Morally Questionable Tactics: Negotiations Between District Attorneys and Public Defenders

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A questionnaire study about bargaining tactics was conducted among 163 public defenders (PDs) and district attorneys (DAs) in the criminal justice system. The authors hypothesized that PDs (defensive roles) would perceive questionable tactics to be more appropriate than would DAs (offensive roles), that PDs and DAs would elevate their approval of questionable tactics for counteraggression purposes, and that PDs would elevate their approval for counteraggression to a greater extent than would DAs. Results supported these hypotheses. The authors also examined the basis of the status quo bias, because previous status quo bias studies always confounded power with defensive role. After testing four status quo bias hypotheses, results suggested that, contrary to previous explanations, a defender-challenger framework sometimes provides a better account of the status quo bias than does a power framework.

Whether negotiating a higher salary, project due date, or restaurant choice, we all use various negotiation tactics to obtain some desired outcome or solution to a conflict (Fisher & Ury, 1981; Pruitt, 1981; J. Rubin, 1994). Sometimes we employ certain negotiation strategies or tactics in part as a function of our relative power and relative offensive or defensive role in the negotiation. Given that negotiators have self-interest at stake and that the negotiation forum is often a competitive one, it is not too surprising that the tactics that negotiators use are more or less ethically questionable or inappropriate (Lewicki & Robinson, 1998) depending on individual differences, such as previous negotiation experience and understanding of the rules of the game, to name a few.

In this study, we sought to investigate the perceived appropriateness of some ethical and some not so ethical negotiation tactics. We wanted to study these tactics using not only a real world population but a population for whom the ability to negotiate effectively is critical for success—namely, attorneys. Public defenders and district attorneys were of particular interest because these two types of attorneys frequently engage in bargaining and negotiation sessions with each other (Champion, 1989; Cole, 1972; Gertz, 1980). The present study examines the extent to which public defenders and district attorneys in the criminal justice system differ in their perceptions of the appropriateness of a set of seemingly unethical tactics and the extent to which they would counteraggress if their opponent used such tactics against them. This study also investigates the intergroup perceptions between public defenders and district attorneys on these questionable tactics and the role power may play, if any, in understanding asymmetries that arise. Although this article focuses on district attorneys and public defenders, the implications of this research shed light on defender and offender roles in general, provid-

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ing a framework to better understand these dynamics in our own lives.

Ethical and Unethical Negotiation Tactics

Although moral behavior has been widely studied in various domains (e.g., Darley & Shultz, 1990; Kohlberg, 1976; Kurtines & Gewirtz, 1991; Williams, 1972), only more recently has it been examined in the negotiation context (Lewicki, 1983; Lewicki & Stark, 1996; Lewicki & Robinson, 1998; Robinson, Lewicki, & Donahue, 1998; Tenbrunsel, 1995, 1998). This research is of great significance because people are sometimes so concerned with maximizing outcomes that they often cross ethical boundaries to meet their objectives, using unethical tactics that in the end may have deleterious effects (Lewicki, 1983). Lewicki and Stark (1996) examined what types of bargaining tactics are appropriate to use in negotiations and found considerable consensus as to which types of tactics are more or less appropriate. In addition, they found that individuals' ratings of the perceived appropriateness of given tactics corresponds to the individuals' ratings of the likelihood they would use the tactics themselves. That is, the more appropriate a tactic is perceived by a person, the greater likelihood that tactic would be used by that person in a negotiation.

Following this line of research, Robinson et al. (1998) identified a five-factor model of ethical and unethical bargaining tactics. The first factor, Traditional Competitive Bargaining, encompasses tactics that are generally acceptable and appropriate. The second factor, Attacking Opponent's Network, is composed of somewhat unethical tactics in which people actively seek to manipulate or interfere with an opponent's network. The third factor, False Promises, reflects those seemingly unethical tactics in which people make false commitments or lie about their intentions to fulfill an agreement. The fourth factor, Misrepresentation, includes somewhat inappropriate tactics where people use misleading information or ill portray circumstances to promote their case. The fifth factor, Inappropriate Information Gathering, captures tactics in which negotiators use unethical means to collect information to support their case. Robinson et al. (1998) subsequently transformed this five-factor model of ethical and unethical bargaining tactics into the Self-Reported Inappropriate Negotiation Strategies (SINS) Scale.

Although the SINS Scale has been rigorously tested, its external validity and applicability is most strong for the population from which it was derived—master of business administration (MBA) students. For our purposes, however, we are only interested in using this scale as a guide to understand how public defenders and district attorneys may view the ethicality of various negotiation tactics. Unfortunately, the SINS Scale omits several common questionable tactics, such as neglecting to share information that is important for the other side to know. In this sense, the SINS Scale appears to subsume more tactics of commission than of omission, which are arguably just as common among attorneys and laypersons alike. Nevertheless, the SINS Scale does help us identify a priori what types of tactics might be perceived as relatively inappropriate or appropriate in a general sense. However, to understand how public defenders and district attorneys may differ in their perceptions of appropriateness, we must first briefly consider their occupational roles in the legal system.

The Roles of Public Defenders and District Attorneys in the Legal System

Public defenders and district attorneys exist in a system in which their relationship is an adversarial one (Cole, 1972; Lichtenstein, 1984). District attorneys, by their very nature, are offensive players in the legal system. Their goal is to challenge, convict, and strive for justice (H. T. Rubin, 1976). They are prosecutors; they make the first moves and pick their fights. They are in offensive roles.

Public defenders, on the other hand, are in defensive roles. Public defenders champion the case of their clients and defend their clients against charges brought about by the prosecution (Mather, 1973). Oftentimes, too, if in their client's best interest, they will engage in plea-bargaining sessions (Blumberg, 1967; Champion, 1989), vigilant in their duty to defend clients against allegations. Thus, the defensive role of public defenders requires them to fend off attacks brought on by their offensive counterparts, the district attorneys.

