False Confessions, False Guilty Pleas: Similarities and Differences

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3. FALSE CONFESSIONS, FALSE GUILTY PLEAS: SIMILARITIES AND DIFFERENCES

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To many it is unfathomable that an innocent individual would admit guilt for a crime he did not commit, particularly murder or rape. However, false confessions and false guilty pleas are not uncommon, and of identified proven cases, murder and rape are quite prevalent. Christopher Ochoa is one example. In the late 1980s, Mr. Ochoa and his friend Richard Danziger were accused and convicted of raping and murdering Nancy DePriest at a Texas Pizza Hut. Due to Ochoa’s false confession and false guilty plea, they spent 12 years imprisoned before the real perpetrator, confessed. Achim Marino, a serial killer in prison serving three life sentences, reportedly underwent a religious conversion. Feeling compelled to come forward, he wrote to several officials with claims that he alone murdered DePriest. Although first ignored, police began to investigate and eventually DNA testing revealed that Ochoa and Danziger were innocent.

Why did Ochoa falsely implicate himself and Danziger? After being interrogated for a total of 24 hours in which he was deceived, denied an attorney, and repeatedly threatened with the death penalty, an exhausted Ochoa falsely confessed (WCJSC, 2007). Ochoa’s false confession to the police, however, did not take the death penalty off the table: In exchange for a life sentence and his testimony against Danziger, Ochoa continued his false claims and pleaded guilty despite actual innocence. It was inconceivable to Ochoa’s court-appointed attorney that his client had confessed to a brutal rape and murder he did not do. As a result, Ochoa’s attorney did not conduct an investigation and was instrumental in getting Ochoa to accept the plea offer. Danziger, who claimed he was with his girlfriend at the time of the crime and could offer no
explanation for Ochoa’s false claims, was convicted at trial based on Ochoa’s testimony. In prison, Danziger suffered irreversible brain damage as the result of a severe beating.

Although Ochoa’s is an extreme case of misconduct, there are hundreds of proven cases of persons falsely confessing to the police and/or pleading guilty to crimes they did not do (Davis & Leo, 2006; Drizin & Leo, 2004; Gross, Jacoby, Matheson, Montgomery, & Patil, 2005). At the time of this writing, the Innocence Project has been instrumental in exonerating 209 wrongfully convicted individuals; approximately 25% of whom were convicted by false confessions or false admissions (Innocence Project Report, 2007; see also Garrett, 2008); this rate includes persons who falsely confessed to the police, persons whose co-defendants falsely confessed, and those who falsely admitted guilt through the acceptance of a plea offer.

This chapter compares and contrasts false confessions and false guilty pleas, paying particular attention to their estimated prevalence and the contexts in which they arise. A false confession is defined here as a statement provided to the police in which the person partially or fully admits guilt, or otherwise takes responsibility, for a crime he or she did not commit. A false guilty plea is defined as the acceptance of a plea offer from the prosecutor for a crime the person did not commit. Like false confessions, guilty pleas are acknowledgments for responsibility for the crime, particularly when the defendant has to allocute as a condition of the plea deal.

False confessions and false guilty pleas are theoretically similar in their nature (i.e., taking responsibility for a non-committed criminal act), underlying motivations, and often their consequences (e.g., a criminal record). However, there are qualitative differences between them as well. Although great strides have been made in understanding false confessions (e.g., Kassin & Gudjonsson, 2004; Lassiter, 2004), the topic of false guilty pleas has received almost no research attention, despite their known existence. Thus, an additional goal of this chapter is to
spark empirical work on false guilty pleas, a problem arguably even larger than false confessions.

**False Confessions**

As noted through this book, false confessions are a serious problem for the criminal justice system: they greatly increase the risk of incarcerating and convicting innocent persons, and allow actual perpetrators to go free. Judges and juries alike find it quite difficult to acquit when there is confession evidence, even when the interrogation techniques used to procure the confession are perceived as questionable or inappropriate (Kassin, 2005).

