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**Prosecutorial Discretion:
Do Selection Methods Matter?**

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Political Science Honors Thesis
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INTRODUCTION

In the United States, prosecutors hold a significant amount of power in the criminal justice system. Though many view the arrest as the beginning of the process, the true beginning of the criminal justice system lies with the prosecutor and the decisions she makes. The prosecutor can decide to drop the case, to pursue the case or to give a plea bargain. Though it seems that there would be strict guidelines for what occurs in that critical stage of the system, there is not. The prosecutor possesses a substantial amount of discretion and the final word on most cases.

Recognizing the immense amount of power that prosecutors hold, scholars have performed a number of studies on discretion and have expanded our knowledge of the criminal justice system. Many of these studies have centered on the factors that influence decisions. Studies have focused on relationships between court officials, prison overcrowding, conviction rates and a number of other factors that could possibly influence a prosecutor's decisions (Cole, Gordon and Huber). While researchers argue that individual factors have a more significant influence on discretion than others, it is difficult to be certain since there are numerous factors and since most of a prosecutor's decisions take place behind closed doors.

While it is difficult to define the factor that has the most significant impact on a prosecutor's discretion, this study examines one of the political factors. More specifically, this study asks, do selection methods of prosecutors matter with respect to the community's desired outcome of a

case? It is argued that selection methods do matter based on two assumptions. The first assumption is that prosecutors that are elected will have a greater stake in pleasing the community and will therefore cater their discretionary decisions to the community's interest. The second assumption is that prosecutors who are appointed will have less of an interest in pleasing the community since they will not be up for reelection and will therefore not tend to the community's interests.

To measure the impact of selection methods, this thesis conducts a case study of two cities, Worcester, Massachusetts and Hartford, Connecticut. The case study helps analyze how elected and appointed prosecutors handle violent crimes cases. This thesis utilizes this method since scholars have failed to examine how prosecutors act in individual cases and whether such actions are related to how they are selected. This study considers three different scenarios, "Husband Murders Wife," "Child Rape," and "Murder of a Child By a Non-Stranger." Categorizing these scenarios is particularly crucial to this study. The two cases that are included in each scenario are carefully selected to ensure that the similarities between the two cases far outweigh the differences. By selecting cases that are similar, this study is able to compare them and suggest that the only major difference, the selection method of the prosecutor, is the reason for their differing outcomes.

Utilizing these methods, the findings demonstrate that selection methods do matter. In Worcester, where public sentiment is expected to play an important role in the prosecutor's decisions, it does, in all three scenarios.

In Hartford, where public sentiment is not expected to play an important role in the prosecutor's decisions, it does not, in two out of the three scenarios.

The findings of this study contribute to current studies on prosecutors by determining if the community is a significant political factor in the decisions of prosecutors. It also allows scholars to determine if there are discrepancies between prosecutors at the state level who are elected or appointed. Both of these determinations are necessary to the study of prosecutors. A focus or lack of focus on the community and potential discrepancies in selection methods has implications for the criminal justice system with respect to justice. Prosecutors that focus all of their attention on community desires and ignore the rights of defendants may not be seen as upholding justice. Similarly, prosecutors that focus all of their attention on the rights of the defendant and not on community desires provide the criminal justice system with an unjust balance of the law.

It is often argued whether the criminal justice system is in need of change. Some scholars argue that the amount of discretion prosecutors hold is necessary to their job (American Bar Association 1970), while others argue that there needs to be limits on that discretion (Angela Davis, Rainville). By examining this pressing issue and searching for irregularities in the criminal justice system, this study helps discover whether the role of prosecutor in the United States should be subject to change.

This thesis begins with a background of the United States criminal justice system. A history of prosecutors, definitions of key terms and an

overview of the two cities are described. Next, an analysis of past and current literature is provided to gain an understanding of theories already put forth on prosecutors as well as to identify the places where information is lacking. The next section is the design of the study. Variables are defined and overall methods are explained. Next, the results of the study are stated and analyzed. Finally, conclusions about selection methods and the criminal justice system in general are suggested.

BACKGROUND

The following information is important to this thesis as it provides a sense of how prosecution has evolved in the United States and where it is today. This section examines the role of the prosecutor throughout history and the positions that they hold today. Knowledge of how the role of the prosecutor has changed is necessary to understanding the importance of selection methods. This section also examines the two cities that are used as case studies in this thesis. Knowledge of how each city's criminal justice system operates is also necessary to understanding the importance of selection methods of prosecutors. The background sub sections include: History of Prosecutors, United States Prosecutors, Hartford, Worcester and Drawing Comparisons.

History of Prosecutors

The United States criminal justice system derives its origins from English common law. The colonists, newly settled in America, continued

some of the same practices that were present in England. They also modified the system to fit their new needs and to step away from the problems they had experienced in England. The colonists made prosecution public. Public Prosecution is the thought that when a crime is committed, the state recognizes it as a crime against the entire state and so provides the prosecution. In public prosecution, the state seeks justice on behalf of the victim (Worrall 5-7).

Public prosecution was first adopted by Connecticut in 1704 (Irons-Guynn 5). Initially, the selection method for all local prosecutors was by appointment. The local courts and governors were responsible for the appointments (Irons-Guynn 5). The role of prosecutor was not seen as a significant role and so many state governments failed to include the method by which they were appointed in their state constitutions (Rainville 14). Nevertheless, local prosecutors were appointed and in 1780 the role of District Attorney was created in the Judiciary Act of 1780, again with an emphasis on appointment (Irons-Guynn 6).

When Jackson took the presidency in 1820, “there was a push for increased democratization, including a push for elections rather than political appointments” (Worrall 7). Giving in to the push for a more democratic process, “Mississippi amended its constitution, in 1832, to add a provision for the election of local prosecutors” (Irons-Guynn 5). By the early 1900’s local prosecutors in each state with the exception of “Alaska, Connecticut, Delaware, the District of Colombia, New Jersey, Rhode Island and the outer

islands of Hawaii” were elected (Rainville 36). Local prosecutors that had originally been treated as a part of the judiciary were now being considered a part of the executive branch due to their election status (Worrall 7). The switch of selection methods from appointment to election was a significant milestone in prosecutorial history. The new selection method marked a significant shift in power within the criminal justice system that greatly impacted how the courts worked back then and still work today.

Prosecutorial power in the United States was initially insignificant in the early courts. This “power” is also known as prosecutorial discretion. Discretion is defined by scholars as the decision to take a certain course of action and more specifically, for a prosecutor to decide when to charge a person with a crime (Angela Davis 12; Kenneth Davis 4; Irons-Guynn 6). In the early history of the prosecutor, discretion was severely limited. The prosecutor was considered a “minor public official” (Rainville 14). The prosecutor was seen as an extension of the court and so the courts were given the most power. Even the sheriff and coroner at one point were upheld with more respect (Worrall 8).

When the selection method of the prosecutor changed from appointment to election, prosecutors gained a significant amount of power and made numerous discretionary decisions. The intended purpose of the change in selection was to hold the prosecutors accountable to the public (Angela Davis 165). Now, the prosecutors had to worry about reelection and therefore cater their decisions to the public. While this was respectable

reasoning, prosecutors began making the majority of the decisions. According to Worrall, "They went from having very limited power to almost limitless power" (8). After the change from appointment to election, the prosecutor's office began to grow with the growing population of the country. Scholars and other officials began to recognize the true power that the prosecutor held. This recognition led to a call for prosecutors to be subject to review.

However, the American Bar Association struck down the idea in 1970.

Rainville notes the following: "The American Bar Association stated that the decision to initiate criminal proceedings needed to be entrusted to a professional, public official" and so the prosecutor's level of discretion was justified (18).

The amount of discretion that prosecutors hold is still a point of contention today. Some scholars call them "the gatekeeper[s] to the justice system" (Rainville 17). Others blatantly state the failures associated with the growth of discretion. Angela Davis claims, "The electoral process has not served as an effective mechanism for holding prosecutors accountable to their constituents" (183). These scholars also call for reform and suggest the public be given more information on the inner workings of the prosecutor's office or prosecutors be subject to review boards (183).

In more recent years, prosecutors, self aware of the amount of discretion they hold, have begun to reach out to the community. Finding its origins in the community policing movement, the community prosecution movement has taken greater shape in recent years. Community prosecution

is noted as a “cultural change” as well as a response to the court’s “inability to control crime and their lack of responsiveness to citizens’ needs” (Thompson 338-340). Rainville describes community prosecution by saying, “The goals of community-based prosecutors, in theory, turned from attaining criminal convictions to solving community problems and addressing quality of life concerns” (20). Prosecutors have left their offices and begun to work closer with police and other attorneys in order to solve the problems on the street before they reach the court (Thompson 345). Changes in the criminal justice system such as this have lead to other implications for the criminal justice system in the United States.

The underlying concerns associated with prosecutorial discretion are often labeled as due process and crime control (Packer). Due process is a part of the American criminal justice system that looks out for the rights of the accused. Herbert Packer describes this in terms of prosecuting a criminal case. He says that it is the process by which the court officials cannot move forward with a case unless they are absolutely sure that the accused is guilty. Any hole in the evidence or any blemish in the case is not tolerated (Packer 6-8). Alternatively, crime control is the advancement of a case such that the prosecution can obtain the maximum amount of criminal convictions. Packer also explains this in terms of case advancement. He says that a prosecutor must do all that she can to get a conviction and that the conviction process should be methodical and speedy (Packer 4-6). Both of these models are constantly at odds and have had an interesting history in the United States.

The evidence seems to suggest from the on-set that America has been concerned with crime control. The switch from private to public prosecutors suggests certain elements of the crime control model. As noted previously, public prosecution suggests that a wrong has not been done solely to the victim, but to the entire state. The theory being that the public entrusts the prosecutors to deliver justice on their behalf. More recently, the United States has seen the impact of the “tough on crime” mentality (Rainville 19). In the 1980’s and 1990’s the United States saw record incarceration rates. Officials became concerned with the increase in prison volume and began to recognize that the people being incarcerated were not “career criminals” and were not committing crimes that warranted the amount of people in the prisons (Rainville 20). This recognition brought on moderate change. Community prosecution and the prosecutor’s interest in pleasing the community started to become more important.

Today, community prosecution and a focus on due process are more prevalent than they were in the past. There are still signs that crime control is still an important part of society. This is apparent in the media and reports on prison overcrowding, particularly in Connecticut and Massachusetts (Quarterly Report on the Status of Prison Overcrowding, Third Quarter 2009; “Report to the Governor and Legislature”; “Eyewitness News 3”). However, current literature on prosecution indicates a switch from crime control to due process. The growing number of studies on community prosecution, the recognition of prison overcrowding by state officials and the complaint by

officials that the court system is too busy suggests that the 21st century is moving toward Packer's due process model. The United States currently stands at a cross roads between the move to due process and the temptation to continue the ways of the past.