Offensive-Defensive Roles and Bargaining Tactics

We can learn from the bargaining literature on offensive and defensive tactics to understand how ethical and unethical tactics may be rated differently depending on whether one is in an offensive or defensive role. Ford and Blegen (1992) studied the offensive and defensive use of punitive tactics in the framework of bilateral deterrence theory (Lawler, 1986; 1992; Lawler, Ford, & Blegen, 1988). The offensive and defensive use of punitive tactics naturally reflect the parties in offensive and defensive roles, respectively. Participants were assigned negotiation roles in which they represented one of two possible nations. The goal of the negotiators was to make the most profit from a pricing dispute. In addition, each negotiator had a savings account that, although not subject to negotiation, could be debited if the negotiating opponent wanted to impose fines, the proxy for punitive damages.

Ford and Blegen (1992) predicted and found that the frequency of punitive tactics by a particular party was greater when the opponent had a higher rather than a lower probability of initiating damage. Thus, this finding implies how the frequency of certain aggressive tactics may depend on whether the person is in an active offensive or defensive role. That is, the frequency of aggressive tactics is likely to be greater for persons in defensive roles who interact with offensive players likely to initiate conflict. This line of research is consistent with work on aggression by Helm, Bonoma, and Tedeschi (1972), who found a direct and linear relationship between initial aggression and counteraggression.

Although Ford and Blegen focused primarily on punitive tactics and Helm and colleagues on aggression, we assume these trends may apply to other aggressive yet inappropriate negotiation tactics. Although there are definitional distinctions between aggression, punitive tactics, and ethically inappropriate tactics, generally speaking, we infer that findings on aggression and punitive tactics apply to inappropriate tactics, which certainly have aggressive or punitive qualities. Second, we infer that the more a party uses aggressive tactics, the more likely he or she will perceive such tactics as being appropriate. This reasoning is supported by Lewicki and Robinson (1998), who found a direct link between aggression and perceiving tactics as being appropriate.

Along these lines, Lewicki and Stark (1996) also found a strong relationship between acting out a particular tactic and perceiving it as appropriate ($r = .92$). As the authors note, however, the direction of this relationship remains unclear: "It is not clear which evaluation drives the other." Whereas a cognitive consistency perspective may suggest that the beliefs precede the actions, a self-perception perspective may argue the actions precede the beliefs. As Lewicki and Stark acknowledge, this interesting relationship deserves further study. Nevertheless, we can extend the Ford and Blegen (1992) findings about defensive and offensive roles to public defenders and district attorneys, and we would expect public defenders, who are likely to use punitive tactics in their defensive roles, to perceive a set of questionable tactics as being more appropriate than would district attorneys, who initiate prosecution. Thus, we posit our first hypothesis:

Hypothesis 1: Public defenders will perceive a set of morally questionable tactics as being more appropriate than will district attorneys.

Ethical and Unethical Tactics In and Out of Context

Although defensive and offensive roles may influence the perceived appropriateness of a set of negotiation tactics, a set of negotiation tactics presented in the context of counteraggression should be perceived differently than if they are presented in the abstract, at face value. To understand how context shapes our perceptions, we can turn to research on morally legitimate and illegitimate aggressive behavior.

Carpenter and Darley (1978) demonstrated how aggressive action is perceived as being morally illegitimate in the abstract yet morally legitimate in the context of counteraggression. In their study, observers watched a videotaped fight between two men. In the abstract condition, observers only saw Person A strike Person B. In the counteraggression context, observers saw the fight along with the precipitating event in which Person B initially provoked Person A. Results showed that observers in the abstract condition rated the aggressive behavior as being less morally legitimate than those in the counteraggression condition. With regard to the present study, then, we would expect that morally questionable tactics will be perceived as being more appropriate in the context of counteraggression than in the abstract by both public defenders and district attorneys alike. In this sense, it is morally sanctioned in a counteraggression context. Thus, our second hypothesis is the following:

Hypothesis 2: A set of morally questionable tactics will be perceived as being more appropriate in the context of counteraggression than in the abstract.

In making this prediction, however, we do not anticipate a large effect because public defenders and district attorneys repeatedly interact with each other in a world of counteraggression (Axelrod, 1997).

Defensive and Offensive Roles and Counteraggression

Assuming that those in defensive roles are more willing to use aggressive tactics than are those in initiating offensive roles and that people generally perceive questionable tactics as being more appropriate in the context of counteraggression, we can derive an interaction between role and context. Namely, we would expect different counteraggression tendencies for public defenders and district attorneys. More specifically, public defenders, who themselves defensively respond to district attorneys, should elevate their appropriateness ratings for counteraggression to a greater extent than district attorneys would elevate theirs. Thus, we posit our third hypothesis:

Hypothesis 3: Public defenders will elevate their approval of morally questionable tactics in the context of counteraggression to a greater extent than will district attorneys.

Investigating the Status Quo Bias

In their article "Defending the Status Quo," Keltner and Robinson (1997) developed a status quo bias framework to understand the role of power and social bias in conflicts to account for asymmetrical intergroup perceptions. The hallmark finding of the status quo bias effect is that powerful groups defending the status quo are less accurate at intergroup perception than are less powerful groups challenging them. Grounding their theory on power and perception findings (e.g., Erber & Fiske, 1984; Fiske, 1993), they contend that power differences greatly underlie these intergroup perception effects. Their research, however, is problematic in that being in a position of power is confounded with being in a defensive role. That is, the status quo groups are not only powerful, but they are defending their power position. The present study attempts to disentangle power and defensive roles to better understand whether power differences or defender-challenger differences underlie these status quo effects.

