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University of New Haven

Honors Program

2020-2021 Honors Thesis

No One is Above the Law: Public Perception of Prosecutorial Misconduct's Influence on
Wrongful Convictions

Amanda N. Pappas

A thesis presented in partial fulfillment of the requirements of the Undergraduate Honors
Program at the University of New Haven.

Student:



(Signature)

Thesis Advisor:



(Signature)

Department Chair: _



(Signature)

Honors Program Director:



(Signature)

May 14th, 2021

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Abstract

Wrongful convictions pose a large threat to the integrity of the United States criminal justice system. While there are many known causes of wrongful convictions, such as eyewitness misidentification, ineffective counsel, and false confessions, the most egregious cause is prosecutorial misconduct. According to the National Registry of Exonerations, prosecutorial misconduct has been found in roughly half of the exonerations listed in the registry. Prosecutors have a tremendous amount of power in the criminal justice system through determining plea deals, obtainment of evidence, disclosure of evidence to the defense, and many more. Studies have been conducted that reveal the occurrence of prosecutorial misconduct, yet very little has been done to correct such misconduct. This study addressed the prevalence of this topic and basic knowledge of United States citizens, specifically legal professionals on prosecutorial misconduct. This study found that perceptions of criminal justice system fairness had the most significance when determining prosecutorial liability, accountability, preventative efforts, regulation and support for overall reform.

Keywords: prosecutor, prosecutorial misconduct, wrongful convictions, criminal justice system fairness

Preliminary Hypothesis

The preliminary hypothesis of the current study is, if someone has a greater knowledge base and a more advanced overall perception and interpretation of prosecutorial misconduct's contribution to wrongful convictions, the more likely they will be in support of prosecutorial reform.

Research Questions

Two research questions were answered in this study. The first was “are legal professionals in support of reform”? The second question was “what personal factors and knowledge levels about wrongful convictions were predictive of support for prosecutorial accountability”?

Introduction

On March 23, 2015, a woman by the name of Debra Milke was formally dismissed of all her charges and became a free woman after spending 23 years on death row (Kiefer, 2015). She was falsely convicted of arranging the murder of her four-year-old son due to the prosecutor withholding key evidence that pointed to her innocence. In 2013, the United States 9th Circuit Court of Appeals overturned Milke's conviction after they found the prosecutor had engaged in misconduct. After looking into this case further, it was discovered that the Arizona prosecutor had been accused of misconduct in *over half* of the cases that the state sought the death penalty (Kiefer, 2015). This story is just one of many that evidences the long history and occurrence of prosecutorial misconduct and the impact such misconduct can have on the lives of United States citizens. Even though it took 23 years to correct this error, Milke was finally exonerated, becoming the 151st exoneree from death row since 1973 (Kiefer, 2015). This story is familiar to many. There have been over 2,600 exoneration cases since 1989 reported in the National Registry of Exonerations. That is 2,600 people and counting who have experienced the major flaw in the United States' criminal justice system which is wrongful convictions (Innocence Project, 2019).

Wrongful convictions are one of the greatest miscarriages of justice. For the purposes of this paper, wrongful convictions are defined as convictions of a factually or procedurally innocent person (Litman, 2018). A person who is factually innocent is one who never committed the crime they were charged and convicted for, like Debra Milke. Someone who is procedurally innocent is one who was harmed by the legality of the criminal justice process or was deprived of a criminal procedural right, such as a Fifth Amendment violation (Litman, 2018).

There are many consequences of a wrongful conviction. First and foremost, people lose decades of their lives by being behind bars for crimes they did not commit. After a wrongful conviction occurs, victims' families are not at ease because the true perpetrator is still roaming the streets (Litman, 2018). The community's confidence in the government and the criminal justice system is slowly diminishing after every exoneration (Litman, 2018). Simply being in the wrong place at the wrong time can cause someone to be sentenced to prison or worse receive capital punishment (Litman, 2018). Wrongful convictions are a product of numerous interrelated decisions from different actors that are involved in the criminal justice system (Acker & Redlich, 2011). The potential for a wrongful conviction can happen at any stage of the criminal justice process as there are multiple stages ranging from the initial arrest to the jury verdict (Acker & Redlich, 2011). However, a criminal trial is the final stage, and it is up to the prosecutor to ensure that guilty people are convicted. Given the prevalence of prosecutorial misconduct, it is important to examine the causes of misconduct and how it relates to wrongful convictions as well as reform efforts to correct these actions. This study examines legal professionals' perceptions and knowledge of prosecutorial misconduct and how such misconduct can lead to wrongful convictions with the hopes to identify key reform efforts that the public would be in support of.

Literature Review

In what follows, this comprehensive review begins by examining the causes of wrongful convictions as they have been articulated in literature to date. Then prosecutorial misconduct's contribution to wrongful convictions is discussed in further detail, followed by discussing prosecutorial immunity and finishes by discussion prosecutorial regulation.

Causes of Wrongful Convictions

The single largest cause of wrongful convictions in the United States is eyewitness misidentification. Eyewitness misidentification has played a role in over 75% of exonerations through DNA testing (Acker & Redlich, 2011). Eyewitness misidentification can be caused by “natural psychological errors in human judgement” or by any suggestiveness in the identification process (Gould et al., 2012). Suggestive lineups or identification processes are an issue in the criminal justice system because they can lead to bias and mistakes during an investigation. They can happen in two ways. First, law enforcement can execute suggestive identification procedures making the “ideal” perpetrator stand out to the witness or victim. The second way occurs when a law enforcement officer or observer confirms a witness/victim's identification, thus validating their choice (Gould et al., 2012).

The second greatest factor of wrongful convictions is the use of improper or fabricated forensic science. Roughly 50% of DNA exonerations, through February 1, 2009, were a result of unvalidated and improper forensic science (Acker & Redlich, 2011). Although forensic science has evolved into what it is now and has increasingly become more accurate, that was not always the case. Decades ago, forensic science was inaccurate, yet law enforcement and prosecutors relied on inaccurate forensic science heavily. The utilization of inaccurate forensics led to wrongful convictions. Fortunately, however, DNA testing has been improved, modified and has

helped correct these forensic errors from the past (Gould et al., 2012). While forensic accuracy is improving, more evidence has come to light about forensic scientists and labs using improper practices. Improper forensic science practices pose a large threat to the credibility, quality of forensic science practices and the role forensics plays in the criminal justice system (Gould et al., 2012).

Wrongful convictions can also happen based on false confessions. The Innocence Project has recorded that about 25% of wrongful convictions exonerated with DNA evidence involved the defendants making false confessions, admissions of guilt or fabricated statements to officials (Innocence Project, 2011). It may be difficult for people to understand how someone can confess to a crime that they did not commit, but indeed it does occur. For example, a father could confess to a crime that his daughter was framed for to protect his daughter or someone could confess to a crime they did not commit due to brutal interrogation techniques or out of fear of the actual perpetrator.

Jailhouse informants and in general perjured testimony can lead to wrongful convictions as well. More than 17% of cases overturned by DNA exonerations were a result of another person testifying against the defendant (Innocence Project, 2011). Prosecutors typically use jailhouse informants to testify against the defendant in exchange for a deal, typically a reduced sentence or a lesser charge. While this may seem good in theory and a great way to obtain a guilty conviction, studies have shown that jailhouse informants are willing to perjure themselves on the stand for their own personal benefit. Some studies have shown that the prosecutors knew that their jailhouse informant created a fabricated story and still allowed them to testify (Acker & Redlich, 2011). Prosecutors are given the power to deliberately misrepresent the truth. It has been known that prosecutors have this power, yet the courts have still refused to

create a rule that would mandate an automatic case reversal of a conviction that was a result of perjured testimony (Acker & Redlich, 2011).

Another contribution to wrongful convictions is ineffective defense counsel. If a prosecutor fails to do their job, some believe that it is the defense attorney's job to find these errors and zealously investigate and defend their client (Gould et al., 2012). Prosecutors failing to do their jobs places a large burden on the defense counsel to find the errors in the system, provide the best representation and negotiate the best plea deals for their client. However, these burdens become unduly burdensome for public defenders who have limited resources and an egregious number of cases they are responsible for. Another potential pitfall with inadequate defense counsel is that defense attorneys can foster wrongful convictions by trying to obtain the best plea deal for their client instead of thoroughly investigating a case and figuring out a way to prove their client's innocence.

Another known cause of wrongful convictions is government misconduct, which includes but is not limited to police misconduct and prosecutorial errors or misconduct. Law enforcement misconduct was found in 37 of the first 74 DNA exonerations, equating to half (50%) of those exonerations (Acker & Redlich, 2011). More recently, researchers studied 2,400 wrongful convictions over a 30-year period and found the involvement of police misconduct in 35% of these cases (National Registry of Exonerations, 2020). Examples of law enforcement misconduct include suggestive lineups, tainting physical evidence and using brutal investigation techniques. On the other hand, prosecutorial misconduct was found in 33 out of the first 74 DNA exonerations (Acker & Redlich, 2011). The National Registry of Exonerations reported prosecutorial misconduct occurred in 30% of the 2,400 wrongful convictions studied (National Registry of Exonerations, 2020). Prosecutorial misconduct can include suppressing evidence,

Brady Rule violations, fabricating evidence, using dishonest expert testimony and jailhouse informants, and willingly bringing a case to trial knowing that the defendant is innocent.

Although there are a multitude of causes of wrongful convictions, prosecutorial error or misconduct tends to be the most dangerous and one that goes unnoticed. Prosecutorial misconduct can be defined as the use of illegal or improper means to gain a conviction. More specifically, Justice Sutherland defined prosecutorial misconduct in *Berger v. United States* stating that misconduct at the hands of the prosecution is when prosecutors “overstep the bounds of that propriety and fairness, which should characterize the conduct of such an officer in the prosecution of a criminal offense”. *Berger v. United States*, 285 U.S. 78, 85 (2015). The National Registry of Exonerations states that 54% of the exonerations in the United States involved prosecutorial misconduct. Prosecutors are exempt from all responsibility within their scope of employment under absolute immunity, vague ethical guidelines, and their vast amount of discretion and trust within the community, resulting in the system’s lack of prosecutorial accountability.

Prosecutorial Misconduct’s Contribution to Wrongful Convictions

Former U.S. Attorney General Robert H. Jackson once stated: “The prosecutor has more control over life, liberty, and reputation than any other person in America” (Acker & Redlich, 2011). This quote sheds light on the enormous amount of power prosecutors are given. They have a large amount of discretion, which allows them to have citizens investigated; they have the authority to order arrests; they decide which cases will go to trial; and they make recommendations as to the proper sentencing for the convicted. With this role in society, a prosecutor is one of the most benevolent forces in society, but when a prosecutor acts in malice or with bad intentions, the prosecutor can be one of the worst, most dangerous forces in society.

Prosecutors can engage in very suggestive witness coaching, provide inappropriate and fabricated closing arguments, fail to disclose critical evidence, and allow a witness to knowingly falsify their testimony, to name a few (Gould et al., 2012). It may be difficult to grasp prosecutorial misconduct because of the amount of power given to them in a community, but it indeed happens. For example, John Thompson was about to be executed when investigators found out that prosecutors during the original trial withheld the results of a blood test that proved his innocence (Wines, 2018); John Floyd spent 36 years in prison for a murder before he was exonerated after someone else's fingerprints and DNA were found at the crime scene, but the prosecutor still prosecuted him anyways (Wines, 2018); Reginald Adams spent 34 years behind bars for the wife of a police officer's murder before being released after a buried police report was found in miscellaneous, unrelated case files that connected another man to the crime (Wines, 2018); and in 1992 Robert Jones was wrongfully prosecuted and convicted of a kidnapping and rape in New Orleans even though the majority of the evidence implicated another man (Wines, 2018). The prosecutor purposefully covered up the evidence that implicated the other man because it would have undermined his case. Under further investigation, the New Orleans District Attorney's Office found at least 45 other prosecutions dating back to the 1970s where the District Attorney's office suppressed evidence that could have helped the accused and knowingly prosecuted someone who was more than likely innocent (Wines, 2018).

Along with misconduct, prosecutors can engage in tunnel vision, cognitive biases, and emotional commitments that affect the way they prosecute crimes. Tunnel vision is the outcome based on the structure of our adversary system, internal office incentives and individual psychological rewards and pressures (Bandes, 2016). Prosecutors tend to become severely attached to the cases that they try. In return, a sense of loyalty to a specific version of events and

the guilt of a specific person develops, leading to tunnel vision (Bandes, 2016). This extreme loyalty can continue even after a different version of events or a different suspect is proven to be accurate. Prosecutors can have a difficult time formulating alternative theories or suspects leading them to pursue the wrong person (Bandes, 2016). The idea of loyalty appears a lot in a prosecutor's line of work. Sometimes prosecutors face divided loyalties and can sometimes be hard to deal with (Bandes, 2016). For example, the prosecutor has a duty to act zealously for the state as well as a duty to ensure justice has been done. This paradox can be self-conflicting at times. Prosecutors are expected to be neutral and impartial. However, they are also pressured by their office to win convictions. Due to this pressure they face, a prosecutor's desire to win a conviction has become a strong driving force in their career. As a result of the pressure prosecutors receive, a prosecutor's actions are dependent upon their vast discretion and intense internal pressures (Bandes, 2016).

The occurrence of tunnel vision, the thin line that prosecutor's walk on relating to their duty to ensure justice is done and their duty to be a zealous advocate, is clear in the Rolando Cruz case. Mary Brigid Kenney, the prosecutor, found herself walking this thin line when she reviewed the appellate case file of Rolando Cruz. Her findings suggested that the record was entrenched in politics and prosecutor misconduct that were a result of the eagerness to win the case instead of trying to find the truth (Bandes, 2016). When she asked her superiors to bring these errors to light, they refused. As a result, she ended up resigning from her position due to the conflict she faced. This example shows the lack of accountability, the existence of tunnel vision, other cognitive biases and its impact on wrongful convictions. These psychological tendencies, to no direct fault to prosecutors, can cause irreparable harm to the community and lead to wrongful convictions (Bandes, 2016).

The idea of representing “the people” can place a large burden on prosecutors. This burden is to keep bad people away from the rest of the community, giving prosecutors the notion that they are responsible for protecting “the people” (Bandes, 2016). This duty to protect “the people” can be falsely reinforced in the idea of conviction rates and the number of wins a prosecutor achieves. The higher the conviction rate is, the more it is conceived that they are protecting the people further facilitating the occurrence of tunnel vision. An experiment was conducted that tested whether the beliefs of guilt and the importance of getting a conviction would influence prosecutorial misconduct. The results showed that the stronger the perceptions of guilt were and the stronger desire to win a conviction led to a higher likelihood of misconduct (Lucas et al., 2008).

Furthermore, Professor Daniel Medwed in his article examining prosecutorial resistance to innocence claims post-conviction noted that “prosecutors may begin to internalize the emphasis placed on conviction rates and view their win-loss record as a symbol of their self-worth” (Bandes, 2016 PAGE #). In return this leads to prosecutors solely looking for information that validates their sequence of events, builds alliances with people who will help their case and isolates themselves from the opposing side. Evidently, this can lead to wrongful convictions. *Miller v. Plate* provides an example of this phenomenon. An 8-year-old girl died because of a heinous sexual assault. The petitioner was charged with murder. The key piece of evidence incriminating the petitioner was a pair of shorts that had red stains on it. These shorts were claimed to be worn by the petitioner on the day of the murder. The prosecutor had expert witnesses testify saying it was blood. On appeal it was disclosed that the red stains on the shorts were not blood but paint. The prosecutor knew at the time of the original trial that the red stains on the shorts were paint, but still had the expert witness testify saying the stains were blood. The

prosecutor felt that his actions were justifiable due to his strong belief that the defendant was guilty and the desire to bring justice to the little girl's family. *Miller v. Plate*, 386 U.S. 1 (1967).

It is difficult to blame prosecutors for wrongful convictions based on the notion of tunnel vision. It is important to understand that in these circumstances, the prosecutor's actions were unintentional, and this psychological phenomenon is innate to mankind. To help reduce the likelihood of tunnel vision, law enforcement should implement strategies and policies that help prevent tunnel vision from occurring and be compelled to speak up instead of suppressing potential instances of tunnel vision.

Stemming from tunnel vision, it is important to recognize that psychology can come into play when analyzing the nature and extent of prosecutorial misconduct. It is usually unclear whether a prosecutor acted in good faith or in bad faith that led to a wrongful conviction. Cognitive dissonance can affect the way a prosecutor views a case. It can be difficult for prosecutors to admit their mistakes and for prosecutors to accept that their individual actions have led to a wrongful conviction. As a result, prosecutors choose to deny that possibility. There is also the theory of conviction psychology that many researchers use to describe the motives behind prosecutorial misconduct. Conviction psychology centers around a person's "score-keeping mentality that compels them to win at all costs" (Schoenfeld, 2005). Researchers claim that the mentality comes from institutional, political and professional pressures to win convictions regardless of a defendant's innocence or guilt. For example, District Attorneys (DAs) may feel pressure to convict as many defendants as possible because some DAs have to be elected to office. Consequently, voters rely on convictions as a measure of success when choosing their DA.

Along with errors in psychological judgement, prosecutors can fail to turn over exculpatory evidence to the defense and can even suppress evidence. A failure to disclose favorable evidence to the defense is one of the leading causes of wrongful convictions. In the landmark case, *Brady vs. Maryland*, the Court held that a prosecutor's suppression of evidence violated due process. *Brady vs. Maryland*, 373 U.S. 83 (1963). When prosecutors suppress evidence, it is known as a Brady violation. The Brady rule is said to be one of the criminal justice system's only mechanisms to protect the wrongfully convicted from conviction, imprisonment and execution.

In many wrongful conviction cases there are usually more than one cause mentioned above that have led to the wrongful conviction. It seems that the causes of wrongful convictions are interconnected, and in some circumstances, one leads to another, which leads to another and so on. As mentioned above, prosecutors can engage in numerous activities that can lead to a wrongful conviction. Some are intentional, and some are unintentional. It is important that society recognizes and examines these causes to prevent them from happening.

Prosecutorial Immunity

There is a lack of accountability when it comes to ensuring that the work of prosecutors truly promotes justice and that their investigations and the trial process are ethical. The main reason for this lack of accountability is because prosecutors are protected under prosecutorial immunity. Prosecutors' actions during the investigation and trial process are protected, making them unable to be held liable if they were to make a mistake.

A prime example of the lack of prosecutor accountability is the case of Alfred Brain Mitchel. He was wrongfully convicted of rape and murder. There were crucial notes from the FBI lab's DNA unit that were suppressed during trial. These notes proved that Mitchell was

innocent of the rape charge. The prosecutor intentionally provided the jury with false evidence that implicated Mitchell of the alleged rape. Such evidence was withheld from the defense as well. The root of this misconduct was pointed at the prosecutor when the district court found that the prosecutor had “labored extensively at trial to obscure the true DNA test results and to highlight [his own, fabricated] test results” and whose closing argument was “entirely unsupported by evidence and... misleading” (Yaroshefsky, 2004). Fortunately, the 10th circuit reversed the death penalty decision because of this misconduct. The prosecutor in this case was never disciplined.

Under normal circumstances, a citizen of the United States or another person within the proper jurisdiction can be held liable for their actions that inflicted harm on another under 42 U.S.C. § 1983. There are, of course, exceptions to this statute, such as judges and legislative committee members; however, prosecutors were never directly given this kind of absolute immunity. Back when this statute was written, prosecutors and police officers had qualified immunity. Qualified immunity protects a government official from being personally liable for constitutional violations. It was not until the court ruling in *Imbler v. Pachtman* that absolute immunity was given to prosecutors. Absolute immunity gives government officials complete immunity from criminal and civil suits if the individual was acting within the scope of their job. Justice Powell elaborated his reasons behind providing prosecutors with absolute immunity. He noted that a prosecutor who is only protected by qualified immunity would be given the burden of the constant possibility of being sued. The prosecutor would also have to use his own resources to provide a defense to these claims (Grometstein & Balboni, 2011). In addition, without absolute immunity, the honest prosecutor could be held liable even though he genuinely meant no harm and his mistake was unintentional (Grometstein & Balboni, 2011). His last

reasoning was that the prosecutor should not have to defend one of his decisions in a trial that happened a long time ago. Having to do such a thing would place an additional burden on him and conflict with his current work.