Prosecutors in the United States

The United States has two types of prosecutors, federal and state. The highest authority on federal prosecution in the United States is the Attorney General. The Attorney General for the United States is appointed by the President and serves as a part of his cabinet. The Attorney General is the head of the Department of Justice and is the "chief law enforcement officer of the Federal Government" (United States Department of Justice). It is his responsibility to give legal advice to the President and represent the federal government in court. The current Attorney General is Eric H. Holder Jr. Serving under the United States Attorney General are the United States Attorneys. They are also a part of the Department of Justice and are appointed by the President. The United States Attorneys are federal employees that serve to represent the federal government in each state (United States Department of Justice). The current United States Attorney for Connecticut is David B. Fein and for Massachusetts is Carmen Milagros Ortiz.

At the state level, an Attorney General is present for each of the 50 states. According to the National Association of Attorney Generals, "The Attorney General is popularly elected in 43 states, as well as in Guam, and is

appointed by the governor in five states” (National Association of Attorneys General). The Attorneys General for each state are considered the “chief legal officers” and “serve as counselors to state government agencies and legislatures and as representatives of the public interest” (National Association of Attorneys General). Attorneys General are typically responsible for civil cases. Both Connecticut and Massachusetts elect their Attorneys General. The current Attorney General for Connecticut is George C. Jepsen, elected as a Democrat. The current Attorney General for Massachusetts is Martha Coakley, also elected as a Democrat.

The prosecutors that this study is mainly concerned with are also state employees. These prosecutors are called District Attorneys. District Attorneys are responsible for handling criminal cases that occur in their district. In Connecticut, there are thirteen States Attorneys that serve as the main prosecutorial power for their district. The current States’ Attorney for the Hartford District is Gail Hardy. In Massachusetts, there are eleven District Attorneys that also serve as the main prosecutorial power for their district. The current District Attorney for the Middle District (Worcester) is Joseph Early. Additionally, each District Attorney maintains Assistant District Attorneys. These attorneys take on cases in each district and report to the District Attorney. The Assistant District Attorneys are typically put in control of their own cases and have a significant amount of authority in the criminal justice system. While the Assistant District Attorneys maintain their own discretion on cases, it is important to note that they are typically in

contact with the District Attorney who supervises them and has the ability to fire them. For the purposes of this study it is important to note that the Assistant District Attorneys are representatives of the District Attorneys and the things that they do in court are a representation of the District Attorney and the way he or she wants the cases to be prosecuted.

Hartford

Founded in 1636, Hartford, has a population of about 124, 512 as of 2006. Hartford is made up of 17 square miles and has 7,023.6 persons per square mile. The median household income is about \$25,000 and per capita income is about \$13,000. About 61% of the people that live in the city are high school graduates with 12.4% going on to achieve a Bachelor's degree or higher. The percentage of people living below the poverty line is 30.6%. Hartford has a mainly Democratic political culture. In the presidential and senatorial elections from 2000-2008 the city's registered voters elected the Democratic candidate ("Election Results and Related Data").

In 2009 Hartford reported 1,603 violent crimes to the Uniform Crime Reports ("Offenses Known to Law Enforcement by State by City"). The state of Connecticut reports high levels of imprisonment and is currently in the process of suggesting ways to minimize prison overcrowding ("Report to the Governor and Legislature"; "Eyewitness News 3"). Also important to Connecticut's legal environment is the acceptance of the death penalty for capital felonies.

Hartford abides by Connecticut's criminal justice system as found in Article 23 of Connecticut's state Constitution. The Constitution allows for the Division of Criminal Justice whose mission it is "...to contribute to the due process of criminal law and achieve justice" (State of Connecticut Division of Criminal Justice). Article 23 of Connecticut's Constitution also establishes a Criminal Justice Commission. The Criminal Justice Commission is "...comprised of the Chief State's Attorneys and six members appointed by the Governor..." Additionally, and most important to note for the purposes of this study:

"The Criminal Justice Commission is the hiring authority for all prosecutors. Thus, unlike other states where prosecutors are elected, all of Connecticut's prosecutors are selected, based on merit, by and independent commission" (State of Connecticut Division of Criminal Justice).

Included among the selections that the Commission makes are the State's Attorneys. Connecticut is comprised of thirteen districts and thus the Commission is responsible for the appointment of thirteen State's Attorneys. The current members of the Criminal Justice Commission are, The Honorable Richard N. Palmer, The Honorable Thomas A. Bishop, Maura Hughes Horan Esq., Garrett M. Moore Esq., Ann G. Taylor Esq., Alfred A. Turco Esq., and Chief State's Attorney Kevin T. Kane.

The current State's Attorney for Hartford is Gail Hardy. Hardy was appointed by the Connecticut Criminal Justice Commission on August 1, 2007 for an eight year term. Prior to her appointment, Hardy served as a probation officer and public defender. Attorney Hardy served the Criminal Justice

Commission in Waterbury as Deputy Assistant State's Attorney (1996), Assistant States Attorney (1998), and a Senior Assistant State's Attorney (2006). The majority of the publicity surrounding Attorney Hardy's appointment centered on her racial background. According to the Connecticut Criminal Justice Commission, Hardy is "the first African American appointed to the position of State's Attorney in Connecticut history."

Since judges frequently interact with prosecutors and therefore contribute to the criminal justice process, it is important to have an idea of their backgrounds as well. In Connecticut, judges are appointed with the exception of probate judges. Judges are appointed for a period of eight years. When that time is up they can choose to apply for reappointment. The similarity in selection methods for prosecutors and judges suggests that they may have the same interests with regard to how they conduct their cases.

Worcester

Founded in 1713, Worcester, as of 2006 has a population of about 175,454. Worcester is made up of 37 square miles and has 4,596.6 persons per square mile. The median household income is about \$35,000 and per capita income is about \$18,000. About 76.7% of the people that live in the city are high school graduates with 23.3% going on to achieve a Bachelor's degree or higher. The percentage of people living below the poverty line is 17.9%. Worcester has a mainly Democratic political culture. In the

presidential and senatorial elections from 2000-2008 the city's registered voters elected the Democratic candidate ("Election Results").

In 2009, Worcester reported 1,790 violent crimes to the Uniform Crime Reports ("Offenses Known to Law Enforcement by State by City"). The state of Massachusetts also reports high levels of imprisonment, about 100%-150% in each prison (Quarterly Report on the Status of Prison Overcrowding, Third Quarter 2009). Unlike Connecticut, Massachusetts does not offer the death penalty for felonies but offers life in prison.

Worcester follows the Massachusetts criminal justice system as stated in Article 19 of its Constitution. Article 19 states,

"The legislature shall prescribe, by general law, for the election of sheriffs, registers of probate, [commissioners of insolvency,] and clerks of the courts, by the people of the several counties, and that district-attorneys shall be chosen by the people of the several districts, for such term of office as the legislature shall prescribe" (Constitution of the Commonwealth of Massachusetts).

The elected District Attorneys in Massachusetts are supported by the District Attorney's Association. The District Attorney's Association is a state organization whose mission "...is to support the District Attorneys in promoting public safety, the fair and effective administration of justice, the education of prosecutors and the safeguarding of victims' rights" (District Attorneys Association).

The current District Attorney for Worcester is Joseph Early. Attorney Early was elected District Attorney "with 78 percent of the vote on November 7, 2006" for a four year term ("Office of District Attorney Joseph D. Early,

Jr."). According to a report by the Secretary of the Commonwealth, 259,570 people voted in the District Attorney, which is about 35% of the Middle District's population (Galvin 47). While this seems low, midterm elections are known for obtaining a lower percentage of voter turn out. These numbers still suggest that the public could have an impact on District Attorney Early's decisions.

From the information present on his website, Attorney Early is an experienced attorney and has a significant amount of experience working for the state of Massachusetts as well as popularity among his constituents. Prior to his decision to run for District Attorney for Worcester, "Early served as an Assistant District Attorney in Hampden County" (1985-1988) ("Office of District Attorney Joseph D. Early, Jr."). He served "in the trial division of the state Attorney" (1988-1990) and "ran his own law office" (1990-2007). He additionally "represented the commonwealth as a special assistant attorney general" (1990-2007) ("Office of District Attorney Joseph D. Early, Jr.").

Judges in Massachusetts are not elected. Instead, all judges are appointed their positions for life and must retire by age seventy. The difference between the ways both of these officials are selected suggests that they may have different motives when conducting their cases. For our purposes, the fact that judges are not elected, but appointed for life time appointments suggest that they will be less inclined to make statements merely to please the public.

Drawing Comparisons

Connecticut and Massachusetts share a few similarities in their criminal justice systems. Both Connecticut and Massachusetts have a board of officials that oversee the District Attorneys. Additionally, both Gail Hardy and Joseph Early are experienced attorneys that have worked in their respective governments for years. Significance, however, lies in their differences, which are more apparent and more abundant.

By looking at the Connecticut government website, it is apparent that there is a focus on appointment and administration. The press release congratulating Attorney Hardy that appears on the Criminal Justice Commission's website focuses mainly on the Commission and their decision to appoint Attorney Hardy. The article includes statements about how the decision was difficult for the Commission and how it was a unanimous vote by the Commission. The article ends with a listing of the Commission members. Furthermore, Attorney Hardy does not have a website to list current projects she is working on or what she wishes to accomplish.

The Massachusetts District Attorney Association, which oversees the Massachusetts District Attorneys, lists the District Attorneys on their website, but does nothing more. Instead there is a link that leads to Attorney Early's private website. On Attorney Early's website there is a plethora of information about himself, upcoming events he will be attending and current press releases of cases he is working on. It appears as if Attorney Early is

more responsible for informing the community with what he is working on and what he wishes to accomplish.

It is necessary to compare the type of information that these two states and their respective District Attorneys provide the public. From the information provided on each government's website, certain conclusions can be drawn. Connecticut's focus on the Criminal Justice Commission rather than Attorney Hardy suggests a focus on administration. Attorney Early's choice to make his own website suggests a focus on constituents. The broader and most important point here is that the methods of selection in each state provide very different environments for District Attorneys to work in.

LITERATURE REVIEW

Among scholars, discretion within the United States criminal justice system is a widely discussed topic. In Discretionary Justice, Kenneth Culp Davis, generally defines discretion: "A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction" (4). There is an attempt by many to analyze the relationship between those officials that hold discretion and how the law should be executed (Gordon, Sanford and Huber; Cole; Angela Davis, Kenneth Davis; Johnson; Rainville; Thompson). One public official that has received significant comment on the amount of discretion that she holds and how that discretion is executed is the prosecutor. Much of the criminal

process either ends or begins with the decisions made by the court's prosecutor (Angela Davis 23). Since these officials are expected to uphold both a "crime control" and "due process model" in applying the law fairly, all of the subjective factors that contribute to their decisions may seem surprising (Packer). One such variable is the way in which prosecutors are selected. While the majority of district attorneys are elected, few are also appointed to the position. This has caused questions to be raised among scholars about how prosecutors make their decisions. While prosecutorial discretion has been largely discussed in the literature, there is a lack of focus on the discrepancies that arise between elected and appointed prosecutors. The relationship between the electorate and elected prosecutors versus those that are appointed will be most relevant to this study.

