charge of conspiracy to make sure they would win in court (Heminway 2002, Seigel and Slobogin 2004, Moohr 2006, Szott 2006). In such cases, the power balance is tilted in favor of prosecution by

⁵Innocence Project, Understand the Causes: Government Misconduct, <http://www.innocenceproject.org/understand/Government-Misconduct.php> attributes 44.6 % of DNA based reversals to prosecutor misconduct.

the fact that the offense is of a very general nature, and only vaguely defined in doctrine. This channel is the object of the present study.

Prosecutors might have reason to exploit this channel. Winning their cases helps them advance their careers (Boylan and Long 2005, Rasmusen, Raghav et al. 2009), be re-elected (Brink 2009), respond to media (Brink 2009) or social pressure (Moohr 2006), uphold their self-esteem (Crank, Flaherty et al. 2007), or retaliate against the defendant for exercising rights of defense (*Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974)). These incentives to be excessively partial are not counteracted by the threat of sanctions if prosecutors are largely immune to prosecution for unduly prosecuting defendants, as is the case in the U.S. (Zacharias 2000, Brink 2009).

Experiments have been an established criminological tool for quite some time (for overviews see Farrington 2003, Farrington and Welsh 2005, Farrington 2006, Farrington and Welsh 2006). Yet lab experiments, in particular those designed in the spirit of experimental economics, are still rare (for an example involving an experimental public authority see Engel and Irlenbusch 2010). To the best of our knowledge, our research question has not been tested experimentally, or in any other rigorous empirical way. We believe the research tool of the experiment is particularly powerful precisely because of its ability to isolate the mechanism with which subjects make decisions and control for all other variations. The experiment is externally valid because it allows for the subjects to place themselves into the shoes of the prosecutors in the framed design, thus causing them to behave in the way a true prosecutor would.

Experimental Design

Essentially, we are interested in a tension between incentives and duty. In our experiment we therefore create a situation in which a payoff maximizing agent exploits the vagueness of the criminal code and charges the defendant for an auxiliary crime. She does so, despite the fact that, with this charge, the odds of winning in court are unrelated to the defendant's action. In the interest of generating clear evidence, our design thus radicalizes the degree of ambiguity, and makes the charge orthogonal to the crime. Casual empiricism suggests that, sadly relatively often this is not far off from the situation in the field. To disentangle motives, we have three treatments. In the *baseline*, we just have two neutrally labeled players who are exposed to the naked incentive structure. In the *harm* treatment, we keep the neutral wording, but add a third inactive player. Depending on the first player's action, this passive player is either worse or equally well off. Comparing the *baseline* with the *harm* treatment, we may investigate whether choosing the vaguely defined charge is driven by the desire to avenge a victim. In the final *frame* treatment, we lay the situation in which we are interested open. We now call the first agent a manager, the passive agent a shareholder, and the second mover a prosecutor. The manager may now choose between "honesty" and "fraud". The calculation of payoffs is explained by the respective tension between individual and social benefits. Comparing the *frame* treatment with the other two treatments, we may explore to which degree holding public office changes behavior. Specifically, the normative expectation of the law is this: if the signal is good, the prosecutor should not take the defendant to court. If the signal is bad, she should charge the clear-cut rule. If we find that these choices are significantly more frequent in the *frame* treatment, compared with the *baseline*, we see the effect of prosecutorial duty. If we find that these choices are

also significantly more frequent than in the *harm* treatment, we can rule out that prosecutors simply desired to help the victim, but were indeed motivated by the specific duties that go with holding the office of a prosecutor.

----- FIGURE 1 ABOUT HERE-----

We model the prosecutor's choice by a game of two decision nodes and two moves by Nature, Figure 2. In the first stage, the later potential defendant decides whether to break the law or not. If he does, and if the prosecutor does not take him to court, he is better off. Yet in the *harm* and *frame* treatments, if the manager behaves dishonestly, the shareholder incurs a loss. The loss for the shareholder is bigger than the gain for the manager, so that dishonesty is not only individually, but also socially harmful. The prosecutor may not directly observe the manager's action. She only receives a signal. We inform all participants that this signal is positively correlated with the manager's action. In nine out of ten cases, the signal is correct. As is standard in game theory, in our game tree the signal is represented by a draw of Nature.

Knowing the signal, the prosecutor chooses between three options. She may do nothing, or charge the defendant for one of two crimes. In the *baseline* and in the *harm* treatment, we do not label these actions. In the *frame* treatment, we call the first law "clear-cut rule", and the second "overall conduct". In terms of incentives for the prosecutor, the two crimes differ by the relevance of the manager's action. If the prosecutor charges the clear-cut rule, her payoff is high if the manager has indeed behaved dishonestly. Yet her payoff is low if he actually has been honest. By contrast, the manager's behavior is irrelevant for

payoffs if the prosecutor charges for overall conduct. Then with 50% probability he receives a high payoff, and with 50% probability his payoff is low. In the parlance of game theory, we thus have a second move of Nature that decides about payoffs. The doctrinal difference between the clear-cut rule and a charge for overall conduct is also reflected in the determinants of managers' payoffs. If the prosecutor uses the clear-cut rule, the court is assumed to actually investigate the manager's behavior, and sanction her only if she actually misbehaved. By contrast, reflecting the assumption that a charge with overall conduct is successful with 50% probability, irrespective of the true behavior of the defendant, whether a manager receives a sanction is unrelated to her behavior; if she misbehaved; either payoff is increased by 10 tokens.

In the instructions (see the Appendix), we do not only explain the game, but also the calculation of payoffs. The payoff of the manager is increased by 10 tokens if he behaves dishonestly. If the prosecutor chooses no sanction, intermediate are also final payoffs. If the prosecutor chooses the clear-cut rule and if the manager was well-behaved, just one token is subtracted from the manager's payoffs. In the *frame* treatment we explain that this token is meant to reflect trial cost. If the prosecutor chooses the clear-cut rule and the manager was not well-behaved, his first stage earnings are reduced by 30 tokens. In the *frame* treatment, we call this a sanction. If the prosecutor chooses overall conduct, the manager's payoff depends on the second draw of Nature. If this draw is to the manager's benefit, and if he had been well-behaved, he again loses one token. In the *frame* treatment, we once more motivate the reduction by trial cost. If the manager had been dishonest but is lucky at trial, he keeps the extra 10 tokens, but also loses one token for

trial cost, resulting in a payoff of 9 tokens. If Nature's draw is to the manager's detriment, he receives 30 tokens less. In the *frame* treatment, we call this reduction a sanction.

The prosecutor's payoff depends on the manager's actual behavior, the signal, and the prosecutor's choice. If the manager has been well-behaved and this has also been signaled to the prosecutor, she receives a payoff of zero for not taking the manager to court. If the manager has been dishonest and this has been signaled to the prosecutor, she receives an additional 10 tokens if she charges the clear-cut rule. The difference between the two cases is explained as the reward prosecutors receive for correctly prosecuting perpetrators. If the manager has been well-behaved, but the prosecutor has received a wrong signal and charges the clear-cut rule, 20 tokens are subtracted from her payoff. This is called a malus for accusing an innocent. If the manager has been dishonest, but the prosecutor has received a bad signal and does not take action, she loses seven tokens. In the instructions of the *frame* treatment, we explain this as punishment for not accusing a potential offender. If the prosecutor charges overall conduct, neither the manager's true behavior nor the signal has payoff relevance. With 50% probability the charge is upheld, which gives the prosecutor a premium of 10 tokens. This is the same payoff as if the manager has rightly been charged under the clear-cut rule, and it is as good as the best possible outcome for the prosecutor. Hence irrespective of the manager's true behavior and of the information the prosecutor has received, she has a 50% chance to receive the maximum payoff. We justify this as a reward for punishing correctly. With the same probability the charge is dismissed, in which case the prosecutor loses 10 tokens if the signal is bad, and 20 tokens if the signal is good. We call this a punishment for abuse of power. This second outcome reflects the situation in which the defendant is successful in

convincing the court that the charge for overall conduct is unfounded. The difference between a loss of 10 and of 20 tokens is meant to capture the impression that prosecutor behavior is particularly egregious if a defendant is charged with overall conduct, despite the fact that the publicly observable signal was good.

The structure of the game and all payoffs are common knowledge. Yet to make it easier for our participants to understand the structure of the game, we do not show them the original game tree, but use the role-specific representations reported in the appendix.

Since negative payoffs are difficult to handle in the lab, we add 60 tokens to all payoffs.

In the instructions, we introduce this as an endowment. Through the endowment, the minimum payoff for the manager is 29 tokens, and the minimum payoff for the prosecutor is 40 tokens. The maximum is 70 tokens for both players. In the *harm* and *frame* treatments, if the manager is well-behaved, the shareholder keeps her endowment of 40 tokens. If the manager misbehaves, her payoff is reduced to 28 tokens. We announce 30 repetitions, yet every period with a new, randomly chosen partner.

Following the procedure that is standard in the experimental literature (see e.g. Charness 2000, Montero, Sefton et al. 2008), we assign participants to matching groups, but do only tell them they will be re-matched every period, not that matching groups have limited size.⁶ This procedure is meant to guarantee independent observations, without inducing participants to try to second guess group composition. In each treatment, we had one or two smaller matching groups, due to the fact that invited participants did not show

⁶ Matching groups are multiples of 2 in the *baseline*, and multiples of 3 in the remaining treatments. In the *baseline* we have 7 matching groups of 6 and, due to the fact that invited participants did not show up, one matching group of 4. In the two treatments we each time have 4 matching groups of 9 and, again since participants did not show up, 2 matching groups of 6.

up. This was not communicated to participants, and therefore should not have biased results.

In each round, and before they choose their own action, we ask prosecutors to estimate the number of managers who have been well-behaved. If they get this number exactly right, they receive an extra 3 tokens. At the end of each round, the computer informs participants in all roles about the decision of the manager, the signal, the decision of the prosecutor, and earnings of all participants. Feedback on beliefs is withheld until the end of the experiment. From the second period on, feedback of all previous periods is provided on one screen.

Hypotheses

If both the manager and the prosecutor hold textbook preferences, and expect the other player to hold such preferences as well, the equilibrium of the stage game predicts their choices. We have defined parameters such that the game has a unique equilibrium in pure strategies. In this equilibrium, the prosecutor reacts to a good signal by not taking the manager to court, and she reacts to a bad signal by charging for overall conduct. Anticipating this reaction, the manager is well-behaved. To see this, it is easiest to represent the game in normal form.