*The Problem*

False confessions are not a new phenomenon (e.g., see Borchard, 1932). What *is* new is the accumulation of evidence indicating the phenomenon is not as rare as once believed. Many proven false confessions cases have been identified, most of which involve murder and rape. These two serious crimes occur much less frequently than other crimes: Of all felony cases from the 75 largest U.S. counties, murder accounted for 0.8% and rape 1.8% (Cohen & Reaves, 2006). Thus the opportunity to falsely confess to a murder would be significantly lower than the opportunity to falsely confess to a theft, for example. Indeed, in one study (Sigurdsson & Gudjonsson, 1996a) of self-reported false confessors, 58% claimed to have made false confessions for property offenses, whereas only 7% and 3% did so for violent and sexual offenses, respectively. Of importance, the detection of wrongful convictions in lower-severity cases is also less imperative than in severe cases. Often, the person’s incarceration time has been served and the motivation from the innocent himself and the motivation of persons in positions to help (e.g., attorneys) are lacking.
Related to the severity of the crime is the motivation behind the false confession. To date, the majority of identified false confession cases are the result of police coercion and improper interrogation techniques (Drizin & Leo, 2004). However, across several studies, Gudjonsson and his colleagues (Sigurdsson & Gudjonsson, 1996a; 1996b; 1996c; 1997) have noted that the “great majority of false confessions . . . are aimed at protecting somebody else rather than resulting from external pressure and coercion” (p. 133, Gudjonsson, Sigurdsson, & Einarsson, 2004).

Another reason to suspect that the prevalence of false confession is much higher than uncovered to date is subjectively reported false confession rates. Among samples of adult Icelandic prisoners, 12% claimed to have falsely confessed in their lifetime (Sigurdsson & Gudjonsson, 1996a, b). Among a sample of more than 10,000 Icelandic college students, of those who had been interrogated by police, 7% claimed to have falsely confessed (Gudjonsson, Sigurdsson, Asgeirsdotir, & Sigfusdottir, 2006). Gudjonsson and colleagues have extended these studies to other European countries and have found similar self-reported rates of false confessions (e.g., Steingrimsdottir, Hrensdottir, Gudjonsson, Sigurdsson, & Nielson, 2007). Further, Sigurdsson and Gudjonsson (1996a; 1996b) found that of those who claimed to have made a false confession, only 33% reported officially retracting the confession.

False confessions that have been objectively proved and those that have been self-reported appear different. In brief, objectively proved false confessions (such as those in Drizin and Leo, 2004) are primarily of the coerced-compliant form, for serious crimes, and retracted. In contrast, self-reported false confessions are primarily voluntary (i.e., protecting the actual perpetrator), for less serious but more prevalent crimes than murder and rape, and may or may not be retracted. Certainly, one explanation for these disparities is that all the self-proclaimed
false confessors are lying and this is why objective and subjective false confessions differ. However, this explanation cannot be the entire story: For one, all objectively proven false confessors were once self-reported false confessors themselves. More likely the explanation is that the qualities associated with objectively proven false confessions—coercion, crime severity, and retraction—are also the factors that influence their identification.

For these and other reasons, the number of identified false confessions to date is surely the tip of the iceberg. In mid-2005, there were 2,186,230 U.S. prisoners or sentenced jail inmates (Harrison & Beck, 2006). If only half a percent (0.5%) had falsely confessed, there would be almost 11,000 false confessions—and this represents only one point in time, persons who were convicted and incarcerated, one false confession per person, and a quite conservative estimate. Regardless of how many people have falsely confessed, the salient question is why people falsely confess.

The Context

Over the past two decades, psycho-legal scholars have conducted groundbreaking studies on police interrogations and false confessions (for reviews, see Gudjonsson, 2003; Kassin & Gudjonsson, 2004; Leo, 2008). The primary question of why a person would admit to criminal acts not committed (and most often heinous crimes) can generally be answered with two complementary explanations: situational factors of the interrogation (e.g., the setting, the techniques themselves, and the context of the crime) and dispositional factors inherent to the suspect.