The definition of discretion given by Kenneth Davis above is an important way to define the topic since it is clear, concise and applies to all officials practicing discretion. Scholars looking to define discretion solely for prosecutors however typically use a more detailed definition. These definitions are typically defined as Angela Davis defines discretion in Arbitrary Justice: the Power of the American Prosecutor. She defines the prosecutor's discretion as fulfilling the following, "...whether an individual should be charged, which charges to bring, and whether and how to plea bargain" (12). These criteria for a prosecutor's discretion are widely accepted by numerous authors (Gordon and Huber; Cole; Johnson).

A reoccurring theme with regards to prosecutorial discretion is found in the language of the definitions. The definition by Kenneth Davis includes the word “inaction” at the end and the definition by Angela Davis implies that a prosecutor may make the decision not to prosecute the full charge. Both of these references to a failure to prosecute are no doubt purposeful. In fact, “almost all criminal cases are resolved with a guilty plea by the defendant” due to the decision not to prosecute, which typically infers a plea bargain (Angela Davis 43). The choice not to act has not only been noted in general prosecutorial research but in specific areas of the law such as mandatory minimum cases. These are cases in which the defendant would have been required to receive at least a minimum sentence (and possibly a much harsher one) had it been brought to a judge. Researchers found that almost half of the cases eligible for a mandatory minimum sentence did not receive that sentence (Ulmer, Kurlychek and Kramer 430). Considering that the majority of cases are not prosecuted, but rather negotiated by way of plea bargain, scholars have focused a lot of their attention on determining the factors that influence the prosecutor’s decision to act or not to act.

The first consideration, among the many reasons why a prosecutor may choose to decide a case, is found in the facts of the case. Johnson labels this as “the prosecutor’s reasonable doubt that the accused is in fact guilty” (6). The thought behind this criterion is three fold. First, people generally do not like to wrongfully convict others of crimes (Gordon and Huber, “Citizen Oversight” 344). Second, if the prosecutor suspects that the defendant is not

guilty and then takes the time to process the case, it is a waste of time for the court that is forced to sift through a large number of cases (Packer 4). Third, the prosecutor's reputation is at stake when choosing which cases to prosecute. If the case goes all the way to court and there is not sufficient evidence to back it up or it has a high probability of losing the prosecutor cannot obtain a conviction. Obtaining a conviction on a case is a key determinate in a prosecutor's reputation (Gordon and Huber, "Political Economy" 143). Next, "the extent of the harm caused by the offense" is also considered (Johnson 6). Similar reasoning applies here. A case that did not cause a lot of damage does not need to be prosecuted if it can be solved by a simpler negotiation process since prosecutors must make sure that in controlling crime they practice efficiency (Packer 4).

Another criticism of the way in which prosecutors decide to prosecute is examined by looking at the relationships that occur within the court. One of the most notable examinations of these relationships comes from George Cole in his article "The Decision to Prosecute". Cole states, "The need for the cooperation of other participants can have a bearing on the decision to prosecute" (332) and as a result, his research of the King's County Prosecutor's office in Washington finds that "most decisions resulted from some type of exchange relationship" (333). He finds that the interactions between the prosecutors and the police, the judges, the prison wardens, the defense attorney and the community all have an impact on the prosecutor's final decisions. Some scholars go so far as to point out that in some cases police

“shopped around” to find an assistant in the office that “ would regard their requests for warrants most sympathetically” (Miller 16). In his study on relationships, Cole also makes reference to one last practical consideration also presented by Misner (720). Cole quotes a judge from King County, “ ‘When the number of prisoners gets to the ‘riot point’, the warden puts pressure on us to slow down the flow” (337). Though it may not seem right that our justice system in part depends on prison capacity, this is just another consideration in the decision to charge a person with a crime.

The identification of all the possible ways a prosecutor can be influenced to act has taken up the majority of the research done on prosecutors and their decisions. The most common theme among these studies is the involvement of community. Whether there is a brief mention or an entire article devoted to it, the opinion of the community is a major factor. Cole, in “The Decision to Prosecute”, devotes a whole section to “community influentials” (340). He says that prosecutors consider what the people want so that the community’s objectives are realized and so it allows them to think favorably of the prosecutor. He says prosecutors ask themselves “ ‘will a course of action arouse antipathy towards the prosecutor rather than the accused?’” (341).

Additionally, though not mentioned directly, community’s influences also have a part in the models as defined by Herbert Packer. Packer’s criminal control model is based on the idea that the prosecutor works for the people. The model provides that the people in the community know that a

wrong has been done to them. Through a proper prosecution, which in this model should end in conviction, the wrong can be turned into a right. In other words, “the criminal process is a positive guarantor of social freedom” and so the public’s grievances should be attended to (4).

More recently, prosecutors have begun to embrace society’s perspective and have become involved in a program called “community prosecution.” Scholars are embracing this idea in showing how prosecutors are becoming more and more accepting of the public’s needs. Community prosecution finds its origins in both community policing and community courts (Thompson 339-341). Prosecutors have recently gotten on board and are attending to the public’s needs by going out into the community and addressing their issues before they come to the court (Irons-Guynn 12-16; Rainville 33). In some areas of the country, prosecutors have embraced the community prosecution movement so much that “attending neighborhood events and meetings held by other institutions” has become the norm (Thompson 346). Prosecutors are going above and beyond to make sure community needs are attended to.

Prosecutorial involvement in the community can be difficult to measure. In a study of community prosecutors, Rainville measures a prosecutor’s involvement in the community based on her choice to report that she participates in community prosecution (36). While this method allows for data that comes directly from the source, it is troublesome in that the

prosecutors could embellish their involvement in order to better their reputation.

Prosecutors are aware of the community's role in their profession. However, a lot of community's influence according to community prosecution is occurring outside of the courtroom. To determine how deeply the community's suggestions resonate within the system and if the community really has control over the prosecutor's decisions in the courtroom scholars have focused on the selection methods of prosecutors.

Among district attorneys in the United States an overwhelming majority are selected by process of election. Only a few, "Alaska, Connecticut, Delaware, the District of Columbia, New Jersey, Rhode Island, and the outer islands of Hawaii, local chief prosecutors are appointed" (Rainville 36). This difference in selection method has larger implications for accountability. There has been a significant amount inquiry into the relationship between an elected official and her electorate (Gordon and Huber, "Incumbent Behavior"; Ferejohn). Many have come to the conclusion that in order for an official to obtain election or in many cases reelection, she must or should address the needs of her constituents. For instance, in the case of judges in a Kansas court, Gordon and Huber found that when they were running against an opponent the judges gave out more convictions (which is what the public valued) than when they were running unopposed (133). This relationship is of course not one sided. In order to get what they want from officials, the electorate is a part of the same game. A study of incumbent officials in

elections by John Ferejohn found that when voters are deciding if they should vote for the incumbent they should make their decision based on the incumbent's past performance. If they focused on past performance in making their decision to vote then the candidate would continue to support the community's interests. If the voters ignored the past actions of the incumbent when reelecting him/her then the incumbent would be less likely to consider the public's needs (Ferejohn 18). Both of these examples are ways in which researchers have examined the relationship between officials and their constituents.

In order to examine the relationships described above, researchers have used various methods. The most notable is the study by Gordon and Huber, "The Effect of Electoral Competitiveness on Incumbent Behavior." Gordon and Huber focused on a unique feature of Kansas in which there were judges that were elected and others that were appointed. They noted the most and least severe choices that both groups of judges could make. Next, they observed the decisions that each set of judges made and were able to conclude that there were stricter sentences set by the groups that was up for reelection (117-118). The advantage of this study is that in comparing the two groups of judges the authors were able to control for confounding variables since the study was focused on officials in the same state.

More recently, there has been a focus on the selection of prosecutors. In attempting to define that relationship one study has attempted to define the "responsiveness" of prosecutors to the community's needs by measuring

how many prosecutors report having practiced community prosecution (Rainville 36). While the study controls for other possible variables that could effect the prosecutor's decision to try charges, it relies on self-reporting of the prosecutors, which leaves room for error. Other studies have focused on the idea of conviction rates as a way for prosecutors to get reelected. This comes from the idea that "popular wisdom suggests that prosecutors, when seeking reelection, must cultivate the public image that, as guardians of public safety, they are 'tough on crime'" (Gordon and Huber, "Citizen Oversight" 335). These authors find that the public will use conviction rates in order to measure how well the prosecutor is doing her job. While it is a well-proven point, the study briefly mentions that their results can be applied to appointed officials as well through threat of a lack of future reappointment.

The role of appointees in the community-prosecutor relationships needs to be studied further. Additionally, in their later study, Gordon and Huber note that, "A skeptic could counter that the average voter is largely unaware of the conviction rates of his or her local prosecutor" (Gordon and Huber, "Political Economy" 143). In that same study the authors once again hint at the similarities between elected and appointed prosecutors by saying that a failure to hand out the "correct" judgments could result in "significant political fallout" (152). But whether the appointed officials are really on the same level that the elected officials are when it comes to community standards is still left unaddressed. The studies mentioned above have different methods of measuring how elected officials are held responsible to

the community and tend to believe that it is a system that works. Others seem to disagree. Some argue that elected prosecutors do not represent the public sufficiently due to problems such as “low voter turnout” and that “voters need far more information than they are presently provided” (Angela Davis 183). Though many scholars in agreement that elected prosecutors are held responsible there is still relevant point to be made to oppose that view.

To see if the idea that elected prosecutors can be held responsible to the views of their constituents Gordon and Huber suggest the study of “well-publicized cases” (153). Their mention of “well-publicized cases” alludes to the influence of the media. The media of course, has not been ignored in defining the election process. In particular, Angela Davis criticizes the media and television for the way in which it defines how the public views the criminal justice system. She argues that most Americans learn about prosecutorial roles through popular television shows and through the cases the media chooses to cover (173-176). Her view of the media’s role is that it mainly influences opinions on what the public thinks about the prosecutor. This is also the view to other authors who look at the media in relation to incumbent performance (Rainville 73). The media have been defined in this sense as a way for the public to view the prosecutors. The media is rarely discussed as a way for the prosecutors to view the public. When Gordon and Huber mention “well-publicized cases”, there is an implication that these cases are important to the public and therefore are the cases that prosecution should focus on.