While Justice Powell provides adequate justifications for the court's ruling, the court misses a key issue. What do we do when the prosecutor acts maliciously and purposefully commits misconduct, sending an innocent person to prison? By giving prosecutors absolute immunity, we are giving prosecutors the ability to intentionally commit misconduct and to maliciously prosecute a defendant who is innocent because there are no repercussions if they do so (Grometstein & Balboni, 2011).

Prosecutor Regulation

Personal and professional motivations alone do not lead to prosecutorial misconduct. Prosecutors are also given the opportunity to act improperly or misbehave. *Berger vs. United States* established the prosecutor's responsibility to ensure that "guilt shall not escape, or innocence suffer" (Gershman, 2014). Through considering this role as a prosecutor, it is obvious that the heaviest amount of responsibility for ensuring that the guilty, and only the guilty, are put away and sentenced to prison lies on the prosecutors' shoulders. The issue here is that there are very little ethical guidelines and regulations in place to ensure innocent people do not suffer, contrary to common belief. A prosecutor's ethical obligation is famously stated in *Berger vs. United States*, "[H]e may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one" (Yaroshefsky, 2004). Many states have adopted some sort of code of ethics, typically based off the American Bar Association's (ABA) Model Rules of

Professional Conduct. These rules are said to regulate lawyers and their workers. While it has been proven that these rules appropriately regulate lawyers ranging from a vast number of different discipline areas, they do little to regulate prosecutors. For the average lawyer, despite their specific area of expertise, they can be subject to professional discipline for violating these rules. Sanctions include suspension, a formal apology and even the revocation of their legal license and admittance into the bar. However, few ethical rules apply directly to prosecutors and courts are extremely reluctant to widely interpret and apply general ethical rules to prosecutors. As a result, prosecutors tend to go unregulated.

Many people claim that prosecutors are held to a higher standard than others yet there is no evidence supporting such a claim. Some rules can be applied to prosecutors but for the most part the ethical rules have little to no significance for prosecutors and how to conduct their line of work (Greene, 2016). ABA Model Rule 3.8 addresses a few aspects of prosecutorial work but is very limited. For example, there are little limitations on prosecutors' charging decisions. Many critics argue that there needs to be more demanding standards set in place relating to prosecutors' charging decisions (Greene,2016). The language in Rule 3.8 simply states that the prosecutor can bring about or dismiss charges for any reason. This includes reasons that are biased and unjustified. Prosecutors are given the authority to bring about charges that are unjustified and extreme as long as the probable cause standard is met. This is problematic because the probable cause standard is a very low standard (Greene, 2016). Very few states have revised Rule 3.8 to mentioned how prosecutors' charging decisions cannot be discriminatory against the defendant during the charging process and should refrain from prosecuting a defendant that is not supported by a prima facie case showing guilt (Greene, 2016).

To provide context with the current state of prosecutorial ethics, the Innocence Project proclaims a story of Wilton Dedge who spent 22 years in prison, primarily in solitary confinement. He was wrongfully convicted of brutally raping and assaulting a 23-year-old woman in her home. He is one of hundreds who maintained his innocence from day one and has been exonerated years after his conviction. Dedge's case illustrates several evidentiary problems that happen frequently in criminal cases. The first problem is the use of eyewitness identification offered by prosecutors during trial and the unreliability of these witness accounts. The 23-year-old woman described the perpetrator as an at least 6'5" tall man with blue eyes but later identified Dedge who was 5'5" with blue eyes as the perpetrator. Another issue was the untrustworthiness of the forensic evidence offered by the prosecutor. During Dedge's trial, a police dog handler testified that a little more than a month after the rape he conducted a "scent lineup" and concluded that his dog found a match between Dedge's scent and the scent on the victim's bed. The third issue in this case was the use of jailhouse snitch testimony. After Dedge's first conviction was overturned on procedural grounds, the police obtained a false testimony from a jailhouse snitch who had a prior history of falsifying other inmates' confessions. In return for his testimony, he received a reduced sentence (Green, 2017). The responsibility for the miscarriage of justice could be blamed on any criminal justice official (police, judge, defense). But the blame is really on the prosecutor for prosecuting a defendant when there was clear evidence of his innocence. This case is one of many where the prosecutor acted unethically; however, the prosecutor in the aforementioned case never received any court discipline for their actions of sending an innocent man to prison even though there was evidence clearly pointing to his innocence (Green, 2017).

In addition, there are prosecutor manuals, which can give helpful instructions but not all manuals are followed or read (Yaroshefsky, 2004). Vague and limited ethical rules are not the only problems with regulating prosecutors. Courts and other committees tend to refrain from punishing prosecutors for their misconduct even when in violation of a policy or ethical rule. Fred Zacharia mentioned in a 2001 article that prosecutors have only been publicly disciplined for their misconduct around 100 times over the course of a century. The largest number of cases relating to misconduct dealt with bribery, extortion or embezzlement. More recent studies have concluded similar results (Green, 2016). This low number is far from the actual number of cases regarding prosecutorial misconduct and undermine the extent of this problem. Not only is prosecutorial misconduct hard to find and can go unnoticed but many alleged cases get declined or dismissed by the judge. Attorneys fail to report their suspicions of prosecutorial misconduct as well (Green, 2016).

Prosecutorial regulation is extremely controversial, which is a reason why the ABA's development and enforcement of strict ethical norms on prosecutors are unlikely (Yaroshefsky, 2004). Currently, there are no outside entities that attempt to hold prosecutors accountable. This lack of accountability can be referred to as the "hands off" approach. The hands-off approach is based on the belief that the internal system and judicial oversight can effectively regulate prosecutorial misconduct. Prosecutor accountability is dependent upon internally developed standards and is implemented and enforced by internal entities. Some people believe that judicial oversight is sufficient to regulate prosecutor behavior; however, this may not be the case. This idea poses a problem because over 90% of indictments result from a guilty plea in our criminal justice system. This means that the judges are hardly exposed to prosecutorial misconduct. Consequently, judicial oversight is hardly a valid remedy. There is a lack of transparency with

the public, which shields prosecutors from public scrutiny, allowing prosecutorial misconduct to simply be overlooked (Yaroshefsky, 2004). This is how a wrongful conviction can be overlooked and fails to be corrected within the criminal justice system.

The improper regulation of prosecutors opens the door for intentional acts and mistakes that can lead to wrongful convictions. Prosecutors also do not have to worry about any repercussions because they are immune from liability and judges and prosecutor's offices are unlikely to reprimand them. This is a grave injustice to the public, diminishing their confidence in the criminal justice system and needs to be discussed and rectified.

Methodology

The Current Study

Prosecutorial misconduct has long played a role in wrongful convictions. Some research has been conducted on prosecutorial misconduct and its attribution to wrongful convictions. However, there is very limited knowledge on the public's opinion of prosecutorial misconduct. Prosecutorial misconduct is a difficult topic to research because there are several problems that impede efforts on gathering an accurate assessment of prosecutorial misconduct. These problems range from prosecutors covering up their misconduct to judges refusing to acknowledge such misconduct. A topic of research that is seldom studied is the potential correlation and influence prosecutorial misconduct has on wrongful convictions specifically. The notion that prosecutors could be the reason why an innocent person is sent to prison is often overlooked due to their authoritative role in society.

This study sought to uncover the public's opinion on potential consequences for when prosecutors engage in misconduct and propose reform ideas. The purpose of the current study

was to determine the level of awareness legal professionals (i.e. lawyers, law professors, etc.) had on wrongful convictions, how factors such as prosecutorial immunity and prosecutorial misconduct could contribute to wrongful convictions and participants' perceptions on ideal reform policies. The study's research questions were:

1. Are legal professionals in support of reform?
2. What personal factors and level of knowledge about wrongful convictions were predictive for the support of accountability for prosecutors?

The answers to these questions gave the researcher the opportunity to use legal professionals' opinions to recommend accountability measures and policy recommendations for prosecutors. In addition, the study provided insight on public support for or against immunity given to prosecutors. Lastly, this study was used to assess the level of knowledge legal professionals have on the correlation between prosecutorial misconduct and wrongful convictions.

Participants

The study had a final sample of 254 participants. The target population of this study was individuals over the age of 18 who are residing in the United States and were members of the American Psychology and Law Society (APLS). APLS was used to gather opinions from those who are invested in the legal world and have slightly more knowledge on the legal system than the general public. The population was reached through a listserv via the APLS. Two emails were sent through the APLS listserv on November 20th, 2020 and December 18th, 2020. Participants needed to have a legal background in order to take the survey. For the purposes of this study, having a legal background can range from academia to working as an active attorney to being a current student studying law. Participants were incentivized to complete this survey.

Ten participants were chosen at random to receive a \$10 amazon gift card. Seventy-nine percent of entering participants made it to the end of the survey.

Study Design

This study was a quantitative analysis of legal professionals' perceptions and knowledge on prosecutorial misconduct and its contribution to wrongful convictions. The instrumentation of this study was a 58-question survey via Qualtrics (See Appendix A on page 18). This survey was dispersed through two emails using the APLS listserv. The survey opened on November 20th, 2020. The survey officially closed on December 18th, 2020. The researcher considered the ethical implications of this quantitative study and received IRB approval for this method of research on May 17th, 2020. The researcher's study obtained IRB approval because it is an exempt population under 45 CFR 46.104(b)(2).

Study Variables

Below independent variables, dependent variables and control variables of the study are discussed.

Control Variables

The control variables in this study are personal demographics. Control variables were coded as follows:

- a) X1= age
- b) X2= gender
- c) X3= race (white or European American)
- d) X4= Hispanic/Latino(a)

Participants' demographic information was measured by the following five questions:

- a) "What is your gender?"
- b) "How old are you?"
- c) "How would you describe your race?"
- d) "What is your occupation?"
- e) "Do you identify as Hispanic/Latino(a)?"

The study's participants were most commonly female (n= 180, 71%), 40 years of age (M=35), White (n=227, 90%) and students (26%).

Dependent Variables

The dependent variables in this study are prosecutorial misconducts' contribution to wrongful convictions and need for reform. Broken down even further, this study identified nine dependent variables that are labelled throughout as follows:

- a) DV1= support for prosecutorial liability
- b) DV2= support for immunity
- c) DV3= support for reform
- d) DV4= support for preventative actions
- e) DV5= appropriate responses for misconduct relating to tampered evidence
- f) DV6= appropriate responses for misconduct relating to wrongful charging
- g) DV7= appropriate responses for misconduct relating to withholding evidence
- h) DV8= appropriate responses for misconduct relating to submitting false evidence
- i) DV9= appropriate responses for misconduct relating to misrepresenting the facts

The support for reform (DV1-DV4) was measured by evaluating questions relating to support for liability, immunity, ethical standards, disciplinary action and prosecutorial power.

The survey's first question set was comprised of the following questions, "What are the chances you would support...":

- a) prosecutors having immunity from criminal prosecution and civil liability?
- b) prosecutors having immunity, but only from civil liability?
- c) prosecutors having immunity, but only from criminal prosecution?
- d) more stringent ethical guidelines governing what prosecutors can and can't do?
- e) compliance for national prosecutorial standards that holds prosecutors more accountable for their actions?
- f) compliance for national prosecutorial standards that holds prosecutors more accountable for their actions?
- g) disciplinary action, civil or criminal, when a prosecutor is found to have committed misconduct?
- h) giving prosecutors less judicial discretion during the charging process?
- i) the internal governing of misconduct cases of prosecutors by the Prosecutor's Office?
- j) the external governing of misconduct cases of prosecutors outside of the Prosecutor's Office?

This question set used a coded scale from 1-5, (1) definitely would not, (2) probably would not, (3) might or might not, (4) probably would and (5) definitely would. Participants showed the greatest support for national prosecutorial standards that would hold prosecutors accountable for their actions (mean=4.65). Participants were also greatly in support of more stringent ethical guidelines governing prosecutors (mean=4.61), civil or criminal action when misconduct occurs (mean=4.37), and externing governing of misconduct cases (mean=4.37). The reform option that participants least supported was giving prosecutors immunity from criminal

and civil liability (mean=2.03). Participants were also not in support of prosecutors having immunity from only criminal prosecution (mean=2.16), and immunity from only civil liability (mean=2.29).

To study dependent variables five through nine (DV5-DV9), a new set of questions were presented stating “If a prosecutor...”:

- a) tampered with evidence during trial and it resulted in a wrongful conviction, what do you think is the most appropriate response?
- b) filed charges against a defendant who they knew was factually innocent but decided to prosecute them anyways, what do you think is the most appropriate response?
- c) withheld evidence from the defense pointing to the defendant’s innocence and it resulted in a wrongful conviction, what is the most appropriate response?
- d) introduces false evidence to sway a judge or jury in favor of convicting the defendant and it resulted in a wrongful conviction, what is the most appropriate response?
- e) misrepresents the facts and falsely persuades a jury to convict the defendant, what is the most appropriate response?
- f) makes an error related to a case and the defendant in that case is wrongfully convicted, do you think the prosecutor should be held liable?

Within this question set, participants could choose from five responses:

- a) criminal sanctions (e.g., sent to prison);
- b) mandatory letter of apology;
- c) civil lawsuit;
- d) professional sanctions (e.g., disbarment);

e) and decline to answer

These responses were coded from least severe (1) to severe (5) to reflect the following:

- a) criminal sanctions = 5
- b) civil lawsuit= 4
- c) professional sanctions= 3
- d) mandatory letter of apology=2
- e) no response=1

The majority of participants said that a prosecutor should be held liable if they made an error that resulted in a wrongful conviction (n=155, 61.0%). There was a split in responses as to whether they should be held civilly or criminally liable. 37% said prosecutors should be held both criminally and civilly liable whereas roughly 21% said they should only be held civilly liable. More than half of participants said that criminal sanctions should be imposed on prosecutors who tamper with evidence (n=128, 50.4%). A little under half of the participants would impose criminal sanctions on a prosecutor who introduced false evidence as a way to sway the jury or judge to convict the defendant (n=119, 46.9%) whereas a little under half said they would impose professional sanctions on a prosecutor who misrepresented the facts to the jury resulting in a conviction (n=104, 40.9%).

Independent Variables

The independent variables in the current study were highest level of education, proximity to prosecutors (I.e., whether participants were a prosecutor or knew a prosecutor) and other criminal justice workers, familiarity with the United States legal system and criminal justice

system, perceptions of the system's fairness, prosecutorial immunity and ethics. Moving forward each set of independent variables were coded as follows:

- a) X5= Familiarity with United States legal system
- b) X6= Scale of 1-10- familiarity with overall legal system
- c) X7= Scale of 1-10- familiarity with United States criminal justice system
- d) X8= Scale of 1-10- familiarity with United States civil court system
- e) X9= Know_Top3_Eyewitness Misidentification
- f) X10= Know_Top3_Falsified Testimony
- g) X11= Know_Top3_Forensic Evidence
- h) X12= Know_Top3_Scale
- i) X13= Know_Top3Rank_Eyewitness Misidentification
- j) X14= Know_Top3Rank_Falsified Testimony
- k) X15= Know_Top3Rank_Forensic Evidence
- l) X16= Know_Top3Rank_Scale
- m) X17= Know_LengthEx
- n) X18= Know_2019MostExoneratedCrime
- o) X19= Know_% WC causedbyPM
- p) X20= Know_ABAApplies
- q) X21= Know_CountEx
- r) X22= Know_QImmun
- s) X23= Know_AImmun
- t) X24= Know_ProImmun
- u) X25= Know_Most Harmful Cause of Prosecutorial Misconduct

- v) X26= Fairness of United States Criminal Justice System
- w) X27= Identifying Prosecutor as Most Powerful CJ Actor

To measure the highest level of the participant's education, the participant had to answer, "What is the highest level of education that you have completed?" Participants could choose from Grammar/Elementary School, High School Diploma or Equivalent, Vocational/Technical School Graduate, Some College, Undergraduate Degree, Master's Degree, Doctoral Degree, Professional Degree or Other. About 60% of participants obtained a Doctoral degree and 24% obtained a Master's degree.

The researcher asked participants "Do you or someone that you know currently work in the criminal justice system?", and "Are you or do you know a prosecutor?" to determine their proximity to prosecutors, other criminal justice workers and the criminal justice system overall. About 58% of participants said that they know someone who currently works in the criminal justice system. In terms of participants' proximity to prosecutors, one person responded saying they were a prosecutor, 44.1% said they know a prosecutor and 34.3% said they did not know a prosecutor nor are a prosecutor.

Next, the researcher gauged the participants' familiarity with the legal system. This was measured by asking "Are you familiar with the United States legal system?". The provided answers varied from slightly familiar, moderately familiar, very familiar and extremely familiar. Almost all participants stated they were at least moderately familiar with the legal system (97.4%). A small set of familiarity questions followed by asking participants "On a scale from 1-10, how familiar are you with the:

- a) United States legal system?"

- b) United States criminal justice system?"
- c) Civil court system?"

Slightly over half of the participants rated their familiarity with the criminal justice system an 8.00 out of 10.00 or higher (n=123). There was a decrease in civil court system familiarity compared to the legal system and criminal justice system. Participants were also asked "Are you familiar with the American Bar Associations Model Rules of Professional Conduct?" to gauge participants' familiarity of legal ethics and could answer between a range of not familiar at all to extremely familiar. Just about 1/3 of participants said they were not familiar at all.

Next, the researcher asked participants about fairness. Specifically, one question asked was "How would you rate the fairness of the criminal justice system?", and respondents could have indicated not fair at all, slightly fair, moderately fair, or very fair. Roughly half of the people that responded rated the system either slightly fair or not fair at all (48.1%).

Lastly, the survey asked various knowledge questions. These questions included:

- a) "Can you name at least one flaw that you see with the fairness of the criminal justice system?"
- b) "Who do you think has the most power in criminal justice system? 1 being the most powerful and 6 being the least powerful"
- c) "What are the three most common causes of wrongful convictions?"
- d) "According to the National Registry of Exonerations, what is the average length of time that a wrongfully convicted person spends in prison before being exonerated?"
- e) "In 2019, which crime is associated with the most exonerations?"
- f) "Overall, which cause of wrongful conviction is the most harmful?"

g) “How many people in the United States do you think have been exonerated and listed on the National Registry of Exonerates?”

h) “What factors might lead prosecutors to committing misconduct in their cases?”

An overwhelming majority of respondents identified systemic racism/ the racial disparities as a large flaw in the criminal justice system. On average, participants felt judges (mean=1.71) and prosecutors (mean=1.84) have the most power in the criminal justice system while forensic experts have the least (mean=5.13). Also, homicide and sexual assault made up for 74% of the responses about the crime associated with most exonerations. When asked for personal answers to when prosecutorial misconduct occurs, the researcher found a general theme of prosecutorial misconduct occurs when the prosecutors misrepresents, misuses or mishandles evidence in court or acts unethically, negligibly or illegally.

Procedure and Analysis

To examine the research questions mentioned above, the researcher conducted a univariate analysis of the variables and then a bivariate analysis to see the relationship between participants’ perceptions and knowledge of prosecutorial misconduct’s influence on wrongful convictions as well as participants’ willingness to support reform. Following these analyses, multivariate analyses were conducted to test the relationship of different variables with dependent variables one through four. Variables that were found to be non-significant were not removed from the analysis and instead were labelled “NS” in Table 13.

Results

Univariate Analysis

The values for the univariate analysis have been shared in the previous section where each variable was shared. Tables 1-11 (See Appendix A) provides an overview of the univariate analysis as well.