Keltner and Robinson (1997) argue that power differences engender accuracy differences in intergroup perceptions. They studied how incumbent groups in power defending the status quo demonstrate greater bias and make more inaccurate intergroup perceptions than do rival group members challenging the status quo. This reasoning stems from theories that power affects the social attention given by an observer and received by a target, such that powerful targets receive more attention and individuating processing than do less powerful targets (Fiske, 1993; Neuberg & Fiske, 1987). As perceivers, members of powerful groups are likely to become biased judges relative to members of less powerful groups. As targets, individuals with low power tend to be less accurately judged than high-power targets. If judging life satisfaction, for instance, a powerless group would make more accurate estimations of a powerful outgroup's life satisfaction than a powerful group would make of a powerless outgroup's life satisfaction. As targets, the powerless group would be perceived less accurately than the powerful group by members of both the powerless and the powerful groups alike. Implicit in these effects is the notion that high-power observers have little motivation to make accurate social judgments relative to low-power observers and that low-power targets offer little incentive to be accurately perceived relative to high-power targets.

Keltner and Robinson (1997) conducted their study in the context of the Western Canon debate, a dispute between traditionalists, who seek to preserve the literary status quo, and revisionists, who want to incorporate more works by women and minorities. The traditionalists are the high-power group members, who tend to be tenured and male professors, whereas the revisionists are the low-power group members, who tend to be untenured and female. Keltner and Robinson showed that both revisionists and traditionalists exaggerated the differences in their attitudes, the extremity of the other side's conviction, the extremity of their own group, and the numerical balance of the two sides. More important, results also indicated that traditionalists were more prone to exaggerate the attitudinal extremism of each side and that both sides tended to exaggerate revisionists' extremism. Furthermore, traditionalists polarized the difference between their opponents' attitudes and their own, whereas revisionists saw less polarization. Traditionalists also underestimated the number of books in common with their opponents to a greater extent than did revisionists. Hence, the powerful status quo groups are more prone to inaccurate perceptions than are the less powerful challenging groups. Although the authors admit the underlying mechanisms that link power and social bias deserve further investigation, they interpreted their results as support that power underlies the status quo bias.

Ebenbach and Keltner (1998) subsequently found similar results in their study on how the status quo bias and emotion influence the accuracy of intergroup perceptions. Thus, in the intergroup context, it seems that the relative power status of a group affects the accuracy of the group members' social judgments in intergroup perceptions.

More recently, Kray and Robinson (1999) have demonstrated the status quo bias using a minimal group paradigm. Participants were randomly assigned membership to one of two fictitious partisan groups: a status quo group or a challenging group. Participants then viewed a videotaped "negotiation" between a status quo group member and a challenging group member, whose roles were played by confederates. Results showed that the effects of the status quo bias can be replicated in a minimal group paradigm and, in particular, artificial partisanship. Their findings furthermore showed that partisanship is an essential precursor to the status quo bias, which did not transpire in nonpartisan situations. Although power differences appear to underlie the status quo bias, it may also be the case that the defensive and offensive nature of partisan conflict contributes to this bias.

Power and Roles of Public Defenders and District Attorneys

Although the status quo bias research (Ebenbach & Keltner, 1998; Keltner & Robinson, 1997; Kray & Robinson, 1999) is impressive, being in a position of power is confounded with being in a defensive role. That is, the status quo groups are not only in power, but they are defending their power positions. In this study, we set out to examine intergroup bias effects in a naturally occur-

ring context where being in a powerful position is not confounded with being in a defensive position. Thus, we decided to take advantage of the public defender/district attorney relationship to disentangle this confound.

In the legal system, district attorneys, relative to public defenders, occupy more powerful positions (Cole, 1972). They function in positions with great discretionary power and have the latitude to make decisions about which cases to prosecute and what plea-bargaining outcomes are acceptable. Public defenders, on the other hand, have little power relative to district attorneys. Public defenders are also likely to have fewer resources than are district attorneys. Unlike the Keltner and Robinson (1997) studies, where those belonging to powerful groups are in defensive roles, powerful district attorneys are in challenging (or offensive) roles, whereas the powerless public defenders are in defensive roles.[1]

Because the objective of this study is to test whether a power framework or a defender-challenger framework better describes the status quo bias, our hypotheses naturally stem directly from the status quo hypotheses.

Based on the notion of naive realism[2] (Robinson, Keltner, Ward, & Ross, 1995), the first and second hypotheses of the status quo bias are proposed as follows:

Hypothesis 4: District attorneys and public defenders will perceive their own group as being more extreme (in the negative direction) than they actually are.

Hypothesis 5: District attorneys and public defenders will perceive each other's stance as being more extreme (in the negative direction) than it actually is.

The third and fourth hypotheses of the status quo bias stem from the power and bias literature (e.g., Fiske, 1993). However, let us recall that Keltner and Robinson (1997) obtained support for these power effects, but in their study, being in a power position was confounded with being in a defensive role. Thus, it is not entirely clear at this point whether power differences or defender-challenger differences truly underlie these effects. Thus, we propose the following contingency hypotheses:

If power differences greatly underlie the status quo bias, then

Hypothesis 6: Powerful district attorneys, relative to less powerful public defenders, should be less accurate at intergroup perception.

Hypothesis 7: As targets, powerless public defenders should be stereotyped more than powerful district attorneys.

If defender-challenger differences greatly underlie the status quo bias, then

Hypothesis 6: Public defenders, in defensive roles, should be less accurate at intergroup perception.

Hypothesis 7: As targets, district attorneys, in challenging roles, should be stereotyped more than public defenders.

METHOD

Participants

Public defenders ($n = 90$) and district attorneys ($n = 73$) from Salt Lake City, San Francisco, and Seattle[3] participated in our questionnaire study. Of the 405 questionnaires mailed, 163 were returned, yielding a 40.2% response rate. Of those providing gender information, 51 were female and 81 were male (21 female/36 male district attorneys, 30 female/45 male public defenders). The mean number of years in current occupation was 7.4 years for public defenders ($n = 72$) and 8.6 years for district attorneys ($n = 57$). Because public defenders and district attorneys have demands on their time and because we wanted to facilitate a respectable return rate, we intentionally tried to create a questionnaire that would require no more than 10 minutes to complete, and we thus had to restrict the number of items.