Lastly, scholars have focused on the larger implications of how prosecutors use their discretion. This is largely a part of Herbert Packer's "Two Models of the Criminal Process." In this article, he discusses a crime control model and a due process model. According to Packer, "The Crime Control Model is based on the proposition that the repression of criminal conduct is by far the most important function to be performed by the criminal process" (4). Alternatively, "The Due Process Model insists on the prevention and elimination of mistakes" in order to protect the defendant (7). We can therefore imply that the crime control model is the model that speaks most to the community. It reasons that the community in order to protect its structure must make sure that crime is kept to a minimum and when crime does occur the defendant must be punished. For prosecutors, this means that they should prosecute to the fullest extent of the law. The due process model on the other hand follows the reasoning that an individual must be protected from the criminal process. The due process model says that the system must be absolutely sure about the guilty conviction before it proceeds to convict the individual. For prosecutors, this leads to a greater amount of plea bargains. The struggle between these two lines of reasoning can be found in scholar's debate over prosecutor's selection and the discretion they hold. For instance, some scholars have called for more lenity in the criminal justice system. Noticing the vast amount of discretion that a prosecutor holds the purpose behind lenity is "limiting the possibility of arbitrary interpretation...and providing equal protection" (Hester 517).

Another example of where these models may apply is in the mandatory minimum study done by Ulmer, Kurlychek and Kramer. As previously stated, in this study the authors found that mandatory minimums were not being applied as frequently as was warranted due to prosecutorial discretion (430). From that conclusion one might suggest that if mandatory minimums are not being applied then prosecutors in that state are favoring the due process model over crime control.

These two models are also nicely applied to the differences in selection of officials. Again the study of the judges in Kansas serves as an example (Gordon and Huber, "Incumbent Behavior" 133). In this case, the fact that the judges were elected affected their decision to apply the crime control model over the due process model, whereas the judges in that same Kansas court that were unopposed may have chosen a more balanced version of the two models. The idea of crime control versus due process once again appears in community prosecution. Speaking on the rise of the community prosecution movement, Thompson notes that people have supported community prosecution because of "what they perceive as a tendency on the part of the prosecutors to be insufficiently sensitive to victims' needs" (344). The community prosecution movement then can be seen as a public outcry for more crime control. In continuing to research how the selection methods of prosecutors impacts how they use their discretion, these two models will continue to be a present force.

From the present research it is clear that prosecutorial discretion has become a topic of interest mostly because it plays a huge role in defining the outcome of cases in the criminal justice system. A large number of scholars have focused their attention on the factors that contribute to the prosecutor's decisions (Cole; Angela Davis; Gordon, Sanford and Huber; Johnson; Rainville). Most studies allude to or directly mention that one of the ways a prosecutor makes her decisions is by taking community objectives into account. In focusing upon the community, the differences between selection methods of district attorneys have become relevant. Disparities between the way elected and appointed prosecutors choose to practice their discretion have been determined and have had larger implications for the community as well as the individual. While scholars have looked into prosecutorial discretion and selection methods, there is a need for a better look at specific cases where the relationship between selection method, the community and prosecutors can be addressed. The next step in examining this relationship is to determine if differences in the practice of discretion can be found in the study of individual cases, particularly those that force the public opinion of the case upon the prosecutor.

RESEARCH DESIGN

Discretion as a factor in a prosecutor's decisions has been well identified by researchers. Authors have tended to focus on discretion with respect to outside variables that affect it (Gordon and Huber; Johnson;

Packer). These variables have ranged from the relationships a prosecutor holds within the court to the amount of overcrowding in state prisons (Cole 337). In order to quantify discretion, current research has tended to focus on how conviction rates are the main indicator. There is an assumption made by researchers that in order to satisfy the public, a high conviction rate is necessary (Gordon and Huber, "Citizen Oversight" 335). While many of these studies have contributed insight into the relationship between a prosecutor and her discretion, there is a lack of studies that focus on selection method as a factor that impacts a prosecutor's discretion. Keeping selection methods at the forefront, this study will focus on three factors that are absent from previous research.

The first of these factors is that there is a lack of comparative study between elected and appointed prosecutors. As a matter of fact, appointed prosecutors at the state level are rarely subjects for discussion. This is reasonably so, since there are few appointed prosecutors at the state level. However, the District Attorneys in states such as Connecticut and New Jersey have "flown under the radar" without comment for a long time. The next factor absent from current research is an alternative way to measure public needs. The public's opinion of prosecutors in previous research designs is typically labeled as being solely concerned with conviction. For most studies, this is a fair assumption to make. The public wants to be sure that the attorneys are working to eradicate crime and conviction rates are a measure of that work. However, this may not apply to appointed prosecutors. In

states where prosecutors are appointed, it is not likely that the community will have widespread access to conviction rates so there must be another method of determining public opinion of prosecutors that can be applied to both the elected and appointed cases. Lastly, current studies do not focus on specific cases. Once again, the conviction rates are used as measures of discretion. A study of individual cases that both appointed and elected district attorneys have prosecuted could prove to be valuable to the measurement of their discretion.

This thesis employs a comparative study. Two cities, Hartford, CT and Worcester, MA are used as case studies. The selection method of State's Attorneys in Connecticut is by appointment and the selection method of District Attorneys in Massachusetts is election. In each state three court cases are chosen. These cases are violent crime cases that have appeared in the media in the past three years. These cases are considered and referred to as "high profile cases." The three types of violent crimes cases that this study examines are: "Husband Murders Wife," "Child Rape," and "Murder of a Child by a Non-Stranger." Each case is reviewed based on how the District Attorney handled the case and what the public's desired outcome of that case was. In order to do this, the assumptions and data that warrant this type of study must be explained.

This study incorporates aspects from Gordon and Huber's research on judges in a Kansas Court titled "The Effect of Electoral Competitiveness on Incumbent Behavior." Their study takes a comparative look at judges in

Kansas, some who are appointed and others who are elected. Though the authors do find the same discrepancy between the judges that this study asserts will be found between prosecutors, there are other aspects of the model that prove useful (133).

The first method that is adopted in this study is the idea of geographical closeness. In the study by Gordon and Huber, one of the benefits of choosing to do a comparative study within the state is that it allowed them to control for outside variables. They say the study is at an advantage because “the legal environment in which those officials operate” is similar (Gordon and Huber, “Incumbent Behavior” 108). Furthermore, in their study they also collect data on the demographic of the districts. This study adopts both of those methods. Hartford, Connecticut and Worcester, Massachusetts are chosen as cities of interest because they are geographically close, share the same demographics and have similar political climates. These characteristics are important to assuming a similar “legal environment” and similar public needs (108).

Though not in the same state as each other, Hartford and Worcester are only separated by a little over 50 miles and share much of the same cultural history. A view of their demographic also speaks to their similarity. A collection of data from the Census in 2000 puts the population of Hartford at 124, 512 and the population of Worcester at 175,454 making them a few of the largest cities in their respective states. The Census data also indicates that their median household incomes are similar, \$25,000 for Hartford and

\$35,000 for Worcester. The percentage of high school graduates is between 60-80%, and people living below the poverty level is between 20-30%. Each city has a decent amount of minority populations, however Worcester has a larger white population at 77.1%. Though there are slight differences between the two cities, they are overall similar ("U.S. Census Bureau").

Since this study deals with the community and the outcomes they desire on high profile cases, it is important to get an idea of the political culture that each city holds. Political culture is determined by examining election results from the past three Presidential elections and past five Senate elections. In 2000, 2004 and 2008 both Hartford and Worcester voted for the Democratic candidate in the Presidential election. Additionally, in each of the U.S. Senate elections from 2000 to 2008 both Hartford and Worcester voted for the Democratic candidate each year ("Election Results and Related Data"; "Election Results"). From these results it is safe to say, at least for the past 5 years, both cities wanted their city to be run by Democratic policy. This again proves the similarities of each community.

Additionally, this has implications for the laws that prosecutors employ when choosing to prosecute a defendant. Since both cities hold a similar political culture, it is likely that in the passing of major legislation similar ideals have been employed and so the legal codes are not drastically different. This, however, does have one exception. Connecticut currently allows the death penalty as an option for punishment, while Massachusetts does not. This is not an issue in this study and is explained later in this design.

Next, it is necessary to make certain comparative assertions about each of the court systems. There are four main aspects of the courts that have stood out to researchers in the past when discussing a prosecutor's discretion. These things are: the number of violent crimes in each state, the caseload of the court, prison overcrowding and prosecutor's own beliefs. In order to compare Hartford and Worcester, these factors should be similar in each court system otherwise they could have a confounding impact on the implications of selection methods on discretion.

The level of violent crimes in both states is nearly the same. According to the Uniform Crime Reports, the amount of violent crime cases in Hartford in 2009 was 1,603 and the violent crimes cases in Worcester were at 1,790 ("Offenses Known to Law Enforcement by State by City"). If these crime rates are examined in relation to their respective populations, violent crimes in each city account for .01% of crime per person. So even though Worcester has about 50,000 more people, the crime rates are similar. It is important to note that the Uniform Crime Reports are not fact. Instead the numbers collected come from the individual reporting of each state. This could potentially leave room for error (over reporting or under reporting). In any case, the reports indicate that Hartford and Worcester both *report* a similar amount of violent crime in their cities. Once again, both cities are similarly ranked.

Prison overcrowding is an identifiable problem for both states. This is a necessary factor to control for because if one city has a lot of room in their prison then the prosecutor may not feel the need to hold back on full

convictions like a prosecutor that is working with an overcrowded prison system. Hartford and Worcester do not differ in this aspect. Both Connecticut and Massachusetts report problems with prison overcrowding. In a Massachusetts report on overcrowding, the Department of Correction notes that they are past capacity (100-150%) in most prisons and suggests ways in which they are solving the problem (Quarterly Report on the Status of Prison Overcrowding, Third Quarter 2009). In Connecticut reports on overcrowding, the Department of Corrections suggests ways to solve the problem but leaves the magnitude of the problem up to the press that reports that some prisons are growing by 800 people during the summer alone ("Report to the Governor and Legislature"; "Eyewitness News 3"). For prosecutors, this means that there may be a chance that they are not looking to put people in prison and may hold back on convictions, but for now it is good to know that both states are on an equal playing field.

In addition to how many violent crimes cases the court must deal with, scholars are concerned with determining the caseload of each court. A heavy caseload suggests that prosecutors may wish to be more efficient with moving cases through the court. A light caseload suggests that prosecutors may wish to spend more time on their cases. Caseload poses a potential problem for this study. The Hartford Superior Court reported a caseload of 3,819 criminal cases from 2009 to 2010 ("CT Judicial Branch Statistics"). The Worcester Superior Court only reported a caseload of 727 criminal cases in 2009 ("Fiscal Year 2009 Statistics"). This difference cannot be ignored.