- - - - - FIGURE 2 ABOUT HERE- - - - -

The unique equilibrium of the game is evident from Figure 2. The prosecutor's best response is "no action" if the signal she sees is good and "overall conduct" in the case of a bad signal. Following this, the manager will always behave honestly, as deviating from

this results in a lower pay-off. Whether there is a shareholder or not and how the situation is framed does not affect players' payoffs. This leads to:

H₁: In all treatments, if the manager and the prosecutor are fully prevoiant, risk-neutral, money-maximizing agents, and expect the other player to hold the same type of preferences, the prosecutor chooses no sanction if the signal is good, and overall conduct if the signal is bad. The manager never behaves dishonestly.

In equilibrium, deterrence is perfect. The threat of punishment is never executed since there is no crime in the first place. Managers always incur a loss. Managers may be tempted to deviate from this equilibrium and behave dishonestly. Further, in equilibrium, prosecutors do not expect a positive profit. They may be tempted to gamble, meaning that they react to a good signal with charging overall conduct. While this is not an equilibrium, it may seem attractive given that, in expected values, the payoff is the same as if they do not sanction the manager.

Prosecutors may anticipate or observe that managers misbehave and play their best responses rather than the equilibrium.

Managers may be reluctant to impose harm on shareholders. Prosecutors may feel obliged to react more aggressively to manager dishonesty if they are not only putting their own money at risk, but if the shareholder suffers as well. This might follow from indirect reciprocity. The above deviations result in not only a difference in terms of the manager's behavior in equilibrium, but also a difference in the response of the prosecutor. Specifically, the prosecutor may select the clear-cut rule in reaction to a bad signal. Further, we may see treatment differences, as a prosecutor aware of her position

may be more likely to engage in the protection of the shareholder and fair retribution for the manager. Thus, we hypothesize:

H2: Managers behave more honestly in the harm and frame treatments, compared to the baseline. In the harm and frame treatments prosecutors are more likely to charge the clear-cut rule when receiving a bad signal.

Results

The experiment was conducted at Columbia University in 2011. A total of 142 students of different majors participated in one of 9 sessions, 3 for each treatment. Both participant-participant and participant-experimenter anonymity were guaranteed. Each session lasted approximately one and a half hours. The experiment was programmed in zTree (Fischbacher 2007). All periods were paid out. In the *baseline*, managers on average earned \$18.24, and prosecutors earned \$20.39. In the *harm* treatment, managers earned \$17.84, prosecutors made \$19.54, and shareholders made \$18.85. In the *frame* treatment, managers had an average profit of \$18.62, prosecutors had \$21.24, and shareholders had \$19.57.

Managers

In clear opposition to the game-theoretic prediction, in all treatments a substantial fraction of managers behaves dishonestly. Actually, in the *baseline* and the *harm* treatments, no more than 2, and in the *frame* treatment no more than 3 participants behave properly in all of the 30 periods of the game, Figure 4. In opposition to **H₁**, managers clearly violate the equilibrium prediction. The most plausible explanation is the larger gain in case prosecutors do not take action, or charge overall conduct but the charge is overturned. Seemingly managers are tempted by the opportunity of a higher

payoff. As we can expect from predicted deviations from the equilibrium, almost all managers at least sometimes give in to temptation and behave badly.

- - - - - FIGURE 3 ABOUT HERE- - - - -

Descriptively, fraud is more pronounced in the *baseline* (on average in 7.22 of 30 periods) than in the *harm* treatment (mean: 5.94 of 30 periods) than in the *frame* treatment (4.63 of 30 periods). Descriptively we thus have support for H_2 . Yet neither non-parametrically nor parametrically do we establish significant treatment differences.

Prosecutors

Unconditional prosecutor decisions would not be meaningful. Several observations immediately follow from Figure 5. Prosecutors strongly condition their behavior on the signal they receive. If the signal is good, they usually do not take the manager to court, as predicted by the equilibrium of the game (H_1). Yet in opposition to game theory, in a substantial minority of cases, prosecutors charge overall conduct if the signal is good. If the signal is bad, in the *harm* treatment prosecutors are most likely to play the equilibrium and charge overall conduct. In the *baseline*, this is slightly less frequent. By contrast, in the *frame* treatment, this is very rare. In opposition to the equilibrium, prosecutors predominantly react to a bad signal by using the clear-cut rule.

- - - - - FIGURE 4 ABOUT HERE- - - - -

Prosecutors have three options. If we were to analyze each option in isolation, and would compare them with choosing either of the remaining options, we would neglect that error terms of these separate regressions are likely to be correlated, given prosecutors choose from their portfolio of three options. We can also not treat the three options as ordered. A sanction is certainly more onerous than no sanction. But there are equally sound reasons to claim that the clear-cut rule is more severe (since the maximum effect is stronger, and since the sanction is applied with certainty if the manager was indeed dishonest), and that the overall conduct charge is even more severe (since it affects the manager randomly with 50% probability, irrespective of the gravity of the offense). We must therefore treat the three options as categorical. We have no reason to explain any of these choices with different independent variables. Therefore multinomial logit is the appropriate functional form. Unfortunately there is no generally acknowledged mixed effects multinomial logit estimator. We therefore estimate ordinary multinomial logit models, but cluster standard errors at the highest possible level of dependence, namely matching groups. Note that this procedure is conservative. We do not exploit the fact that we know our data generating process to be more structured, in that individuals are nested in matching groups.⁷

Our main interest is in prosecutors using the overall conduct charge. We therefore define this option to be the baseline category. Our model predicts how likely prosecutors are to deviate to either no sanction or the clear-cut rule. The regressions in Table 1 show that adding the time trend and its interaction with treatments clears the picture. Model 2 provides the statistical test for Figure 5: If the signal is bad, in the *frame* treatment

Adut, A. (2005). "A theory of scandal: Victorians, homosexuality, and the fall of Oscar Wilde." American Journal of Sociology **111**(1): 213-248.⁷ If we analyse individual options with mixed effects logit models, results look similar.

prosecutors are much more likely to charge the clear-cut rule. Interestingly, we also find a significant main effect of the *harm* treatment. In this treatment, clear-cut rule charges are somewhat more likely than in the *baseline*, irrespective of the signal. Prosecutors might feel the urge to use a sanction of the clear-cut rule as a signal to the manager that they care about the effects for the third player.

----- TABLE 1 ABOUT HERE-----

We first have to explain why so many prosecutors violate the equilibrium if the signal is bad, and charge the clear-cut rule. To understand this finding, recall why, in equilibrium, prosecutors react to a bad signal with a charge of overall conduct. In equilibrium, managers never behave badly. Therefore the bad signal must result from the fact that Nature has sent out a wrong signal. Yet if the prosecutor does not charge the manager when the signal is bad, she is punished with -7 tokens (Figure 2). Reacting with a charge of overall conduct to a bad signal is necessary to deter a money maximizing, risk neutral manager. One may also say the payoff losses both players incur when the signal is bad is the price they are paying for the fact that the prosecutor can only imperfectly supervise the manager. Now the Nash equilibrium is a normative, not an empirical prediction. Were the prosecutor to know that a bad signal actually stands for the fact that the manager truly misbehaved, it would be her best response to charge the clear-cut rule. She then expects 10 tokens, instead of a gamble with a 50% chance to also get 10 tokens, but a 50% chance to lose 10 tokens. The data suggest that prosecutors take a bad signal as information about the likely true action of the manager, and play their best response.

Given they know the signal to be correct with 90% probability; this interpretation seems reasonable, despite the fact that it violates game theory.

We are now in a position to address the main issue of this paper. The law expects prosecutors to stay inactive if the would-be defendant is very likely innocent (and no additional means of evidence to resolve the remaining uncertainty are available). In our experiment, if the signal is good, with 90% probability the manager is innocent, and the prosecutor has no technology for further reducing the remaining uncertainty. As both models of Table 1 show, in all treatments prosecutors are very likely to fulfill this normative expectation. In the *frame* treatment (and in the first round), the predicted probability of no charge if the signal is good is 83.82%. A charge of the clear-cut rule only has a 2.04% probability, so that the predicted probability of a charge for overall conduct is 14.14%. The prediction is even clearer if the signal is bad. In this case, the law would want the prosecutor to take action. To the degree the prosecutor is able to investigate the case, there is a 90% probability of guilt. The prosecutor knows she runs a small risk of losing in court. But the law would want her to take this risk. In the *frame* treatment, almost all prosecutors do. The predicted probability of this charge if the signal is bad is as high as 98.92%, with only 0.78% left for a charge of overall conduct, and only 0.3% left for taking no action.

Figure 6 investigates this further. It collects average marginal effects⁸ of the effect of main interest from Table 1 model 2: Right from the start, in the *frame* treatment prosecutors are about 20% more likely to use the clear-cut rule if they receive a bad

⁸ Of course taking the multiplicative character of the interaction terms into account.

signal. The treatment effect, conditional on the signal being bad, remains significant until period 21.

- - - - - FIGURE 5 ABOUT HERE- - - - -

By contrast, in the *harm* treatment, the predicted probability of a charge of the clear-cut rule when the signal is bad is only 80.32%, more than 18% less than in the frame treatment. In the *baseline*, the predicted probability is very similar, namely 81.43%. Our data suggest that we have two effects. We have already explained the first effect. In all treatments, most prosecutors believe a bad signal to be true, and play their best response. Yet in the *frame* treatment, and only in this treatment, there is an additional effect, which accounts for another 20% of choices. Through our design we know this additional effect to result from the call of duty and justice.

To cast further light on this effect, we test how prosecutors react to two types of experiences: false acquittals and false charges. Recall that, after the end of each period, all participants get complete feedback. Through feedback, prosecutors learn the true action of managers, and they consequently know whether they have taken an innocent manager to court, or whether a guilty manager has escaped their scrutiny. We count the number of times prosecutors have let escape a guilty manager, and the number of times they have wrongly charged an innocent manager with the clear-cut rule. As Figure 7 shows, in all treatments prosecutors are more likely to make the latter than the former mistake. Overly harsh reactions are particularly likely in the *harm* treatment.

----- FIGURE 6 ABOUT HERE-----

In Table 2 we use the number of times a prosecutor has failed in either direction as an additional explanation for their choices in the current period. All main effects, and all interactions with the *harm* treatment, are insignificant. The one significant three-way interaction with the *harm* treatment even points into the “wrong” direction. The more often prosecutors have wrongly acquitted a defendant, the more frequently they acquit him again if the signal is bad. By contrast, the two three-way interactions with the *frame* treatment significantly explain the decision to abstain from sanctioning, and all four interactions significantly explain the decision to charge the clear-cut rule. If participants are told they are holding the position of a prosecutor, they care about minimizing mistakes. Actually they do so in both directions. They not only want to make sure that guilty managers are apprehended. They are equally zealous preventing innocent managers from being sentenced. Actually, if we calculate average marginal effects, it turns out that we only find a weakly significant, yet sizeable effect of having once falsely acquitted the defendant. In that case, the probability of using the clear-cut rule increases by 20.7 % ($p = .064$) in the *frame* treatment, compared with the remaining treatments. By contrast, if the prosecutor knows the *frame*, we find a strongly significant negative effect in reaction to one ($-.019, p < .001$) and to two false convictions ($-.028, p = .028$). These reaction patterns show quite clearly that prosecutors feel the urge of duty and justice.