Regarding situational factors, police interrogation tactics rely with near exclusivity on psychological manipulation and the betrayal of trust (including feigned sympathy and friendship).
and minimization scenarios that reduce or shift blame (Inbau, Reid, Buckley, & Jayne, 2001; Leo, 1996a, 2008). One particularly controversial—but legal—interrogation technique is lying to, or otherwise deceiving, suspects. In police surveys, this technique has been found to be somewhat common (Kassin et al., 2007; Meyer & Reppucci, 2007), and in laboratory experiments it has been found to increase false confession rates (Kassin & Kiechel, 1996; Redlich & Goodman, 2003). There are several notable false confession cases in which lies and deception appeared to be the main reason for the false admissions of guilt. Nonetheless, with the exception of some egregious lies, courts consider the use of trickery and deception legally permissible interrogation tactics.

There are, however, constraints on the police that in part are intended to guard against coerced and false confessions. Perhaps most notable is the *Miranda v. Arizona* decision by the Supreme Court in 1966. Prior to an interrogation (which is distinct from an interview; see Inbau et al., 2001), law enforcement must inform suspects of their rights against self-incrimination and to (free) counsel. Suspects can then decide to invoke or waive their rights, though this decision is required to be voluntary, knowing, and intelligent. Some research has indicated that *Miranda* warnings are often passed off as a mere formality (Leo, 1996b, 2008) rather than a protection. Similar to the psychological manipulation underlying interrogation techniques used to obtain confessions, the police have developed equally effective ways to obtain waivers of *Miranda*.

Another constraint on police interrogators is that they are not allowed to offer explicit promises of leniency, issue explicit threats of harm or punishment, or inflict actual harm or punishment. For example, as noted by Reid & Associates on its Web site, impermissible interrogative statements include, “You’re not leaving this room until you confess” and “With the evidence that we have, there’s no doubt you will be convicted of this. The only question is how
long you are going to sit in jail.” That is, because confessions should be voluntary, overt references to jail, the death sentence, loss of liberty, etc. are disallowed. However, a common element in many, if not all, false confessions is implicit promises of leniency or threats of punishment (and sometimes explicit, despite their illegality such as in the Ochoa case). In other words, police imply that outcomes will be better for suspects if they cooperate or that things will be worse if they do not. Kassin and McNall (1991) examined this notion of pragmatic implication and indeed found explicit promises and minimization techniques that only imply leniency were perceived similarly and had indistinguishable effects on the likelihood of guilty verdicts. Russano, Meissner, Narchet, and Kassin (2005) also found that offering leniency to guilty and innocent suspects in a laboratory study increased both the true and false confession rates. Overall, although there are constraints on police interrogators that exist to reduce the likelihood of coerced and false confessions, contemporary interrogation techniques often skirt these constraints. Whereas most interrogators follow the letter of the law (see Leo, 1996a), the spirit behind these legal constraints is arguably less regarded.

In addition to the situational factors related to the interrogation, dispositional factors inherent in the suspect have been identified as contributing to false confessions. The two groups most commonly cited as at risk are juveniles (Owen-Kostelnik, Meyer, & Reppucci, 2006; Redlich, 2007; Redlich & Drizin, 2007) and persons with mental impairment (persons with mental illness and with developmental disabilities; Fulero & Everington, 2004; Redlich, 2004), although certainly other vulnerability factors exist (Gudjonsson, 2003). In brief, immature development, impulsivity, obedience to and desire to please authority, inability to consider long-term consequences, and deficits in executive functioning are some of the factors that can be present in these populations and that can affect decision making and the likelihood of false
confession in interrogation settings (see Appelbaum & Appelbaum, 1994; Owen-Kostelnik et al., 2006; Perske, 2004; Redlich & Drizin, 2007). These limitations are most often discussed in relation to the situational aspects of interrogation, and it is clear that contemporary interrogation tactics are neither developmentally appropriate nor altered for persons with vulnerabilities (Meyer & Reppucci, 2007; Reppucci et al., this volume).