However, these statistics, when combined with statistics on prison overcrowding, evoke a completely different meaning. Though Hartford Superior Court claims far more cases than Worcester, both cities state that they have widespread prison overcrowding. When it comes to a prosecutor's decisions these two factors must be considered together. Alone, the caseload data for Hartford suggests that prosecutors will want to offer plea bargains in order to move cases through the system and that prosecutors in Worcester will have more time to prosecute cases if need be. However, if the caseload data is combined with the fact that each state reports a significant amount of prison overcrowding, other conclusions can be made. Both Hartford and Worcester cannot afford to send people to prison. Even though Worcester may have more time to prosecute a defendant it does not mean that they will offer fewer plea bargains. As will be seen later in this study, this reasoning proves true and in both cities plea bargains are offered more often than not even if there is a difference in the time it takes to prosecute the case.

It is also a concern that the personal beliefs of the District Attorneys may play a part in determining a case. This becomes a problem when the views of the District Attorney are not similar to those of the community. There is evidence, however, that this is not the case. As previously stated, both states have voted for the Democratic Party in the majority of past elections. It is not an exaggerated assumption, then to claim that the views of the District Attorney are likely to be similar. This is true of the District Attorney for Worcester, Joseph Early, who was elected with an affiliation to

the Democrat Party. Though Gail Hardy, State's Attorney for Connecticut, was not able to run under a political party there are factors that indicate that her beliefs align with the Hartford community. Hardy worked in the Waterbury District Attorney's office prior to her appointment. Waterbury is another city known for electing Democratic candidates. Additionally, after her appointment she received support from State Representative Minnie Gonzalez, Majority Whip at large for the Democrat Party ("Minnie Gonzales Newsroom").

Two other aspects of a prosecutor's discretion that must be addressed are relationships within the court and extent of harm of the crime being considered. For the sake of this research design it is assumed that there will be various relationships between the District Attorney and other officials in both courts. The time it would take to study these relationships is far beyond the parameters of this study. The extent of harm that is caused by a case is typically also considered when a prosecutor makes decisions. The cases that appear in the media and that the public is most concerned with tend to be violent crime cases and so the scope of the harm involved is narrowed.

When choosing which court cases to examine, this study again borrows theory from Gordon and Huber. When explaining their model, Gordon and Huber note that citizens in the community become most aware of court cases when they are "high-profile trials" (110). Following their study, this study will examine "high profile" cases that make their way to the prosecutor's office. Three court cases from both Hartford and Worcester that occurred in

the past three years are chosen. The time period from 2007 to 2010 will be examined since District Attorney Joseph Early was elected to Worcester in 2006 and decisions made before that would have been by a different District Attorney. Additionally, Hartford's District Attorney, Gail Hardy was appointed in 2007.

In order to choose the violent crime cases for each state this model assumes that the media is an accurate representation of the public's desired outcome of each high profile case. To choose which cases are deemed "high profile" the cases chosen from each city have a significant presence in the media. In fact, the cases chosen for this study are cases that have appeared in the city's local media three or more times. These cases are found by searching through the archives of various local news sources to discover which cases have a strong media presence. Another requirement for the cases that are chosen is that they must provide a cohesive public sentiment and must show how the prosecution responds to that sentiment.

This study looks for coverage of the case in the local newspapers as well as in television media. The major source examined in Hartford is *The Hartford Courant* with supporting articles found in the *Connecticut Post*, *MSNBC*, *News 8* and *West Hartford News*. The major source examined in Worcester is the *Worcester Telegram and Gazette* with supporting coverage found in the *Boston Globe*, *Boston Herald*, *CBS Boston*, *Milford Daily News* and *My Fox Boston*. This study is not concerned with national newspaper sources since the issues most important to a particular community are not

always worthy of the national news and are not likely to give many details on local cases. A mention in a national news source such as the *New York Times* or *Washington Post* however, demonstrates a high level of concern surrounding a particular case and is not ignored.

The articles chosen from each newspaper are then examined for signs of the public's desired outcome and the action taken by the District Attorney. This depends solely on the wording of the articles. In each article there are signs that the prosecutor is aware of and concerned with the public's desired outcome for each case. One of these signs is how strong the public's concern for the case is based on statements given in the articles. In order to say that there is a unified desired outcome the statements must be illustrative of that. Within each article, the majority of people quoted must have the same opinion. A news article that has three opinions for conviction and two opinions against conviction cannot be counted as a unified opinion.

Additionally, this study acknowledges other statements given by actors in the case's proceedings that may influence public sentiment. For instance, a statement from a judge on a particular case that is reported to the media and therefore heard by the public holds some significance in the public's view of the case. A judge who tells the media and the community that the defendant needs to go to prison has the opportunity to influence what people think the conviction should be for the defendant. A culmination of statements from the community, the judge and even the defendant can signal a unified public

attitude about what the outcome of the case should be. They are taken into account since each of these opinions has an impact on the case.

Another sign that is examined in the articles is if the prosecutor is quoted in the article him or herself. A statement given by a District Attorney that says something to the effect of “this case has struck a chord with the community” or “the city will not stand for this type of crime” is seen as an admission by the prosecutor that he or she is concerned with the public’s needs. A statement with vague wording such as “my office is doing the best it can to bring about justice” cannot be counted as indicating concern for the public’s needs.

To actually determine if the District Attorneys are responsive to the public’s needs the outcome of the case is also a consideration. The outcomes for each case are that it is dropped, given a plea bargain or prosecuted to the fullest extent. It must be stated here that “prosecuted to the fullest extent” is relative for each state. The fact that Connecticut has a death penalty and Massachusetts does not is not an issue since only the maximum sentence for each state is considered. Once the public’s desired outcome and the actual outcome are identified it is determined if the public had any say in the course of action taken. Furthermore, by tallying the amount of times each District Attorney acted on behalf of the public’s vocalized needs it is determined whether elected prosecutors are more likely than appointed prosecutors to listen to the public.

The potential outcomes of this study suggest that examining the relationship between the selection of District Attorneys and the community through a case study has larger implications for the criminal justice system at the state level. This study seeks to find that there is a difference between how appointed District Attorneys handle the community's opinion of individual cases and how elected District Attorneys handle the community's opinion of individual cases. This difference is assumed solely on the idea of reelection. A number of studies have been done on the lengths that a public official will go to get reelected (Ferejohn; Gordon and Huber). The idea here is that elected District Attorneys are more attentive to the community. The elected prosecutor is more willing to prosecute the case the way the community wants so that when reelection comes around the public is satisfied with what the prosecutor has done with each case. Alternatively, appointed District Attorneys do not have to agonize over how the public wants a case prosecuted since she does not have to worry about reelection.

This discrepancy, if proven, could greatly impact our view of the criminal justice system based on Herbert Packer's Crime Control and Due Process Model, as discussed previously. For instance, if it is found that elected District Attorneys always prosecute cases based on public sentiment of the case then this is harmful to due process. If this scenario is true, then elected prosecutors are not serving justice, but are merely seeking reelection. If it is found that appointed prosecutors always act of their own volition without consideration of public needs, then there is also a cause for concern.

A District Attorney who is focused on her own view of the criminal justice system may end up evoking too much due process or too much crime control. As citizens of the United States, there seems to be an assumption that there will be a balance of both crime control and due process when a case is brought to court. If selection methods of District Attorneys are inhibiting either crime control or due process, then we have a right to know and an obligation to fix it.

Furthermore, this study has implications for the selection status of prosecutors in the future. Discretion is a pressing issue among scholars since it gives prosecutors the power to determine exactly what goes on in the criminal justice system. The study of discretion and suggestions for how it should be used help ensure fairness and justice. The determination of how much discretion elected and appointed prosecutors hold will allow scholars to suggest which selection methods offer the defendant the best chance at justice. Discretion that has a negative impact on the criminal justice system cannot be allowed.

Selection status for prosecutors was initially changed from appointment to election so that they may be held more accountable to the public (Angela Davis 165). If appointed prosecutors are not held accountable to the public then the states with appointed prosecutors might consider changing their selection status. It is also possible that prosecutors have become too accountable to the public and so there may be an important reason why some states continue to use appointments.

All in all, this study looks for a correlation between selection methods and discretion. It suggests that appointed prosecutors use a significant amount of discretion (since they are free from the public's opinion) while elected prosecutors use slightly less discretion (since they must cater to the public's opinion). This relationship is examined in the following cases.

RESULTS

First Set of Cases: Husband Murders Wife

In 2007, in Worcester, Joseph Ventola was charged with murdering his wife, Ester Ventola. Joseph, 64, and Ester, 60, had been married for 18 years. Police reported that Ventola called 911 and told the operator that he had stabbed his wife. Shortly after, he was arrested and charged with first-degree murder. He was held without bail and appointed public defender, James G. Reardon Jr. In court, he initially pleaded not guilty to the murder charge. Police noted that he did not have a previous criminal record. Joseph Ventola was initially charged with first-degree murder, which would have carried a sentence of life in prison without the possibility of parole. However, prosecutors offered him a plea bargain and in 2010 he pleaded guilty to second-degree murder and was "sentenced to life in prison with the possibility of parole in 15 years" ("My Fox Boston").

In 2009, in Hartford, Jose Lacouture, was charged with murdering his wife, Gina Lacouture. Jose, 32, and Gina, 23, had a 3-year-old son together. Reports of the murder suggest that the couple was fighting when Jose

stabbed and killed Gina. When police arrived on the scene Lacouture admitted that he had killed his wife. Jose was provided with public defense. *West Hartford News* states that one of the defenders was William O'Connor (Dempsey). Police reported that they had been called to the Lacouture house in the past for problems that they were having and that Gina was dealing with mental illness.

Lacouture was charged with murder, risk of injury to a child and violating a protective order in the killing of his wife. The murder charge alone could have carried a life sentence or death penalty. In 2010, Lacouture was given a plea bargain by the prosecution. He pleaded guilty to first-degree manslaughter under the Alford Doctrine, a type of plea bargain in which the defendant admits that the prosecution has enough evidence to prosecute but does not force the defendant to admit his guilt. The prosecution asked for 10 years from the judge, however, he was sentenced to 5 years.

Though from two different states, these two cases are very similar. Both Ventola and Lacouture are accused of killing their spouses. They are both charged with first-degree murder, appointed public defenders and initially plead not guilty. Later, each defendant is offered a plea bargain by the prosecution and they take the deal, incurring lesser sentences. There are of course a few differences between the two defendants such as age and previous police contact, but these are minor differences. Another difference is found in the actual sentences. Both faced life sentences; however, Lacouture is sentenced to five years in prison while Ventola incurs the life

sentence with possibility of parole. Both sentences made by plea bargain, but one much greater than the other.

The pattern of how the public responds to the cases is also similar. In each case, the support for the defendant by the public is abundant. In Joseph Ventola's case, the media began reporting on his case immediately. From the arrest in 2007 to the conviction in 2010, the case is reported on in twelve separate articles. Reports of the case appear in the *Worcester Telegram and Gazette*, *The Boston Globe*, *The Milford Daily News*, *My Fox Boston* and *CBS Boston*. These articles not only report the facts but also give numerous opinions on the case by people that know the Ventolas. The quotes from each of these articles provide a cohesive sentiment of the case. The public sentiment is that Joseph Ventola is not a bad guy. He made a mistake.