----- TABLE 2 ABOUT HERE-----

Discussion

When payoff maximizing agents interact with other agents who do the same, and when all actors believe all others to hold such standard preferences, the situation lends itself to game-theoretic modeling. The rational choice theory of crime believes criminals to maximize (not necessarily pecuniary) utility. This expectation seems particularly plausible with white collar crime. Observers frequently wonder whether the same holds for prosecutors. In their case, utility would most likely not be exclusively pecuniary. But it does not seem far-fetched to assume an incentive of prosecutors to win in court. Utility maximizing agents exploit opportunities as they present themselves. Prosecutors have the power to select the charge. If the odds of winning are unclear, in expectation prosecutors may be better off when shifting the charge to crimes that are only vaguely defined in doctrine, like conspiracy or false statements. Utility maximizing prosecutors should seize this opportunity.

To test this supposition, we have had experimental defendants and prosecutors play a stylized game. The game has a unique equilibrium in pure strategies. In equilibrium, prosecutors do not take the defendant to court if they receive a signal to the effect that the defendant is likely innocent. If they receive the opposite signal, they do not charge her for a well-defined crime. Instead they shift to a charge of “overall conduct”. In that case, the odds of winning in court are unrelated to the actual behavior of the defendant. In anticipation, would-be defendants never commit the crime.

In the *baseline* we have participants play the naked game. Results fully refute the game-theoretic prediction. Defendants quite frequently misbehave. Seemingly defendants are tempted by the possibility of a large gain. If they receive a good signal, prosecutors predominantly do not take action. Yet a substantial fraction charges overall conduct, which is not predicted by game theory. If the signal is bad, even a large majority of prosecutors violates game theory and charges the specific crime. This suggests that prosecutors believe the bad signal to be true, and play their best response, instead of the equilibrium.

Adding a third participant who suffers if the defendant misbehaves has practically no effect on defendants' behavior. They do not shy away from imposing harm on a passive outsider. In this treatment, descriptively prosecutors are most likely to react to a bad signal with a charge of overall conduct. Yet this is not statistically significant from the *baseline*.

By contrast, behavior looks substantially and significantly different if we reveal our research question and speak of a manager, a shareholder and a prosecutor. This polarizes prosecutor behavior. If they see a good signal, they are strongly inclined to refrain from a charge. If they see a bad signal, they almost unanimously use the clear-cut rule. In our experiment, the suspicion that prosecutors exploit the vagueness of doctrine to their selfish advantage does not hold true.

As in any experiment in law, one has reason to carefully consider external validity. In the courtroom, much more is at stake for the defendant. If at all, this qualification should have worked against us. Since they know that defendants at most lose a couple of dollars,

prosecutors might have been less hesitant to ignore the frame and to treat the situation just as a game. This is clearly not what has happened.

In the courtroom, for prosecutors more is also at stake. They lose an opportunity to advance their careers, or they dread pressure from their superiors and the public if they lose a case. By contrast, in our experiment they at most put a couple of dollars at risk. We cannot exclude that higher stakes change behavior. But it is remarkable that we find a highly significant treatment effect, in particular in reaction to a bad signal. Since the fraction of prosecutors who respond to a bad signal with a charge of the clear-cut rule is already high in the *baseline*, for the treatment effect to be significant we need a very strong and very clear effect.

We have had our participants to act repeatedly. The time trend is significant and negative, and it pushes behavior closer to the game theoretic equilibrium. In their professional lives, prosecutors not only meet thirty defendants, but hundreds of them. While they may be willing to live up to normative expectations in the beginning of their careers, over time the litigant spirit might gain the upper hand. Again we cannot negate this qualification altogether. But we note that, within the thirty periods of our experiment, the time trend is very flat and far from reversing the treatment effect even at the very end of the experiment.

In our design, the signal is correct with 90% probability. In the field it happens that prosecutors know with near certainty whether the defendant is guilty or innocent. Yet frequently at the end of police investigations there remains a higher degree of uncertainty. The law does not prevent prosecution from accusing such defendants as long as the charge is not frivolous. But in such cases prosecutors might be more tempted to play it

safe and exploit the ambiguity of legal doctrine. We acknowledge this but note that we have constructed the game such that the unique equilibrium had prosecutors bring the vague charge. In the field, the ambiguity of the law is not only a panacea for prosecutors, it also is a risk. Precisely because the law is not clear, prosecutors also have a hard time predicting the outcome. We have entirely removed this source of uncertainty, which should have made this choice even more attractive.

In the experiment, if the prosecutor charges overall conduct the odds of winning are totally unrelated to the guilt of defendants. In the courtroom, the difference between clear-cut and vague rules is less extreme. While vague rules are considerably more ambiguous, the defendant still stands a better chance to be acquitted if he is actually innocent. Also, doctrine is never fully settled, nor is its application to the case at hand, so that there is inevitably a dose of ambiguity even in the application of apparently clear-cut rules. Prosecutors who are hesitant to expose defendants to a true gamble might be more willing to exploit the vagueness of the law if they can assuage their conscience with the excuse that, to a degree, all law is ambiguous. We cannot exclude that this might matter, but we note that this objection presupposes our main result to be true. The possibility to assuage one's conscience only matters if conscience guides behavior in the first place.

This is what our experiment was meant to show.

Whenever there is an opportunity, it is good policy to be vigilant. The stronger the incentives, the more likely it is that agents seize the opportunity, even if the law expects them to ignore it. In the introduction of this paper we list the reasons why prosecutors might be tempted to exploit the vagueness of criminal law to their selfish benefit. Against this backdrop it is remarkable that mock prosecutors next to never seize the opportunity

in our lab experiment once we make them aware of their virtual public office.

Policymakers, and the watchdogs of the public, should not stop being vigilant. But our experiment justifies giving prosecutors the benefit of the doubt. As long as there are no signs to the contrary, they should not be suspected to be reckless hired guns. The call of prosecutorial duty is stronger than one might have thought.

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TABLES & FIGURES

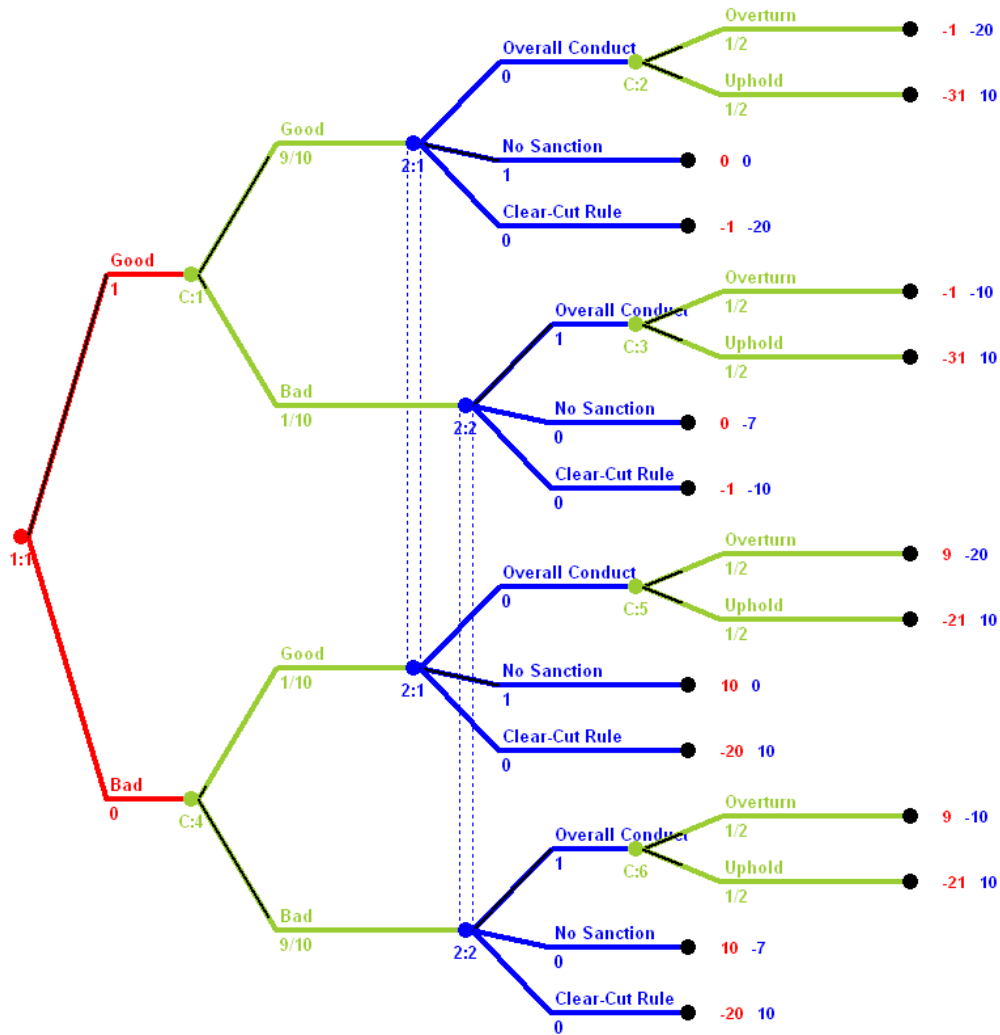


FIGURE 2 – GAME TREE

Note: The moves of all three players are described in detail in this tree. In the first move the manager decides whether or not to commit fraud. Then Nature signals to the prosecutor with 90% accuracy if this has taken place. Next, the prosecutor decides between her three options. Finally, Nature once more plays a 50% draw if the overall conduct choice was selected. The first payoff is for the first player, i.e. the manager (and appears in red), the second payoff is for the second player, i.e. the prosecutor (and appears in blue).