Procedure

Depending on our agreement with the different public defender and district attorney offices, questionnaires were either mailed directly to individual attorneys or distributed internally. For all cases, a cover letter explaining the study was included in every questionnaire packet along with a preaddressed, stamped return envelope. For cases that were mailed directly, we sent a prequestionnaire letter introducing our study and notifying them that our questionnaire would soon be mailed to them. Three weeks after they received the questionnaire, these same participants received thank-you letters that served to remind them or thank them for their participation.

Participation was quasi-anonymous to the extent we did not ask for personal identity. However, the questionnaires did reflect the originating city and office and solicited voluntary information regarding gender, years in office, and case load (although the latter variable was difficult to quantify). Participants were asked to return the questionnaire within 3 weeks after receiving it. The overall instructions (a modified version of those on the SINS Scale) on the front page of the questionnaire read as follows:

> Prosecutors and defense lawyers exist in a complex environment in which they often contest issues, but do so in an environment in which certain rules and standards apply. We will give you a list of negotiation tactics that might be used in trial and bargaining sessions, and ask you to rate the legitimacy or appropriateness of these tactics. In completing this questionnaire, please try to be as candid as you can about what you think is appropriate

and acceptable to do. You are being asked about tactics that are controversial: However, your responses on this questionnaire are completely anonymous, and no one will ever know your individual responses.

Participants were first asked to rate the appropriateness of five negotiation tactics on a scale of 1 (*not at all appropriate*) to 7 (*very appropriate*) in terms of their own personal opinion. Except for the "threaten to post-pone or speed-up trial" tactic, the negotiation tactics came directly from the SINS Scale (Robinson et al., 1998). These tactics were chosen to reflect midrange ethical and unethical tactics of the subscales of the SINS Scale. They were also selected because prior personal communication with public defenders and district attorneys (not involved in the study) suggested that they would be recognized as tactics by both camps. The five tactics were as follows: (a) "in return for concessions now, offer to make future concessions that you know you will not follow through on"; (b) "make an opening demand that is far greater than what you really hope to settle for"; (c) "deny the validity of information that your opponent has that weakens your negotiating position, even though that information is true and valid"; (d) "threaten to post-pone or speed-up trial, whichever is worse for your opponent"; and (e) "intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position." These ratings became an index of how participants perceived the appropriateness of the negotiation tactics in the abstract context.

Perceived appropriateness in the counteraggression context was captured through five scenarios in which each of the five tactics above was hypothetically used by an opponent against the participant. For each case, the participants were asked, "How appropriate would it be for you to respond with EACH of the 5 tactics?" thus providing a measure of counteraggression. For instance, if you were a public defender, your scenarios would read, "If a district attorney threatened to post-pone or speed-up trial, whichever is worse for you, how appropriate would it be for you to respond with EACH of the 5 tactics?" Then, you would rate the appropriateness of Tactics 1 through 5. The structure of these hypothetical scenarios (If opponent used Tactic X against you) remained the same, with only the tactic changing. After each scenario, the participants would always rate how appropriate it would be to respond with Tactics 1 through 5.

The data for the status quo bias were collected on the same questionnaire. The participants' ratings of the appropriateness of the five negotiation tactics in the abstract context, for our purposes here, will now be considered self-ratings. That is, the participants were asked to rate the five tactics according to how they personally felt (self-ratings). In addition, the participants also rated the appropriateness of the five negotiation tactics in terms of how they felt others in their own group would rate the tactics (ingroup ratings) and how they felt outgroup members would rate the appropriateness of these tactics (outgroup ratings).

To demonstrate, let us assume that you are a public defender. In this case, you would first assign appropriateness ratings to the five negotiation tactics according to how you personally felt—your self-ratings. Then, you would rate these same tactics according to how you felt the average public defender would complete these ratings—your ingroup ratings. Finally, you would rate the tactics according to the perspective of the average district attorney—your outgroup ratings.

The self-ratings on the appropriateness of the tactics allowed us to identify an approximate position where public defenders and district attorneys actually stood along the inappropriate-appropriate continuum. We hasten to acknowledge, however, that this measurement is only an approximate estimate because not every public defender and district attorney participated. Identifying the absolute position of a group is a perennial problem and perhaps impossible to assess (Judd & Park, 1993). Nevertheless, for our purposes here, we are only concerned with relative position and differences, not actual position and differences.

The extent to which Group A members exaggerate the stance of their own group is the difference between Group A's ingroup ratings and Group A's self-ratings. The extent to which Group A exaggerates the stance of Group B is the difference between Group A's outgroup ratings and Group B's self-ratings.

RESULTS

Ethical and Unethical Tactic Hypotheses

There was no significant interaction by city and attorney type on the perception of the five negotiation tactics, $F(2, 157) = 0.48$, $p = .62$. Thus, the district attorneys and public defenders in Salt Lake City, San Francisco, and Seattle posted data in similar patterns. Similarly, there was no main effect for gender, $F(1, 128) = 1.645$, $p = .20$, and the interaction by gender and attorney type was not significant, $F(1, 128) = 0.066$, $p = .80$. Second, there is great agreement between public defenders and district attorneys as to which tactics are relatively appropriate or inappropriate. Interestingly too, their appropriateness ratings converge on the egregious tactics—namely, "In return for concessions now, offer to make future concession that you know you will not follow through on" and "Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments

TABLE 1: Mean Appropriateness Ratings of Tactics in the Abstract and for Counteraggression