Bivariate Analysis

The bivariate analysis of this study entailed correlations between the independent and dependent variables. Table 12 provides an overview of the bivariate analysis.

DV1: Support for Liability

For support for prosecutorial liability (DV1), the variables found to be significantly correlated at a 0.01 level or lower were gender ($r=-0.173$), identifying eyewitness misidentification as a top cause of wrongful convictions ($r=0.218$), knowing the top three causes of wrongful convictions scaled ($r=0.256$), ranking eyewitness misidentification as the leading cause of wrongful convictions ($r=0.162$), knowing top three causes rank scaled ($r=0.174$), knowing the definition of qualified immunity ($r=0.456$), absolute immunity ($r=0.166$) and prosecutorial immunity ($r=0.206$) as well as the fairness of criminal justice system ($r=-0.201$). The variables found to be correlated below a 0.05 level were age ($r=-0.147$), identifying forensic error as a top cause of wrongful convictions ($r=0.133$), knowing the average length of time an exoneree spends in prison ($r=0.131$), knowing the top crime associated with the most exonerations ($r=0.126$), identifying the correct number of exonerations to date ($r=0.153$), and identifying the most harmful cause of prosecutorial misconduct ($r=0.150$). Lastly, the variables that were found to be correlated below a 0.10 level were familiarity with overall legal system ($r=0.106$) and knowing that the ABA model rules apply to prosecutors ($r=0.103$).

DV2: Support for Immunity

In terms of support for immunity, two variables were found to be significantly correlated at a 0.01 level or lower. These variables were fairness of criminal justice system ($r=-0.407$), and identifying prosecutors as having the most power in the system ($r=-0.183$). The variables found to be correlated below a 0.05 level were identifying falsified testimony as a top three cause of wrongful convictions ($r=0.173$), and correctly ranking false testimony as the second cause of wrongful convictions ($r=0.166$). Several variables were found to be correlated under a 0.10 level which were gender ($r=0.122$), familiarity with the criminal justice system ($r=0.123$), identifying top three causes to wrongful convictions scale ($r=0.136$), and identifying prosecutorial misconduct as the most harmful cause of wrongful convictions ($r=-0.132$).

DV3: Support for Regulation

The variables found to be significantly correlated at a 0.01 level or below for support for regulation were age ($r=-0.184$), and fairness of the criminal justice system ($r=-0.366$). The variables that were correlated below a 0.05 were gender ($r=-0.151$), race ($r=0.135$), identifying eyewitness misidentification as a top cause of wrongful convictions ($r=-0.151$), and identifying prosecutorial misconduct as the most harmful cause of wrongful convictions ($r=0.164$). Lastly, the single variable that operated at a 0.10 correlation level was familiarity with the United States civil court ($r=-0.123$).

DV4: Support for Preventative Actions

For support for preventative actions, the variables found to be significantly correlated at a 0.01 level or below were age ($r=-0.224$), identifying eyewitness identification as a top cause of wrongful convictions ($r=0.236$), the scale of the top three causes of wrongful convictions ($r=0.271$), the rank scale of the top three causes of wrongful convictions ($r=0.191$), knowledge of

qualified immunity ($r=0.557$), knowledge of absolute immunity ($r=0.171$), knowledge of prosecutorial immunity ($r=0.322$) and identifying prosecutorial misconduct as the most harmful cause of wrongful conviction (0.165). Several variables were found to be correlated below a 0.05 which were age ($r=-0.151$), race ($r=0.135$), familiarity with the United States legal system ($r=-0.142$), familiarity with the overall legal system ($r=-0.141$), identifying eyewitness misidentification as the top cause of wrongful convictions ($r=0.150$), and knowing the number of current exonerations ($r=0.155$). The variables that were correlated at a 0.10 level or below were identifying falsified testimony as a top cause of wrongful convictions ($r=0.121$), identifying false forensic evidence as a top cause of wrongful convictions ($r=0.110$), correctly ranking false forensic evidence as the third cause of wrongful convictions ($r=0.113$), knowing the average length of time an exoneree spends in prison (0.107), knowing percentage of wrongful convictions caused by prosecutorial misconduct ($r=0.110$), and knowing that the ABA model ethical rules apply to prosecutors ($r=0.117$).

DV5: Appropriate Response for Misconduct Relating to Tampered Evidence

The only variable found to be correlated at 0.05 level or below was identifying eyewitness misidentification as a leading cause to wrongful convictions ($r=0.140$). The variables found to be correlated at a 0.1 level were race ($r=-0.121$), identifying eyewitness misidentification as the top cause of wrongful convictions ($r=0.137$), knowing the average length of time an exoneree spends in prison ($r=-0.121$), and knowing absolute immunity ($r=0.150$).

DV6: Appropriate Response for Misconduct Relating to Wrongful Charging

The only variable significant correlated at a 0.01 level or below was age ($r=0.192$). Gender ($r=0.158$) and identifying prosecutors as the most powerful actor in the criminal justice system ($r=0.159$) were found to be correlated below a 0.05 level. The rank scale of the top three

causes of wrongful convictions ($r=-0.120$) and fairness of criminal justice system ($r=-0.123$) were correlated at a 0.1 level or below.

DV7: Appropriate Response for Misconduct Relating to Withholding Evidence

The sole variable found to be correlated was race ($r=-0.121$) operating at a 0.1 level or below.

DV8: Appropriate Response for Misconduct Relating to Submitting False Evidence

Race ($r=-0.143$) operated at a 0.05 level or below. Familiarity of the United States civil court system ($r=0.123$) and scale of the top three causes of wrongful convictions ($r=0.138$) were found to be correlated at a 0.1 level or below.

DV9: Appropriate Response for Misconduct Relating to Misrepresenting The Facts

The variables found to be correlated at a 0.05 level or below were race ($r=-0.173$), and fairness of criminal justice system ($r=-0.177$). The variable found to be correlated at a 0.1 level or below was identifying false forensic science as a top cause of wrongful convictions ($r=0.121$).

In review of all the bivariate analyses it should be noted that identifying as Hispanic or Latino(a) (X4) was not significant for any of the variables. The strongest model was Model 1 which represented support for liability. The model with the least significance was Model 7 which was determining the appropriate response to prosecutors withholding evidence from the defense. In general, however, dependent variables 5-9 did not show a lot of significance across the models.

Multivariate Analysis

The results in this section were conducted using a regression predicting the support for liability, immunity, regulation and preventative efforts (dependent variables 1-4). Table 13

provides further information on the bivariate analysis. The first set of multivariate regressions focused on support for liability. Model 1 was significant, and the higher values represented support for liability. Three variables came through in this model which were gender, knowledge of qualified immunity and fairness of the criminal justice system. Knowledge of qualified immunity was the most significant ($r=0.080$) and had the most impact ($B=0.306$). The qualified immunity variable indicated a positive relationship. Both fairness of the criminal justice system ($r=0.040$) and gender ($r=0.076$) came through at a 0.05 level or below and had negative outcomes.

Model 2 represented support for immunity. Higher values meant those that were in support of prosecutorial immunity and this model was significant. This variable operated in the opposite direction of the other variables meaning higher values meant more prosecutorial protections. Three variables came through in this model which were identifying falsified testimony as a top cause of wrongful convictions, fairness of criminal justice system, and identifying prosecutors as individuals who had the most power in the system. Fairness of the criminal justice system ($r=0.077$) was the most significant and had the most impact ($B=0.369$). This variable indicated a positive relationship. Operating at a 0.05 p value or lower was the prosecutorial power variable ($r=0.131$) and identifying falsified testimony as a top cause of wrongful convictions ($r=0.122$). The falsified testimony variable had a positive relationship while the prosecutorial power variable had a negative relationship.

Model 3 represented support for prosecutorial regulation. The higher values represented support for prosecutorial regulation. Three variables were significant: age, identifying eyewitness misidentification as a top cause of wrongful convictions, and fairness of the criminal justice system. Fairness of the criminal justice system was the most significant ($r=0.043$) and had the

most impact ($B=-0.279$). Fairness of the criminal justice system had a negative relationship. The eyewitness misidentification variable ($r=0.077$) and age ($r=0.003$) variable were correlated at a 0.1 level or below and were both negative outcomes.

Lastly, Model 4 represented support for preventative actions for when misconduct occurs. The higher values represented support for preventative actions. Two variables were significant, and they were knowledge of qualified immunity and knowledge of prosecutorial immunity. Knowledge of qualified immunity was the most significant ($r=0.234$) and had the most impact ($B=0.386$). This variable had a positive relationship. Knowledge of prosecutorial immunity ($r=0.18$) had a positive relationship as well and operated at a 0.05 or below level.

Discussion and Conclusion

While the results from the research study are incredibly important, it is also important to understand and apply the results to what is currently known about this topic. Prosecutorial misconduct, and its contribution to wrongful convictions, is a prevalent topic that tends to go unnoticed, yet over the past decade numerous misconduct incidents have become known. The motive to engage in misconduct arises as a result of how society defines the prosecutorial role, internal governing, cognitive biases, prosecutorial work culture, and weak sanctions for when misconduct happens.

Currently, in 2020 and 2021, there has been a large focus on law enforcement reform. Police officer misconduct is increasingly coming to light, through visual evidence and testimony, and the government is finally beginning to enact desirable change (Edmondson & Fandos, 2021). While police misconduct is egregious, it is worth emphasizing that prosecutors are one of the last criminal justice actors that make key decisions about a defendant's fate prior to conviction.

Therefore, more attention needs to be directed towards uncovering the frequency of prosecutorial misconduct, understanding the motivations behind misconduct, and bring forward solutions to deter misconduct—especially with the same enthusiasm as addressing police misconduct.

Overall, there was general support for prosecutorial liability, both civil and criminal. Roughly 61% of people favored civil and criminal liability. Civil liability was highly desired compared to solely criminal liability. This finding goes to say that many believed absolute immunity needs to be revisited and was also reemphasized on a univariate level for dependent variable 2 where roughly 55% of participants did not support prosecutors having immunity from civil liability and criminal prosecution. Another takeaway was the lack of support for prosecutorial immunity. This topic is further discussed below in the policy implication section. Nonetheless, the majority of participants were not in support for prosecutorial immunity.

With the current state of prosecutorial immunity, prosecutors cannot be held civilly liable which is contrary to the study's findings. There was also support for disciplinary action for when misconduct occurs. This finding is also against current practices as it has been reported that very few misconduct cases result in disciplinary action. Enforcing disciplinary action when misconduct occurs will provide the accountability piece that participants are looking for. Disciplinary action should range from a warning all the way up to termination depending on the severity of the misconduct.

Lastly, the key takeaway of the study was the influence that participants' perceptions of criminal justice fairness had on their likelihood to support prosecutorial liability, accountability, immunity and preventative efforts for when misconduct occurs. On a univariate level, roughly half of participants reported perceiving the criminal justice system as slightly fair or not fair at all which is a cause for concern. On a bivariate level, fairness of the criminal justice system came

through independent variables 1-3 and 9 and on a multivariate level came through on dependent variables 1-3. The relationship between fairness and support revealed that those who felt the system was unfair were more likely to support liability, accountability and regulation compared to those that felt the system was fair.

It is important to note that fairness is an opinion or perception that is comprised of participant's experiences and knowledge levels of the justice system which can greatly vary from person to person. However, there was a wide discrepancy between those that felt the system was mostly fair or completely fair and those that felt the system was slightly fair or not fair. Also, 177 out of 240 participants (74%) rated their familiarity with the criminal justice system as an 8.00 or higher out of 10.00, yet this discrepancy still existed. This signals that there are other mechanisms aside from knowledge on the criminal justice system and familiarity with the system that led to the perception of fairness and therefore support for liability, accountability, and regulation of prosecutors.

Overall, these key takeaways helped answer the two research questions of the study. The first research question was: Are legal professionals in support for reform? The majority of participants were in support for reform. About $\frac{3}{4}$ of participants supported heavier compliance with prosecutorial standards (75%), more stringent ethical guidelines (74%) and disciplinary action (72%). All of which are indicators of reform efforts for prosecutorial misconduct.

In terms of research question two, which sought to determine predictors of support for prosecutorial accountability, a few predictors came through in the models. There were a few knowledge pieces such as understanding the meaning of qualified immunity and prosecutorial immunity that came through in models 1 and 4. Contrary to what previous literature said, no personal factors like proximity to the criminal justice system showed up as a predictor of support

for prosecutorial accountability. Lastly, criminal justice system fairness was a predictor of support for prosecutorial accountability, which was previously discussed in the above paragraph.

Research Limitations

There are a few important limitations to consider before generalizing the findings of this study. The sample size was found through a singular listserv and organization, the American Psychology and Law Society. This survey asked participants in one point in time their opinion and knowledge on the topics discussed. The survey design did not take into account the fluidity of people's opinions and knowledge bases and how these areas may change with time. These limitations tie into the next section on future research.

Future Research

Research should be continued on this subject matter as there are large gaps within this topic, yet there is great importance around uncovering the flaws of the criminal justice system. A suggestion would be to study the same material but utilize a different listserv or outreach approach. While APLS was a good listserv to start this topic, as it was an accessible way to outreach to legal professionals, a broader population would serve useful when determining support for reform. Additional research could also be done addressing the general public and what constituents think about prosecutorial misconduct and need for reform. Another area of future research would be to interview prosecutors specifically to see how their perceptions might differ from legal professionals. Lastly, there was one research question that was not addressed in this study, which was simply, do legal professionals believe that prosecutorial misconduct is a flaw of United States criminal justice system. Finding answers to this question would couple nicely with what this study already revealed.

Policy Implications

This study provided insight on various policy implications that may help solve the issue of prosecutor misconduct. Prior to getting into the specific reform recommendations, it is important to recognize that this study revealed that the majority of APLS legal professionals were in support for prosecutorial regulations, accountability, preventative efforts and liability. First, the United States should revisit prosecutor immunity. Currently, prosecutors have functional immunity meaning that they have absolute immunity when acting as a prosecutor and qualified immunity when they are acting in an investigative role, similar to law enforcement officers. This type of immunity shields prosecutors from any sort of liability, leaving no mechanism in place for accountability.

While it is important to protect prosecutors in their line of work for when honest mistakes happen, it must be recognized that there are prosecutors who purposefully engage in misconduct and can hide behind the immunity given to them by the government. As criminal justice reform begins to become more and more sought after by the public, such as revisiting qualified immunity for law enforcement officers, it is integral to take a deeper look at all criminal justice actors who have immunity. This study showed that legal professionals are in favor of eliminating absolute immunity for prosecutors.

Secondly, the government should begin to implement internal disciplinary actions for prosecutorial misconduct. On paper, disciplinary sanctions exist. The issue is that misconduct is rarely reported and even if misconduct is reported, little to no reprimand occurs. An emphasis should be placed on reporting misconduct in order to truly understand the nature and extent of misconduct. Furthermore, when misconduct is reported, an investigation should be conducted

immediately. If the prosecutor in question without a doubt engaged in misconduct, disciplinary action must occur.

The extent of discipline depends on the degree of misconduct. Instilling disciplinary action can occur prior to revisiting immunity since immunity only shields prosecutors from legal suits. Therefore, revamping prosecutor offices' approach to misconduct should be started first to see if the occurrence of misconduct can be curbed prior to eliminating immunity. Legal professionals who participated in this study revealed their support for this action and indicated disciplinary action as a good steppingstone to fixing the problem.

Lastly, the establishment of an external commission to review prosecutor misconduct cases was highly sought after by participants of the study. This is not to contradict the previous point made about internal disciplinary action but more as a supplement. An external review board should be established to review misconduct cases. The externality of such a review board will ensure that unbiased sets of eyes are reviewing the misconduct cases for actual misconduct without a concern for the prosecutor or prosecutor office's reputation. This external commission should review the case based on the facts provided and engage in a formal investigation if needed. From there, the commission should report its findings to the prosecutor's office with a recommendation of appropriate reprimand. If, and only if, a prosecutor is found to have engaged in misconduct, this finding should be published in a public database for people to review. The external commission coupled with internal disciplinary action and public access will add a much-needed accountability piece to the scope of prosecutor employment. Overall, the study successfully revealed that prosecutorial reform is warranted.

In conclusion, wrongful convictions are one of the greatest mistakes society can make. This topic is an increasingly prominent topic as more and more wrongful convictions are coming

to light. Even more alarmingly is that prosecutors, some of the most powerful people in the United States justice system, are engaging in behaviors that allow wrongful convictions to occur. Prosecutorial misconduct needs to be prevented. Due to the vast amount of power prosecutors are given, it is vital that mechanisms are put into place to prevent misconducts that lead to wrongful convictions. This study proved the need for reform efforts and had the ability to interpret policy recommendations. Innocent people should not be sent to prison for crimes they did not commit, especially at the hands of prosecutors who took an oath to not allow innocence to suffer. In order to improve the United States criminal justice system, prosecutorial misconduct, wrongful convictions, and the intersectionality of the three need to be properly attended to and discussed further.

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Appendix A- Tables

CONTROL VARIABLES

Table #1: Univariate Statistics for Gender

Gender	<i>f</i>	Percent (%)	Cumulative Percent (%)
Female	180	72.80	72.80
Male	68	26.80	99.60
Transgender	1	.40	100.00
Total	N=249		

Table #2: Univariate Statistics for Race

Race	<i>f</i>	Percent (%)
Asian or Asian American	8	3.1
American Indian or Alaska Native	9	3.5
Black or African American	17	6.7
Middle Eastern or North African	1	.4
Native Hawaiian or Pacific Islander	1	.4
White or European American	227	89.4
Other	3	1.2
Total	N=254	

DEPENDENT VARIABLES

Table #3 Univariate Statistics for Dependent Variables 1 through 3

Variable	N	Me an	Med ian	Mo de	St. Dev.	M in	M ax
Prosecutorial liability for prosecutorial error		1.26	1.00	1	.439	1	2
Support for stringent ethical guidelines for prosecutors	201	4.61	5.00	5	.721	1	5
Support for compliance with national prosecutorial standards	201	4.65	5.00	5	.607	2	5
Support for less judicial discretion during charging process	201	3.72	4.00	4	.987	1	5
Support for internal governing of misconduct cases	201	2.53	2.00	2	1.175	1	5
Support for external governing of misconduct cases	201	4.37	4.00	5	.667	2	5
Support for disciplinary action (civil or criminal)	200	4.37	4.00	5	.718	1	5

Table #4: Univariate Statistics for Dependent Variable 4 (%)

Variable	Criminal Sanction	Civil Lawsuit	Professional Sanctions	Mandatory Letter of Apology	No Response
Prosecutor tampered with evidence	50.4	5.5	22.0	0	0.8
Prosecutor introduced false evidence	46.9	6.7	23.6	.5	1.5
Prosecutor withheld exculpatory evidence	35.8	10.6	31.9	0	.5
Prosecutor knew defendant was innocent	28.7	11.0	36.2	.8	2.0
Prosecutor misrepresented fact to falsely persuade jury	18.1	11.8	40.9	2.0	7.5

Note: This table reflects row totals, which identify different responses for each item listed on the left.