		Manager	
		Honesty	Fraud
P r o s e c u t o r	Overall Conduct if Honesty/Overall Conduct if Fraud	(-16, -4.5)	(-6, -0.5)
	Overall Conduct if Honesty/Clear-cut if Fraud	(-14.4, -5.2)	(8.4, -6.8)
	Overall Conduct if Honesty/No sanction if Fraud	(-14.5, -5.5)	(-18.6, 8.5)
	No sanction if Honesty/Overall Conduct if Fraud	(-1.6, 0)	(-4.4, 0)
	No sanction if Honesty/Clear-cut if Fraud	(0, 0.7)	(10, -6.3)
	No sanction if Honesty/No sanction if Fraud	(-0.1, -1)	(-17, 9)
	Clear-cut if Honesty/Overall Conduct if Fraud	(-2.5, -18)	(-7.4, 1)
	Clear-cut if Honesty/Clear-cut if Fraud	(-0.9, -18.7)	(7, -5.3)
	Clear-cut if Honesty/No sanction if Fraud	(-1, -19)	(-20, 10)
*(Manager, Prosecutor)			

FIGURE 3 – GAME IN NORMAL FORM

Note: The game presented in the game tree in Figure 1 is described here in Normal Form. The manager draws first and has the option to behave honestly or to commit fraud. The prosecutor has three options: charging overall conduct, no sanction or the clear-cut rule. Since the prosecutor only sees the signal, she must condition her choice on the signal. The prosecutor therefore must adopt one of 9 possible strategies. The game has one equilibrium in pure strategies, indicated in bold.

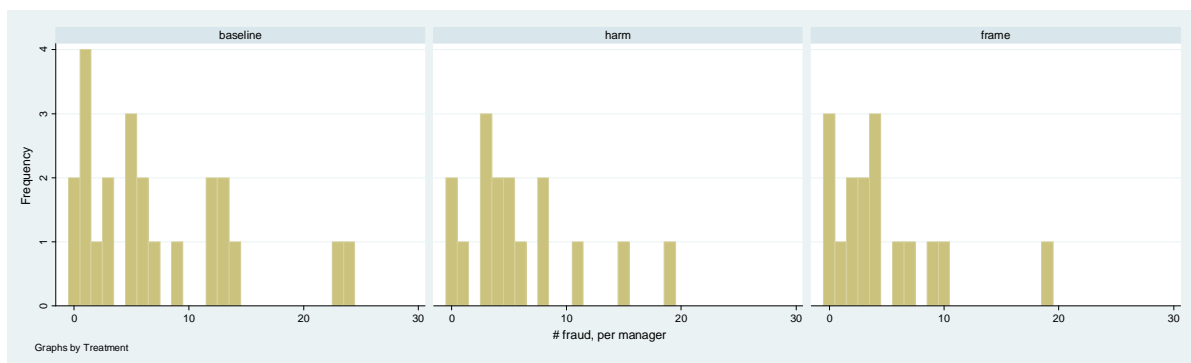


FIGURE 4 – MANAGER BEHAVIOR

Note: The game is played for 30 periods and in each period the managers select to commit fraud or not. The x-axis indicates how many times, out of a maximum of 30 opportunities, a certain manager committed fraud. The y-axis indicates how many managers chose to commit fraud that frequently.

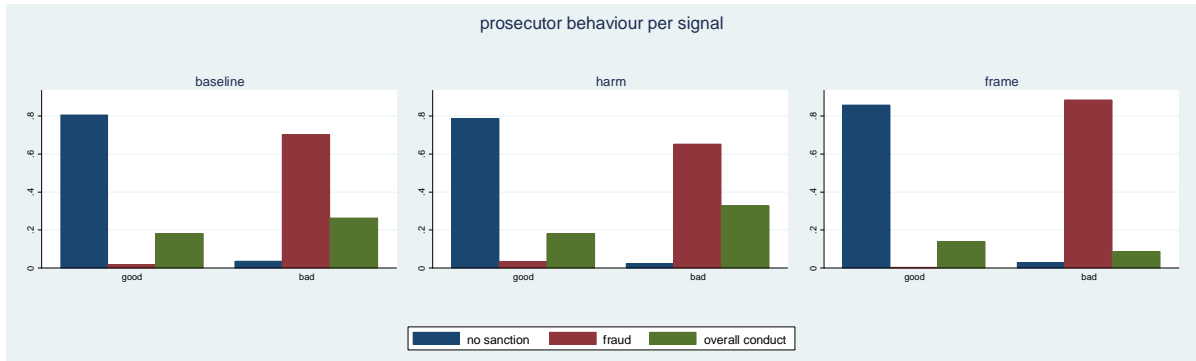


FIGURE 5 – PROSECUTOR ACTION CONDITIONAL ON SIGNAL

Note: In each treatment, the prosecutor chooses between selecting No Action, the Clear-cut rule and Overall Conduct. This figure shows how these choices are split according treatment and signal.

TABLE 1 – TREATMENT EFFECTS FOR PROSECUTORS CONDITIONAL ON SIGNAL

Note: A multinomial logit, with standard errors clustered at the level of matching groups, is run to model the behavior of prosecutors. The constants determine how likely prosecutors are to deviate from overall conduct to either no charge or using the clear-cut rule. The coefficients of the explanatory variable show how a one unit change in these variables alters the likelihood of choosing the alternative to overall conduct. Model 2 introduces period effects. Signal is a dummy variable that is 1 if the signal is bad. ***, **, *, + indicates significance at the .001, .01, .05 and 0.1 levels, respectively.

	model 1		model 2	
	no sanction	clear-cut rule	no sanction	clear-cut rule

Harm	-.023	.751 ⁺	-.070	.792*
Frame	.323	-.849	-.197	-.149
Signal	-3.486***	3.390***	-3.498***	3.370***
harm*signal	-.630	-1.039	-.577	-.943
frame*signal	.564	2.192	.553	3.352*
Period			-.029*	-.048**
harm*period			.002	-.005
frame*period			.032	-.087
Cons	1.500***	-2.409***	1.974***	-1.652***
N		1650		1650
p model		<.001		<.001
pseudo R ²		.3985		.4092

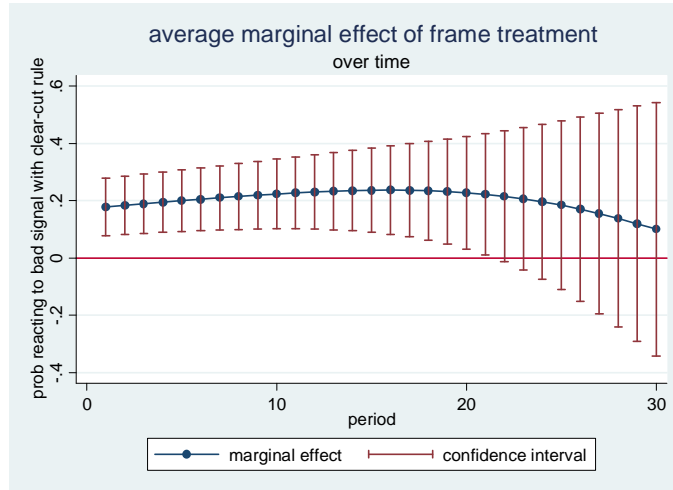


FIGURE 6 – MARGINAL EFFECT OF FRAME TREATMENT ON USING CLEAR-CUT RULE IF SIGNAL IS BAD

Note: The positive or negative probability of reacting with the clear-cut rule when faced with a bad signal is displayed here using a graph of the marginal effect. This is shown for the frame treatment. The marginal effect is shown using the blue dots and confidence intervals are displayed with red bars.

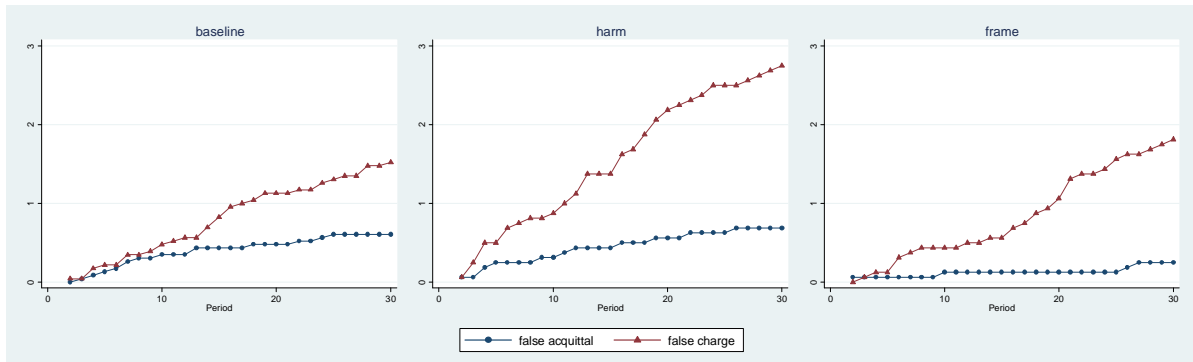


FIGURE 7 – PROSECUTOR FAILURE

Note: Separately for each treatment, these graphs show how frequently, in the respective period, a prosecutor has falsely acquitted or falsely charged a manager in the entire past.

TABLE 2 – THE EFFECT OF PAST FALSE CHARGES

Note: A multinomial logit, with standard errors clustered at the level of matching groups, is run to model the effect prosecutors' past false charges have on their selection of punishment. Interaction terms include treatments as well as signals.***, **, *, + indicates significance at the .001, .01, .05 and 0.1 levels, respectively.

	no sanction	clear-cut rule
Harm	.701	1.701 ⁺
Frame	-.017	-.201
Signal	-3.517***	3.754***
harm*signal	-1.570	-2.234*
frame*signal	1.604 ⁺	1.555
# past false acquittals	-.297	.323
# past false charges	-.194	.020
signal*# past false acquittals	-.598	-.686
signal*# past false charges	.228	.125
harm*false acquit	-.608	-.642
harm*false charge	-.089	-.246
harm*signal*false acquit	1.589*	1.171
harm*signal*false charge	-.491	.248
frame*false acquit	.131	2.834*
frame*false charge	.255	-14.388***
frame*signal*false acquit	-16.186***	-2.934 ⁺
frame*signal*false charge	-18.227***	14.295***
Cons	1.789**	-2.776***
N		1595
p model		<.001
pseudo R ²		.4190

CHAPTER 3: INTERVIEWING PROSECUTORS: THEIR VIEW OF THE POLYSEMANTIC LAW

Alicja Reuben

Abstract: An interesting puzzle that concerns strategy scholars is whether social control agents exercise discretion. Prosecutors exact control over the statutes they select for those cases that they take to trial. I study the strategy of the prosecutor when conducting white collar criminal investigation and trials. In the study, I interview 22 prosecutors with open format and record their responses to later use as examples. Further, this study is composed of distributing a short 1-page 15 minute survey to all of the District Attorney's offices in the United States via email or fax. This accounts for close to 2300 different offices. The objective is to explore how the process of selecting the law that is ultimately brought to trial, if it is not settled, takes place. Typically, the law is first suggested by the police when they bring it to the prosecutor, then the prosecutor goes through a series of steps until the trial and the case often changes hands among Assistant District Attorneys. The prosecutor must consider a great deal when deciding whether not to change the charge and which law to select. This article provides insights that complement the quantitative analysis in this dissertation by exploring polysemy further. It asks three questions: how prosecutors view polysemantic laws; if there is an association between polysemantic laws and conviction; and whether they have career aspirations that affect their discretion. I attempt to address what the statistics were unable to address.