**False Guilty Pleas**

Another burgeoning problem for the criminal justice system is that of false guilty pleas (Frontline, 2004). According to one legal scholar, “Very few issues in the American criminal justice system generate such fierce controversy as plea bargaining—and very few allegations against the practice are as severe as the assertion that it leads to the conviction of innocent defendants” (p. 103; Gazal-Ayal, 2006). Despite this fierce debate and the tragic consequences of false guilty pleas, virtually no psychological research exists.

**The Problem**

As defined here, false guilty pleas are when innocent persons agree to plead guilty, usually in response to plea “deals” or “bargains” offered by prosecutors. There are dozens of known cases, and if conventional estimates existed, they would probably show many more. Of the 209 Innocence Project exonerees to date, 11 (5%) pleaded guilty (see Table 3.1); of the 340 Gross et al. (2005) exonerees, 20 (6%) pleaded guilty, and of the 125 proven false confessors from Drizin and Leo’s (2004) sample, 14 (11% of total sample or 32% of those convicted) pleaded guilty—but note, these false guilty pleaders overlap between samples, and numbers should not be summed. There have also been “mass exoneration” cases—in which many of the
defendants pleaded guilty (see Gross et al., 2005)—and other individually highlighted cases such as the “Lackawanna Six” (Powell, 2003) and two of the “Norfolk Four” defendants (Berlow, 2007; Wells & Leo, 2008). It is also important to note the direct role of plea deals involving informants, snitches, and co-defendants in wrongful conviction cases: For the most part, it is not malicious intent that makes a jailhouse snitch lie and claim that an innocent person confessed; rather it is the promise of a reduced sentence or some other reward from the state.

These identified cases are, again, likely to represent the tip of the iceberg: 5–11% rates are most probably a gross underestimation of the extent of the problem. First, guilty pleas constitute nearly all (95%) of convictions (Cohen & Reaves, 2006). Second, guilty pleas occur more often for less serious crimes, and the majority of identified injustices are for the serious crimes of rape and murder; for example, 44% of accused murderers took their case to trial, whereas trial rates for all other crimes (including rape) were 9% or lower (Cohen & Reaves, 2006). Third, because plea bargains do generally shorten the time of incarceration or even eliminate it, the motivation to correct the injustice and be set free is not present. And fourth, guilty pleas are difficult to withdraw and appeal, and thus the wrongful conviction may never be recognized and righted.

In addition, estimating rates of false guilty pleas using samples of officially exonerated individuals can be misleading. By definition, persons who plead guilty are convicted of crimes, and attempting to assert actual innocence after entering a plea is notoriously difficult. As established by the Federal Rules of Evidence, guilty pleas are extremely difficult to withdraw (Weaver, 2001–02), especially after sentencing. The two “Norfolk Four” defendants who had pleaded guilty attempted to withdraw their pleas later but were not allowed (Wells & Leo, 2008). Thus, those who plead falsely may never receive an official determination of legal innocence.
Kerry Max Cook is one such example (Cook, 2007). Cook spent 21 years on death row, and eventually accepted a plea of no contest in exchange for time served. His case, highlighted in the popular play and movie *The Exonerated*, however, is not included in the Gross et al. (2005) sample of 340 exonerees. Gross and colleagues included only official declarations of exoneration, and because Cook pleaded no contest, his case did not qualify. Nonetheless, twenty-two years after the commission of the crime and a mere two months after accepting the plea, DNA from the crime exculpated Cook. Cook was released from prison, yet he retains the legal status of convicted murderer.