A 2007 article from the *Worcester Telegram and Gazette* demonstrates the first glimpse into the public's feelings of Joe Ventola. At the beginning of the case, numerous character witnesses speak out on Ventola's behalf. Ms. Bradford, a neighbor of the Ventolas, says, "They kept to themselves" and "They were nice people" (Foskett). In the same article, a friend of Ester Ventola, Sally Seekings, says, "This is not true" (Foskett). Further, *The Milford Daily News* finds many supporters of Joe Ventola. An article reports that friends of Ester Ventola "recall her husband...as a patient and supportive companion" (Laczkoski). A friend of Joe Ventola, Bob Konetzny, calls him "smart", "patient" and "a very likeable guy" (Laczkoski).

When the trial begins in 2010, a quote appears in *The Milford Daily News* from a friend of Ester Ventola. Joan Doran says of Joe Ventola, "I hope you suffer every minute of every day" (O'Connell). This negative sentiment, however, is over shadowed by quotes given by the police chief and the victim's brother. In the *Boston Globe*, the police chief speaks out about his view of the couple and the responses he received from the community, "'It's a shock not only for the neighborhood but everyone, including us'" (Ranalli). Most importantly, during court proceedings, Ester Ventola's brother does not show hatred, but instead says, "I know deep down, you miss Esther as much as we do, Joe... We will not be hateful, but forgiveness is not yet to be" (Croteau, "Husband Stabs Wife"). The majority of the statements given by family and friends are supportive of the defendant and show the prosecution that there is not a call for revenge.

The same support is present in Lacouture's case. This study examines six articles about the case. These articles appear in the *Hartford Courant*, *West Hartford News* and "News 8." Public support for the defendant is prevalent in each of the new sources. During the trial, the *Hartford Courant* outright states the amount of support that was seen for the defendant. The article states: He received "pleas for leniency from 18 people, including victim Gina Lacouture's parents. No one called for harsh punishment" (Dempsey). Public support for Jose Lacouture is so important to the decision making during the case that the Judge issues a statement, "Gold said he had never seen such an outpouring of support for a defendant, 'with much of that

support coming from the victim's mother herself" (Dempsey). The *Courant* reports that friends of his had traveled from Pennsylvania and Colombia to support him. Additionally, the *West Hartford News* reports that people described Jose Lacouture as "a hard worker who worked from dusk until dawn for his family" (Kloczko). The statements given by Jose's family, friends and even the Judge suggest that this is a horrible mistake. It is not a crime that deserves a harsh sentence.

Also found in the media for each case is the prosecutor's opinion and decision on how to handle each case. The prosecutors in the Ventola case and in the Lacouture case both arrive at the decision to allow a plea bargain. In Ventola's case, Assistant District Attorney Sarah Richardson states, "'The commonwealth believes this sentence is reasonable based on the feelings of the victim's family, the age of the defendant and the current health concerns'" (O'Connell). This statement recognizes that the opinion of the family is taken into consideration by the prosecution. Furthermore, the *Telegram and Gazette* obtains a reaction by District Attorney Joseph Early while court is in session. During the proceedings, a video of Joe and Ester is shown to which Early responds, "It was very unique. It was on a number of different levels. It was very personal. I think everyone was affected by that" (Croteau, "Husband Stabs Wife"). District Attorney Early's quote demonstrates that he is sympathetic to the situation and does not suggest that Joe Ventola is a threat to the community.

In Lacouture's case, the prosecution understands the public's call for forgiveness, and though they do not release a statement, their actions suggest forgiveness. Initially, Lacouture is charged with murder, which could have led to life in prison. As the case moves forward, however, and people begin to support Lacouture, the prosecution allows a plea bargain. Even though they ask for a greater sentence than the judge ultimately assigns it is likely that the pressures from the public have an impact here. Once again, as the *Courant* reports, "No one called for harsh punishment. The state had asked for a sentence of 10 years" (Dempsey).

Both the prosecutors in the Ventola and Lacouture cases allow a plea bargain after hearing the public's call for a reduced sentence. Though they come to the same final result a difference still exists between the two courts. The prosecutors in Worcester claim more of a media presence and give the public sound reasoning for what they decide. The prosecutors in Hartford allow a plea bargain but do not allow the media to capture much of the thought process behind the deal.

Table 1: Comparing Prosecutorial Actions in Cases Where "Husband Murders Wife"

	Facts	Public's Response	Prosecutor's Response	Sentence
Worcester (Ventola)	-stabbed wife to death -admitted guilt immediately to police	Strong support for defendant	plea bargain	life in prison with possibility of parole in 15 years
Hartford	-stabbed wife to death	Strong support for	plea bargain	5 years in prison

(Lacouture)	-admitted guilt immediately to police	defendant		
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Second Set of Cases: Child Rape

In 2009, in Worcester, 33-year-old Juan Nazario was charged with numerous counts of child rape and pornography. Nazario worked at a daycare and was accused of assaulting anywhere from 50-120 children. He was held on \$250,000 bond. He was appointed public defense attorney Michael S. Hussey and it was later reported that his attorney was Alexei C. Garick, also a public defender. Evidence of this accusation was found in pictures, videos and a journal that Nazario kept. According to the *Worcester Telegram and Gazette*, "Prosecutors allege Mr. Nazario committed those offenses from about December 2006 to about June 7 of last year" ("Telegram.com").

A press release on District Attorney Early's website states that Nazario, "had been indicted on 10 counts of rape of a child with force; 11 counts of posing a child in a state of nudity; 15 counts of photographing an unsuspecting nude person; 18 counts of possession of child pornography; and one count of indecent assault & battery on a child under 14" ("Office of District Attorney Joseph D. Early, Jr."). The Commonwealth of Massachusetts General Law Section 22A states anyone who commits child rape with force "shall be punished by imprisonment in the state prison for life

or for any term of years" ("The 187th General Court of The Commonwealth of Massachusetts"). In 2010, Juan Nazario was sentenced to 40 to 45 years in prison.

In 2009, in Hartford, Jack Boyko was charged with sexually assaulting two young girls on numerous occasions. The prosecution stated that the girls had been abused from when they were about 5 years old until their mid teens. The prosecution also noted that the girls he assaulted were not his first. In fact, he had assaulted two other children before this case. Boyko was appointed a public defender, R. Bruce Lorenzen.

According to the *Hartford Courant*, "He'd pleaded guilty to two counts of first-degree sexual assault and two counts of risk of injury to a minor in October" (Owens, "Manchester Man Gets 17 Years"). To get an idea of the typical charge for this type of crime, Connecticut General Statute suggests, "ten years of the sentence imposed may not be suspended or reduced by the court if the victim is under ten years of age" (Chapter 952* Penal Code: Offenses). Boyko was given a plea bargain in 2011. The prosecution asked for the maximum under that plea bargain, which was 20 years in prison, however, the judge sentenced him to 17 years in prison.

These two cases are comparable since both cases deal with child rape by an older male, both acts occur multiple times and both defendants eventually admit their guilt. Additionally, the people involved in the cases prove that they are disturbed by the accusations and the judges provide statements reiterating that sentiment. The main difference between the cases

is that Nazario molested numerous children over the years while Boyko exploited two young girls over many years.

In both cases, public attitudes of the defendant are clear. There is no support for either of these defendants. The Nazario case appears in the *Worcester Telegram and Gazette*, *My Fox Boston*, *CBS Boston*, *The Boston Globe* and *The Boston Herald*. This study examines six articles on the case. Public attitudes surrounding this case are found in a few different ways. *CBS Boston* reports that Nazario lived in a neighborhood with a lot of children. When his neighbors hear the news, they are shocked and disturbed. One man is quoted as saying, "I know the guy was there doing child pornography. I mean little five year olds. It was like kids!" ("CBS Boston").

Additional sentiment of this case comes from other actors involved in the case, the defendant, the defense and the judge. Nazario writes the following in his journal, "I'm a monster. Seriously. I molest kids" (Murray, "Convicted Child Monster"). Additionally, instead of saying that his client was sorry for what he had done, Nazario's attorney states, "He's sickened by what he did" (Murray, "Convicted Child Monster"). Each of these quotes suggests the seriousness of the crime. These statements demonstrate how a broad scope of people hint to the prosecution that this is not a case that can be ignored. Finally, recalling the public attitudes of the case, the judge states the following during the sentencing phase, "Judge Lemire said Mr. Nazario 'preyed on the weakest and most defenseless victims imaginable' and described his crimes as 'egregious'" (Murray, "Convicted Child Monster"). The

judge's ability to recount public sentiment as a reason for the harsh sentence during the sentencing phase is evidence that opinions are unified and strong during this case.

Criticism of Boyko is similar to that of Nazario. Boyko's case appears numerous times in the *Hartford Courant* and also in the *Connecticut Post* and *Boston Globe*, demonstrating that the details of this case reached a significant number of people. This study examines six news articles regarding the case.

Public attitudes from this case come mostly from the mother of one of the girls. The *Hartford Courant* reports, "The mother of one of Boyko's victims said his crimes affected not only the girl he abused but her siblings. They have experienced a multitude of emotional problems" (Owens, "Manchester Man Gets 17 Years"). The family's opinion in this case is present in multiple news sources and has the possibility to influence the prosecution's decision. Though Judge Gold comments after the prosecution has made its decision, the Judge's statement goes to show how powerful the family's attitudes were at the beginning of the trial. His statement mirrors the family's earlier statement, "Gold told Boyko his crimes called for severe punishment, and that the children will continue to suffer for years to come" (Owens, "Manchester Man Gets 17 Years").

Up until this point there have been numerous similarities in these two cases. The area in which they differ is the most significant to this case study. The way in which the prosecution recognizes public sentiment and how they choose to act on that sentiment is very different in the Nazario case than in

the Boyko case. This difference demonstrates the differences in discretionary use when prosecutors are selected in different ways.

In Nazario's case, the prosecution is very perceptive to the public's feelings and makes this known in both how they handle the case and the quotes they release to the public. Assistant District Attorney Anthony Marotta "called Mr. Nazario's crimes 'vile' and 'disgusting'" (Murray, "Monster Guilty"). Furthermore, District Attorney Early, releases a statement on his website stating, "This self-described monster has now been taken off the street...He will be placed behind bars, where he belongs, for a very long time" ("Office of District Attorney Joseph D. Early, Jr."). Due to the strong call for conviction and the prosecution's recognition of that call, Nazario is sentenced to 40 to 45 years in prison.