INTRODUCTION

Three questions are central to the study of prosecutors' strategies. Firstly, I hope to determine whether prosecutors view laws in terms of being more or less polysemantic. Without using the term, I interview prosecutors to find out if they use certain laws more often or more specifically to attain convictions. I find that while prosecutors are hesitant in admitting that they deliberately use certain statutes to win, they do concede that certain statutes are used more than others and in conjunction with others.

Secondly do prosecutors have a specific level of discretion over the laws that they select while conducting their cases? I find that prosecutors are highly motivated by the outcome of conviction and often select charges that suit conviction. An example of this is changing the charges presented by the police because they do not allegedly have adequate knowledge of the law.

Finally, I pose the question: Are prosecutors highly motivated by the status of their office because it serves as a career advancement? Surprisingly, I find that Assistant District Attorneys (ADAs) are motivated differently than District Attorneys (DAs) themselves. While DAs are highly driven by career aspirations, ADAs seem to be focused on serving the People and castigating white collar criminals. Nevertheless, the end result of a positive outcome in a trial is desirable to both types of prosecutors. The prosecutorial office does not necessarily use one prosecutor for the entirety of the process through which a case travels from the police to the courtroom.

The answers to these questions serve as complement to the findings earlier in this dissertation. In chapter one I identified this causal path. These are the aspects of that path: career, motivation, etc. Using a survey and interviews I explore these. I find that most of

them are correct but there is one aspect that's surprising. The difference here is the methodology employed. Specifically, I employ a series of 22 interviews with prosecutors from various districts as well as a survey of all of the prosecutorial districts.

The central tenets of this article are to explore how prosecutors view polysemantic laws, what motivates prosecutors to use polysemantic laws, and whether convictions result from this use. Typically, the law is first suggested by the police when they bring it to the prosecutor, then the prosecutor goes through a series of steps until the trial and the cases often changes hands among Assistant District Attorneys. The prosecutor has much to weigh regarding whether not to change the charge and which law to select. I am trying to understand if there is an association between prosecutorial discretion over which law to select and how to affect conviction rates. The results of the study will be used to shed light on certain aspects of the study of these relationships that cannot be addressed through statistical analysis that I already conducted.

As a qualitative study, this project is novel in bringing in the idea of analyzing the responses, both open-ended and multiple-choice, of prosecutors to certain queries regarding their behavior. Such studies have been performed regarding prosecutors and their exposure to overload and strain but have not focused on intent and the relationship to conviction (Gomme and Hall 1995). Prosecutors have also admittedly affirmed that they utilize certain statutes, like the Mail Fraud Statute, for a variety of applications and that it serves as a very powerful tool in the face of uncertainty (Rakoff 1980). The right of the prosecutorial office to discretion, despite being rife with controversy, has not been overturned by the judiciary because it was considered necessary (Applegate 1982). I am particularly interested in cases that go to trial because welfare considerations and decision

making for those prosecutors that do seek plea bargaining have not had a systematic analysis outside of theoretical constructs (McCannon and Bandyopadhyay 2010). Cases that go to trial explicate the precise discretion of prosecutors because they allow the prosecutor to select the statute and see its effect on the decisions of the judge or the jury.

This paper consists of six sections. In the first I review the theoretical background for the investigation of prosecutorial decision making. This stems primarily from the first chapters. Next, I describe the methodology used in this paper, as it is the significant contribution of this chapter to the entirety of the dissertation project. Next, I enter the analytical sections of the paper. The first asks about the prosecutors' view of polysemantic laws. The second question relevant to this study is to what motivates prosecutors to pursue conviction and whether this is primarily career advancement. The third consists of asking if there is an influence of polysemantic laws on conviction rates. The way I present the two qualitative methods of the paper is that they point to for the most part supporting the claims made in the first chapter. The last sections discuss and conclude.

THEORETICAL BACKGROUND

Before embarking on a qualitative study of the prosecutorial office, it is important to fully understand the way that the district attorney's office operates. Through our particular inquiry, I have determined consistency among offices. Specifically, the process begins with a police investigation within which the law enforcement agency approaches the prosecutor with a case to be charged. The inquiry enters the record system, where both police investigators and prosecutors have access, before it is entered into the court system for inquiry by the courts. Law enforcement typically suggests a charge and the

prosecutor is then free to determine whether or not she wishes to keep that charge, add to it, or change it completely. The prosecutor has absolute discretion about whether or not the charge is kept. She is the one who determines what charge continues through the plea bargain process and if that process continues to court. She often consults with witnesses as well as police.

The prosecutor is motivated by several aspects of her vocation. Firstly, she has limited resources to expend on any case, and has to be extremely conscious about what money is spent. Further, she may be interested in pursuing justice and defending her constituents, the People. Next, they may be motivated by a potential increase in status. The definition of status is that it is a relative position in society that provides satisfaction at one's level or allows for advancement into another, more desirable, position. Lastly, they may simply desire victory.

Judgment aligns with prosecutorial selection of the laws about half of the time. This whole process will be surveyed fully later, when I try to determine if there is a link between polysemantic laws and conviction rates. I observe clear patterns regarding how prosecutors select laws. They attempt to be as accurate as possible with the facts they receive. At the same time, typical violations do occur. For these, prosecutors often use a bundle, or set of laws, that determine what charges will be made for that specific crime. These do not necessarily correspond with crimes but rather to the precedence of what crimes have already been charged and tried with those laws. For example, in many cases of fraud the laws used can be financial transaction violation or forgery. Prosecutors also tend to avoid charges that have lower rates of conviction or sentences according to the sentencing guidelines. It is unclear whether the "battle for truth" is the ultimate goal not

only of prosecutors but also defense attorneys (Gordon and Huber 2009). Prosecutors may tend to avoid certain cases because their probability of winning is low. Some evidence is also presented in studies that indicates that the budget a prosecutor has and her conviction rate are correlated (Rasmusen, Raghav et al. 2009). It is not nevertheless unclear how prosecutors should conduct themselves in their office. The American Bar Associations clearly states in the Criminal Justice Standards “[t]he duty of the prosecutor is to seek justice, not merely to convict.”

I attempt to understand why prosecutors may seem to focus on sets of laws or individual laws that are more likely to bring conviction rates in trials through conducting interviews and a survey that attempts to arrive at the solution to the questions: how do prosecutors operate around polysemantic laws? We have already demonstrated that these exist and looked at them on a larger scale. Here, I attempt to further disentangle the process by which they are utilized.

WHY WHITE COLLAR CRIME?

White collar crime is specifically well situated within criminal law for this study because of its characteristics that bring it at odds with its civil libertarian roots. It violates certain assurances that other parts of criminal law hold as a guarantee. The first of these is mens rea, or a guilty mind. White collar crime does not require, as the mens rea requirement does, that the prosecutor demonstrate that the defendant was aware of the crime being committed and that intent was involved. The second is vicarious criminal liability. In this case, a bank manager can for example be tried for something that someone working under her committed without being directly liable. Such a backing away from tradition is possible because of corporate criminal liability, where

corporations can be put on trial as well as individuals. Corporations are dispersely-owned entities under the oversight of managers and these managers have the duty to bear the brunt of charges of their underlings if necessary. The third difference that white collar criminal law brings forward to the table is the principle of legality, or that laws cannot be created as the need for them arises. In this realm, new laws often come about because a new problem came about. For example, one may think of Sarbanes-Oxley in 2002. Because these laws are utilized in trials, they create more common law and influence what kind of trials are brought forth afterwards.

These are not the only guarantees that white collar crime violates. Others include the presumption of innocence and attorney-client privilege. Defendants are treated as potential criminals from the start and evidence that is used in trials may be confidential correspondence between co-workers and bosses.

This qualitative study of prosecutors attempts to understand how prosecutors conducting white collar crimes may act differently than in drug related or violent crimes. Often these may be entangled, but there is still a possibility that I may observe differences among these laws. One description referred to white collar crime directly, and stated how it is treated differently.

For white collar criminals, we don't want them to get off.
Generally, I'm not very sympathetic towards them. I'm
more likely to take a little tougher stance. If it's just greed,
I'm not gonna let them out.

Most likely, prosecutors understand that their discretion is stronger in white collar scenarios. However, if they don't they exhibit a lack of perception that is interesting. Convictions are more easily sought when defendants don't have the guards of mens rea,

vicarious criminal liability, and legality. While these safe-guards may be provided because white collar crime is harder to prosecute (Stigler 1970), it nevertheless creates a scenario where prosecutors can exercise more discretion.

The pressure to convict may also be much higher because these are the cases that often get press and media pressure might be high on the prosecutor. White collar crime continues to be important to be studied here because of its impact on the world, but also will help to produce consistent answers in a few interviews because they are so specific. On the survey side, many prosecutors may not have experience with white collar crime, but I do ask that this be related in some way. I hope to gain insight into white collar crime from the surveys too.

PROSECUTORS AS SOCIAL CONTROL AGENTS

Before embarking on the study of prosecutors' interviews, it is crucial to place them within a strategic system and label them as a specific type of actor. The first thing that I use to identify an actor is the environment in which she operates. For actors within the managerial sphere, the most important environment is the legal environment and the actors which bear the majority of the discretion and influence over the corporations are prosecutors. Prosecutors possess the control of misconduct, which often acts as a marker for corporate activity. In this environment, prosecutors act as social control agents (Greve, Palmer et al. 2010). By social control agent, I mean someone who acts to delineate punishment for wrongdoers on behalf of their constituents and often pressured by the media. Reelection is an important aspect for prosecutors and they often follow the wishes of their constituents in order to satisfy their demands (Wiesenfeld, Wurthmann et al. 2008). Here, I make another attempt to disentangle the process they use.