Another reason pointing to larger numbers of false guilty pleas than those presently known is the lack of safeguards in the plea process. When a defendant pleads guilty, institutionalized trial safeguards like burden of proof and cross-examination are absent. Consider this: a defendant who pleads guilty may know that an eyewitness exists against him and will consider this risk when opting to plead guilty; a defendant who goes to trial may also hold this knowledge but has the opportunity to challenge the eyewitness, bring in expert witnesses, and have a jury or judge decide the credibility of the witness. As Bibas (2004) points out, because of rules of discovery, innocent defendants are especially disadvantaged in not knowing the evidence that exists against them (as in theory there should be no factual evidence). To be sure, in the wrongful conviction cases that went to trial, the safeguards meant to identify the causal factors (e.g., eyewitness misidentification, false confessions) failed. However, in the wrongful conviction cases that culminated in a plea bargain, the causal factors never had the opportunity to undergo scrutiny or challenge. As such, the factors identified as contributing to wrongful convictions by trial are likely to be even more prevalent in wrongful convictions by guilty plea.
For example, Alschuler (1986) convincingly argues why the plea bargaining system promotes inadequate representation, or “bad lawyering,” one of the main causes of wrongful convictions (see also Bibas, 2004). In brief, defense attorneys working within the plea bargaining system, most of whom are overburdened, are subject to many temptations that serve to seek quick solutions and reduce the likelihood of acting in clients’ best interests. Exacerbating the problem is that ineffective assistance of counsel is virtually undetectable in the guilty plea system as the system is characterized by secrecy, confidential conferences, and unwritten rules (Alschuler, 1986). Trials create a basis and a record for appeal, whereas pleas are more secret endeavors (with the exception of plea discussions, see below). The Innocence Project exonerees convicted at trial had the opportunity to argue that trial errors were committed or that information not presented to the jury has since come to light. Persons who plead guilty have much less of a basis from which to argue. In essence, plea arrangements—which account for 95% of convictions—create situations in which the identified contributors of wrongful convictions (e.g., eyewitness misidentification, false confessions, bad lawyering, etc.) are more likely to be present (than at trials) and be present without dispute, scrutiny, or public review.

The Context

When addressing the question of why innocent persons would plead guilty to crimes they did not commit, it is important to address the plea process itself. Since the inception of the plea bargaining process in the mid-1800s, the possibility of innocents pleading guilty has been recognized (*State v. Kaufman*, 1879). Indeed, the “Alford plea” is an explicit endorsement of innocents who would rather plead guilty than risk their fates at trial. Henry Alford, a defendant accused of first-degree murder, testified that he did not commit the murder but was pleading
guilty because of the threat of death penalty if he lost at trial (North Carolina v. Alford, 1970). Today, defendants can enter Alford pleas when innocent but perceive their chances at trial to be too much of a risk (Bibas, 2003). Redlich and Ozdogru (in press) reported that more than 76,000 state prison inmates incarcerated in 2004 were estimated to have entered Alford pleas.

The main arguments for plea bargaining is that it empowers choice on the defendant and that it saves the courts time and money. Many contend that the U.S. criminal justice system could not operate without plea bargains or without the high frequency of plea bargains (see Bibas, 2003). The main arguments against plea bargaining is that it is a coercive choice and eschews the standard safeguards built into the trial process. When guilty pleas are in place, the state does not have to prove the charge against the defendant beyond a reasonable doubt, the defendant loses the presumption of innocence and the rights to confront persons against him, to present evidence in his defense, and all other constitutionally afforded safeguards. As Gazal-Ayal (2006) argues it is often the weaker cases in which the prosecutor offers a deal because the state knows or suspects that they cannot prove their case beyond a reasonable doubt at trial (see also Bibas, 2004). Thus, assuming that innocent defendants have weak evidentiary cases, plea bargains may be more readily offered to innocents, and offered with increased incentives. A caveat to this, however, is that innocents who falsely confess may not be offered plea bargains because of the seemingly strong evidence against them (see Drizin & Leo, 2004). Though, as I discuss below, some false confessors surely are offered pleas deals.

Regardless of guilt or innocence, there are powerful inducements to plead guilty, particularly when pitted against remaining in jail pretrial and/or risking a conviction with a stiffer sentence at trial. For the most part, plea arrangements do reduce the charges, the time in jail or prison, and potentially other consequences (e.g., having to register as a sex offender). It is
common knowledge that many defendants plead guilty to get out of jail and receive reduced sentences or probation (Gross et al., 2005). In a study of actual prosecutorial decisions, detained defendants were more likely to be offered pleas than defendants who had been released. Indeed, the authors viewed detention as a way to encourage or “coerce” pleas (Kellough & Wortley, 2002).

