

## Power and Breaking the Rules

In the *State of Wisconsin v. Steven A. Avery*, one of the theories of the case espoused by the defense is that Steven Avery, due to his high profile exoneration, was framed by the State, or more particularly by one or more officers of the State, for the murder of Teresa Halbach. As a factual matter, the defendant, Steven Avery either was or was not framed, and it is the role of a jury as fact finders to make this determination. But the jury can be aided by what is known alternately as Social or Empirical Framework Testimony (Faigman, Monahan, & Slobogin 2014). In this section we discuss some of the pertinent social science evidence that can speak to this issue of the probability that Detectives Lenk and Colburn may have planted evidence and allow jurors to determine whether that probability is substantive enough to constitute reasonable doubt as to Avery's guilt or innocence.

It is important to remember that before any opportunities to frame Avery arose the police force was already looking at Avery as the prime suspect as evidenced by Detective Jacobs immediate call to dispatch asking whether Avery was already in custody, when no evidence had even been collected yet. Detectives Lenk and Colborn were convinced that Avery was a bad guy and the social science evidence from Psychology and Behavioral Economics shows that people are more likely to bend the rules and cheat when they are doing it for a good cause such as charity (Cojoc & Stoian 2014). Breaking the rules for a good cause is also seen as more forgivable by others (Savitsky & Babel 1976). Being a police officer is clearly a position of power, and the psychological literature on power and morality is fairly straight forward. Being in what one perceives as a justified position of power makes you more forgiving of your own failings and more critical of the mistakes of others (Lammers, Staples, and Galinsky 2010). In a police context, this would be expected to translate to being forgiving of yourself and fellow officers who don't play 100% by the book in their pursuit of catching bad guys, and to be more morally offended by those criminals, increasing the scale of the temptation to do anything to put them away.

People of different mindset are lured into misbehaving for different reasons. People with more abstract mindsets are more likely to misbehave for a good cause, whereas those with more concrete mindsets are more likely to bend the rules for personal gain (Rixom & Mishra 2014). Due to Detectives Lenk and Colburn's involvement with Avery's prior case, and their being deposed in his law suit for wrongful imprisonment, Detective Lenk and Colborn had both personal gain and their perception of the greater good pushing them towards the temptation of bending the rules.

Detectives Lenk and Colborn found the key to Halbach's car, Detective Lenk was present before the car scene was closed and began having a required log in sheet, and Detective Lenk was also present when the bullet with Halbach's blood was found in Avery's Garage. When people break the rules, they are more likely to do so when they think they won't get caught (Shalvi, Dana, Handgraaf, & De Dreu 2011). They are also more likely to bend the rules, not to break them entirely and fly in the face of social order. Detective Lenk in his testimony suggested that it would have been easier to just kill Avery if he had been intent on police misconduct. This mirrors most people's intuition, which is why as way of avoiding getting caught, people tend to

misbehave in ways where there were more extreme options available to them (Shalvi, Dana, Handgraaf, & De Dreu 2011). Further, thinking about these counterfactual situations, of how they could have behaved worse exacerbates the odds of “bending” the rules, particularly when people feel they are justified in their behavior as it is for a good cause, as Detective Lenk and Colborn (if they did frame Avery) must have felt about a man they were sure was guilty (Lewis et al. 2012). So Lenk’s statement about how he could have done things so much worse, likely increases the odds he may bend the rules.

Between the key with Avery’s DNA, Avery’s blood in the car, and the bullet with Halbach’s DNA in Avery’s garage, Detectives Lenk and Colborn would have had to break the rules multiple times. Leigh intuition might lead to the deduction that this makes framing less probable. But what the research shows, is that once you misbehave once, it is a slippery slope, where it becomes successively easier to keep on misbehaving (Cojoc & Stoian 2014).

#### References:

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