	District Attorney		*Public Defender*	
	Abstract	*Counteraggression*	*Abstract*	*Counteraggression*
Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position	1.11 (0.36)	1.14 (0.40)	1.16 (0.39)	1.30 (0.64)
Threaten to postpone or speed-up trial, whichever is worse for your opponent	2.65 (1.82)	2.93 (1.94)	4.70 (2.05)	5.15 (1.97)
Deny the validity of information that your opponent has that weakens your negotiating position, even though that information is true and valid	1.79 (1.18)	1.82 (1.22)	2.45 (1.72)	2.81 (1.87)
Make an opening demand that is far greater than what you really hope to settle for	3.78 (1.85)	3.83 (1.88)	5.38 (1.75)	5.61 (1.69)
In return for concessions now, offer to make future concessions that you know you will not follow through on	1.05 (0.28)	1.17 (0.42)	1.33 (0.85)	1.81 (1.25)

or position"—albeit public defenders seem to perceive the tactics to be more appropriate overall (see Table 1 for "abstract" means).

As for our first hypothesis, we find support that public defenders did in fact perceive the tactics to be more appropriate than did district attorneys, $F(1, 161) = 49.238$, $p < .001$; $d = 1.10$. The public defenders had a mean of 3.00 ($SD = 0.87$; 1 = *not at all appropriate*, 7 = *very appropriate*), whereas the district attorneys had a mean of 2.08 ($SD = 0.80$). There was also a significant interaction between attorney type and type of tactic, $F(4, 644) = 19.057$, $p < .001$, suggesting that public defenders and district attorneys differed on the extent to which each of the five tactics was more or less inappropriate. Compare the abstract ratings of the district attorneys and public defenders in Table 1. In other words, whereas public defenders perceived the tactics to be more appropriate overall than did district attorneys, these patterns did not exactly mirror each other. That is, the attorneys had consensus, as mentioned above, on some tactics (e.g. "Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position") and disagreement on others (e.g. "Threaten to post-pone or speed-up trial, whichever is worse for your opponent").

As for our second hypothesis, we find support that the negotiation tactics were perceived as being significantly more appropriate in the counteraggression context than in the abstract, as suggested by Carpenter and Darley (1978). By calculating the average appropriateness ratings across the five tactics by context type, we found that the mean appropriateness score for the abstract context ($M = 2.59$, $SD = 0.96$) was significantly lower than the mean for the counteraggression context ($M = 2.82$, $SD = 1.12$), $t(1, 162) = 6.139$, $p < .001$, $d = 0.22$.

Our third hypothesis that public defenders would elevate their approval of the set of negotiation tactics in the context of counteraggression to a greater extent than would district attorneys was also confirmed, $F(1, 161) = 9.496$, $p < .01$ (see Table 1 for means). Whereas some tactics were more likely to be counteraggressed at greater rates than others, $F(4, 644) = 2.795$, $p < .05$, there was no significant interaction between attorney type and type of tactic, $F(4, 644) = 0.624$, $p = .645$. Perhaps not surprisingly, there was also a strong correlation between how the tactics were rated in the abstract and counteraggression contexts ($r = 0.91$, $p < .001$).

Although we made no a priori predictions about specific types of tactics and counteraggression, we considered the following question: If an opponent used Tactic X against the attorneys, are the attorneys more likely to respond with Tactic X? Indeed, we found support for this eye-for-an-eye mentality. By calculating difference scores between the abstract rating of Tactic X and counteraggression rating of Tactic X in which Tactic X was hypothetically used by the opponent and by creating a within-subjects factor for tactic type (Tactic X vs. Tactic Not X), we found that the attorneys had a greater tendency to counteraggress with the identical tactic, $F(1, 161) = 16.744$, $p < .001$. However, the significant interaction between tactic type and attorney type, $F(1, 161) = 4.703$, $p < .05$) suggests that the public defenders sought an eye for an eye to a greater extent than did district attorneys.

Status Quo Bias Hypotheses

For our fourth hypothesis, we found support that group members perceive their own group members as being more extreme than they actually are. By comparing the average of the self-ratings with the average ingroup ratings by attorney type, we found that individual district attorneys ($M = 2.08$, $SD = 0.80$; 1 = *not at all appropriate*, 7 = *very appropriate*) perceive themselves to be

TABLE 2: Mean Appropriateness Ratings of Negotiation Tactics

	District Attorney			*Public Defender*		
	Self	*Ingroup*	*Outgroup*	*Self*	*Ingroup*	*Outgroup*
Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position	1.11 (0.36)	1.29 (0.70)	3.27 (2.05)	1.16 (0.39)	1.60 (0.88)	3.11 (1.81)
Threaten to postpone or speed-up trial, whichever is worse for your opponent	2.65 (1.82)	3.28 (1.97)	5.11 (1.98)	4.70 (2.05)	5.17 (1.86)	4.78 (1.95)
Deny the validity of information that your opponent has that weakens your negotiating position, even though that information is true and valid	1.79 (1.18)	2.32 (1.49)	4.77 (1.96)	2.45 (1.72)	3.17 (1.84)	4.36 (1.82)
Make an opening demand that is far greater than what you really hope to settle for	3.78 (1.85)	4.56 (1.84)	5.75 (1.54)	5.38 (1.75)	5.64 (1.70)	5.90 (1.29)
In return for concessions now, offer to make future concessions that you know you will not follow through on	1.05 (0.28)	1.38 (0.83)	2.75 (1.76)	1.33 (0.85)	2.01 (1.19)	2.88 (1.72)

less extreme than other district attorneys ($M = 2.57$, $SD = 0.99$), $t(1, 72) = 7.410$, $p < .001$; $d = 0.55$. Similarly, individual public defenders ($M = 3.01$, $SD = 0.87$) perceive themselves as less extreme than other public defenders ($M = 3.52$, $SD = 1.00$), $t(1, 89) = 7.08$, $p < .001$; $d = 0.55$. Compare the self-ratings to the ingroup ratings in Table 2. Notice in both cohorts how the ingroup is perceived as more approving of questionable tactics than is the self.