Table #5: Univariate Statistics Measures to Prevent Prosecutors from Engaging in Misconduct (multi-select)

Preventative measures	<i>f</i>	Percent (%)
Create external commission to hold prosecutors accountable	184	72.4

Impose civil/criminal liability	146	57.50
Update code of ethics	104	40.90
More training in law school	86	33.9
Other	18	7.1

Table #6: Univariate Statistics Measures of Criminal or Civil Liability for Prosecutors

Liability	<i>f</i>	Percent (%)	Cumulative Percent (%)
Civil	64	21.30	21.30
Criminal	6	2.40	23.70
Both	94	37.0	60.6
Missing	100	39.4	100.00
Total	N=254		

INDEPENDENT VARIABLES

Table #7: Univariate Statistics Measures of Participant’s Knowledge on wrongful convictions, prosecutorial immunity and regulation

Variable	N	Mean	Median	Mode	St. Dev.	Min	Max
Definition of Absolute Immunity	208	1.92	2.00	2	.721	1	5
Definition of Qualified Immunity	207	1.18	1.00	1.00	.642	1	4
Type of Immunity Prosecutors Have	204	2.32	2.00	1.00	1.314	1	4
Average Length of Time that a Wrongfully Convicted Person Spends in Prison	222	3.78	4.00	4.00	1.006	1	5
2019- Most Common Exonerated Crime	221	1.78	2.00	1.00	.893	1	4
Percentage of Wrongful Convictions Resulted from Prosecutorial Misconduct	210	3.24	3.00	3.00	1.389	1	6

Table #8: Univariate Statistics Measures for Most Harmful Cause of Wrongful Convictions

Harmful Cause	<i>f</i>	Percent (%)	Cumulative Percent (%)
Eyewitness Misidentification	60	27.3	27.3
Falsified Testimony	10	4.5	31.8
Use of Jailhouse Informants	1	.5	32.3
Police Misconduct	51	23.2	55.5
Prosecutor Misconduct	70	31.8	87.3
Tampered Forensic Evidence	11	5.0	92.3
Ineffective Defense Counsel	17	7.7	100.00
Total	N=220		100

Table #9: Univariate Statistics Measures for Participants' Proximity to the Criminal Justice System

Proximity to Criminal Justice System	<i>f</i>	Percent (%)	Cumulative Percent (%)
Currently works in criminal justice system	96	38.6	38.6
Knows someone who works in criminal justice system	146	57.5	96.1
Does not work or know someone who works in criminal justice system	41	4.9	100.0
Total	N= 283	100.0	

Table #10: Univariate Statistics Measures on Participants' Perceptions on Factors Leading to Committing Misconduct

Prosecutorial Motives Behind Misconduct	<i>f</i>	Percent (%)
Pressure to convict	202	79.5
Failure to report	122	48
Lack of consequences	170	66.9
Lack of ethical guidelines	93	36.6

Table #11: Most Power in Criminal Justice System

Most Power in Criminal Justice System	<i>f</i>	Percent (%)	Cumulative Percent (%)	Mean	Median
Judges	127	54.7	54.7	1.71	1.00
Prosecutors	84	36.2	90.9	1.84	2.00
Defense Attorneys	1	.4	91.3	4.31	4.00
Police Officers	19	8.2	99.5	3.14	3.00
Forensic Experts	1	.4	99.9	5.13	5.00
Probation Officers	0	0	99.9	4.87	5.00
Total	N=254	99.9			

Table #12 Bivariate Analysis for Dependent Variables 1 through 9 (Pearson's Correlations)

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X1-Age	0.147* *	NS	0.184* **	0.224* **	NS	0.192* **	NS	NS	NS
X2- Gender	0.173* **	0.122*	0.151* *	0.151* *	NS	0.158* *	NS	NS	NS
X3-Race (White or European American)	NS	NS	0.135* *	0.135* *	- 0.121 *	NS	- 0.121 *	0.143 **	0.173 **
X4- Hispanic or Latino(a)	NS	NS	NS	NS	NS	NS	NS	NS	NS
X5 -Familiarity w/ U.S. legal system	- 0.106*	NS	NS	0.142* *	NS	NS	NS	NS	NS
X6- Familiarity w/ overall legal system	NS	NS	NS	0.141* *	NS	NS	NS	NS	NS
X7-Familiarity w/ CJS	NS	0.123*	NS	NS	NS	NS	NS	NS	NS
X8- - Familiarity w/ U.S. civil court system	NS	NS	-0.123*	NS	NS	NS	NS	0.123 *	NS
X9- Know Top 3 EW	0.218* **	NS	0.151* *	0.236* **	0.140 **	NS	NS	NS	NS
X10- Know Top 3 FT	NS	0.173* *	NS	0.121* *	NS	NS	NS	NS	NS
X11-Know Top 3 FE	0.133* *	NS	NS	0.110* *	NS	NS	NS	NS	0.121 *

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X12- Know Top 3 Scale	0.256* **	0.136*	NS	0.271* **	NS	NS	NS	0.138 *	NS
X13- Know Top 3 Rank EW	0.161* **	NS	NS	0.150* *	0.137 *	NS	NS	NS	NS
X14 Know Top3Rank FT	NS	0.166* *	NS	NS	NS	NS	NS	NS	NS
X15- Know Top3Rank FE	NS	NS	NS	0.113*	NS	NS	NS	NS	NS
X16-Know Top3Rank Scale	0.174* **	NS	NS	0.191* **	NS	- 0.120*	NS	NS	NS
X17- Know Length of Exoneration	0.131* *	NS	NS	0.107*	0.121 *	NS	NS	NS	NS
X18- Know 2019 Most Ex	0.126* *	NS	NS	NS	NS	NS	NS	NS	NS
X19--Know WC Pros	NS	NS	NS	0.110*	NS	NS	NS	NS	NS
X20- Know ABAApplies	0.103*	NS	NS	0.117*	NS	NS	NS	NS	NS
X21- Known Count Ex	0.153* *	NS	NS	0.155* *	NS	NS	NS	NS	NS
X22-Know QImmun	0.456* **	NS	NS	0.557* **	NS	NS	NS	NS	NS
X23- Know AImmun	0.166* **	NS	NS	0.171* **	0.150 *	NS	NS	NS	NS
X24- Know ProsImmun	0.206* **	NS	NS	0.322* **	NS	NS	NS	NS	NS
X25-Most Harm PM	0.150* *	- 0.132*	0.164* *	0.165* **	NS	NS	NS	NS	NS
X26- Fairness of CJS	- 0.201** *	0.407* **	- 0.366* **	NS	NS	- 0.123*	NS	NS	- 0.177 **

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X27-Most Power Pros	NS	0.183*	NS	NS	NS	0.159*	NS	NS	NS
		**				*			
	***p < 0.01		** p < 0.05		*p < 0.10				

IV	DV1			DV2			DV3			DV4		
	b	B	SE	b	B	SE	b	B	SE	b	B	SE
X25- Most Harm PM	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X26- Fairness of CJS	-	-	[0.040]**	0.38	0.36	[0.077]***	-	-	[0.043]*	NS	NS	NS
X27- Most Power Pros	NS	NS	NS	-	-	[0.131]**	NS	NS	NS	NS	NS	NS
Constant	.732		[0.219]***	0.96		[0.461]**	4.60		[0.257]**	1.88		[0.642]**
Model Fit F	3.017***			3.207***			2.352***			4.681***		
Adj. R-Square	0.143			0.174			0.114			0.233		

Notes: Values shown for each DV represented as follows: unstandardized coefficients/ standard coefficients [standard error]
 *** p< 0.01 **p<0.05 *p<0.1

**Appendix B- Survey Printout from Qualtrics:
Pappas Thesis Survey**

Start of Block: Informed Consent

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Q2 Perceptions of Legal Professionals Misconduct as Contributors to Wrongful Conviction

Informed Consent

Sponsor of the Study This study is sponsored by the University of New Haven Honors Program

The Purpose of the Research

The purpose of this study is to investigate the level of awareness legal professionals (i.e. lawyers, legal professors, etc.) have on wrongful convictions and how prosecutorial misconduct can contribute to wrongful convictions. You will be asked questions about the criminal justice system, prosecutors, your knowledge on wrongful convictions, legal ethics and prosecutorial misconduct and immunity. All of your answers will be kept confidential. **Procedures**

Before you can be included in this research study, your consent must be obtained. By reading the information on this page and indicating that you give your consent when asked below, you will have agreed to allow the researcher to ask you questions about how you have learned different

behaviors of interest to the researcher. Your "yes" response below will act as your signature/ acknowledgement on this informed consent. **Participant Alertness** This survey will ask questions about your attitudes and behaviors. These questions will have varying instructions that help you move throughout the survey. As you answer each of these types of questions, there are no wrong answers about your attitudes or behaviors. The researchers are only interested in insuring honest answers from alert participants. This occurs when you take the time and read the instructions for each set of questions. To encourage that you are paying attention, there are a few questions throughout the survey that measure your alertness. If you are paying attention, you will be able to answer the questions correctly. Failure to answer the read the instructions and questions correctly will result in the participant failing to qualify as an "alert participant".

Time Required It will take 30-60 minutes to answer the questions, depending on your pace.

Risks/Discomforts

Risks are minimal for involvement in this study. However, you may feel emotionally uneasy or conflicted when asked to express experiences involving authority figures. Please take the survey in private or under conditions that ensure privacy.

Benefits There are no direct or indirect benefits offered to you through this study.

Compensation

There is no monetary compensation for participation in this study.

Confidentiality

All of your answers will be kept confidential and then de-identified before data storage, meaning that none of your answers will be linked back to you as an individual although there is always some minimal risk that online information could be accessed and compromised. The

results of the study will present patterns of how everyone answered as a group. The report will not focus on any one person's answers. This study will utilize the data protection system provided by Qualtrics, the professional survey-software company that hosts our survey. Qualtrics is a secure site that has been certified (SAS 70) for rigorous privacy standards. Only the study investigators will have access to the data on Qualtrics. Any data you provide to Qualtrics is encrypted for security purposes, and your computer's IP address will be masked by Qualtrics and will be unavailable to the researchers or others. (Their privacy statement can be obtained at <http://www.qualtrics.com/privacy-statement>.)

Voluntary Participation and Right to Withdraw from the Study You do not have to answer any questions that you do not want to answer, and you can stop taking the survey at any time.

Questions about the Research

If you have questions regarding this study, you may contact the Principal Investigator, Amanda Pappas, Criminal Justice Honors Student (at apapp2@unh.newhaven.edu) or the Research Supervisor, Danielle Cooper, PhD, CPP (at dcooper@newhaven.edu). **Whom to**

Contact About Your Rights as a Research Participant in the Study UNHIRB Office, University of New Haven, West Haven, CT 06516; You can email irb@newhaven.edu about Protocol #2020-038.

Thank you for your time!

Q3 "I have read the consent form and I am willing to participate in this study"

- No
- Yes

End of Block: Informed Consent

Start of Block: No-Consent

Q4

You have chosen not to participate in the survey.

If this is in error, please indicate below and you will be redirected survey.

If this was not in error, thank you for your time! Press the next button to exit the survey.

Q5 "I have read the consent form and desire of my own free will to participate in this study"

- Yes, please take me to the survey

- o No, please take me to the exit

End of Block: No-Consent

Start of Block: Demographic

Q6 What is your gender?

Select all that apply.

- Male
- Female
- Transgender
- Nonbinary
- Gender Fluid
- Other

Q7 How many years old are you?

Enter the number representing your current age.

Q8 How old are you?

Select from pull down menu.

▼ 17 or younger ... 100 or older

Q9 How would you describe your race?

You may select more than one option.

- American Indian or Alaska Native
- Asian or Asian-American
- Black or African-American
- Middle Eastern or North African
- Native Hawaiian or Pacific Islander
- White or European American
- Other (*please specify here*)

Q10 Do you identify as Hispanic/ Latino(a)?

- Yes
- No

Q11 What is the highest level of education that you have completed?

- Grammar/Elementary School
 - High School Diploma or equivalent
 - Vocational/Technical School Graduate
 - Some College
 - Undergraduate Degree
 - Master's Degree
 - Doctoral Degree
 - Professional Degree
 - Other Degree (*please specify here*)
-

Q12 Are you familiar with the United States legal system?

- Not familiar at all
- Slightly familiar
- Moderately familiar

Q14 What is your occupation?

▼ Management Occupations (4) ... Military Specific Occupations

Q15 Do you or someone that you know currently work in the criminal justice system?

Select all that apply.

- Yes, I currently work in the criminal justice system
- Yes, I know someone else who currently works in the criminal justice system
- No, neither I nor anyone I know works in the criminal justice system

Q16 Are you or do you know a prosecutor?

- Yes, I am a prosecutor
- Yes, I know a prosecutor

- No, I do not know nor am I a prosecutor

End of Block: Demographic

Start of Block: Block 3

Q17 Is there a Code of Ethics for lawyers?

- Yes
- No

Q18 Have you ever been arrested before?

- No
- Yes
- Decline to Answer

Q19 Do you have a criminal record?

- No
- Yes
- Decline to Answer

Q20 Who do you think has the most power in the criminal justice system?

Rank order the list below with 1 being the most powerful and 6 being the least powerful.

_____ Prosecutors

_____ Judges

_____ Defense Attorneys

_____ Police Officers

_____ Forensic Experts

_____ Probation Officers

Q21 How would you rate the fairness of the criminal justice system?

- Not fair at all
- Slightly fair
- Moderately fair
- Very fair
- Extremely fair

Q22 If you think it is unfair, name one flaw that you see below:

Q23 How many people in the United States do you think have been listed on the National Registry of Exonerates?

Please enter a number without using a comma. If you do not know, please guess to the best of your ability.

Q24 What are the three most common causes of wrongful convictions?

For the top 3 selected, please rank in order from 1 to 3, where 1 is the highest.

Top 3

_____ Eyewitness Misidentification

_____ Falsified Testimony

_____ Use of Jailhouse Informants

_____ Police Misconduct

_____ Prosecutor Misconduct

_____ Tampered Forensic Evidence

_____ Ineffective Defense Counsel

Q25 Overall, which cause of wrongful conviction is the most harmful?

- Eyewitness Misidentification
- Falsified Testimony
- Use of Jailhouse Informants
- Police Misconduct
- Prosecutor Misconduct
- Tampered Forensic Evidence

- o Ineffective Defense Counsel

Q26 According to the National Registry of Exonerations, what is the average length of time that a wrongfully convicted person spends in prison before being exonerated?

- o Less than 1 year
- o Between 3-5 years
- o Between 6-9 years
- o Between 10-14 years
- o 15 years or more

Q27 In 2019, which crime dealt with the most exonerations?

- o Homicide
- o Sexual assault
- o Larceny

- o Fraud

End of Block: Block 3

Start of Block: Prosecutorial Misconduct

Q28 Please complete the following sentence using your own words:

“Prosecutorial misconduct occurs when _____.”

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Q29 Review the following definition of Prosecutorial Misconduct before moving forward:

Prosecutorial misconduct was addressed in *Berger vs. United States*. Justice Sutherland defined prosecutorial misconduct as: “overstepp[ing] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense.”

After a few seconds, you will be able to click NEXT to advance this page at the bottom.

Q30 Timing

First Click

Last Click

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Click Count

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Q31 According to the National Registry of Exonerations, what percentage of wrongful convictions resulted from prosecutorial misconduct?

- Around 10% of all cases
- Around 20% of all cases
- Around 30% of all cases
- Around 40 % of all cases
- Around 50% of all cases
- Around 60% or more cases

Q32 If a prosecutor makes a mistake and a defendant is wrongfully convicted, do you think the prosecutor should be held liable?

- Yes
- No

Q33 Should prosecutors be held civilly or criminally liable?

- Civilly
- Criminally
- Both

Q34 What motivates prosecutors to commit misconduct?

Select all that apply.

- Pressure to convict
 - Failure to report
 - Lack of consequences
 - Lack of ethical obligations
 - Other (please enter text)
-

End of Block: Prosecutorial Misconduct

Start of Block: Immunity

Q35 Which one of the options below best describes Absolute Immunity?

- A government official is immune from civil and criminal liability
- A government official is immune from civil and criminal liability when the action in question occurred within their scope of employment
- A government official is immune from civil liability when the action in question occurred within their scope of employment
- A government official is immune from criminal liability when the action in question occurred within their scope of employment
- A government official is immune from only civil liability

Q36 Which one of the options below best describes Qualified Immunity?

- A government official is immune from civil liability if the Plaintiff can show that the official violated “clearly established statutory or constitutional rights” of a person
- A government official who is immune from all civil liability

- o A government official who is immune from all criminal liability
- o A government official who is immune from civil and criminal liability

Q37 Do prosecutors have qualified, absolute, or no immunity when it comes to their line of work?

- o Qualified immunity
- o Absolute immunity
- o No immunity

Q38 Timing

First Click

Last Click

Page Submit

Click Count

Q39 Review the following definition of Absolute Immunity before moving forward:

According to the American Constitution Society, Absolute Immunity is a “blanket and unconditional grant of protection from civil liability”. *Imbler vs. Pachtman* granted prosecutors absolute immunity for actions that are committed during their work as a prosecutor.

After a few seconds, you will be able to click NEXT to advance this page at the bottom.

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Q40 On a scale of 1 to 10, how fair is it for prosecutors to have absolute immunity, meaning they cannot be held liable for mistakes they might have made during the trial process?

Not Fair At All

Extremely Fair

0 1 2 3 4 5 6 7 8 9 1

0

Fairness	
----------	--

Q41 What are the chances that you would support prosecutors having immunity from criminal prosecution and civil liability?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q42 What are the chances that you would support prosecutors having immunity from civil liability?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q43 What are the chances that you would support prosecutors having immunity from criminal prosecution?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q44 What are the chances that you would support internal offices governing prosecutors?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q45 What are the chances that you would support more ethical guidelines governing what prosecutors can and can't do?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q46 What are the chances that you would support nation-wide compliance for prosecutorial standards that holds prosecutors more accountable for their actions?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q47 What are the chances that you would support giving prosecutors less judicial discretion during the charging process thus, ultimately giving them less power in the criminal justice system?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q49 What are the chances that you would support having external entities handle prosecutorial misconduct cases?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

End of Block: Immunity

Start of Block: Ethics

Q50 Are you familiar with the ABA Model Rules of Professional Conduct?

- Not familiar at all
- Slightly familiar
- Moderately familiar

- Very familiar
- Extremely familiar

Q51 Based on your understanding, do these rules apply to prosecutors?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

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Q52 What are the chances that you would support disciplinary action, civil or criminal, when a prosecutor is found to have committed misconduct??

- Definitely would not

- Probably would not
- Might or might not
- Probably would
- Definitely would

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Q53 If a prosecutor tampered with evidence during trial and it resulted in a wrongful conviction, what do you think is the most appropriate response?

- Criminal sanctions (e.g., sent to prison)
- Mandatory letter of apology
- Civil lawsuit
- Professional sanctions (e.g., disbarment)
- No response

Q54 If a prosecutor filed charges against a defendant who they knew was factually innocent but decided to prosecute them anyways, what do you think is the most appropriate response?

- Criminal sanctions (e.g., sent to prison)
- Mandatory letter of apology
- Civil lawsuit
- Professional sanctions (e.g., disbarment)
- No response

Q55 If a prosecutor withheld evidence from the defense pointing to the defendant's innocence and it resulted in a wrongful conviction, what is the most appropriate response?

- Criminal sanctions (e.g., sent to prison)
- Mandatory letter of apology
- Civil lawsuit
- Professional sanctions (e.g., disbarment)

- o No response

Q56 If a prosecutor introduces false evidence to sway a judge or jury in favor of convicting the defendant and it resulted in a wrongful conviction, what is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)
- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

Q57 If a prosecutor misrepresents the facts and falsely persuades a jury to convict the defendant, what is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)

- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

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Q58 What should be done to prevent prosecutors from engaging in misconduct?

- o Update the code of ethics
 - o More training in law school
 - o Impose civil/ criminal liability
 - o Create an external commission to hold pros accountable
 - o Other (please specify)
-

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End of Block: Ethics

University of New Haven

Honors Program

2020-2021 Honors Thesis

No One is Above the Law: Public Perception of Prosecutorial Misconduct's Influence on
Wrongful Convictions

Amanda N. Pappas

A thesis presented in partial fulfillment of the requirements of the Undergraduate Honors
Program at the University of New Haven.