In Boyko's case, something much different occurs. The prosecutors show that they understand the public's feelings but they do not act on that understanding. The *Hartford Courant* reports, "Assistant State's Attorney Anthony Bochicchio told Gold that among the sexual assault cases he's handled during his 15 years as a prosecutor, Boyko's were the worst" (Owens, "Manchester Man Gets 17 Years"). He is also quoted as saying, "'I can't recall a more upsetting case than this one'... Worse, the prosecutor added, was that Boyko had been convicted of sexually assaulting a child before" (Owens, "Manchester Man Gets 17 Years"). These statements from the prosecuting attorney make clear that he recognizes how upsetting the case is to everyone. He even goes so far as to say that it is the worst case he has handled. This

kind of recognition from the prosecutor suggests that he is willing to be tough on crime and send Boyko to prison for many years. This, however, does not happen.

Boyko receives a plea bargain for his crimes. The prosecution suggests that he be given the maximum allowed by the deal, which is 20 years. In the end, however, the judge sentences him to 17 years. For a case that was the worst that Bochicchio had ever seen, it seems that the punishment does not fit the crime. One last insight into this case comes from the judge who reduces the sentence by three years for not making the girls have to go through a long trial. This is an interesting statement since the judge made it in the final stages of the case and not by the prosecution as a reason for the plea bargain.

In this piece of the case, both prosecutors recognize that the community does not want either of the defendants to get a reduced sentence. In Nazario's case, the prosecutors listen to the public and impose a full sentence. In Boyko's case, however, the prosecutors offer a plea bargain. There is one piece of evidence found in the media for why Boyko's prosecution does this. In the sentencing stage the judge says that he will lower the sentence from 20 years to 17 years since the girls will not have to go through a trial that will make them relive their experiences. This could potentially be seen as a reason for why the prosecution is willing to give Boyko a plea deal. However, if the prosecution truly cared about the public's opinion they could have issued a statement for why the plea bargain was

being allowed. Instead, it is the judge who provides the public with this reasoning after the fact.

Additionally, it is apparent that the children involved in the Nazario case are not left out of the process and must endure hearing all of the things that they were put through while the investigation is going on. If the prosecution for the Nazario case is able to do it successfully, it seems possible for the prosecution for Boyko to do it as well. This difference between the two cases suggests that there is a difference between how appointed and elected prosecutors view and use their discretion.

Table 2: Comparing Prosecutorial Actions in Cases Where “Child Rape”

	Facts	Public’s Response	Prosecutor’s Response	Sentence
Worcester (Nazario)	-assaulted 50-120 children -admitted guilt in court	No support for defendant	case prosecuted	40-45 years in prison
Hartford (Boyko)	assaulted two young girls for many years	No support for defendant	plea bargain	17 years in prison

Third Set of Cases: Murder of a Child by Non-Stranger

In 2007, in Worcester, Michelle Lepkowski was charged with assault, battery and reckless endangerment of a child. Further into the investigation, she was charged with murder of her two-year-old child Raelynn Mascal. It was alleged that Lepkowski had caused severe injuries to her child by beating

her when the child was disobedient. Lepkowski's boyfriend, Luke Malizia, was arrested for being present when the crime was committed and not stopping Lepkowski from killing her daughter. She was appointed a public defender, Michael S. Hussey, for the initial stages of the case and eventually hired Barry P. Wilson. It was also suggested in court that Lepkowski was suffering from mental health problems.

Even though the prosecution sought a murder conviction, which could have ended in a life sentence, in 2010 a jury convicted Michelle Lepkowski of involuntary manslaughter. Lepkowski was sentenced to 12 years and 7 years probation. The prosecution had asked for a sentence up of 20 years while the defense asked for the sentence to be minimal but to include probation.

In 2008, in Hartford, Yalines Torres was charged with the murder of a child she was babysitting, Elijah Gasque. Torres was said to have been taking care of the child when she put him in a sleeping bag and swung him around the room, ultimately resulting in a head injury and death of the child. According to authorities, Torres changed the story of how the child died numerous times. Torres was held on one million dollars bail and was appointed public defender Claudia Jones. Later it was reported that she was being represented by Robert Babcock.

In 2009, Torres agreed to a plea bargain that allowed her to plead guilty to manslaughter. Had the trial gone on, Torres was facing life in prison or the death penalty. After her plea agreement, she was sentenced to 16 years in prison and 5 years probation.

The facts of these cases make them comparable. Both cases include the murder of a small child by a constant caregiver. The way that the murder occurs is initially questioned in both cases. Additionally, the amount of public support for each defendant is similar.

Public support for both Lepkowski and Torres is lacking. Lepkowski's case is reported on numerous times in the *Worcester Telegram and Gazette* and makes a few appearances in the *Boston Globe*. This study examines a total of seven articles regarding this case. The public attitudes in these articles are unrelenting except for one friend of Lepkowski, "He said he does not believe she could have intentionally harmed the child. 'Every time I saw her with the child, she was always a loving mother'" (Barnes and Bruun). Despite this vote of confidence given by her friend, Jason Jeleniewski, the public is shocked and disappointed. A neighbor of Lepkowski's states, "I felt horrible when I heard about it," "I was in shock when I heard about it"(Barnes and Bruun). A former co-worker of Lepkowski's seems to capture the feeling of the public in the quotes she gives to the *Telegram and Gazette*. On her way into court she mirrors the shock and confusion of the people in the room and says, "She doesn't seem to be that type of person" (Barnes and Bruun). On her way out she provides another statement to the paper, "I don't think there should have been any bail at all," "I'm going home now and kiss my girls" (Barnes and Bruun). Another friend of Lepkowski, Christine Moulton, states, "I just want justice for their baby," "Nobody should have to endure what that baby went through" (Barnes and Bruun). Speaking for the child's father,

Patrick Mascal, Moulton says, "He's in shock. He's a father that lost everything" (Barnes and Bruun). In later articles, Mascal also speaks out, "My daughter is gone. She will never come back to me." (Croteau, "Mom Gets 12 Years").

Finally, the *Worcester Telegram and Gazette* reports a statement from the judge that mirrors the feelings of the public, "It is all about Michelle. That is who Michelle cared the most about," Judge Kenton-Walker said. "There is no sentence that is going to bring back this child." (Croteau, "Mom Gets 12 Years").

Despite statements of initial shock and confusion by people that knew Lepkowski, the statements remain full of revenge. There is a call for justice. Though Lepkowski may have had one or two supporters at her trials, many, including her own friends we not supportive of her actions.

The Torres case is reported on by many different news sources. Five different articles are examined for this case. Articles appear in the *Hartford Courant*, *News 8*, *MSNBC*, and the *New York Times*. Each of these articles provides a unifying opinion of the Torres case. Just like in the Lepkowski case, Torres is supported by one of her friends. Mayra Velazquez reports, "She's a good mother." "She takes care of her kids" ("msnbc.com"). Aside from this woman however, there is significant public distaste for Torres. Much of the negative support came from the family of the child. The following was the mother's response to the crime:

"Right now, you are getting away with murder, I hope in your dreams you are tormented forever. To be told your son has a fractured skull

and blood around his brain. To look down at your baby and see the bruises and his eyes rolling around in his head like loose marbles..." (Santillo).

It is clear from this statement that Julie Atkins, the mother of Elijah, is asking for

retribution. Not only does she evoke emotion with her statement, but she also tells

the defendant that she should not get off easy. She also tells the *New York Times* that Torres had been her friend however, "the murder charge 'lightens my heart a little'" (Stuart). Negative sentiments for Torres are seen in this report by a local news station, "Gasque's family didn't speak at Torres' hearing on Wednesday, but they made it clear that they don't feel the deal is tough enough" ("Eyewitness News 3"). The many sources that report on the Torres case seem to agree that there is not a sense of forgiveness in this case. Torres goes from a family friend to a murderer to the Gasque family.

Once again, these two cases differ in how the prosecution responds to the public's pleas. The prosecutors in the Lepkowski case act on the public's feelings while the prosecutors in the Torres case cast the public's feelings aside. Prosecutors on the Lepkowski case act according to the opinion that the public presents. Assistant District Attorney, Paula Frasso, says of the incident, "The defendant is not a mother, she was a monster and it was evidenced that day" (Croteau, "Mom Gets 12 Years"). The language that Frasso uses indicates that she is catering her opinion to the public. She strips Lepkowski of her "mother" title and labels her a "monster." These are terms that are intended to invoke a certain emotion. Frasso basically reports that

she is aware that Lepkowski's acts were heinous and that she will be doing something about it. Frasso follows through with what she indicates in her statements and does not allow a plea bargain but charges her with murder.

The murder charge given by the prosecution is not found by the jury. Instead, the jury convicts Lepkowski of involuntary manslaughter and she is sentenced to 12 years and probation. The actual conviction in this case is not as important as in previous cases since the prosecution does not determine the conviction. In Lepkowski's case, the public speaks out against her and the prosecution seems to take the public's opinion into account when Frasso releases her statements and then asks for a murder charge.

The prosecution does not seem to follow the prevalent sentiment of the Torres case. The *New York Times* reports on one of the first statements given by the prosecution, "State prosecutor, Sandra Tullis, said the state 'believes we have a strong case,' but declined to comment further" (Stuart). As the case goes on and the family continues to speak out, the prosecution does not provide the media with any more statements. The prosecution offers Torres a plea bargain and she takes it. It is clear that the family does not agree with their decision, but the prosecution does not seem sympathetic. One of the prosecutors on the case, Donna Mambrino, states the following:

"We recognize that neither one of them are satisfied with this disposition, but the state is confident with our combined 80 years of experience for the four of us that this has led to a just resolution," Mambrino said ("Eyewitness News 3").

The prosecution recognizes that they have not made a popular decision. It is clear that these decisions are not about popularity but about what the prosecutors determine is justice.

Yalines Torres is sentenced to 16 years in prison and 5 years probation instead of the likely death penalty or life in prison that she would have received had the trial been allowed. This case shows a particularly interesting series of events. The crime is committed, the public speaks out against the defendant, the prosecution recognizes the popular opinion but decides not only to provide the defendant with a plea bargain but also to defend the choice by claiming experience.

These two cases are alike in many ways. In both cases, the facts are similar and the public calls for retribution, but in the end it is the Worcester prosecutors that pay attention to the public and the Connecticut prosecutors that dismiss them.

Table 3: Comparing Prosecutorial Actions in Cases Where “Murder of a Child By a Non-Stranger”

	Facts	Public’s Response	Prosecutor’s Response	Sentence
Worcester (Lepkowski)	-beat child to death -initial confusion of facts	No support for defendant	case prosecuted	12 years in prison, 7 years probation
Hartford (Torres)	-murdered child by swinging him in sleeping bag -initial	No support for defendant	plea bargain	16 years in prison, 5 years probation

	confusion of facts			
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CONCLUSION

This study sought to determine if selection methods of prosecutors affect their decision to prosecute criminal cases. The evidence in this case study suggests that they do.

Two cities with different selection methods were chosen, Hartford, Connecticut (appointment) and Worcester, Massachusetts (election). For each city, three cases were selected based on their “high-profile” status. Each case was examined for public sentiment, the prosecutor’s recognition of that sentiment and then the prosecutor’s final decision. It was hypothesized that prosecutors who are elected are more likely to follow public sentiment since they seek reelection while prosecutors who are appointed are less likely to follow public sentiment since they do not seek reelection.