Our fifth hypothesis that both sides would exaggerate each other's stance was also confirmed. By subtracting Group A's average outgroup ratings from the self-ratings of the target Group B, we derived our measure of exaggeration: The higher the exaggeration score, the greater the exaggeration. Public defenders thought the district attorneys would perceive the questionable tactics as being more appropriate than the district attorneys actually did, $t(1, 89) = 16.865$, $p < .001$; $d = 2.12$. The public defenders perceived the stance of district attorneys to be a mean of 4.21 ($SD = 1.20$), whereas the district attorney self-ratings reflect a mean of 2.05 ($SD = 0.80$). Comparing the public defenders' outgroup ratings to the self-ratings of the district attorneys in Table 2 illustrates the large discrepancy between the public defenders' estimates of the district attorneys and the district attorneys' self-ratings. Interestingly, too, Table 2 suggests that public defenders' estimates were more accurate for some tactics than others (i.e. compare "In return for concessions now, offer to make future concessions that you know you will not follow through on" to "Deny the validity of information that your opponent has that weakens your negotiating position"). A within-subjects analysis on the public defenders' ratings of the district attorneys on each of the five tactics indeed reveals a significant main effect for tactic type, $F(1, 356) = 3.463$, $p < .01$, suggesting that public defenders were more "off" on some tactics than on others.

As for the district attorneys, they also thought the public defenders would perceive the questionable tactics as being more appropriate than the public defenders actually did, $t(1, 72) = 7.741$, $p < .001$; $d = 1.16$. The district attorneys perceived the stance of public defenders to be a mean of 4.33 ($SD = 1.46$), whereas the public defenders' self-ratings reflect a mean of 3.01 ($SD = 0.87$). Comparing the district attorneys' outgroup ratings to the self-ratings of the public defenders in Table 2 shows how district attorneys' estimates were relative to the public defenders' self-ratings and how district attorneys were more accurate about some tactics than others. A within-subjects analysis reveals a significant main effect for tactic type such that district attorneys were indeed off on some tactics but not on others, $F(4, 288) = 35.912$, $p < .001$. Interestingly, too, by looking at Table 2, it appears that district attorneys virtually "hit the nail on the head" for the "Make an opening demand that is far greater than what you really hope to settle for" and "Threaten to post-pone or speed-up trial, whichever is worse for your opponent" tactics.

As for our contingency hypotheses, it appears that public defenders exaggerated the stance of the district attorneys to a greater extent than the other way around (see Table 3). By looking at the average exaggeration score by attorney type, we found that public defenders were off by a mean of 2.16 ($SD = 1.21$) points, whereas district attorneys were only off by a mean of 1.32 ($SD = 1.46$) points, $F(1, 161) = 14.923$, $p < .001$; $d = 0.66$. There was also a significant interaction between attorney type and type of tactic, $F(4, 644) = 16.625$, $p < .001$).

Last, it appears that, as targets, district attorneys were more prone to be stereotyped by public defenders and district attorneys alike than were public defenders. By calculating exaggeration scores for the two target

TABLE 3: The Extent to Which Attorneys Exaggerated Other Side

Tactic	*District Attorney*	*Public Defender*
Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position	2.12	2.00
	(2.05)	(1.81)
Threaten to postpone or speed-up trial, whichever is worse for your opponent	0.41	2.13
	(1.98)	(1.95)
Deny the validity of information that your opponent has that weakens your negotiating position, even though that information is true and valid	2.32	2.57
	(1.96)	(1.82)
Make an opening demand that is far greater than what you really hope to settle for	0.36	2.12
	(1.54)	(1.29)
In return for concessions now, offer to make future concessions that you know you will not follow through on	1.41	1.83
	(1.76)	(1.72)

NOTE: These exaggeration scores are simply difference scores between the observer group's estimates of the target on these five tactics and the target group's self-ratings.

groups, district attorneys ($M = 1.41$, $SD = 1.28$) and public defenders ($M = 0.87$, $SD = 1.17$), and conducting a two-way analysis of variance with attorney type (public defender/district attorney) as a between-subjects factor and target type (district attorney/public defender) as a within-subjects factor, it appears that both sides significantly exaggerated the stance of district attorneys to a greater extent than the stance of public defenders, $F(1, 161) = 14.596$, $p < .001$; $d = 0.44$. This main effect was naturally qualified by a significant interaction between attorney type and target type, $F(1, 161) = 134.711$, $p < .001$. Thus, because public defenders, being in defensive roles, were less accurate at intergroup perception than were powerful district attorneys and because district attorneys were stereotyped more than public defenders, the implication is that a defender-challenger framework, at least in this case, better describes asymmetries than does a power framework.

DISCUSSION

Questionable Negotiation Tactics

The finding that public defenders perceive questionable tactics to be more appropriate than district attorneys is quite interesting. Interesting, too, is that the discrepancy between public defenders and district attorneys is larger for the more appropriate tactics (i.e. "Threaten to post-pone or speed-up trail, whichever is worse for your opponent," "Make an opening demand that is far greater than what you really hope to settle for") than it is for the less appropriate tactics (i.e. "In return for concessions now, offer to make future concessions that you know you will not follow through on," "Intentionally misrepresent information to your opponent in order to strengthen your negotiating arguments or position"). These findings partially support Ford and Blegen's (1992) work on offensive and defensive use of punitive bargaining tactics. That is, parties interacting with opponents who are likely to initiate conflict are more likely to use aggressive tactics as defensive measures. However, whereas Ford and Blegen primarily focus on offensive and defensive use, the effects in our study are demonstrated in naturally occurring roles in the legal system using a range of appropriate and inappropriate tactics, not just punitive tactics.