Student:



Thesis Advisor:

Department Chair:



Honors Program Director:

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Abstract

Wrongful convictions pose a large threat to the integrity of the United States criminal justice system. While there are many known causes of wrongful convictions, such as eyewitness misidentification, ineffective counsel, and false confessions, the most egregious cause is prosecutorial misconduct. According to the National Registry of Exonerations, prosecutorial misconduct has been found in roughly half of the exonerations listed in the registry. Prosecutors have a tremendous amount of power in the criminal justice system through determining plea deals, obtainment of evidence, disclosure of evidence to the defense, and many more. Studies have been conducted that reveal the occurrence of prosecutorial misconduct, yet very little has been done to correct such misconduct. This study addressed the prevalence of this topic and basic knowledge of United States citizens, specifically legal professionals on prosecutorial misconduct. This study found that perceptions of criminal justice system fairness had the most significance when determining prosecutorial liability, accountability, preventative efforts, regulation and support for overall reform.

Keywords: prosecutor, prosecutorial misconduct, wrongful convictions, criminal justice system fairness

Preliminary Hypothesis

The preliminary hypothesis of the current study is, if someone has a greater knowledge base and a more advanced overall perception and interpretation of prosecutorial misconduct's contribution to wrongful convictions, the more likely they will be in support of prosecutorial reform.

Research Questions

Two research questions were answered in this study. The first was "are legal professionals in support of reform"? The second question was "what personal factors and knowledge levels about wrongful convictions were predictive of support for prosecutorial accountability"?

Introduction

On March 23, 2015, a woman by the name of Debra Milke was formally dismissed of all her charges and became a free woman after spending 23 years on death row (Kiefer, 2015). She was falsely convicted of arranging the murder of her four-year-old son due to the prosecutor withholding key evidence that pointed to her innocence. In 2013, the United States 9th Circuit Court of Appeals overturned Milke's conviction after they found the prosecutor had engaged in misconduct. After looking into this case further, it was discovered that the Arizona prosecutor had been accused of misconduct in *over half* of the cases that the state sought the death penalty (Kiefer, 2015). This story is just one of many that evidences the long history and occurrence of prosecutorial misconduct and the impact such misconduct can have on the lives of United States citizens. Even though it took 23 years to correct this error, Milke was finally exonerated, becoming the 151st exoneree from death row since 1973 (Kiefer, 2015). This story is familiar to many. There have been over 2,600 exoneration cases since 1989 reported in the National Registry of Exonerations. That is 2,600 people and counting who have experienced the major flaw in the United States' criminal justice system which is wrongful convictions (Innocence Project, 2019).

Wrongful convictions are one of the greatest miscarriages of justice. For the purposes of this paper, wrongful convictions are defined as convictions of a factually or procedurally innocent person (Litman, 2018). A person who is factually innocent is one who never committed the crime they were charged and convicted for, like Debra Milke. Someone who is procedurally innocent is one who was harmed by the legality of the criminal justice process or was deprived of a criminal procedural right, such as a Fifth Amendment violation (Litman, 2018).

There are many consequences of a wrongful conviction. First and foremost, people lose decades of their lives by being behind bars for crimes they did not commit. After a wrongful conviction occurs, victims' families are not at ease because the true perpetrator is still roaming the streets (Litman, 2018). The community's confidence in the government and the criminal justice system is slowly diminishing after every exoneration (Litman, 2018). Simply being in the wrong place at the wrong time can cause someone to be sentenced to prison or worse receive capital punishment (Litman, 2018). Wrongful convictions are a product of numerous interrelated decisions from different actors that are involved in the criminal justice system (Acker & Redlich, 2011). The potential for a wrongful conviction can happen at any stage of the criminal justice process as there are multiple stages ranging from the initial arrest to the jury verdict (Acker & Redlich, 2011). However, a criminal trial is the final stage, and it is up to the prosecutor to ensure that guilty people are convicted. Given the prevalence of prosecutorial misconduct, it is important to examine the causes of misconduct and how it relates to wrongful convictions as well as reform efforts to correct these actions. This study examines legal professionals' perceptions and knowledge of prosecutorial misconduct and how such misconduct can lead to wrongful convictions with the hopes to identify key reform efforts that the public would be in support of.

Literature Review

In what follows, this comprehensive review begins by examining the causes of wrongful convictions as they have been articulated in literature to date. Then prosecutorial misconduct's contribution to wrongful convictions is discussed in further detail, followed by discussing prosecutorial immunity and finishes by discussion prosecutorial regulation.

Causes of Wrongful Convictions

The single largest cause of wrongful convictions in the United States is eyewitness misidentification. Eyewitness misidentification has played a role in over 75% of exonerations through DNA testing (Acker & Redlich, 2011). Eyewitness misidentification can be caused by "natural psychological errors in human judgement" or by any suggestiveness in the identification process (Gould et al., 2012). Suggestive lineups or identification processes are an issue in the criminal justice system because they can lead to bias and mistakes during an investigation. They can happen in two ways. First, law enforcement can execute suggestive identification procedures making the "ideal" perpetrator stand out to the witness or victim. The second way occurs when a law enforcement officer or observer confirms a witness/victim's identification, thus validating their choice (Gould et al., 2012).

The second greatest factor of wrongful convictions is the use of improper or fabricated forensic science. Roughly 50% of DNA exonerations, through February 1, 2009, were a result of unvalidated and improper forensic science (Acker & Redlich, 2011). Although forensic science has evolved into what it is now and has increasingly become more accurate, that was not always the case. Decades ago, forensic science was inaccurate, yet law enforcement and prosecutors relied on inaccurate forensic science heavily. The utilization of inaccurate forensics led to wrongful convictions. Fortunately, however, DNA testing has been improved, modified and has

helped correct these forensic errors from the past (Gould et al., 2012). While forensic accuracy is improving, more evidence has come to light about forensic scientists and labs using improper practices. Improper forensic science practices pose a large threat to the credibility, quality of forensic science practices and the role forensics plays in the criminal justice system (Gould et al., 2012).

Wrongful convictions can also happen based on false confessions. The Innocence Project has recorded that about 25% of wrongful convictions exonerated with DNA evidence involved the defendants making false confessions, admissions of guilt or fabricated statements to officials (Innocence Project, 2011). It may be difficult for people to understand how someone can confess to a crime that they did not commit, but indeed it does occur. For example, a father could confess to a crime that his daughter was framed for to protect his daughter or someone could confess to a crime they did not commit due to brutal interrogation techniques or out of fear of the actual perpetrator.

Jailhouse informants and in general perjured testimony can lead to wrongful convictions as well. More than 17% of cases overturned by DNA exonerations were a result of another person testifying against the defendant (Innocence Project, 2011). Prosecutors typically use jailhouse informants to testify against the defendant in exchange for a deal, typically a reduced sentence or a lesser charge. While this may seem good in theory and a great way to obtain a guilty conviction, studies have shown that jailhouse informants are willing to perjure themselves on the stand for their own personal benefit. Some studies have shown that the prosecutors knew that their jailhouse informant created a fabricated story and still allowed them to testify (Acker & Redlich, 2011). Prosecutors are given the power to deliberately misrepresent the truth. It has been known that prosecutors have this power, yet the courts have still refused to

create a rule that would mandate an automatic case reversal of a conviction that was a result of perjured testimony (Acker & Redlich, 2011).

Another contribution to wrongful convictions is ineffective defense counsel. If a prosecutor fails to do their job, some believe that it is the defense attorney's job to find these errors and zealously investigate and defend their client (Gould et al., 2012). Prosecutors failing to do their jobs places a large burden on the defense counsel to find the errors in the system, provide the best representation and negotiate the best plea deals for their client. However, these burdens become unduly burdensome for public defenders who have limited resources and an egregious number of cases they are responsible for. Another potential pitfall with inadequate defense counsel is that defense attorneys can foster wrongful convictions by trying to obtain the best plea deal for their client instead of thoroughly investigating a case and figuring out a way to prove their client's innocence.

Another known cause of wrongful convictions is government misconduct, which includes but is not limited to police misconduct and prosecutorial errors or misconduct. Law enforcement misconduct was found in 37 of the first 74 DNA exonerations, equating to half (50%) of those exonerations (Acker & Redlich, 2011). More recently, researchers studied 2,400 wrongful convictions over a 30-year period and found the involvement of police misconduct in 35% of these cases (National Registry of Exonerations, 2020). Examples of law enforcement misconduct include suggestive lineups, tainting physical evidence and using brutal investigation techniques. On the other hand, prosecutorial misconduct was found in 33 out of the first 74 DNA exonerations (Acker & Redlich, 2011). The National Registry of Exonerations reported prosecutorial misconduct occurred in 30% of the 2,400 wrongful convictions studied (National Registry of Exonerations, 2020). Prosecutorial misconduct can include suppressing evidence,

Brady Rule violations, fabricating evidence, using dishonest expert testimony and jailhouse informants, and willingly bringing a case to trial knowing that the defendant is innocent.

Although there are a multitude of causes of wrongful convictions, prosecutorial error or misconduct tends to be the most dangerous and one that goes unnoticed. Prosecutorial misconduct can be defined as the use of illegal or improper means to gain a conviction. More specifically, Justice Sutherland defined prosecutorial misconduct in *Berger v. United States* stating that misconduct at the hands of the prosecution is when prosecutors “overstep the bounds of that propriety and fairness, which should characterize the conduct of such an officer in the prosecution of a criminal offense”. *Berger v. United States*, 285 U.S. 78, 85 (2015). The National Registry of Exonerations states that 54% of the exonerations in the United States involved prosecutorial misconduct. Prosecutors are exempt from all responsibility within their scope of employment under absolute immunity, vague ethical guidelines, and their vast amount of discretion and trust within the community, resulting in the system’s lack of prosecutorial accountability.

Prosecutorial Misconduct’s Contribution to Wrongful Convictions

Former U.S. Attorney General Robert H. Jackson once stated: “The prosecutor has more control over life, liberty, and reputation than any other person in America” (Acker & Redlich, 2011). This quote sheds light on the enormous amount of power prosecutors are given. They have a large amount of discretion, which allows them to have citizens investigated; they have the authority to order arrests; they decide which cases will go to trial; and they make recommendations as to the proper sentencing for the convicted. With this role in society, a prosecutor is one of the most benevolent forces in society, but when a prosecutor acts in malice or with bad intentions, the prosecutor can be one of the worst, most dangerous forces in society.

Prosecutors can engage in very suggestive witness coaching, provide inappropriate and fabricated closing arguments, fail to disclose critical evidence, and allow a witness to knowingly falsify their testimony, to name a few (Gould et al., 2012). It may be difficult to grasp prosecutorial misconduct because of the amount of power given to them in a community, but it indeed happens. For example, John Thompson was about to be executed when investigators found out that prosecutors during the original trial withheld the results of a blood test that proved his innocence (Wines, 2018); John Floyd spent 36 years in prison for a murder before he was exonerated after someone else's fingerprints and DNA were found at the crime scene, but the prosecutor still prosecuted him anyways (Wines, 2018); Reginald Adams spent 34 years behind bars for the wife of a police officer's murder before being released after a buried police report was found in miscellaneous, unrelated case files that connected another man to the crime (Wines, 2018); and in 1992 Robert Jones was wrongfully prosecuted and convicted of a kidnapping and rape in New Orleans even though the majority of the evidence implicated another man (Wines, 2018). The prosecutor purposefully covered up the evidence that implicated the other man because it would have undermined his case. Under further investigation, the New Orleans District Attorney's Office found at least 45 other prosecutions dating back to the 1970s where the District Attorney's office suppressed evidence that could have helped the accused and knowingly prosecuted someone who was more than likely innocent (Wines, 2018).

Along with misconduct, prosecutors can engage in tunnel vision, cognitive biases, and emotional commitments that affect the way they prosecute crimes. Tunnel vision is the outcome based on the structure of our adversary system, internal office incentives and individual psychological rewards and pressures (Bandes, 2016). Prosecutors tend to become severely attached to the cases that they try. In return, a sense of loyalty to a specific version of events and

the guilt of a specific person develops, leading to tunnel vision (Bandes, 2016). This extreme loyalty can continue even after a different version of events or a different suspect is proven to be accurate. Prosecutors can have a difficult time formulating alternative theories or suspects leading them to pursue the wrong person (Bandes, 2016). The idea of loyalty appears a lot in a prosecutor's line of work. Sometimes prosecutors face divided loyalties and can sometimes be hard to deal with (Bandes, 2016). For example, the prosecutor has a duty to act zealously for the state as well as a duty to ensure justice has been done. This paradox can be self-conflicting at times. Prosecutors are expected to be neutral and impartial. However, they are also pressured by their office to win convictions. Due to this pressure they face, a prosecutor's desire to win a conviction has become a strong driving force in their career. As a result of the pressure prosecutors receive, a prosecutor's actions are dependent upon their vast discretion and intense internal pressures (Bandes, 2016).

The occurrence of tunnel vision, the thin line that prosecutor's walk on relating to their duty to ensure justice is done and their duty to be a zealous advocate, is clear in the Rolando Cruz case. Mary Brigid Kenney, the prosecutor, found herself walking this thin line when she reviewed the appellate case file of Rolando Cruz. Her findings suggested that the record was entrenched in politics and prosecutor misconduct that were a result of the eagerness to win the case instead of trying to find the truth (Bandes, 2016). When she asked her superiors to bring these errors to light, they refused. As a result, she ended up resigning from her position due to the conflict she faced. This example shows the lack of accountability, the existence of tunnel vision, other cognitive biases and its impact on wrongful convictions. These psychological tendencies, to no direct fault to prosecutors, can cause irreparable harm to the community and lead to wrongful convictions (Bandes, 2016).

The idea of representing “the people” can place a large burden on prosecutors. This burden is to keep bad people away from the rest of the community, giving prosecutors the notion that they are responsible for protecting “the people” (Bandes, 2016). This duty to protect “the people” can be falsely reinforced in the idea of conviction rates and the number of wins a prosecutor achieves. The higher the conviction rate is, the more it is conceived that they are protecting the people further facilitating the occurrence of tunnel vision. An experiment was conducted that tested whether the beliefs of guilt and the importance of getting a conviction would influence prosecutorial misconduct. The results showed that the stronger the perceptions of guilt were and the stronger desire to win a conviction led to a higher likelihood of misconduct (Lucas et al., 2008).

Furthermore, Professor Daniel Medwed in his article examining prosecutorial resistance to innocence claims post-conviction noted that “prosecutors may begin to internalize the emphasis placed on conviction rates and view their win-loss record as a symbol of their self-worth” (Bandes, 2016 PAGE #). In return this leads to prosecutors solely looking for information that validates their sequence of events, builds alliances with people who will help their case and isolates themselves from the opposing side. Evidently, this can lead to wrongful convictions. *Miller v. Plate* provides an example of this phenomenon. An 8-year-old girl died because of a heinous sexual assault. The petitioner was charged with murder. The key piece of evidence incriminating the petitioner was a pair of shorts that had red stains on it. These shorts were claimed to be worn by the petitioner on the day of the murder. The prosecutor had expert witnesses testify saying it was blood. On appeal it was disclosed that the red stains on the shorts were not blood but paint. The prosecutor knew at the time of the original trial that the red stains on the shorts were paint, but still had the expert witness testify saying the stains were blood. The

prosecutor felt that his actions were justifiable due to his strong belief that the defendant was guilty and the desire to bring justice to the little girl's family. *Miller v. Plate*, 386 U.S. 1 (1967).

It is difficult to blame prosecutors for wrongful convictions based on the notion of tunnel vision. It is important to understand that in these circumstances, the prosecutor's actions were unintentional, and this psychological phenomenon is innate to mankind. To help reduce the likelihood of tunnel vision, law enforcement should implement strategies and policies that help prevent tunnel vision from occurring and be compelled to speak up instead of suppressing potential instances of tunnel vision.

Stemming from tunnel vision, it is important to recognize that psychology can come into play when analyzing the nature and extent of prosecutorial misconduct. It is usually unclear whether a prosecutor acted in good faith or in bad faith that led to a wrongful conviction. Cognitive dissonance can affect the way a prosecutor views a case. It can be difficult for prosecutors to admit their mistakes and for prosecutors to accept that their individual actions have led to a wrongful conviction. As a result, prosecutors choose to deny that possibility. There is also the theory of conviction psychology that many researchers use to describe the motives behind prosecutorial misconduct. Conviction psychology centers around a person's "score-keeping mentality that compels them to win at all costs" (Schoenfeld, 2005). Researchers claim that the mentality comes from institutional, political and professional pressures to win convictions regardless of a defendant's innocence or guilt. For example, District Attorneys (DAs) may feel pressure to convict as many defendants as possible because some DAs have to be elected to office. Consequently, voters rely on convictions as a measure of success when choosing their DA.

Along with errors in psychological judgement, prosecutors can fail to turn over exculpatory evidence to the defense and can even suppress evidence. A failure to disclose favorable evidence to the defense is one of the leading causes of wrongful convictions. In the landmark case, *Brady vs. Maryland*, the Court held that a prosecutor's suppression of evidence violated due process. *Brady vs. Maryland*, 373 U.S. 83 (1963). When prosecutors suppress evidence, it is known as a Brady violation. The Brady rule is said to be one of the criminal justice system's only mechanisms to protect the wrongfully convicted from conviction, imprisonment and execution.

In many wrongful conviction cases there are usually more than one cause mentioned above that have led to the wrongful conviction. It seems that the causes of wrongful convictions are interconnected, and in some circumstances, one leads to another, which leads to another and so on. As mentioned above, prosecutors can engage in numerous activities that can lead to a wrongful conviction. Some are intentional, and some are unintentional. It is important that society recognizes and examines these causes to prevent them from happening.

Prosecutorial Immunity

There is a lack of accountability when it comes to ensuring that the work of prosecutors truly promotes justice and that their investigations and the trial process are ethical. The main reason for this lack of accountability is because prosecutors are protected under prosecutorial immunity. Prosecutors' actions during the investigation and trial process are protected, making them unable to be held liable if they were to make a mistake.

A prime example of the lack of prosecutor accountability is the case of Alfred Brain Mitchel. He was wrongfully convicted of rape and murder. There were crucial notes from the FBI lab's DNA unit that were suppressed during trial. These notes proved that Mitchell was

innocent of the rape charge. The prosecutor intentionally provided the jury with false evidence that implicated Mitchell of the alleged rape. Such evidence was withheld from the defense as well. The root of this misconduct was pointed at the prosecutor when the district court found that the prosecutor had “labored extensively at trial to obscure the true DNA test results and to highlight [his own, fabricated] test results” and whose closing argument was “entirely unsupported by evidence and... misleading” (Yaroshefsky, 2004). Fortunately, the 10th circuit reversed the death penalty decision because of this misconduct. The prosecutor in this case was never disciplined.

Under normal circumstances, a citizen of the United States or another person within the proper jurisdiction can be held liable for their actions that inflicted harm on another under 42 U.S.C. § 1983. There are, of course, exceptions to this statute, such as judges and legislative committee members; however, prosecutors were never directly given this kind of absolute immunity. Back when this statute was written, prosecutors and police officers had qualified immunity. Qualified immunity protects a government official from being personally liable for constitutional violations. It was not until the court ruling in *Imbler v. Pachtman* that absolute immunity was given to prosecutors. Absolute immunity gives government officials complete immunity from criminal and civil suits if the individual was acting within the scope of their job. Justice Powell elaborated his reasons behind providing prosecutors with absolute immunity. He noted that a prosecutor who is only protected by qualified immunity would be given the burden of the constant possibility of being sued. The prosecutor would also have to use his own resources to provide a defense to these claims (Grometstein & Balboni, 2011). In addition, without absolute immunity, the honest prosecutor could be held liable even though he genuinely meant no harm and his mistake was unintentional (Grometstein & Balboni, 2011). His last

reasoning was that the prosecutor should not have to defend one of his decisions in a trial that happened a long time ago. Having to do such a thing would place an additional burden on him and conflict with his current work.

While Justice Powell provides adequate justifications for the court's ruling, the court misses a key issue. What do we do when the prosecutor acts maliciously and purposefully commits misconduct, sending an innocent person to prison? By giving prosecutors absolute immunity, we are giving prosecutors the ability to intentionally commit misconduct and to maliciously prosecute a defendant who is innocent because there are no repercussions if they do so (Grometstein & Balboni, 2011).