Prosecutors are no different from other environmental actors in that they are boundedly rational and familiar with a limited amount of legislation from which they select the law that they use. Clearly the entire body of law is available to them, but it is possible that they are more familiar with a set of statutes that they often use, especially for white collar criminal activity, rather than that they reach out to the entire range of possibilities each time. Acting as social control agents, prosecutors exercise their discretion by selecting the law that is most suited for their cause. They have much power, including that to create new laws that draw a line between that behavior which is tolerated, and that which is not (Greve, Palmer et al. 2010). In addition, prosecutors are able to create conditions where the behavior that is not tolerated is more easily committed. One example is the famous Enron. Here, it was certain laws and regulations that created a situation where the market for energy could have been treated in illegal or at least unethical ways (McLean and Elkind 2003). Another groups of possibilities where this type of discretion could be encouraged is when defendants commit crimes during the investigation itself and can be used instead of those for which the defendants were originally indicted. Examples of this include the conspiracy between Martha Stewart and her broker Peter Bacanovic, in which Stewart was initially indicted for insider trading or the shredding of documents at Andersen, which is a crime that occurred only after the initial charges were made. Next, social control agents have the decision making ability to sway the line between right and wrong. Thus, potential defendants, since they are not required to have mens rea, may inadvertently cross this line. Finally, one must recognize the limitations that social control agents also have. Social control agents are also influenced by their private interests, the enforcement that their organizations have and the

possibilities posed by the situation (Greve, Palmer et al. 2010). This is something that drives prosecutors to act in a specific way simply because they know that such a situation could create benefits for them. These include high discretion, which leads to higher performance. The way to achieve that higher performance is often to seek a polysemantic law. Social control agents such as prosecutors have strategic objectives, and while often this is to seek justice, there is some evidence that conviction is also high on the agenda.

POLYSEMANTIC LAWS

In this section, I introduce the primary constructs I will utilize to explain prosecutors' practice of discretion, which I test qualitatively. Since they are already explained in detail in the first chapter, here I will simply remind the reader of the most important aspects of the constructs and how they will be addressed here. I use the interviews here to ascertain that the information about how a law is eventually selected was gathered properly and to learn further about what motivates prosecutors discretion. First, however, it is important to understand how a prosecutor reaches the selection of a law. First, she receives a case and therefore has to select from the U.S. Code or the State Code. These two can differ with respect to sentencing guidelines but generally address the same questions. The first charge is set by the police or law enforcement agency. Prosecutors can then add, subtract or change those charges completely. Thus, there are often sets of laws that prosecutors used formulaically. Prosecutors do not currently have a classification of laws according to how effective they are in prosecution, but I attempt to disentangle their understanding of whether some laws are more complex and have more semantic interpretations.

Polysemantic statutes are composed of a series of monosemantic statutes, as described in the first chapter. Prosecutors have the possibility of implying many interpretations when presenting it to the judge or jury of polysemantic statutes. Discretion is extremely important in this case, because it allows the prosecutor complete discretion over how the law is perceived. Thus, discretion is not applied only to the choice of selecting the law, deciding whether or not to plea and other aspects of the prosecutors position, but also to the specific interpretation a polysemantic statute bears. The group the prosecutor is trying to convince is the jury, or the judge depending on the type of court. Each interpretation may be able to lead to the conviction the prosecutor seeks. Examples I use to try to make the prosecutors I interview are conspiracy, obstruction of justice and false statements. I ask whether they use these statutes and whether they perceive them differently.

The roots of the idea of polysemantic laws are tied to their semantic nature. Here, I want to reach back to cultural psychology, and the presumption that how that an audience's perception matters to instill meaning in an object. This is akin to Griswold (1987)'s multivocality, by which she explains how one novel possesses different interpretations in accordance with the group that receives it. While Griswold explores the cultural power and ambiguity of the works she assesses, she does not make claims about the performance derived from the use of the objects. In my case, I seek to propose that focal actors may exploit polysemantic objects. Another field that incorporates multiple interpretations of objects is organizations and markets. Phillips (2011) measures the uniqueness of the use of an instrument through combinatorial uniqueness in the context of Jazz music. He discusses how actors impute value and meaning to unusual objects in a

network context. This idiosyncrasy spurs improved performance. Similarly, while polysemantic objects may initially seem to complicate the contexts they populate, I expect focal actors to utilize them to their advantage. Prosecutors derive utility from polysemantic objects, by applying them to contexts where they can produce higher conviction rates.

PROCEDURE

The purpose of this essay is to expand the quantitative and experimental findings from the other two chapters by using a qualitative study. Before proceeding to the results, I present the process of thinking that underlies this approach. I would like to see what causes the qualitative link that I did not see before. This triangulation is necessary because we made assumptions about motivations and processes and in what situations prosecutors behave a certain way. Presently I seek the information from the direct source, the prosecutor, to find out if these are accurate and to ascertain more about causal links. The procedures of this study are of an entirely qualitative nature. Inspired by the tradition of Dutton and Dukerich (1991), I would like to create a project that “draws you in” (Dutton and Dukerich 2006). In order to draw a relational foundation, or critiquing the individuals with whom one interacts during the course of a project, I interview prosecutors to find out about the process through which they select laws and go to court. Here, in this study I try to comment on the applicability of the relational foundation to qualitative methods. Dutton and Dukerich (2006) examine the relational foundation which bridges the gap between different disciplines. The key to this type of research appears to be qualitative and in this project I aim to bring together law and management

in this same way. In addition, I hope to combine the different methodological approaches used in my dissertation.

I also hope to expand my relational practice through this essay, or the viewing the interconnections between the relational foundation individuals with more precision. Once I began my work on the first chapter, I quickly approached my connections who were lawyers to see if any of them worked with or had connections with prosecutors. Many lawyers had connections to prosecutors because they had gone to law school with them or gotten to know them otherwise. While only a fraction of them agreed to interviews, those that did were eager to share their experiences. I used the questions in Appendix 2 to steer the conversation, but often let the respondents tell me about portions of the questions that were particularly interesting or that they knew more about. The lack of participation and additional challenges along the path the interviews can be explain through a variety of reasons: the participant and researcher may not be acquainted, anxiety may exist about what the data will be used for, the language and terminology of the courtroom and prosecutorial process is very specific and potentially tacit (Kogut and Zander 1992), and finally, of course, prosecutors are very busy and it may be difficult to get on their schedule.

In order to successfully approach the interviews with the prosecutors, it is important to keep in mind several of the recommendations that Dutton and Dukerich (2006) make. Specifically, it is important to be vulnerable. One must be prepared to be influenced greatly by the research participants, and to have one's mind changed about certain presumptions made in the beginning. The research agenda should not be to validate theories but instead to learn about the participants and subject area of study as

much as possible. Another recommendation is to be genuinely interested. In other words, the passion of the subject area of study must be obvious and present. Under any other circumstances, research participants are less likely to be forthcoming about their experiences, because they may sense that the researcher is not fully engaged. In order to purvey this genuine fascination with the subject that the researcher has, one must listen not only to the words but also to the expressions, intonation and body language of the participant. The final two recommendations are related more to research that has multiple interactions with participants, these are to seek feedback and be trustworthy. With a one-shot interaction like the one in this study, it is important make an attempt at these things by asking intelligent questions about what has already been said and showing an understanding of the topic of the law.

This approach is precisely the type of research that was recommended by Sutton (1997) and there still appears to be a gap between how much of this type of research is actually used. According to this work, researchers can utilize their own “closet” qualitative research to improve previous or extant work. It is important to note that these studies include portions of the problem that have not yet been reviewed or may induce further quantitative information gathering or analysis. This is the final stage of this project, but it is also the beginning of a research agenda that I hope will incorporate polysemantic symbolic codes. It is also possible that sometimes qualitative research should be downplayed and not used as a separate project. Fully aware of this possibility, I decided to create this third chapter as a separate study that would go through and further develop the initial qualitative study that was part of the preparation to complete the quantitative study that comprises the first chapter of this thesis. This was not the plan

initially, but the more I talked to prosecutors, the more I realized this part of the research deserves a full and separate treatment.

Thus, I will pursue two methodologies to capture the qualitative aspects of the prosecutors acting among polysemantic laws. The first will be interviewing until participants no longer contribute any additional insights and one achieves theoretical saturation, also known as the “Snowball” method. Essentially, a researcher interviews contacts obtained throughout the study until the information they provide begins to be repetitive. This stage came surprisingly early in this study, as prosecutors were answering the question in very similar ways after 15 interviews. Since others were scheduled, I completed 22 but stopped after that.

The other method I use to qualify the information gained during the interviews is to send out a survey. This survey appears on Qualtrics.com, a website that allows open coding of surveys and questionnaires and for partly completed responses to be saved. I contacted nearly 2300 prosecutorial offices and received over 200 responses.

The 200 responses constitute a low response rate. The danger of a low response rate is non-response bias. In a survey of general practitioners, authors found that younger GPs as well as those in single practices were more likely to respond (Templeton, Deehan et al. 1997). This may translate to younger prosecutors and those in smaller offices to respond more. Nevertheless, we seem to have responses from both prosecutors with a high tenure and from large offices as well as small. Moreover, this is the only survey of its kind that allows some insight on the mechanisms and when used with the interviews they can use a lot of insights.

For some I had an email address, which I used and for others I only had a fax number. I sent those faxes via a software that is able to send out massive faxes called Ringcentral.com. The questionnaire I used was vetted through two senior professors. The survey ought to have taken no more than 15 minutes to complete. I hope that this will enable me to better understand that process through which prosecutors make decisions and exercise discretion over which law is selected in the trial of defendants. I expect that although the offices differ in policy, enough consistency exists among offices that viable comparisons will be able to be made.

Through these two methodologies, I arrived at the following results.

RESULTS

This section presents the results of the interview study. It contains three sections. First, I ask if polysemantic laws exist. The second asks about motive, or rather if polysemantic laws are associated with higher conviction rates. Finally, I discuss prosecutors' career aspirations and whether they affect judgment. This study is part of a larger dissertation project concerning the discretion of U.S. prosecutors over the statutes they select in order to gain convictions. While the first part of the study is quantitative and the other an experiment, certain questions cannot be answered by either. In order to gain understanding about the causal relationship between law selection and conviction as well as other factors, it is necessary to conduct a qualitative study.

Why do prosecutors seek high conviction rates? What is most striking in these findings is that the conviction rates may not be equated with justice. According to prosecutors, convictions are only made when defendants are truly guilty, but the idea that polysemantic laws can be exploited points to the reverse, at least part of the time.

Hopefully, only a small portion of polysemantic convictions are incorrect. The reasons these laws are selected, however, are potentially related more to the fact that these laws are winners.

WHICH LAWS: IF POLYSEMANTIC LAWS EXIST

Within the U.S. Code, laws are organized in a very specific way and while their polysemantic nature is not necessarily what classifies them, there are differences that can correspond to our classification. Laws are primarily organized according to the gravity of the crime they adjudicate. Strictly, this means they are organized into violations, misdemeanors and felonies. Felonies usually take a great deal longer to trial, according to the survey as long as 72 weeks in some districts. It is the felonies that interest us most, because this is where white collar crimes are primarily classified. The way that these vary among themselves has often to do with how much contact there is with the police. One prosecutor put it succinctly:

For the vast majority of cases (misdemeanors) there is very little, and most often no contact with law enforcement. For serious felonies there is substantially more contact and for the most serious felonies there may be daily contact with the investigators for weeks or months.