Interestingly, too, these results also replicate Carpenter and Darley (1978) such that questionable tactics are perceived as being more appropriate in a counteraggression context than in the abstract. However, the present study differs and contributes to the earlier work in that it captures the perspective of an involved party as opposed to reflecting third-party observer judgments. Public defenders and district attorneys were confronted with the hypothetical opportunity to counteraggress and adjusted their appropriateness ratings to justify counteraggressive action. Although this effect was clearly obtained, note that it is a rather small effect. In other words, appropriateness ratings in the counteraggression context did not necessarily soar. This is not surprising because public defenders and district attorneys are already in adversarial roles (Lichtenstein, 1984) and thus counteraggressive modes. Because these attorneys presumably engage in counteraggressive action on a daily basis, their appropriateness ratings are already at heightened levels (Axelrod, 1997). Furthermore, the extent to which they can counteraggress is capped by their reputation concerns and the frequency of their interactions.

Although these predictions were confirmed, the alternative explanations that plague real-world studies need to be considered: the degree to which social desirability pressures operated on the responses of district attorneys and public defenders. For instance, the fact that district attorneys perceive the tactics as being less appropriate

overall than do public defenders may not be a function of defensive and offensive roles but rather of social desirability. After all, the district attorneys are public servants and therefore not likely to admit to using morally dubious tactics. Perhaps district attorneys feel more obliged to act in socially desirable ways because they represent the law. According to Skolnick (1967), the district attorney is "interested in making a favorable impression on a diffuse public—including courts, political authorities, and the man on the street" (p. 55). Public defenders, on the other hand, who already have somewhat stigmatized reputations (McIntyre, 1987), may feel relatively less pressure to act in socially desirable ways. Hence, social desirability considerations may weigh more heavily on district attorneys.

Robinson et al. (1998) admit that social desirability is an issue with the SINS Scale, as with many other self-report scales; the idea that social desirability alone is differentially driving these effects for district attorneys and public defenders is doubtful but merits further consideration. Indeed, their different roles in the legal system, one being powerful and offensive and the other less powerful and defensive, may lead them to differentially perceive a set of questionable negotiation tactics, such that public defenders would be approving of questionable tactics. Another counterargument is that these attorneys have self-selected themselves into their respective groups. On one hand, district attorneys may appear more socially desirable because they truly subscribe to a certain set of principles and hence chose to become district attorneys. On the other hand, they may seem more socially desirable because they are district attorneys and should exhibit certain standards.

The issue of social desirability is also relevant to our index of accuracy, and it strikes us that one version of this problem calls into question our theoretical conclusions, whereas another does not. If district attorneys, more constrained by social norms, are less likely to use morally questionable tactics, and this is what they report on our survey, then our interpretation of the gap between the district attorneys' self-ratings and the public defenders' ratings of the district attorneys as an index of accuracy still stands. That is, even if district attorneys are acting in socially desirable ways, accurate perception means taking factors that control behavior, such as social desirability, into account. That is, the public defenders were explicitly asked, "How would the average district attorney rate the appropriateness of this set of negotiation tactics? In your best estimation, please rate each tactic as an average district attorney would." Hence, along these lines, public defenders should be aware of any potential strategic self-presentation on the part of the district attorneys and should have adjusted their ratings accordingly. Implicit in accurately estimating the stance of an outgroup entails taking the perspective of the outgroup. Any failure to do so arguably entails a less accurate perspective.

The other possible interpretation of a social desirability bias would be that the district attorneys were motivated to distort their reports to us of what tactics they actually approved of; that is, they presented themselves to us as somewhat more moral actors than they are in practice. Obviously, we cannot conclusively rule out this possibility, but we find it an unlikely one. We took the standard steps taken in questionnaire studies to preclude these types of social desirability effects. First, the questionnaire responses were anonymous, for the most part: Personal identity was not captured on the questionnaire, and the completed questionnaires were mailed directly to the experimenters instead of respondent superiors. Second, virtually all of our district attorneys were deputies or assistants and not the elected district attorneys, so they are less likely to experience the reluctance that political candidates feel to put their opinions on record, unless perhaps they themselves aspire to become the elected district attorney. Notwithstanding, the role of social desirability in self-reports among district attorneys and public defenders or, for that matter, among any pairs of groups in conflict certainly merits further study. These studies will require observations of frequency and kind of tactics used during actual bargaining sessions.

Revisiting the Status Quo Bias

These results provide partial support for the status quo bias in two ways. First, according to the self-ratings provided by public defenders and district attorneys, it appears that both sides perceived their own group to approve of questionable tactics to a greater extent than they personally did. This tendency to perceive the self as being less extreme than the rest of the group has been demonstrated across many studies (Keltner & Robinson, 1997; Miller & Prentice, 1994; Prentice & Miller, 1993; Robinson et al., 1994), although discussed for different reasons as pluralistic ignorance and naive realism. To the extent that the status quo bias hypotheses are in part based on naive realism, the present study provides support in that public defenders considered other public defenders and district attorneys considered other district attorneys to be more extreme than the self.

Second, this study supports the status quo bias hypotheses in that both district attorneys and public defenders exaggerated each other's stance on the questionable tactics in the negative direction. That is, both sides thought the other would approve of the questionable tactics to a greater extent than they actually did. Just as previous research has shown (Ebenbach & Keltner,

1998; Keltner & Robinson, 1997; Robinson et al., 1995), groups at odds over an issue tend to exaggerate the stance of the other side.