Many scholars posit this choice between remaining in jail awaiting a trial (in which they are likely to be found guilty) and a reduced sentence or probation via a guilty plea is one of coercion (e.g., Langbein, 1992). A watershed case concerning the coerciveness of pleas is *Bordenkircher v. Hayes* (see Lynch, 2003). In this case, the prosecutor attempted to pressure the defendant into pleading guilty by offering him a deal of five years (for the crime of passing a forged check for $88.93) to “save the court the inconvenience and necessity of a trial,” or charge the defendant as a habitual offender, for which he would serve a mandatory life sentence. Hayes opted for his constitutional right to a jury trial and lost. In 1978, Hayes’ case was heard by the U.S. Supreme Court who approved the prosecutor’s actions and upheld Hayes’ life sentence.

For persons who are innocent, the choice to plead is arguably even more coercive. Although there is a lack of empirical studies on guilty pleas, generally, and false guilty pleas, specifically, studies have been conducted comparing guilty and innocent subjects. In one set of studies, Gregory, Mowen, and Linder (1978) asked male college students to imagine they were guilty or innocent of armed robbery, listen to a tape of the defense attorney’s arguments, and then reject or accept a plea offer. Number of charges and sanction severity were also manipulated. They found that when the number of charges was high versus low (four versus one charge) and when the sanctions were high versus low (10–15 versus 1–2 years in prison), both guilty and innocent participants were more likely to plead: 100% for guilty and 33% for
innocents. In a separate experiment, Gregory et al. (1978) manipulated the guilt or innocence of subjects in regard to cheating on a test. After all the participants (16 male college students) were accused of cheating, they were told they would have to go before the department ethics committee, and if the committee determined the subject had cheated, their final grade in the class would be dropped. However, the subject was told that if he admitted guilt, the experimenter would be willing to drop the matter and forgo the committee. Of the eight innocent subjects, none accepted the deal. In comparison, six of the eight guilty subjects admitted to cheating.

In a similar study with more participants, Russano et al. (2005) varied the use of minimization (lessening the seriousness of the offense) and the use of a deal with subjects who were either guilty or innocent of cheating on a problem-solving task. In the deal condition, guilty and innocent subjects were offered: sign the statement (false confession) to “settle things quickly” and receive research credit for that day, but also agree to return and not receive additional credit; or not sign the statement, in which the “supervising professor” would be called with the “strong implication being that the consequences would be worse if the professor became further involved” (p. 483). They found that when subjects were guilty, and when minimization and the deal were used in conjunction, 87% signed the statement. When subjects were innocent, almost half (43%) took responsibility when both techniques were used. Unlike Gregory et al.’s (1978) findings, the deal alone was sufficient to induce some (14%) of the innocent subjects to admit guilt. Although the Russano et al. (2005) study was framed as a false confession study, the implications for false guilty pleas are clear. Indeed, whether the acceptance of the deal is labeled a false confession or a false guilty plea is immaterial.

**Similarities and Differences between False Confessions and False Guilty Pleas**
False confessions and false guilty pleas share several aspects: the false admission of guilt; the techniques used to obtain them; the rationales behind them; and, potentially, the dispositional traits of those who utter them. Of particular note, false confessions often precipitate false guilty pleas for the same crime.

On their face, false confessions and false guilty pleas both represent taking responsibility for criminal acts not committed. False confession statements can range from a mere “I did it” without further explanation to seemingly detailed rich accounts of the crime (Gudjonsson, 2003). Similarly, plea arrangements are often conditioned on the defendant admitting guilt in open court and allocuting to details (Wrightsman, Nietzal, & Fortune, 1998). Like false confessions, there have been instances in which allocutions consist of inaccuracies, inconsistencies, and details supplied by someone other than the defendant (see Frontline, 2004).