Using the above methodology, it was determined that this hypothesis is valid for these cases. In Worcester it was expected that the District Attorney would follow public sentiment. For all three cases this was true. In the Ventola case, the public called for forgiveness and the prosecutors responded by allowing a plea bargain. In the Nazario case, the public called for retribution and so Nazario was not given a plea deal. In the Lepkowski case, the public again asked for retribution and so the prosecution responded by taking the case to trial. In each of these cases the Worcester prosecutors paid

close attention to the public sentiment surrounding each case. Not only was this apparent in their final decisions, but in their statements given to the media and in court.

In Hartford, it was hypothesized that the State Attorney would not be concerned with the public sentiment surrounding a case. This was determined to be valid for two out of three cases. In the Boyko case, the public wanted Boyko to pay for his crimes. While the prosecution recognized the public sentiment, they ignored it and gave Boyko a lesser sentence via plea bargain. In the Torres case, it was clear that the public was not forgiving of her crimes. The prosecution, however, did not pay attention to this sentiment and allowed Torres to take a plea bargain. The one case that stood out was the Lacouture case. Lacouture seemed to have full public support for his case. Prosecutors recognized the support and so they allowed him to accept a plea bargain. In two of these cases it was clear that the prosecutors were not concerned with gaining public support. However, there was one outlier that suggested appointed prosecutors might sometimes pay attention to the public.

Additional support for the hypothesis that selection methods matter in the use of discretion was found in other variables throughout this case study. Through examining each case found in the media, it was readily observed that prosecutor presence was much more prevalent in the Worcester cases than in the Hartford cases. Though there were quotes from at least one prosecutor in each case, in the Worcester cases the quotes were not only more abundant,

but on numerous occasions the District Attorney himself gave some of the most powerful statements on the case. This was not found in the Hartford cases. In the Hartford cases, the presence of the State's Attorney was only seen through her representation by the Assistant District Attorneys.

This same difference was also discovered when information was sought out on the Internet. Brief information about Gail Hardy was mentioned on the Connecticut Government website, while District Attorney Early had an entire web site devoted to his cases and other projects. These differences point toward the conclusion made by this study. The District Attorney that would eventually seek reelection put himself in the media and made himself available to the public as to encourage them to vote for him in his reelection. (In Fact, District Attorney Early was reelected in 2010). The District Attorney that did not seek a vote and instead enjoyed appointment was not made available to the public and did not have to prove herself to the public.

While this study found a relationship between selection methods and discretion, it does not claim to be a causal study. The limitations of this study do not allow for an absolute conclusion. Instead, it asserts that there is a relationship between these two variables and that the next step would be to examine this topic further. A study that uses this same methodology but examines a much greater number of cases to determine if the pattern still holds would be able to assert a stronger relationship between the variables. A study that could provide this same evidence but also interview the prosecutors may also provide more insight into this topic. The ability to

expand these findings to all of the districts in the states would also provide additional insight. Finally, a study that focuses on cases in the present would be more open to interviews with the community and prosecutors. These are just a few ways that this study could be expanded for future research, but were not done so at present due to time constraints.

The trends present in the findings in Hartford and Worcester suggest implications for the criminal justice system. The first implications on the criminal justice system is found in Herbert Packer's "Two Models of the Criminal Process." As explained earlier, the "Two Models of the Criminal Process" is the thought that there are two models present in the criminal justice system and those models are Due Process and Crime Control. The due process model suggests that the prosecutors must work for the defendant to make sure there are no mistakes in the case that could cause a wrongful conviction (Packer 7). The crime control model suggests that prosecutors must be concerned with getting criminals off the street and that they must push cases through the system in the most efficient way possible (Packer 4). These two models are present in the criminal justice system and are in constant competition.

When applying Packer's model to the United States court system, the ideal scenario is that there is an even balance of both the crime control and due process models. Too much or too little of either model offsets the criminal justice system and has the opportunity to damage justice. For instance, if the system were to only focus on due process, cases would rarely

ever be prosecuted. If the facts of a case were ever in question, the prosecution would have to stop what they were doing and make one hundred percent sure that the facts and evidence were perfect in order to move forward. This would not do the country well since criminals would hardly ever be sentenced. If the system were only focused on crime control there would be more of a chance for innocent people to go to prison. Prosecutors would have the opportunity to prosecute anyone without taking certain precautions to protect that person. In the United States, neither of these methods would be considered justice. However, combined they have the chance to bring about fair results.

From Packer's "Two Models of the Criminal Process," the following question must be asked about this case study: Do the selection methods of prosecutors interfere with the balance that provides us with justice? In both Hartford and Worcester there were instances where it was probable that justice was averted because of selection methods.

Beginning with Worcester, the Ventola and Nazario cases seemed to be the most balanced with respect to due process and crime control. In the Ventola case, the public lobbied strongly for a less harsh sentence and the prosecutor listened to that lobbying. What does this say for the way in which justice was provided? Should the District Attorney have been more concerned about crime control in a case where the facts made it clear that the man murdered his wife? In this case, it appeared that the prosecutor saw an opportunity. The public was very vocal about their opinion to show mercy

for Joe Ventola and so the prosecutor went with a sentence that was slightly reduced. In doing so he reduced the life sentence to life with parole in 15 years. Though this was a reduced sentence, considering Ventola's age, the sentence suited the crime well. In this case, it could have been suggested that the prosecutors let due process take the back seat in order to secure the District Attorney the popular vote, however this was one of the more just outcomes.

In the Nazario case, the prosecutor again followed public sentiment and imposed a harsh crime control penalty. Does this mean that due process was averted in the process? This may have been the case since only estimates were given as to the number of children he molested. Since the due process model says all of the facts must be certain then this may have been a violation. However, the prosecution was also provided with hard evidence that Nazario was not innocent. The prosecution obtained his diary and an admission of the crimes. Therefore, this was another instance where it was likely that crime control and due process were applied fairly.

In the Lepkowski case, however, there were more concerning issues. The prosecution charged Michelle Lepkowski with the murder of her child since the public called for retribution. For this case, it seemed likely that the murder charge was an act by the prosecution to gain public support. It was made clear in the media that the facts of the case were not exact. In fact, some of the articles suggest that Lepkowski's boyfriend was the one responsible for the crime. According to the due process model, it was not all

right for the prosecution to continue this case in the assertive way that they did. Further evidence that the choice to go for a harsh crime control sentence was just for the public comes from the conviction that the jury assigned Lepkowski. The jury did not find her guilty of murder, but convicted her of manslaughter, a lesser charge. It is cases like these that need to be questioned.

Though the majority of the cases from Worcester seemed to provide a good balance of crime control and due process, the Lepkowski case proved that it was possible for some cases to slip through the cracks. The Lepkowski case suggested that selection methods were important in Worcester and that because elections were important justice might not always be provided.

The Hartford cases also brought up some questions about the fairness of crime control and due process. In Hartford, the Lacouture case was the one that seemed able to keep a balance of crime control and due process.

Lacouture was charged with murdering his wife but received wide public support from people who claim he was a good husband and his wife had mental issues. Though it was obvious that Lacouture murdered his wife, the prosecution granted him a plea bargain based on the public's support for him and the fact that his wife was not mentally well. Though the plea bargain suggested that this was solely a crime control outcome, the other facts of the case, including the mental health of his wife suggested that this was a fair outcome.

The other two cases that came out of Hartford suggested a more

significant imbalance between crime control and due process. First was the Boyko case. Boyko was charged with molesting two girls over a long period of time. The public and even the prosecutors recognized that this was a case that needed to be prosecuted. Instead of prosecuting, however, Boyko was given a plea, which let him off easily and secured the conviction for the prosecution. This was an abuse of the Crime Control Model since the prosecution was able to secure the conviction even when that conviction might not have been the correct choice. This decision was made possible by the lack of accountability of the prosecutors to the public. Because they were able to use their discretion so liberally, crime control was not upheld. The same outcome occurred in the Torres case. Torres was charged with murdering the child she was babysitting. The public was appalled by the way in which the child was murdered. Instead of providing the public with retribution, the prosecutors used their discretion to their advantage and offered a plea bargain, which means they did not have to go to trial but were able to secure a conviction. Once again, crime control was a priority. The Hartford cases suggested that justice was second best to what the prosecutors wanted to do with the case.

A final question then is if anything should be done about selection methods? Since a majority of states have switched to electing their prosecutors it seems as if the remaining states should also switch. But maybe there is something valuable in appointing prosecutors that the other states have overlooked. Which is the better option? In determining this question

there are two competing theories. One is that the public is informed and knows enough about the law that they can make educated decision and hold prosecutors accountable for what they do. The other is that the general public does not know enough about the system and therefore prosecutors should not be held accountable to the public. Clearly, the majority of states have chosen to abide by the former thought.

In determining which selection method is the best, this study suggests that each of these selection methods has their advantages and disadvantages. As is seen in the Worcester cases, it is possible for prosecutors to take their vote into consideration when they should be focusing on the case. In the Hartford cases, it is possible that the prosecutors will do what they think is best and ignore the community's desires. In both cities it is apparent that in one way or another either crime control or due process is going to suffer at some point.

Since crime control and due process will tend to suffer in both cities, it is important to look at the benefits that each of these selection methods provides. In Worcester, there may be an imbalance between crime control and due process, but that also means that the public is being represented. In Hartford, when there is a crime control and due process imbalance, the public officials use their expertise to make decisions. The benefits that come out of each of these cities are very different. In Worcester, there is an emphasis on accountability and transparency. In Hartford, there is a lack of accountability and transparency. Since crime control and due process are

likely to fall out of balance in each city, the decision of which selection method is best comes down to personal preference. Would you rather trust public officials or would you rather monitor their every move?

Finally, this study makes a similar conclusion as that of previous scholars. The criminal justice system is, in fact, a “system” and the prosecutors are just a piece of that system (Cole; Miller). There are so many factors that go into a prosecutor’s decision that it is impossible to say which factor determines how a prosecutor will handle a case. This study suggests that selection methods account for a larger portion of that system.

The literature on this topic points to the fact that prosecutors have a significant amount of discretion at their disposal (Angela Davis; Kenneth Davis). Scholars suggest that there is a system at work and that factors like relationships, conviction rates and the community play a role in the prosecutor’s use of discretion (Cole; Miller). Studies, however, fail to determine which factor has the most influence on a prosecutor’s decisions. They also fail to examine the relationship between prosecutors and their selection status. These two topics are combine in this study to determine that there are differences in how prosecutors use discretion based on selection status and that the reason for that is their level of responsiveness to the community. The way in which prosecutors address the community in their decisions on criminal cases is one of the main reasons why prosecutors choose to prosecute the way they do.

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