Although the status quo bias hypotheses are quite intriguing, the present study complicates the theoretical underpinnings in that, at least in some cases, defender-challenger differences seem to better explain the status quo bias than power differences. In the previous studies (e.g., Ebenbach & Keltner, 1998; Keltner & Robinson, 1997; Robinson & Keltner, 1996), power position was always confounded with being in a defensive role. In the present study, however, this confound is untangled. The district attorneys were powerful, but in challenging roles, whereas public defenders were less powerful, but in defensive roles. Whereas the status quo bias would predict that the powerful district attorneys would exaggerate the stance of the outgroup to a greater extent, the present study found that powerless public defenders, those in defensive roles, were more prone to exaggerate. Thus, the implication is that perhaps in some cases defensive roles are more predictive of intergroup perception inaccuracies than power roles.

Keltner and Robinson (1997) acknowledged this potential alternative explanation in their study. Studying traditionalists (powerful status quo group) and revisionists (less powerful challenging group) of the Western Canon debate, Keltner and Robinson explained possible defender-challenger differences through prospect theory (Kahneman & Tversky, 1984). They conceded that traditionalists could "perceive the conflict as more costly, the demands and positions of their opposition more antithetical to their own, and the conflict as more extreme" (p. 1075), thus rendering greater exaggeration of the revisionists (less powerful challenging group), a point echoed by Kray and Robinson (1999). Whereas Keltner and Robinson (1997) were quick to add that this loss aversion is likely associated with being in a powerful position, the present study suggests that, in some cases, the act of defending leads to greater misperception than just having power. However, power differences are certainly important and most likely do affect intergroup perception in the absence of defender-challenger differences.

Limitations and Implications

This study highlights the importance of defensive and offensive roles in ways that have not been considered. Although some social perception work on defensive personalities (e.g., Watt & Morris, 1995) and defensive groups (e.g., Ng & Cram, 1988) exists, few studies have explored asymmetrical intergroup perception in the context of defensive and offensive roles. To this end, the present study demonstrates that studying such dynamics is warranted, especially in laboratory studies that could more closely control for noise.

Although this study suggests that public defenders, by virtue of their greater outgroup exaggerations, are less accurate at intergroup perception, this notion of accuracy is complicated and must be qualified (Judd & Park, 1993; Kenny, 1991; Kruglanski, 1989). In the present study, we use the term accuracy to reflect exaggeration: The greater the exaggeration, the less accuracy. However, we must keep in mind that exaggeration is measured as a function of self-other agreement. In other words, we compare Group A's estimates of Group B with Group B's self-ratings. Thus, to the extent we do not (and cannot) capture self-ratings from every single Group B member (or outgroup ratings from every Group A member, for that matter), our measures of exaggeration are flawed. Nevertheless, considering that we are only interested in relative measures of exaggeration and not actual measures, our findings remain tenable.

Although defensive and offensive roles may have an effect on intergroup perception, we must also consider the processes by which perception biases arise. Recently, Miller and Prentice (1999) suggested that misperceptions arise from the fact that public selves are often highly discrepant from private selves. Thus, individuals often base their inferences on public self-information, whereas the private, more actual self remains hidden. For instance, public defenders and district attorneys may perceive their own group members to be more extreme because they can only see the public selves of fellow group members rather than their private selves. At the intergroup level, public defenders may be "easier to read" than district attorneys because the public defenders' public selves more closely correspond to their private selves. The general issue of target expressivity is certainly plausible and has been demonstrated in power relationships (Snodgrass, Hecht, & Ploutz-Snyder, 1998).

As for implications, this study offers some insight into not only the public defender/district attorney relationship but defender and offender roles in general. Assuming these attorneys play defensive and offensive roles, as their occupations would suggest, this research suggests that defensive and offensive roles may affect our intergroup perceptions and appropriateness ratings of seemingly questionable negotiation tactics. Although neither group showed outright approval of unethical tactics, public defenders displayed slightly more approval of the questionable tactics than did district attorneys, suggesting that being on the defensive allows us to elevate our approval of otherwise questionable tactics.

Because district attorney–public defender negotiations more often resemble distributive rather than inte-

grative negotiations, it would be interesting to see how the perception of questionable tactics would change as parties focus more on joint interests and optimizing joint outcomes. That is, outside of the legal system, many negotiations in the business or interpersonal context offer more opportunity for integrative negotiations—situations devoid of legal rights and power issues. In integrative negotiations, the spirit of cooperation presumably elevates disapproval of ethically questionable tactics. In addition, it seems integrative negotiations can transcend offender and defender differences to foster more accurate and symmetrical intergroup perceptions, and in some ways, in integrative situations, offender and defender distinctions become less salient. In short, the effect of integrative negotiations on the perception of morally dubious tactics certainly deserves further investigation.

Finally, just as research from laboratory studies must be tempered to take into account a certain element of artificiality, so too these results must be tempered to take into account a certain element of noise. Nevertheless, this new research suggests that much more may be learned from the study of defender and challenger roles in social perception, and this study provides an initial step in that direction.

NOTES

1. To provide further support for what the legal literature suggests, we telephoned or, rather, "cold-called" three district attorneys and three public defenders not involved with the study and asked them the following questions: (a) In the legal system, who is more powerful: district attorneys or public defenders? (b) in the legal system, who is in the defensive role: district attorneys or public defenders? (c) in the legal system, who is in the offensive role: district attorneys or public defenders? and (d) in the legal system, who initiates the cases: district attorneys or public defenders? All six attorneys stated that district attorneys were more powerful, that public defenders were in defensive roles, that district attorneys were in offensive roles, and that district attorneys initiated the cases.

2. Naive realism formulations of intergroup and intragroup perceptions suggest the following: (a) Individuals assume they see the world objectively, without taking into account any subjective biases; (b) people assume others base their perceptions on this same "objective reality"; and (c) partisans believe that any deviation from their own standing, such as those in the opposition, stems from ideological biases.

3. Salt Lake City, San Francisco, and Seattle were chosen because they represent different geographical regions, sizes, industries, and arguably different points on a political ideology continuum. We wanted to demonstrate our effects across somewhat dissimilar metropolitan areas.

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