Prosecutor Regulation

Personal and professional motivations alone do not lead to prosecutorial misconduct. Prosecutors are also given the opportunity to act improperly or misbehave. *Berger vs. United States* established the prosecutor's responsibility to ensure that "guilt shall not escape, or innocence suffer" (Gershman, 2014). Through considering this role as a prosecutor, it is obvious that the heaviest amount of responsibility for ensuring that the guilty, and only the guilty, are put away and sentenced to prison lies on the prosecutors' shoulders. The issue here is that there are very little ethical guidelines and regulations in place to ensure innocent people do not suffer, contrary to common belief. A prosecutor's ethical obligation is famously stated in *Berger vs. United States*, "[H]e may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one" (Yaroshefsky, 2004). Many states have adopted some sort of code of ethics, typically based off the American Bar Association's (ABA) Model Rules of

Professional Conduct. These rules are said to regulate lawyers and their workers. While it has been proven that these rules appropriately regulate lawyers ranging from a vast number of different discipline areas, they do little to regulate prosecutors. For the average lawyer, despite their specific area of expertise, they can be subject to professional discipline for violating these rules. Sanctions include suspension, a formal apology and even the revocation of their legal license and admittance into the bar. However, few ethical rules apply directly to prosecutors and courts are extremely reluctant to widely interpret and apply general ethical rules to prosecutors. As a result, prosecutors tend to go unregulated.

Many people claim that prosecutors are held to a higher standard than others yet there is no evidence supporting such a claim. Some rules can be applied to prosecutors but for the most part the ethical rules have little to no significance for prosecutors and how to conduct their line of work (Greene, 2016). ABA Model Rule 3.8 addresses a few aspects of prosecutorial work but is very limited. For example, there are little limitations on prosecutors' charging decisions. Many critics argue that there needs to be more demanding standards set in place relating to prosecutors' charging decisions (Greene,2016). The language in Rule 3.8 simply states that the prosecutor can bring about or dismiss charges for any reason. This includes reasons that are biased and unjustified. Prosecutors are given the authority to bring about charges that are unjustified and extreme as long as the probable cause standard is met. This is problematic because the probable cause standard is a very low standard (Greene, 2016). Very few states have revised Rule 3.8 to mentioned how prosecutors' charging decisions cannot be discriminatory against the defendant during the charging process and should refrain from prosecuting a defendant that is not supported by a prima facie case showing guilt (Greene, 2016).

To provide context with the current state of prosecutorial ethics, the Innocence Project proclaims a story of Wilton Dedge who spent 22 years in prison, primarily in solitary confinement. He was wrongfully convicted of brutally raping and assaulting a 23-year-old woman in her home. He is one of hundreds who maintained his innocence from day one and has been exonerated years after his conviction. Dedge's case illustrates several evidentiary problems that happen frequently in criminal cases. The first problem is the use of eyewitness identification offered by prosecutors during trial and the unreliability of these witness accounts. The 23-year-old woman described the perpetrator as an at least 6'5" tall man with blue eyes but later identified Dedge who was 5'5" with blue eyes as the perpetrator. Another issue was the untrustworthiness of the forensic evidence offered by the prosecutor. During Dedge's trial, a police dog handler testified that a little more than a month after the rape he conducted a "scent lineup" and concluded that his dog found a match between Dedge's scent and the scent on the victim's bed. The third issue in this case was the use of jailhouse snitch testimony. After Dedge's first conviction was overturned on procedural grounds, the police obtained a false testimony from a jailhouse snitch who had a prior history of falsifying other inmates' confessions. In return for his testimony, he received a reduced sentence (Green, 2017). The responsibility for the miscarriage of justice could be blamed on any criminal justice official (police, judge, defense). But the blame is really on the prosecutor for prosecuting a defendant when there was clear evidence of his innocence. This case is one of many where the prosecutor acted unethically; however, the prosecutor in the aforementioned case never received any court discipline for their actions of sending an innocent man to prison even though there was evidence clearly pointing to his innocence (Green, 2017).

In addition, there are prosecutor manuals, which can give helpful instructions but not all manuals are followed or read (Yaroshefsky, 2004). Vague and limited ethical rules are not the only problems with regulating prosecutors. Courts and other committees tend to refrain from punishing prosecutors for their misconduct even when in violation of a policy or ethical rule. Fred Zacharia mentioned in a 2001 article that prosecutors have only been publicly disciplined for their misconduct around 100 times over the course of a century. The largest number of cases relating to misconduct dealt with bribery, extortion or embezzlement. More recent studies have concluded similar results (Green, 2016). This low number is far from the actual number of cases regarding prosecutorial misconduct and undermine the extent of this problem. Not only is prosecutorial misconduct hard to find and can go unnoticed but many alleged cases get declined or dismissed by the judge. Attorneys fail to report their suspicions of prosecutorial misconduct as well (Green, 2016).

Prosecutorial regulation is extremely controversial, which is a reason why the ABA's development and enforcement of strict ethical norms on prosecutors are unlikely (Yaroshefsky, 2004). Currently, there are no outside entities that attempt to hold prosecutors accountable. This lack of accountability can be referred to as the "hands off" approach. The hands-off approach is based on the belief that the internal system and judicial oversight can effectively regulate prosecutorial misconduct. Prosecutor accountability is dependent upon internally developed standards and is implemented and enforced by internal entities. Some people believe that judicial oversight is sufficient to regulate prosecutor behavior; however, this may not be the case. This idea poses a problem because over 90% of indictments result from a guilty plea in our criminal justice system. This means that the judges are hardly exposed to prosecutorial misconduct. Consequently, judicial oversight is hardly a valid remedy. There is a lack of transparency with

the public, which shields prosecutors from public scrutiny, allowing prosecutorial misconduct to simply be overlooked (Yaroshefsky, 2004). This is how a wrongful conviction can be overlooked and fails to be corrected within the criminal justice system.

The improper regulation of prosecutors opens the door for intentional acts and mistakes that can lead to wrongful convictions. Prosecutors also do not have to worry about any repercussions because they are immune from liability and judges and prosecutor's offices are unlikely to reprimand them. This is a grave injustice to the public, diminishing their confidence in the criminal justice system and needs to be discussed and rectified.

Methodology

The Current Study

Prosecutorial misconduct has long played a role in wrongful convictions. Some research has been conducted on prosecutorial misconduct and its attribution to wrongful convictions. However, there is very limited knowledge on the public's opinion of prosecutorial misconduct. Prosecutorial misconduct is a difficult topic to research because there are several problems that impede efforts on gathering an accurate assessment of prosecutorial misconduct. These problems range from prosecutors covering up their misconduct to judges refusing to acknowledge such misconduct. A topic of research that is seldom studied is the potential correlation and influence prosecutorial misconduct has on wrongful convictions specifically. The notion that prosecutors could be the reason why an innocent person is sent to prison is often overlooked due to their authoritative role in society.

This study sought to uncover the public's opinion on potential consequences for when prosecutors engage in misconduct and propose reform ideas. The purpose of the current study

was to determine the level of awareness legal professionals (i.e. lawyers, law professors, etc.) had on wrongful convictions, how factors such as prosecutorial immunity and prosecutorial misconduct could contribute to wrongful convictions and participants' perceptions on ideal reform policies. The study's research questions were:

1. Are legal professionals in support of reform?
2. What personal factors and level of knowledge about wrongful convictions were predictive for the support of accountability for prosecutors?

The answers to these questions gave the researcher the opportunity to use legal professionals' opinions to recommend accountability measures and policy recommendations for prosecutors. In addition, the study provided insight on public support for or against immunity given to prosecutors. Lastly, this study was used to assess the level of knowledge legal professionals have on the correlation between prosecutorial misconduct and wrongful convictions.

Participants

The study had a final sample of 254 participants. The target population of this study was individuals over the age of 18 who are residing in the United States and were members of the American Psychology and Law Society (APLS). APLS was used to gather opinions from those who are invested in the legal world and have slightly more knowledge on the legal system than the general public. The population was reached through a listserv via the APLS. Two emails were sent through the APLS listserv on November 20th, 2020 and December 18th, 2020. Participants needed to have a legal background in order to take the survey. For the purposes of this study, having a legal background can range from academia to working as an active attorney to being a current student studying law. Participants were incentivized to complete this survey.

Ten participants were chosen at random to receive a \$10 amazon gift card. Seventy-nine percent of entering participants made it to the end of the survey.

Study Design

This study was a quantitative analysis of legal professionals' perceptions and knowledge on prosecutorial misconduct and its contribution to wrongful convictions. The instrumentation of this study was a 58-question survey via Qualtrics (See Appendix A on page 18). This survey was dispersed through two emails using the APLS listserv. The survey opened on November 20th, 2020. The survey officially closed on December 18th, 2020. The researcher considered the ethical implications of this quantitative study and received IRB approval for this method of research on May 17th, 2020. The researcher's study obtained IRB approval because it is an exempt population under 45 CFR 46.104(b)(2).

Study Variables

Below independent variables, dependent variables and control variables of the study are discussed.

Control Variables

The control variables in this study are personal demographics. Control variables were coded as follows:

- a) X1= age
- b) X2= gender
- c) X3= race (white or European American)
- d) X4= Hispanic/Latino(a)

Participants' demographic information was measured by the following five questions:

- a) "What is your gender?"
- b) "How old are you?"
- c) "How would you describe your race?"
- d) "What is your occupation?"
- e) "Do you identify as Hispanic/Latino(a)?"

The study's participants were most commonly female (n= 180, 71%), 40 years of age (M=35), White (n=227, 90%) and students (26%).

Dependent Variables

The dependent variables in this study are prosecutorial misconducts' contribution to wrongful convictions and need for reform. Broken down even further, this study identified nine dependent variables that are labelled throughout as follows:

- a) DV1= support for prosecutorial liability
- b) DV2= support for immunity
- c) DV3= support for reform
- d) DV4= support for preventative actions
- e) DV5= appropriate responses for misconduct relating to tampered evidence
- f) DV6= appropriate responses for misconduct relating to wrongful charging
- g) DV7= appropriate responses for misconduct relating to withholding evidence
- h) DV8= appropriate responses for misconduct relating to submitting false evidence
- i) DV9= appropriate responses for misconduct relating to misrepresenting the facts

The support for reform (DV1-DV4) was measured by evaluating questions relating to support for liability, immunity, ethical standards, disciplinary action and prosecutorial power.

The survey's first question set was comprised of the following questions, "What are the chances you would support...":

- a) prosecutors having immunity from criminal prosecution and civil liability?
- b) prosecutors having immunity, but only from civil liability?
- c) prosecutors having immunity, but only from criminal prosecution?
- d) more stringent ethical guidelines governing what prosecutors can and can't do?
- e) compliance for national prosecutorial standards that holds prosecutors more accountable for their actions?
- f) compliance for national prosecutorial standards that holds prosecutors more accountable for their actions?
- g) disciplinary action, civil or criminal, when a prosecutor is found to have committed misconduct?
- h) giving prosecutors less judicial discretion during the charging process?
- i) the internal governing of misconduct cases of prosecutors by the Prosecutor's Office?
- j) the external governing of misconduct cases of prosecutors outside of the Prosecutor's Office?

This question set used a coded scale from 1-5, (1) definitely would not, (2) probably would not, (3) might or might not, (4) probably would and (5) definitely would. Participants showed the greatest support for national prosecutorial standards that would hold prosecutors accountable for their actions (mean=4.65). Participants were also greatly in support of more stringent ethical guidelines governing prosecutors (mean=4.61), civil or criminal action when misconduct occurs (mean=4.37), and external governing of misconduct cases (mean=4.37). The reform option that participants least supported was giving prosecutors immunity from criminal

and civil liability (mean=2.03). Participants were also not in support of prosecutors having immunity from only criminal prosecution (mean=2.16), and immunity from only civil liability (mean=2.29).

To study dependent variables five through nine (DV5-DV9), a new set of questions were presented stating "If a prosecutor...":

- a) tampered with evidence during trial and it resulted in a wrongful conviction, what do you think is the most appropriate response?
- b) filed charges against a defendant who they knew was factually innocent but decided to prosecute them anyways, what do you think is the most appropriate response?
- c) withheld evidence from the defense pointing to the defendant's innocence and it resulted in a wrongful conviction, what is the most appropriate response?
- d) introduces false evidence to sway a judge or jury in favor of convicting the defendant and it resulted in a wrongful conviction, what is the most appropriate response?
- e) misrepresents the facts and falsely persuades a jury to convict the defendant, what is the most appropriate response?
- f) makes an error related to a case and the defendant in that case is wrongfully convicted, do you think the prosecutor should be held liable?

Within this question set, participants could choose from five responses:

- a) criminal sanctions (e.g., sent to prison);
- b) mandatory letter of apology;
- c) civil lawsuit;
- d) professional sanctions (e.g., disbarment);

e) and decline to answer

These responses were coded from least severe (1) to severe (5) to reflect the following:

- a) criminal sanctions = 5
- b) civil lawsuit= 4
- c) professional sanctions= 3
- d) mandatory letter of apology=2
- e) no response=1

The majority of participants said that a prosecutor should be held liable if they made an error that resulted in a wrongful conviction (n=155, 61.0%). There was a split in responses as to whether they should be held civilly or criminally liable. 37% said prosecutors should be held both criminally and civilly liable whereas roughly 21% said they should only be held civilly liable. More than half of participants said that criminal sanctions should be imposed on prosecutors who tamper with evidence (n=128, 50.4%). A little under half of the participants would impose criminal sanctions on a prosecutor who introduced false evidence as a way to sway the jury or judge to convict the defendant (n=119, 46.9%) whereas a little under half said they would impose professional sanctions on a prosecutor who misrepresented the facts to the jury resulting in a conviction (n=104, 40.9%).

Independent Variables

The independent variables in the current study were highest level of education, proximity to prosecutors (I.e., whether participants were a prosecutor or knew a prosecutor) and other criminal justice workers, familiarity with the United States legal system and criminal justice

system, perceptions of the system's fairness, prosecutorial immunity and ethics. Moving forward each set of independent variables were coded as follows:

- a) X5= Familiarity with United States legal system
- b) X6= Scale of 1-10- familiarity with overall legal system
- c) X7= Scale of 1-10- familiarity with United States criminal justice system
- d) X8= Scale of 1-10- familiarity with United States civil court system
- e) X9= Know_Top3_Eyewitness Misidentification
- f) X10= Know_Top3_Falsified Testimony
- g) X11= Know_Top3_Forensic Evidence
- h) X12= Know_Top3_Scale
- i) X13= Know_Top3Rank_Eyewitness Misidentification
- j) X14= Know_Top3Rank_Falsified Testimony
- k) X15= Know_Top3Rank_Forensic Evidence
- l) X16= Know_Top3Rank_Scale
- m) X17= Know_LengthEx
- n) X18= Know_2019MostExoneratedCrime
- o) X19= Know_% WC causedbyPM
- p) X20= Know_ABAApplies
- q) X21= Know_CountEx
- r) X22= Know_QImmun
- s) X23= Know_AImmun
- t) X24= Know_ProImm
- u) X25= Know_Most Harmful Cause of Prosecutorial Misconduct

- v) X26= Fairness of United States Criminal Justice System
- w) X27= Identifying Prosecutor as Most Powerful CJ Actor

To measure the highest level of the participant's education, the participant had to answer, "What is the highest level of education that you have completed?" Participants could choose from Grammar/Elementary School, High School Diploma or Equivalent, Vocational/Technical School Graduate, Some College, Undergraduate Degree, Master's Degree, Doctoral Degree, Professional Degree or Other. About 60% of participants obtained a Doctoral degree and 24% obtained a Master's degree.

The researcher asked participants "Do you or someone that you know currently work in the criminal justice system?", and "Are you or do you know a prosecutor?" to determine their proximity to prosecutors, other criminal justice workers and the criminal justice system overall. About 58% of participants said that they know someone who currently works in the criminal justice system. In terms of participants' proximity to prosecutors, one person responded saying they were a prosecutor, 44.1% said they know a prosecutor and 34.3% said they did not know a prosecutor nor are a prosecutor.

Next, the researcher gauged the participants' familiarity with the legal system. This was measured by asking "Are you familiar with the United States legal system?". The provided answers varied from slightly familiar, moderately familiar, very familiar and extremely familiar. Almost all participants stated they were at least moderately familiar with the legal system (97.4%). A small set of familiarity questions followed by asking participants "On a scale from 1-10, how familiar are you with the:

- a) United States legal system?"

- b) United States criminal justice system?"
- c) Civil court system?"

Slightly over half of the participants rated their familiarity with the criminal justice system an 8.00 out of 10.00 or higher (n=123). There was a decrease in civil court system familiarity compared to the legal system and criminal justice system. Participants were also asked "Are you familiar with the American Bar Associations Model Rules of Professional Conduct?" to gauge participants' familiarity of legal ethics and could answer between a range of not familiar at all to extremely familiar. Just about 1/3 of participants said they were not familiar at all.

Next, the researcher asked participants about fairness. Specifically, one question asked was "How would you rate the fairness of the criminal justice system?", and respondents could have indicated not fair at all, slightly fair, moderately fair, or very fair. Roughly half of the people that responded rated the system either slightly fair or not fair at all (48.1%).

Lastly, the survey asked various knowledge questions. These questions included:

- a) "Can you name at least one flaw that you see with the fairness of the criminal justice system?"
- b) "Who do you think has the most power in criminal justice system? 1 being the most powerful and 6 being the least powerful"
- c) "What are the three most common causes of wrongful convictions?"
- d) "According to the National Registry of Exonerations, what is the average length of time that a wrongfully convicted person spends in prison before being exonerated?"
- e) "In 2019, which crime is associated with the most exonerations?"
- f) "Overall, which cause of wrongful conviction is the most harmful?"

g) “How many people in the United States do you think have been exonerated and listed on the National Registry of Exonerates?”

h) “What factors might lead prosecutors to committing misconduct in their cases?”

An overwhelming majority of respondents identified systemic racism/ the racial disparities as a large flaw in the criminal justice system. On average, participants felt judges (mean=1.71) and prosecutors (mean=1.84) have the most power in the criminal justice system while forensic experts have the least (mean=5.13). Also, homicide and sexual assault made up for 74% of the responses about the crime associated with most exonerations. When asked for personal answers to when prosecutorial misconduct occurs, the researcher found a general theme of prosecutorial misconduct occurs when the prosecutors misrepresents, misuses or mishandles evidence in court or acts unethically, negligibly or illegally.

Procedure and Analysis

To examine the research questions mentioned above, the researcher conducted a univariate analysis of the variables and then a bivariate analysis to see the relationship between participants’ perceptions and knowledge of prosecutorial misconduct’s influence on wrongful convictions as well as participants’ willingness to support reform. Following these analyses, multivariate analyses were conducted to test the relationship of different variables with dependent variables one through four. Variables that were found to be non-significant were not removed from the analysis and instead were labelled “NS” in Table 13.

Results

Univariate Analysis

The values for the univariate analysis have been shared in the previous section where each variable was shared. Tables 1-11 (See Appendix A) provides an overview of the univariate analysis as well.

Bivariate Analysis

The bivariate analysis of this study entailed correlations between the independent and dependent variables. Table 12 provides an overview of the bivariate analysis.