For those cases that take weeks or months, it is clear that discretion is extremely possible and likely to be caused by the possibility of changing the charges to better fit a winning case. Each felony (as well as misdemeanors and violations) has classes that indicate in the sentencing guidelines what kind of a win the case will be. This is always a large negotiation between the judge and the ADA who is sent to court, or in the case of smaller districts, the DA or the only ADA. In both smaller rural and larger metropolitan districts, the judge faces the same ADA each time. Because smaller districts only have

one of each of these representatives and the larger districts have a horizontal processes, where each attorney has a role that a specific attorney always plays the role of interacting with the judge in the same courtroom, the judge faces the same ADA for each trial. Once the charge is negotiated and decided upon, if that is the case and no plea bargain is agreed upon beforehand, another judge and ADA handle the trial.

The final decision about which law to bring to trial also involves the role of the victims. Although it is clear that the People are being represented not the victim or witness, prosecutors do take into account their suggestions and wishes. Often witnesses are related or familiar with the defendant, and may have some insight on how that person ought to be treated.

The witness does not have a say on what goes on; however, prosecutors may take into account the view of the witness if they are a victim.

The way that the laws are selected are by the legal attributes of the case and deciding what kind of law can apply. The leverage of the prosecutor is to select a law that fits that description that is also polysemantic in nature. Each time, the prosecutor selects one or more laws. In many cases, there are formulas for selecting a specific kind of set of laws for a case that has been tried that way before. The prosecutors know these formulas and take advantage of them in the way that is most applicable to the case at hand. Moreover, the relationship with the judge matters, especially when there has been a long series of interactions. In addition to analyzing the information the police or investigating agency provides, the prosecutor identifies legal attributes of the evidence that can point to which statutes to apply. Once she is fully familiar with the case, she selects from the U.S. Code, a statute or statutes that will be used in the case. She selects among objects of

differing polysemantic values. The ability of the prosecutor to select the appropriate application of the statute she has selected depends on her influence.

Finally, prosecutors often use sets of laws that are pre-selected for a particular crime. For example, if the crime is forgery, the federal mail fraud state, along with conspiracy and obstruction of justice, can often be used. These are all polysemantic statutes. In combination, they are a powerful weapon against almost any defendant. Such bundles provide prosecutors with the ability to combine polysemantic laws with those presented initially by the police. The prosecutors I interviewed, often referenced examples like the one I list above, as sets of laws that are often used in conjunction with one another. I believe this justifies our use of the polysemantic measure in Chapter 1 because it is evident that polysemantic laws are used more often in conjunction with others than simply alone.

MOTIVE: ARE POLYSEMANTIC LAWS ASSOCIATED WITH HIGHER CONVICTION RATES?

Showing that there is a positive relationship between polysemantic laws and conviction rates would violate what is written in the literature about ambiguity leading to lower performance. So far, researchers have claimed that with higher ambiguity, as in the case with polysemantic laws, one observes lower performance. I see however, that prosecutors are able to deal with ambiguity quite well. Prior to presenting the results of the interviews as they relate to the research question, I would like to describe some of the facts that I learned while conducting interviews.

As mentioned before, the process through which a case travels from the police to the courtroom is often overseen by numerous prosecutors. The offices can be organized

either horizontally, where the case stays with one prosecutor. This is the case about one-third of the time. Differences may exist within states even, as the decision to choose vertical or horizontal processes depends on the District Attorney herself and may vary completely. In fact, according to my survey, 76% of districts have a horizontal intake. The other possibility is that the office is horizontally organized and that the case passes to different prosecutors when it is first charged, then when it enters arraignment, and then when it potentially enters special bureaus, until the plea bargain process, and then when it is tried. In the vertical process, a specific prosecutor works alone on the entire case, spanning from when it is received from law enforcement to when it enters the courtroom. In general about 15% of cases make it through the plea bargain process into the courtroom. The other 85% are either dismissed or end in a plea bargain. In our quantitative study, we study only those cases. Here, however, I ask about the prosecutor's discretion through all cases, starting at when they receive them. Prosecutors have high discretion in both cases, because they may make changes to the law being tried at any point in the case. One prosecutor said the following, and it was echoed in many interviews. It serves as an indication that there may be a correlation between the law selected and the conviction result.

When it's my turn to look at a case, I take a look at the case sent from the police and very often I feel compelled to change the charges. I mean, they often overlook some charges or don't submit enough of them. It's mostly that, them overlooking some charges.

This quote leads to the next portion of the interviews that I would like to relay. A slight tension between prosecutors and the police seems to exist in many prosecutorial districts. The initial information that the prosecutor receives about the case is from the

law enforcement agency involved in the crime fighting. Thus, an initial suggestion exists regarding what charges to bring. The police are also vested in convicting the case, but the incentives for the prosecutorial office and the law enforcement agency (be it police, the Securities and Exchanges Commission (SEC), or the Department of Defense (DOD)) may be different. The police may be more involved with the victims. And while I will discuss later how the victims play into the decision of the prosecutor about the law, it is still possible to say that a tension exists between the police and the prosecutors. While prosecutors do not overtly complain about the police they work with, they certainly consider them less than well-versed in the notions of the law. They often state that the law enforcement officers do not consider that more statutes could have been added to help improve the chances of the case winning in court. The police do not do an adequate job of identifying polysemantic laws in the charges, and completing charges that are more likely to get a conviction. Perhaps they are unaware of the polysemantic nature of the laws, although they appear to at least have an idea about what laws are associated with conviction.

In terms of what the eventual string of conviction leads to, it is crucial to understand that there is a goal involved for most District Attorneys. The office of the District Attorney can be an adequate stepping stone for further elected offices or appointed ones like senator or judge. Here, I seek to determine how much this drives prosecutors in their actions and how much they therefore worry about the concerns of constituents. While Assistant District Attorneys do not necessarily follow a career path like the DAs, they are often involved with their constituents, and consider their job to be “serving the people” and feel that they owe it to them to have a victory. According to the

survey, 47% say they have a large amount of discretion over the laws they select for the case. This is lower than would be expected, but it seems that this question asked only about the particular law. Overall discretion over how the case ensues must be higher. They go back to the individuals involved in the case and to the media as support for pursuing defendants. Although they do not necessarily seek out media attention, they do appear to feel like they aim to please those that follow them.

Another aspect that could increase conviction rates rather than using polysemantic laws or even misusing them could be considered misconduct. Prosecutorial misconduct is not following the standard protocol of the trial such as discovery rules. On the surface, prosecutors are very averse to misconduct. They claim that it is the worst crime and claim there are serious consequences for any prosecutor committing misconduct. Prosecutors appear to be very preoccupied with this possibility. It is considered a very strong privilege to have as much discretion as prosecutors have, and thus they consider this something that needs to be protected and claimed as a right. This is especially the case in white collar criminal cases, where misconduct may be easier because of the way that mens rea, liability and legality are exempted. However, it is not unreasonable to believe that the actions of the prosecutors are inspired by the will the serve and people and justice. Prosecutors are also very motivated to win in general. Here, I give an example of the confidence that prosecutors have when they enter the courtroom. “I f***** need to know I’m gonna get that conviction.”

Why might they be so motivated? It is possible that they simply desire victory from a psychological standpoint. Also, it may be that the mandate of their office is so

strong that they feel strongly compelled by it. “Usually I won't charge something we can't prove from the get go.”

Also, as mentioned above, they may be interested in pursuing justice. Finally, they may be limited by government resources, which have a maximum above which they cannot spend.

I can't go beyond my budget. There is a certain amount I can spend and after that I don't have resources and I can't continue the investigation or even the trial. You have to be really careful.

Prosecutors also face speedy trial rules in many states, where the trial has to be over within a certain period (such as 90 days) after it has been brought to court. This causes them to strongly consider going to court, and only going if they feel they can secure a conviction quickly.

Thus, in this section, we find that prosecutors have an a priori view of the result of the trial and that it is conviction. They take specific steps, namely selecting certain laws, to succeed at this goal. The laws they select are often in bundles and they are often polysemantic. One can conclude that the answer to the question, whether polysemantic laws are related to conviction, is yes. Prosecutors use their discretion over polysemantic laws strategically.

DISCRETION: DO CAREER MOTIVATIONS AFFECT THE USE OF POLYSEMANTIC LAWS?

This leads directly into the question of whether or not prosecutors have career aspirations when they serve in the prosecutorial office. To review, there are several reasons why prosecutors may use polysemantic laws: they may desire victory, they may pursue justice, they may be limited by government resources, and finally they may wish

to raise their status, as described above. Prosecutors are responsible towards their constituents, whether they are elected or appointed. They also answer to the media, who threaten them with bringing potential misconduct into the public light (Adut 2005). As all social control agents and agents dealing with the field of strategy, prosecutors struggle with limited resources. There is only so much that they can do within what they are permitted by their office.

Of course I have to be careful about how much is being spent on the investigation. We do what is necessary, but within certain limits. If there is a charge that doesn't make sense after the trial starts, or would consume too much effort to investigate, those charges will be dropped. Those charges, because they won't allow a conviction, will be dropped.

A salient recollection from many prosecutors was that no one can perceive waste. It is clear that prosecutors seek high conviction rates, however, it is not so clear that they do so in order to advance their career. A great difference exists between District Attorneys (DA) and Assistant District Attorneys (ADA). While DAs may go on to be judges and senators, this is not a typical career path for ADAs. Because DAs are elected and ADAs are appointed, ADAs do not seek further political careers. Not all districts have ADAs due to their size, however. They still are very much responsible toward their constituents when appointed, but they do not have the same career-minded orientation as their bosses. This is where the difference lies. Thus, DAs often sought convictions with a plan of raising the conviction rates, as measured in the first chapter of this dissertation. Several different reasons exist for polysemantic laws to be used. Prosecutors seek to conduct career “accelerating” cases, such as high profile cases, which they hope to win. ADAs act a bit differently because they do not necessarily seek to advance their career,

but instead tend to be committed to the cause of the People and serving their constituents. They embrace the role of a protector of the victims involved in the case as well.

We work for the People. They are the ones who are represented in the seat. We do not represent the victims of the crime but the entire People themselves. The prosecutor serves the People. We do take victims pleas into account but they are not the ones who are represented alone.