DV1: Support for Liability

For support for prosecutorial liability (DV1), the variables found to be significantly correlated at a 0.01 level or lower were gender ($r=-0.173$), identifying eyewitness misidentification as a top cause of wrongful convictions ($r=0.218$), knowing the top three causes of wrongful convictions scaled ($r=0.256$), ranking eyewitness misidentification as the leading cause of wrongful convictions ($r=0.162$), knowing top three causes rank scaled ($r=0.174$), knowing the definition of qualified immunity ($r=0.456$), absolute immunity ($r=0.166$) and prosecutorial immunity ($r=0.206$) as well as the fairness of criminal justice system ($r=-0.201$). The variables found to be correlated below a 0.05 level were age ($r=-0.147$), identifying forensic error as a top cause of wrongful convictions ($r=0.133$), knowing the average length of time an exoneree spends in prison ($r=0.131$), knowing the top crime associated with the most exonerations ($r=0.126$), identifying the correct number of exonerations to date ($r=0.153$), and identifying the most harmful cause of prosecutorial misconduct ($r=0.150$). Lastly, the variables that were found to be correlated below a 0.10 level were familiarity with overall legal system ($r=0.106$) and knowing that the ABA model rules apply to prosecutors ($r=0.103$).

DV2: Support for Immunity

In terms of support for immunity, two variables were found to be significantly correlated at a 0.01 level or lower. These variables were fairness of criminal justice system ($r=-0.407$), and identifying prosecutors as having the most power in the system ($r=-0.183$). The variables found to be correlated below a 0.05 level were identifying falsified testimony as a top three cause of wrongful convictions ($r=0.173$), and correctly ranking false testimony as the second cause of wrongful convictions ($r=0.166$). Several variables were found to be correlated under a 0.10 level which were gender ($r=0.122$), familiarity with the criminal justice system ($r=0.123$), identifying top three causes to wrongful convictions scale ($r=0.136$), and identifying prosecutorial misconduct as the most harmful cause of wrongful convictions ($r=-0.132$).

DV3: Support for Regulation

The variables found to be significantly correlated at a 0.01 level or below for support for regulation were age ($r=-0.184$), and fairness of the criminal justice system ($r=-0.366$). The variables that were correlated below a 0.05 were gender ($r=-0.151$), race ($r=0.135$), identifying eyewitness misidentification as a top cause of wrongful convictions ($r=-0.151$), and identifying prosecutorial misconduct as the most harmful cause of wrongful convictions ($r=0.164$). Lastly, the single variable that operated at a 0.10 correlation level was familiarity with the United States civil court ($r=-0.123$).

DV4: Support for Preventative Actions

For support for preventative actions, the variables found to be significantly correlated at a 0.01 level or below were age ($r=-0.224$), identifying eyewitness identification as a top cause of wrongful convictions ($r=0.236$), the scale of the top three causes of wrongful convictions ($r=0.271$), the rank scale of the top three causes of wrongful convictions ($r=0.191$), knowledge of

qualified immunity ($r=0.557$), knowledge of absolute immunity ($r=0.171$), knowledge of prosecutorial immunity ($r=0.322$) and identifying prosecutorial misconduct as the most harmful cause of wrongful conviction (0.165). Several variables were found to be correlated below a 0.05 which were age ($r=-0.151$), race ($r=0.135$), familiarity with the United States legal system ($r=-0.142$), familiarity with the overall legal system ($r=-0.141$), identifying eyewitness misidentification as the top cause of wrongful convictions ($r=0.150$), and knowing the number of current exonerations ($r=0.155$). The variables that were correlated at a 0.10 level or below were identifying falsified testimony as a top cause of wrongful convictions ($r=0.121$), identifying false forensic evidence as a top cause of wrongful convictions ($r=0.110$), correctly ranking false forensic evidence as the third cause of wrongful convictions ($r=0.113$), knowing the average length of time an exoneree spends in prison (0.107), knowing percentage of wrongful convictions caused by prosecutorial misconduct ($r=0.110$), and knowing that the ABA model ethical rules apply to prosecutors ($r=0.117$).

DV5: Appropriate Response for Misconduct Relating to Tampered Evidence

The only variable found to be correlated at 0.05 level or below was identifying eyewitness misidentification as a leading cause to wrongful convictions ($r=0.140$). The variables found to be correlated at a 0.1 level were race ($r=-0.121$), identifying eyewitness misidentification as the top cause of wrongful convictions ($r=0.137$), knowing the average length of time an exoneree spends in prison ($r=-0.121$), and knowing absolute immunity ($r=0.150$).

DV6: Appropriate Response for Misconduct Relating to Wrongful Charging

The only variable significant correlated at a 0.01 level or below was age ($r=0.192$). Gender ($r=0.158$) and identifying prosecutors as the most powerful actor in the criminal justice system ($r=0.159$) were found to be correlated below a 0.05 level. The rank scale of the top three

causes of wrongful convictions ($r=-0.120$) and fairness of criminal justice system ($r=-0.123$) were correlated at a 0.1 level or below.

DV7: Appropriate Response for Misconduct Relating to Withholding Evidence

The sole variable found to be correlated was race ($r=-0.121$) operating at a 0.1 level or below.

DV8: Appropriate Response for Misconduct Relating to Submitting False Evidence

Race ($r=-0.143$) operated at a 0.05 level or below. Familiarity of the United States civil court system ($r=0.123$) and scale of the top three causes of wrongful convictions ($r=0.138$) were found to be correlated at a 0.1 level or below.

DV9: Appropriate Response for Misconduct Relating to Misrepresenting The Facts

The variables found to be correlated at a 0.05 level or below were race ($r=-0.173$), and fairness of criminal justice system ($r=-0.177$). The variable found to be correlated at a 0.1 level or below was identifying false forensic science as a top cause of wrongful convictions ($r=0.121$).

In review of all the bivariate analyses it should be noted that identifying as Hispanic or Latino(a) (X4) was not significant for any of the variables. The strongest model was Model 1 which represented support for liability. The model with the least significance was Model 7 which was determining the appropriate response to prosecutors withholding evidence from the defense. In general, however, dependent variables 5-9 did not show a lot of significance across the models.

Multivariate Analysis

The results in this section were conducted using a regression predicting the support for liability, immunity, regulation and preventative efforts (dependent variables 1-4). Table 13

provides further information on the bivariate analysis. The first set of multivariate regressions focused on support for liability. Model 1 was significant, and the higher values represented support for liability. Three variables came through in this model which were gender, knowledge of qualified immunity and fairness of the criminal justice system. Knowledge of qualified immunity was the most significant ($r=0.080$) and had the most impact ($B=0.306$). The qualified immunity variable indicated a positive relationship. Both fairness of the criminal justice system ($r=0.040$) and gender ($r=0.076$) came through at a 0.05 level or below and had negative outcomes.

Model 2 represented support for immunity. Higher values meant those that were in support of prosecutorial immunity and this model was significant. This variable operated in the opposite direction of the other variables meaning higher values meant more prosecutorial protections. Three variables came through in this model which were identifying falsified testimony as a top cause of wrongful convictions, fairness of criminal justice system, and identifying prosecutors as individuals who had the most power in the system. Fairness of the criminal justice system ($r=0.077$) was the most significant and had the most impact ($B=0.369$). This variable indicated a positive relationship. Operating at a 0.05 p value or lower was the prosecutorial power variable ($r=0.131$) and identifying falsified testimony as a top cause of wrongful convictions ($r=0.122$). The falsified testimony variable had a positive relationship while the prosecutorial power variable had a negative relationship.

Model 3 represented support for prosecutorial regulation. The higher values represented support for prosecutorial regulation. Three variables were significant: age, identifying eyewitness misidentification as a top cause of wrongful convictions, and fairness of the criminal justice system. Fairness of the criminal justice system was the most significant ($r=0.043$) and had the

most impact ($B=-0.279$). Fairness of the criminal justice system had a negative relationship. The eyewitness misidentification variable ($r=0.077$) and age ($r=0.003$) variable were correlated at a 0.1 level or below and were both negative outcomes.

Lastly, Model 4 represented support for preventative actions for when misconduct occurs. The higher values represented support for preventative actions. Two variables were significant, and they were knowledge of qualified immunity and knowledge of prosecutorial immunity. Knowledge of qualified immunity was the most significant ($r=0.234$) and had the most impact ($B=0.386$). This variable had a positive relationship. Knowledge of prosecutorial immunity ($r=0.18$) had a positive relationship as well and operated at a 0.05 or below level.

Discussion and Conclusion

While the results from the research study are incredibly important, it is also important to understand and apply the results to what is currently known about this topic. Prosecutorial misconduct, and its contribution to wrongful convictions, is a prevalent topic that tends to go unnoticed, yet over the past decade numerous misconduct incidents have become known. The motive to engage in misconduct arises as a result of how society defines the prosecutorial role, internal governing, cognitive biases, prosecutorial work culture, and weak sanctions for when misconduct happens.

Currently, in 2020 and 2021, there has been a large focus on law enforcement reform. Police officer misconduct is increasingly coming to light, through visual evidence and testimony, and the government is finally beginning to enact desirable change (Edmondson & Fandos, 2021). While police misconduct is egregious, it is worth emphasizing that prosecutors are one of the last criminal justice actors that make key decisions about a defendant's fate prior to conviction.

Therefore, more attention needs to be directed towards uncovering the frequency of prosecutorial misconduct, understanding the motivations behind misconduct, and bring forward solutions to deter misconduct—especially with the same enthusiasm as addressing police misconduct.

Overall, there was general support for prosecutorial liability, both civil and criminal. Roughly 61% of people favored civil and criminal liability. Civil liability was highly desired compared to solely criminal liability. This finding goes to say that many believed absolute immunity needs to be revisited and was also reemphasized on a univariate level for dependent variable 2 where roughly 55% of participants did not support prosecutors having immunity from civil liability and criminal prosecution. Another takeaway was the lack of support for prosecutorial immunity. This topic is further discussed below in the policy implication section. Nonetheless, the majority of participants were not in support for prosecutorial immunity.

With the current state of prosecutorial immunity, prosecutors cannot be held civilly liable which is contrary to the study's findings. There was also support for disciplinary action for when misconduct occurs. This finding is also against current practices as it has been reported that very few misconduct cases result in disciplinary action. Enforcing disciplinary action when misconduct occurs will provide the accountability piece that participants are looking for. Disciplinary action should range from a warning all the way up to termination depending on the severity of the misconduct.

Lastly, the key takeaway of the study was the influence that participants' perceptions of criminal justice fairness had on their likelihood to support prosecutorial liability, accountability, immunity and preventative efforts for when misconduct occurs. On a univariate level, roughly half of participants reported perceiving the criminal justice system as slightly fair or not fair at all which is a cause for concern. On a bivariate level, fairness of the criminal justice system came

through independent variables 1-3 and 9 and on a multivariate level came through on dependent variables 1-3. The relationship between fairness and support revealed that those who felt the system was unfair were more likely to support liability, accountability and regulation compared to those that felt the system was fair.

It is important to note that fairness is an opinion or perception that is comprised of participant's experiences and knowledge levels of the justice system which can greatly vary from person to person. However, there was a wide discrepancy between those that felt the system was mostly fair or completely fair and those that felt the system was slightly fair or not fair. Also, 177 out of 240 participants (74%) rated their familiarity with the criminal justice system as an 8.00 or higher out of 10.00, yet this discrepancy still existed. This signals that there are other mechanisms aside from knowledge on the criminal justice system and familiarity with the system that led to the perception of fairness and therefore support for liability, accountability, and regulation of prosecutors.

Overall, these key takeaways helped answer the two research questions of the study. The first research question was: Are legal professionals in support for reform? The majority of participants were in support for reform. About $\frac{3}{4}$ of participants supported heavier compliance with prosecutorial standards (75%), more stringent ethical guidelines (74%) and disciplinary action (72%). All of which are indicators of reform efforts for prosecutorial misconduct.

In terms of research question two, which sought to determine predictors of support for prosecutorial accountability, a few predictors came through in the models. There were a few knowledge pieces such as understanding the meaning of qualified immunity and prosecutorial immunity that came through in models 1 and 4. Contrary to what previous literature said, no personal factors like proximity to the criminal justice system showed up as a predictor of support

for prosecutorial accountability. Lastly, criminal justice system fairness was a predictor of support for prosecutorial accountability, which was previously discussed in the above paragraph.

Research Limitations

There are a few important limitations to consider before generalizing the findings of this study. The sample size was found through a singular listserv and organization, the American Psychology and Law Society. This survey asked participants in one point in time their opinion and knowledge on the topics discussed. The survey design did not take into account the fluidity of people's opinions and knowledge bases and how these areas may change with time. These limitations tie into the next section on future research.

Future Research

Research should be continued on this subject matter as there are large gaps within this topic, yet there is great importance around uncovering the flaws of the criminal justice system. A suggestion would be to study the same material but utilize a different listserv or outreach approach. While APLS was a good listserv to start this topic, as it was an accessible way to outreach to legal professionals, a broader population would serve useful when determining support for reform. Additional research could also be done addressing the general public and what constituents think about prosecutorial misconduct and need for reform. Another area of future research would be to interview prosecutors specifically to see how their perceptions might differ from legal professionals. Lastly, there was one research question that was not addressed in this study, which was simply, do legal professionals believe that prosecutorial misconduct is a flaw of United States criminal justice system. Finding answers to this question would couple nicely with what this study already revealed.

Policy Implications

This study provided insight on various policy implications that may help solve the issue of prosecutor misconduct. Prior to getting into the specific reform recommendations, it is important to recognize that this study revealed that the majority of APLS legal professionals were in support for prosecutorial regulations, accountability, preventative efforts and liability. First, the United States should revisit prosecutor immunity. Currently, prosecutors have functional immunity meaning that they have absolute immunity when acting as a prosecutor and qualified immunity when they are acting in an investigative role, similar to law enforcement officers. This type of immunity shields prosecutors from any sort of liability, leaving no mechanism in place for accountability.

While it is important to protect prosecutors in their line of work for when honest mistakes happen, it must be recognized that there are prosecutors who purposefully engage in misconduct and can hide behind the immunity given to them by the government. As criminal justice reform begins to become more and more sought after by the public, such as revisiting qualified immunity for law enforcement officers, it is integral to take a deeper look at all criminal justice actors who have immunity. This study showed that legal professionals are in favor of eliminating absolute immunity for prosecutors.

Secondly, the government should begin to implement internal disciplinary actions for prosecutorial misconduct. On paper, disciplinary sanctions exist. The issue is that misconduct is rarely reported and even if misconduct is reported, little to no reprimand occurs. An emphasis should be placed on reporting misconduct in order to truly understand the nature and extent of misconduct. Furthermore, when misconduct is reported, an investigation should be conducted

immediately. If the prosecutor in question without a doubt engaged in misconduct, disciplinary action must occur.

The extent of discipline depends on the degree of misconduct. Instilling disciplinary action can occur prior to revisiting immunity since immunity only shields prosecutors from legal suits. Therefore, revamping prosecutor offices' approach to misconduct should be started first to see if the occurrence of misconduct can be curbed prior to eliminating immunity. Legal professionals who participated in this study revealed their support for this action and indicated disciplinary action as a good steppingstone to fixing the problem.

Lastly, the establishment of an external commission to review prosecutor misconduct cases was highly sought after by participants of the study. This is not to contradict the previous point made about internal disciplinary action but more as a supplement. An external review board should be established to review misconduct cases. The externality of such a review board will ensure that unbiased sets of eyes are reviewing the misconduct cases for actual misconduct without a concern for the prosecutor or prosecutor office's reputation. This external commission should review the case based on the facts provided and engage in a formal investigation if needed. From there, the commission should report its findings to the prosecutor's office with a recommendation of appropriate reprimand. If, and only if, a prosecutor is found to have engaged in misconduct, this finding should be published in a public database for people to review. The external commission coupled with internal disciplinary action and public access will add a much-needed accountability piece to the scope of prosecutor employment. Overall, the study successfully revealed that prosecutorial reform is warranted.

In conclusion, wrongful convictions are one of the greatest mistakes society can make. This topic is an increasingly prominent topic as more and more wrongful convictions are coming

to light. Even more alarmingly is that prosecutors, some of the most powerful people in the United States justice system, are engaging in behaviors that allow wrongful convictions to occur. Prosecutorial misconduct needs to be prevented. Due to the vast amount of power prosecutors are given, it is vital that mechanisms are put into place to prevent misconducts that lead to wrongful convictions. This study proved the need for reform efforts and had the ability to interpret policy recommendations. Innocent people should not be sent to prison for crimes they did not commit, especially at the hands of prosecutors who took an oath to not allow innocence to suffer. In order to improve the United States criminal justice system, prosecutorial misconduct, wrongful convictions, and the intersectionality of the three need to be properly attended to and discussed further.

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Appendix A- Tables

CONTROL VARIABLES

Table #1: Univariate Statistics for Gender

Gender	<i>f</i>	Percent (%)	Cumulative Percent (%)
Female	180	72.80	72.80
Male	68	26.80	99.60
Transgender	1	.40	100.00
Total	N=249		

Table #2: Univariate Statistics for Race

Race	<i>f</i>	Percent (%)
Asian or Asian American	8	3.1
American Indian or Alaska Native	9	3.5
Black or African American	17	6.7
Middle Eastern or North African	1	.4
Native Hawaiian or Pacific Islander	1	.4
White or European American	227	89.4
Other	3	1.2
Total	N=254	

DEPENDENT VARIABLES

Table #3 Univariate Statistics for Dependent Variables 1 through 3

Variable	N	Me an	Med ian	Mo de	St. Dev.	M in	M ax
Prosecutorial liability for prosecutorial error		1.26	1.00	1	.439	1	2
Support for stringent ethical guidelines for prosecutors	201	4.61	5.00	5	.721	1	5
Support for compliance with national prosecutorial standards	201	4.65	5.00	5	.607	2	5
Support for less judicial discretion during charging process	201	3.72	4.00	4	.987	1	5
Support for internal governing of misconduct cases	201	2.53	2.00	2	1.175	1	5
Support for external governing of misconduct cases	201	4.37	4.00	5	.667	2	5
Support for disciplinary action (civil or criminal)	200	4.37	4.00	5	.718	1	5

Table #4: Univariate Statistics for Dependent Variable 4 (%)

Variable	Criminal Sanction	Civil Lawsuit	Professional Sanctions	Mandatory Letter of Apology	No Response
Prosecutor tampered with evidence	50.4	5.5	22.0	0	0.8
Prosecutor introduced false evidence	46.9	6.7	23.6	.5	1.5
Prosecutor withheld exculpatory evidence	35.8	10.6	31.9	0	.5
Prosecutor knew defendant was innocent	28.7	11.0	36.2	.8	2.0
Prosecutor misrepresented fact to falsely persuade jury	18.1	11.8	40.9	2.0	7.5

Note: This table reflects row totals, which identify different responses for each item listed on the left.