After all, all prosecutors seek high conviction rates. An understanding of their behavior and the way their incentives are organized is therefore essential. If the prosecutor's choice of law goes according to play, it seems that the selection of the polysemantic law led to a higher conviction rate. If the conviction did not occur, this is surprising if a polysemantic law was used. Prosecutors most likely have strong discretion (Hambrick and Abrahamson 1995). This is generated by their influence. By influence, I mean the extent to which the prosecutor has an impact on her constituents and co-workers and is based on her ability. She works through a professional logic: she pursues the path of justice that is the most convenient for her professional agenda. This is in contrast with democratic logics, which although always places a chasm between "us" and "them," also allows for the reaction of the people to have a say about what laws will be selected (Mouffe 2000). Through these logics, ADAs focus on pleasing the constituents and serving the People and thus do not look into rising in the ranks and going further that just that office. This appears to be constant among districts. Instead of assuming that all prosecutors follow the same career path, I triangulated and found that ADAs follow a slightly different path. This does not, however, mean that they do not pursue polysemantic laws and convictions in the same way that DAs do. They continue to select

the law that is most likely to win, and they do use patterns to selecting groups of laws that are formulaic for the crime committed and often lead to conviction.

Further differences between DAs and ADAs exist in addition. ADAs are concerned with justice, or the outcome favorable for the People. They also focus on the victims, as mentioned before, and they seem to be concerned that the outcome of the trial matches the facts of the case. Moreover, they are certainly extremely preoccupied with the potential of committing, being accused of committing prosecutorial misconduct, and even the potential of an implication that prosecutorial misconduct is common. In this way, ADAs are specific about their discretion.

DISCUSSION AND CONCLUSION

This study provides additional insights into the entire dissertation thesis. While the first two studies are quantitative and experimental, respectively, this study utilizes qualitative methodology. In order to triangulate the results received, I employ two qualitative methods. In the first, I interview prosecutors to try to gain answers to three questions. Firstly, I discuss laws that have different classification to see if a polysemantic classification fits in. The second question is whether there is a correlation or even causal relationship between polysemantic laws and conviction. The last is regarding career success and further career aspirations of prosecutors. In the second method, I use a survey to answer the same questions to a larger scale of prosecutors. I received over 200 responses to the survey, which takes about 15 minutes to complete. Thus, this study provides insights regarding whether polysemantic laws are associated with higher conviction rates, career aspirations of prosecutors and how prosecutors select laws in terms of whether or not they are polysemantic.

In terms of higher conviction rates, it is evident from our conversations that prosecutors seek conviction rates and use that to be their primary goal once a case goes to trial. If a conviction cannot be secured, the prosecutor has many options including plea bargaining or dropping the case. It is important to remember that speedy trial rules often influence a prosecutor's choices. In terms of career incentives, the results are mixed. It appears that DAs attempt to attain senator or judge positions after their election, but ADAs are in their position more for the long run and pursue justice more directly. They have a strong affiliation with the People, who they see themselves as serving and also often take victim's considerations into account. In terms of polysemantic laws, it is clear that some prosecutors recognize a different quality of certain laws, or that they can give multiple interpretations. Moreover, they admit to using certain formulaic combinations, or bundles, of laws in order to secure conviction. Most importantly, they indicate that they have a great deal of discretion no matter if their system is horizontally or vertically organized. Further, the relationship between the police or other law enforcement agencies can often be tenuous, so that the charges presented initially are subject to change.

Overall, this study complements the first two chapters of this dissertation. I find support for the quantitative results we find in Chapter 1, by recognizing that prosecutors have high discretion independent of the way that an office is organized (whether horizontally or vertically) and the type of office that it is (rural or metropolitan). It is also evident that prosecutors have a strong motive to win, for various reasons. I also find a strong indication that our results in Chapter 2 are valid, as prosecutors, particularly ADAs feel a strong call of justice and defending the People. To conclude, prosecutors are not

the People's hired guns, but they are empowered with a great deal of discretion which they utilize.

APPENDIX 1 – PROSECUTOR’S SURVEY

Dear Sir or Madam:

I am a Doctoral Student at Columbia University. I am studying the process through which prosecutors exercise their discretion. Attached is a short survey which is an important part of my research and I would be very thankful if you could contribute to my research by filling out this short survey. I would greatly appreciate if one, or perhaps more Assistant District Attorneys (ADAs) in your office could fill it out. The survey takes an absolute maximum of 10 minutes to fill out.

I would be delighted to email you the results of the questionnaire, as well as a précis of the findings stemming from my dissertation research.

Could you please select continue below to be redirected to the questionnaire directly. Your responses will be stored.

Thank you in advance for your participation in the research study.

Sincerely,

Alicja Reuben

- Continue

Optional: Please enter your prosecutorial district.

INTAKE

Is there a horizontal or vertical intake process at your office? In other words, are there a large number of ADAs assigned to a case or does one ADA see a case all the way through?

- Horizontal
- Vertical

How many weeks does each case take, on average?

On average, how many different ADAs see a case before it is settled, dropped, or prosecuted before it eventually goes to trial, if it does so?

On average, how much do ADA interact with the police in prosecuting a case?

- A small amount

- A moderate amount
- Very often

Does this also vary among white collar and violent and drug crimes?

- Yes
- No

As an ADA, how much discretion do you have in deciding which case you receive to prosecute? how much say do you get over which cases you receive?

- A small amount
- A moderate amount
- Very much

PRE-TRIAL SELECTION OF STATUTES USED TO PROSECUTE A CASE

What level of discretion does an ADA have in deciding which statute to use during the prosecution?

- Low level
- Medium level
- High level

Do you feel that the classification of laws goes beyond violation, misdemeanor, or felony?

- Yes
- No

What involvement do the victims of a crime have in influencing the statute under which the crime is tried?

- No involvement
- Some involvement
- Much involvement

On average, do many ADA's advise the prosecuting attorney concerning which statute they should employ to prosecute a case?

- None
- A few

- A great deal

How often is the statute used to indict a defendant different than the used to prosecute?

- Very rarely
- Often
- Almost always

If a case is prosecuted how much does the prosecutor know about the defending attorney?

Please skip to the next section if there is generally no relationship with the defense.

- Nothing
- A little
- Everything

Does the relationship between the prosecutor and the defense affect the ADA's choice of statute?

- Yes
- No

Does the defense have an impact on what law is selected for trial?

- Yes
- No

CHARACTERISTICS OF STATUTES

Would you say some laws have more than one interpretation while others are more clearcut?

- Yes
- No

Are multiple laws often used in conjunction with one another? For example conspiracy would be used with insider trading.

- Yes
- No

HIGH PROFILE CASES

What proportion of cases that the office is involved with would you label as “high-profile cases”?

- 0-15%
- 15%-75%
- 75%-100%

APPENDIX 2 – PROSECUTORS INTERVIEW QUESTIONS

1. Intake

- a. Is there a horizontal or vertical intake process in your office?
 - i. If horizontal, how much time do you take on each case, on average?

 - ii. If vertical, how much time do you take on each case, on average?

- b. How many different ADAs see a case before it eventually gets to trial, if it gets there?

- c. Do many white collar crimes take place in your district as compared to violent crimes?

- d. How much interaction does the ADA have with the police?

- e. Does this also vary among white collar and violent and drug crimes?

- f. As an ADA, how much say do you get over which cases you receive?

2. Selecting a law

- a. What level of discretion does a prosecutor have in deciding which statute to use during the prosecution? How far past violation, misdemeanor, felony, and classes does it go?

- b. What involvement do the victims have in influencing the crime that is selected?

- c. Do many others help the prosecutor with the decision?

- d. How often does it happen that a different statute is used for the case rather than the one used for the indictment?

3. Going to trial

a. If and when a case actually does end up litigated, how much does the prosecutor know about the defense? Please skip to the next section if there is generally no relationship with the defense.

i. Does the relationship with the defense affect any of the prosecutor's actions?

ii. Does the defense have an impact on what law is selected for trial?

4. Characteristics of the law

i. Would you say some laws have more than one interpretation while others are more clear-cut?

b. Are multiple laws often used in conjunction with one another?

5. Reputation

a. What proportion of cases are high-profile?

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CONCLUSION TO DISSERTATION

In this thesis, chapters 2 and 3 clarify chapter 1 in addition to making contributions independently. Chapter 1 presents the supposition that the use of polysemantic laws, those that are more subject to multiple interpretations, are associated with higher rates of conviction. This implies that prosecutors select polysemantic laws intentionally to achieve conviction rates. Chapter 1 contains a quantitative study of a dataset of cases and districts on which several regressions are run at different levels of analysis.

The study concludes that polysemy is positively associated with conviction but several issues remain unresolved. For example, it is unclear whether prosecutors pursue justice and how they view polysemantic laws. Those are the primary questions that chapters 2 and 3 attempt to answer.

In chapter 2, we intend to answer the question of whether prosecutors pursue justice. By using an experiment, we try to determine whether experimental prosecutors will select a law that is more fair or one that is more lucrative. Although we find a correlation between conviction and polysemantic laws, experimental prosecutors seem to avoid a vague law once they are aware of that role.

We employ three treatments where results vary. The players are a manager who potentially commits fraud and a prosecutor that can punish the manager after she is informed of a signal that indicates imperfectly whether the manager is guilty or not. In the first treatment participants play a naked game where actions and roles are called neutral and only economic outcomes are exposed. Next, we introduce a third player who is harmed by the potential fraud of the manager. Prosecutors seem to be concerned with

the harming of the third player and choose the just outcome more. Finally, we present a game where all roles and decisions are called by their names (i.e. manager, fraud, prosecutor, vague law, clear-cut law, no action). Here we find the most extreme results where prosecutors overwhelmingly choose the clear-cut law when seeing a signal of fraud. This indicates that prosecutors seem to pursue justice rather than success when there is a tension between the two.

In chapter 3, I seek to answer three questions. The first is whether prosecutors realize that there are polysemantic laws. I find that prosecutors recognize the difference between laws, even if they don't point to their polysemantic characteristics. They make changes to the charges assigned by the police and they bundle laws together for specific charges. Secondly, I ask if they use polysemantic laws and to pursue convictions. Once more, I find that prosecutors are extremely concerned with winning, and they only use charges that are likely to result in a conviction. In fact, they say they would never enter the courtroom without being certain of the conviction. Finally, I ask about the career motivations of prosecutors and find a surprising results. Namely, Assistant District Attorneys (ADAs) have very different career motivations than District Attorneys (DAs). The former pursue justice and the defense of the People as their primary goal and the latter are more likely to move on to different political positions such as a judge.

In the end we also find that I can piece some of it together but I still see gaps and things that contradict. Future research should sort this inconsistency out. One example is the career question. Why do ADAs utilize polysemantic laws if they are not clearly motivated by advancing to further, higher, political offices? Is the motivation of pursuing justice enough to make them seek convictions? Another question is what type of other

symbolic codes are polysemantic and are used to bolster performance? Further, chapter 1 can be bolstered by including new measures of polysemy such as token counts or other computer aided text analysis measures. At the end of the day this thesis clarifies the idea that prosecutors rely on their discretion to try cases and this discretion is a legal strategy.

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