Table #5: Univariate Statistics Measures to Prevent Prosecutors from Engaging in Misconduct (multi-select)

Preventative measures	<i>f</i>	Percent (%)
Create external commission to hold prosecutors accountable	184	72.4

Impose civil/criminal liability	146	57.50
Update code of ethics	104	40.90
More training in law school	86	33.9
Other	18	7.1

Table #6: Univariate Statistics Measures of Criminal or Civil Liability for Prosecutors

Liability	<i>f</i>	Percent (%)	Cumulative Percent (%)
Civil	64	21.30	21.30
Criminal	6	2.40	23.70
Both	94	37.0	60.6
Missing	100	39.4	100.00
Total	N=254		

INDEPENDENT VARIABLES

Table #7: Univariate Statistics Measures of Participant’s Knowledge on wrongful convictions, prosecutorial immunity and regulation

Variable	N	Mean	Median	Mode	St. Dev.	Min	Max
Definition of Absolute Immunity	208	1.92	2.00	2	.721	1	5
Definition of Qualified Immunity	207	1.18	1.00	1.00	.642	1	4
Type of Immunity Prosecutors Have	204	2.32	2.00	1.00	1.314	1	4
Average Length of Time that a Wrongfully Convicted Person Spends in Prison	222	3.78	4.00	4.00	1.006	1	5
2019- Most Common Exonerated Crime	221	1.78	2.00	1.00	.893	1	4
Percentage of Wrongful Convictions Resulted from Prosecutorial Misconduct	210	3.24	3.00	3.00	1.389	1	6

Table #8: Univariate Statistics Measures for Most Harmful Cause of Wrongful Convictions

Harmful Cause	<i>f</i>	Percent (%)	Cumulative Percent (%)
Eyewitness Misidentification	60	27.3	27.3
Falsified Testimony	10	4.5	31.8
Use of Jailhouse Informants	1	.5	32.3
Police Misconduct	51	23.2	55.5
Prosecutor Misconduct	70	31.8	87.3
Tampered Forensic Evidence	11	5.0	92.3
Ineffective Defense Counsel	17	7.7	100.00
Total	N=220		100

Table #9: Univariate Statistics Measures for Participants' Proximity to the Criminal Justice System

Proximity to Criminal Justice System	<i>f</i>	Percent (%)	Cumulative Percent (%)
Currently works in criminal justice system	96	38.6	38.6
Knows someone who works in criminal justice system	146	57.5	96.1
Does not work or know someone who works in criminal justice system	41	4.9	100.0
Total	N= 283	100.0	

Table #10: Univariate Statistics Measures on Participants' Perceptions on Factors Leading to Committing Misconduct

Prosecutorial Motives Behind Misconduct	<i>f</i>	Percent (%)
Pressure to convict	202	79.5
Failure to report	122	48
Lack of consequences	170	66.9
Lack of ethical guidelines	93	36.6

Table #11: Most Power in Criminal Justice System

Most Power in Criminal Justice System	<i>f</i>	Percent (%)	Cumulative Percent (%)	Mean	Median
Judges	127	54.7	54.7	1.71	1.00
Prosecutors	84	36.2	90.9	1.84	2.00
Defense Attorneys	1	.4	91.3	4.31	4.00
Police Officers	19	8.2	99.5	3.14	3.00
Forensic Experts	1	.4	99.9	5.13	5.00
Probation Officers	0	0	99.9	4.87	5.00
Total	N=254	99.9			

Table #12 Bivariate Analysis for Dependent Variables 1 through 9 (Pearson's Correlations)

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X1-Age	- 0.147* *	NS	- 0.184* **	- 0.224* **	NS	0.192* **	NS	NS	NS
X2- Gender	- 0.173* **	0.122*	- 0.151* *	- 0.151* *	NS	0.158* *	NS	NS	NS
X3-Race (White or European American)	NS	NS	0.135* *	0.135* *	- 0.121 *	NS	- 0.121 *	- 0.143 **	- 0.173 **
X4- Hispanic or Latino(a)	NS	NS	NS	NS	NS	NS	NS	NS	NS
X5 -Familiarity w/ U.S. legal system	- 0.106*	NS	NS	- 0.142* *	NS	NS	NS	NS	NS
X6- Familiarity w/ overall legal system	NS	NS	NS	- 0.141* *	NS	NS	NS	NS	NS
X7-Familiarity w/ CJS	NS	0.123*	NS		NS	NS	NS	NS	NS
X8- - Familiarity w/ U.S. civil court system	NS	NS	-0.123*	NS	NS	NS	NS	0.123 *	NS
X9- Know Top 3 EW	0.218* **	NS	- 0.151* *	0.236* **	0.140 **	NS	NS	NS	NS
X10- Know Top 3 FT	NS	0.173* *	NS	0.121*	NS	NS	NS	NS	NS
X11-Know Top 3 FE	0.133* *	NS	NS	0.110*	NS	NS	NS	NS	0.121 *

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X12- Know Top 3 Scale	0.256* **	0.136*	NS	0.271* **	NS	NS	NS	0.138 *	NS
X13- Know Top 3 Rank EW	0.161* **	NS	NS	0.150* *	0.137 *	NS	NS	NS	NS
X14 Know Top3Rank FT	NS	0.166* *	NS	NS	NS	NS	NS	NS	NS
X15- Know Top3Rank FE	NS	NS	NS	0.113*	NS	NS	NS	NS	NS
X16-Know Top3Rank Scale	0.174* **	NS	NS	0.191* **	NS	- 0.120*	NS	NS	NS
X17- Know Length of Exoneration	0.131* *	NS	NS	0.107*	0.121 *	NS	NS	NS	NS
X18- Know 2019 Most Ex	0.126* *	NS	NS	NS	NS	NS	NS	NS	NS
X19--Know WC Pros	NS	NS	NS	0.110*	NS	NS	NS	NS	NS
X20- Know ABAApplies	0.103*	NS	NS	0.117*	NS	NS	NS	NS	NS
X21- Known Count Ex	0.153* *	NS	NS	0.155* *	NS	NS	NS	NS	NS
X22-Know QImmun	0.456* **	NS	NS	0.557* **	NS	NS	NS	NS	NS
X23- Know AImmun	0.166* **	NS	NS	0.171* **	0.150 *	NS	NS	NS	NS
X24- Know ProsImmun	0.206* **	NS	NS	0.322* **	NS	NS	NS	NS	NS
X25-Most Harm PM	0.150* *	- 0.132*	0.164* *	0.165* **	NS	NS	NS	NS	NS
X26- Fairness of CJS	- 0.201** *	0.407* **	- 0.366* **	NS	NS	- 0.123*	NS	NS	- 0.177 **

Variable	DV1	DV2	DV3	DV4	DV5	DV6	DV7	DV8	DV9
X27-Most Power Pros	NS	0.183*	NS	NS	NS	0.159*	NS	NS	NS
		**				*			
	***p < 0.01		** p < 0.05		*p < 0.10				

Table #13: Multivariate OLS Regression Analyses for Dependent Variables 1 through 4

IV	DV1			DV2			DV3			DV4		
	b	B	SE	b	B	SE	b	B	SE	b	B	SE
X- Age	NS	NS	NS	NS	NS	NS	-0.005	-0.149	0.003*	NS	NS	NS
X2- Gender	-0.174	-0.164	[0.076]**	NS	NS	NS	NS	NS	NS	NS	NS	NS
X3- Race (White or European American)	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X4- Hispanic	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X5- Familiarity w/ U.S. Legal System	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X9- Know Top 3 EW	NS	NS	NS	NS	NS	NS	-0.137	-0.125	0.077*	NS	NS	NS
X10- Know Top 3 FT	NS	NS	NS	0.260	0.142	[0.122]**	NS	NS	NS	NS	NS	NS
X11- Know Top 3 FE	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X17- Know length Ex	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X18- Know 2019	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X19- Know WC Pros.	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X20- ABA applies	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X21- Know Count Ex	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X22- Know Q Immun.	0.370	0.306	[0.080]***	NS	NS	NS	NS	NS	NS	1.441	0.386	[0.234]**
X23- Know A Immun.	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X24- Know Pros. Immun.	NS	NS	NS	NS	NS	NS	NS	NS	NS	0.444	0.152	[0.189]*

IV	DV1			DV2			DV3			DV4		
	b	B	SE	b	B	SE	b	B	SE	b	B	SE
X25- Most Harm PM	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS	NS
X26- Fairness of CJS	-	-	[0.040]**	0.38	0.36	[0.077]***	-	-	[0.043]*	NS	NS	NS
X27- Most Power Pros	NS	NS	NS	-	-	[0.131]**	NS	NS	NS	NS	NS	NS
Constant	.732		[0.219]***	0.96		[0.461]**	4.60		[0.257]**	1.88		[0.642]**
Model Fit F	3.017***			3.207***			2.352***			4.681***		
Adj. R-Square	0.143			0.174			0.114			0.233		

Notes: Values shown for each DV represented as follows: unstandardized coefficients/ standard coefficients [standard error]

*** p< 0.01 **p<0.05 *p<0.1

**Appendix B- Survey Printout from Qualtrics:
Pappas Thesis Survey**

Start of Block: Informed Consent

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Q2 Perceptions of Legal Professionals Misconduct as Contributors to Wrongful Conviction

Informed Consent

Sponsor of the Study This study is sponsored by the University of New Haven Honors Program

The Purpose of the Research

The purpose of this study is to investigate the level of awareness legal professionals (i.e. lawyers, legal professors, etc.) have on wrongful convictions and how prosecutorial misconduct can contribute to wrongful convictions. You will be asked questions about the criminal justice system, prosecutors, your knowledge on wrongful convictions, legal ethics and prosecutorial misconduct and immunity. All of your answers will be kept confidential. **Procedures**

Before you can be included in this research study, your consent must be obtained. By reading the information on this page and indicating that you give your consent when asked below, you will have agreed to allow the researcher to ask you questions about how you have learned different

behaviors of interest to the researcher. Your "yes" response below will act as your signature/ acknowledgement on this informed consent. **Participant Alertness** This survey will ask questions about your attitudes and behaviors. These questions will have varying instructions that help you move throughout the survey. As you answer each of these types of questions, there are no wrong answers about your attitudes or behaviors. The researchers are only interested in insuring honest answers from alert participants. This occurs when you take the time and read the instructions for each set of questions. To encourage that you are paying attention, there are a few questions throughout the survey that measure your alertness. If you are paying attention, you will be able to answer the questions correctly. Failure to answer the read the instructions and questions correctly will result in the participant failing to qualify as an "alert participant".

Time Required It will take 30-60 minutes to answer the questions, depending on your pace.

Risks/Discomforts

Risks are minimal for involvement in this study. However, you may feel emotionally uneasy or conflicted when asked to express experiences involving authority figures. Please take the survey in private or under conditions that ensure privacy.

Benefits There are no direct or indirect benefits offered to you through this study.

Compensation

There is no monetary compensation for participation in this study.

Confidentiality

All of your answers will be kept confidential and then de-identified before data storage, meaning that none of your answers will be linked back to you as an individual although there is always some minimal risk that online information could be accessed and compromised. The

results of the study will present patterns of how everyone answered as a group. The report will not focus on any one person's answers. This study will utilize the data protection system provided by Qualtrics, the professional survey-software company that hosts our survey. Qualtrics is a secure site that has been certified (SAS 70) for rigorous privacy standards. Only the study investigators will have access to the data on Qualtrics. Any data you provide to Qualtrics is encrypted for security purposes, and your computer's IP address will be masked by Qualtrics and will be unavailable to the researchers or others. (Their privacy statement can be obtained at <http://www.qualtrics.com/privacy-statement>.)

Voluntary Participation and Right to Withdraw from the Study You do not have to answer any questions that you do not want to answer, and you can stop taking the survey at any time.

Questions about the Research

If you have questions regarding this study, you may contact the Principal Investigator, Amanda Pappas, Criminal Justice Honors Student (at apapp2@unh.newhaven.edu) or the Research Supervisor, Danielle Cooper, PhD, CPP (at dcooper@newhaven.edu). **Whom to**

Contact About Your Rights as a Research Participant in the Study UNHIRB Office, University of New Haven, West Haven, CT 06516; You can email irb@newhaven.edu about Protocol #2020-038.

Thank you for your time!

Q3 "I have read the consent form and I am willing to participate in this study"

- No
- Yes

End of Block: Informed Consent

Start of Block: No-Consent

Q4

You have chosen not to participate in the survey.

If this is in error, please indicate below and you will be redirected survey.

If this was not in error, thank you for your time! Press the next button to exit the survey.

Q5 "I have read the consent form and desire of my own free will to participate in this study"

- Yes, please take me to the survey

- o No, please take me to the exit

End of Block: No-Consent

Start of Block: Demographic

Q6 What is your gender?

Select all that apply.

- Male
- Female
- Transgender
- Nonbinary
- Gender Fluid
- Other

Q7 How many years old are you?

Enter the number representing your current age.

Q8 How old are you?

Select from pull down menu.

▼ 17 or younger ... 100 or older

Q9 How would you describe your race?

You may select more than one option.

- American Indian or Alaska Native
- Asian or Asian-American
- Black or African-American
- Middle Eastern or North African
- Native Hawaiian or Pacific Islander
- White or European American
- Other (*please specify here*)

Q10 Do you identify as Hispanic/ Latino(a)?

- Yes
- No

Q11 What is the highest level of education that you have completed?

- Grammar/Elementary School
 - High School Diploma or equivalent
 - Vocational/Technical School Graduate
 - Some College
 - Undergraduate Degree
 - Master's Degree
 - Doctoral Degree
 - Professional Degree
 - Other Degree (*please specify here*)
-

Q12 Are you familiar with the United States legal system?

- Not familiar at all
- Slightly familiar
- Moderately familiar

Q14 What is your occupation?

▼ Management Occupations (4) ... Military Specific Occupations

Q15 Do you or someone that you know currently work in the criminal justice system?

Select all that apply.

- Yes, I currently work in the criminal justice system
- Yes, I know someone else who currently works in the criminal justice system
- No, neither I nor anyone I know works in the criminal justice system

Q16 Are you or do you know a prosecutor?

- Yes, I am a prosecutor
- Yes, I know a prosecutor

- No, I do not know nor am I a prosecutor

End of Block: Demographic

Start of Block: Block 3

Q17 Is there a Code of Ethics for lawyers?

- Yes
- No

Q18 Have you ever been arrested before?

- No
- Yes
- Decline to Answer

Q19 Do you have a criminal record?

- No
- Yes
- Decline to Answer

Q20 Who do you think has the most power in the criminal justice system?

Rank order the list below with 1 being the most powerful and 6 being the least powerful.

_____ Prosecutors

_____ Judges

_____ Defense Attorneys

_____ Police Officers

_____ Forensic Experts

_____ Probation Officers

Q21 How would you rate the fairness of the criminal justice system?

- Not fair at all
- Slightly fair
- Moderately fair
- Very fair
- Extremely fair

Q22 If you think it is unfair, name one flaw that you see below:

Q23 How many people in the United States do you think have been listed on the National Registry of Exonerees?

Please enter a number without using a comma. If you do not know, please guess to the best of your ability.

Q24 What are the three most common causes of wrongful convictions?

For the top 3 selected, please rank in order from 1 to 3, where 1 is the highest.

Top 3

_____ Eyewitness Misidentification

_____ Falsified Testimony

_____ Use of Jailhouse Informants

_____ Police Misconduct

_____ Prosecutor Misconduct

_____ Tampered Forensic Evidence

_____ Ineffective Defense Counsel

Q25 Overall, which cause of wrongful conviction is the most harmful?

- Eyewitness Misidentification
- Falsified Testimony
- Use of Jailhouse Informants
- Police Misconduct
- Prosecutor Misconduct
- Tampered Forensic Evidence

- o Ineffective Defense Counsel

Q26 According to the National Registry of Exonerations, what is the average length of time that a wrongfully convicted person spends in prison before being exonerated?

- o Less than 1 year
- o Between 3-5 years
- o Between 6-9 years
- o Between 10-14 years
- o 15 years or more

Q27 In 2019, which crime dealt with the most exonerations?

- o Homicide
- o Sexual assault
- o Larceny

- o Fraud

End of Block: Block 3

Start of Block: Prosecutorial Misconduct

Q28 Please complete the following sentence using your own words:

“Prosecutorial misconduct occurs when _____.”

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Q29 Review the following definition of Prosecutorial Misconduct before moving forward:

Prosecutorial misconduct was addressed in *Berger vs. United States*. Justice Sutherland defined prosecutorial misconduct as: “overstepp[ing] the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense.”

After a few seconds, you will be able to click NEXT to advance this page at the bottom.

Q30 Timing

First Click

Last Click

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Click Count

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Q31 According to the National Registry of Exonerations, what percentage of wrongful convictions resulted from prosecutorial misconduct?

- Around 10% of all cases
- Around 20% of all cases
- Around 30% of all cases
- Around 40 % of all cases
- Around 50% of all cases
- Around 60% or more cases

Q32 If a prosecutor makes a mistake and a defendant is wrongfully convicted, do you think the prosecutor should be held liable?

- Yes
- No

Q33 Should prosecutors be held civilly or criminally liable?

- o Civilly
- o Criminally
- o Both

Q34 What motivates prosecutors to commit misconduct?

Select all that apply.

- Pressure to convict
- Failure to report
- Lack of consequences
- Lack of ethical obligations
- Other (please enter text)

End of Block: Prosecutorial Misconduct

Start of Block: Immunity

Q35 Which one of the options below best describes Absolute Immunity?

- A government official is immune from civil and criminal liability
- A government official is immune from civil and criminal liability when the action in question occurred within their scope of employment
- A government official is immune from civil liability when the action in question occurred within their scope of employment
- A government official is immune from criminal liability when the action in question occurred within their scope of employment
- A government official is immune from only civil liability

Q36 Which one of the options below best describes Qualified Immunity?

- A government official is immune from civil liability if the Plaintiff can show that the official violated “clearly established statutory or constitutional rights” of a person
- A government official who is immune from all civil liability

- o A government official who is immune from all criminal liability
- o A government official who is immune from civil and criminal liability

Q37 Do prosecutors have qualified, absolute, or no immunity when it comes to their line of work?

- o Qualified immunity
- o Absolute immunity
- o No immunity

Q38 Timing

First Click

Last Click

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Click Count

Q39 Review the following definition of Absolute Immunity before moving forward:

According to the American Constitution Society, Absolute Immunity is a “blanket and unconditional grant of protection from civil liability”. *Imbler vs. Pachtman* granted prosecutors absolute immunity for actions that are committed during their work as a prosecutor.

After a few seconds, you will be able to click NEXT to advance this page at the bottom.

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Q40 On a scale of 1 to 10, how fair is it for prosecutors to have absolute immunity, meaning they cannot be held liable for mistakes they might have made during the trial process?

Not Fair At All

Extremely Fair

0 1 2 3 4 5 6 7 8 9 1
0

Fairness	
----------	--

Q41 What are the chances that you would support prosecutors having immunity from criminal prosecution and civil liability?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q42 What are the chances that you would support prosecutors having immunity from civil liability?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q43 What are the chances that you would support prosecutors having immunity from criminal prosecution?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q44 What are the chances that you would support internal offices governing prosecutors?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q45 What are the chances that you would support more ethical guidelines governing what prosecutors can and can't do?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q46 What are the chances that you would support nation-wide compliance for prosecutorial standards that holds prosecutors more accountable for their actions?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q47 What are the chances that you would support giving prosecutors less judicial discretion during the charging process thus, ultimately giving them less power in the criminal justice system?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

Q49 What are the chances that you would support having external entities handle prosecutorial misconduct cases?

- Definitely would not
- Probably would not
- Might or might not
- Probably would
- Definitely would

End of Block: Immunity

Start of Block: Ethics

Q50 Are you familiar with the ABA Model Rules of Professional Conduct?

- Not familiar at all
- Slightly familiar
- Moderately familiar

- Very familiar
- Extremely familiar

Q51 Based on your understanding, do these rules apply to prosecutors?

- Definitely yes
- Probably yes
- Might or might not
- Probably not
- Definitely not

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Q52 What are the chances that you would support disciplinary action, civil or criminal, when a prosecutor is found to have committed misconduct??

- Definitely would not

- o Probably would not
- o Might or might not
- o Probably would
- o Definitely would

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Q53 If a prosecutor tampered with evidence during trial and it resulted in a wrongful conviction, what do you think is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)
- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

Q54 If a prosecutor filed charges against a defendant who they knew was factually innocent but decided to prosecute them anyways, what do you think is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)
- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

Q55 If a prosecutor withheld evidence from the defense pointing to the defendant's innocence and it resulted in a wrongful conviction, what is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)
- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)

- o No response

Q56 If a prosecutor introduces false evidence to sway a judge or jury in favor of convicting the defendant and it resulted in a wrongful conviction, what is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)
- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

Q57 If a prosecutor misrepresents the facts and falsely persuades a jury to convict the defendant, what is the most appropriate response?

- o Criminal sanctions (e.g., sent to prison)

- o Mandatory letter of apology
- o Civil lawsuit
- o Professional sanctions (e.g., disbarment)
- o No response

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Q58 What should be done to prevent prosecutors from engaging in misconduct?

- o Update the code of ethics
 - o More training in law school
 - o Impose civil/ criminal liability
 - o Create an external commission to hold pros accountable
 - o Other (please specify)
-

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End of Block: Ethics