Though there is a dearth of research on the techniques prosecutors use to secure guilty pleas, at first glance, interrogation and prosecutorial techniques overlap. Both utilize social influence–gaining tactics, such as scarcity (e.g., “This is a one-time offer”; “I can only help you now”), authority, reciprocity, and social validation (Cialdini, 2001). One common interrogation technique is bluffing about the evidence against suspects (Inbau et al., 2001). Bibas (2004) states, “[p]rosecutorial bluffing is likely to work particularly well against innocent defendants, who are on average more risk averse than guilty defendants” (p. 2495). Thus, like false confessors, false guilty pleaders may be misled about the strength of the evidence against them, which in turn produces the false responsibility-taking. The perceived strength of evidence is a leading reason behind true and false confessions (Gudjonsson, 2003) and contributes to true and false guilty pleas as well (Redlich, Robbins, Keator, & Steadman, 2009).
The proximate reason for most coerced false confessions and false guilty pleas is the need to extricate oneself from the situation, such as the need to simply have the questioning stop or to get out of jail. False confessors and false guilty pleaders are confronted with a Hobson’s choice—that is, an apparently free choice that offers no real alternative. The Hobson’s choice for the false confessor is to continue denials and thus continue the interrogation, or to confess and have the interrogation end. Similarly in false guilty pleas, often the decision is between pleading guilty, receiving ‘time served’ for the days already spent incarcerated, and being allowed to walk out of jail; or pleading not guilty, awaiting trial in jail, and risking a much greater sentence (possibly death) if adjudged guilty. The case of Robert H. illustrates this point (Alschuler & Deiss, 1994). Robert H. spent six months in jail without being charged before first meeting his public defender, who reportedly handled more than five hundred cases that year. The lawyer recommended that Robert plead guilty and explained that if he pleaded guilty, he could go home that day or if he chose, he could go to trial but spend up to another year in jail. Although Robert pleaded guilty, it was later discovered that he had been confused with someone else and was innocent.

The same traits that place persons at risk for false confession may also place persons at risk for false guilty pleas. The same rationales underlying juveniles’ risk for false confession (see Owen-Kostelnik et al., 2006; Redlich, 2007), for example, are likely to also underlie risks for false guilty pleas. That is, juveniles’ impulsivity, immaturity, and possible impairments in decision-making capabilities can also influence the decision to accept plea offers when truly innocent. Further, findings from the adjudicative competence literature are highly relevant here as understanding and appreciation of the adjudication process pertains most to pleas, not trials. Juveniles and persons with mental illness and with mental retardation are significantly more
likely to have deficits in competence than their adult and non-disordered counterparts (Appelbaum & Appelbaum, 1994; Grisso et al., 2003; Hoge, Poythress, Bonnie, Monahan, Eisenberg, & Feucht-Haviar, 1997; Viljoen, Roesch, & Zapf, 2002). Thus, as argued in regard to police interrogations and false confessions (Redlich, 2004; Redlich, Silverman, Chen, & Steiner, 2004), individuals who do not understand and appreciate the plea process may be more likely to falsely plead guilty.

Finally, though not a similarity per se, it is important to recognize that false confessions and false guilty pleas are often present for the same crime. This is important because the driving factor behind the false guilty plea may be the false confession itself (supported by the strength of the evidence). Among the 125 proven false confessors reported by Drizin and Leo (2004) who were subsequently convicted, 32% pleaded guilty despite their innocence, a rate higher than the 5-6% rates seen in samples of exonerations of all causes (i.e., Gross et al., 2005; Innocence Project Report, 2007).

Table 3.1 lists the to-date 11 false guilty pleaders from 209 exonerees identified by the Innocence Project. The most striking pattern among these individuals is the presence of false confessions: of the 11 who falsely pleaded guilty, 6 or 54.5% had also falsely confessed. Of the 198 exonerees who did not falsely plead guilty, only 26 or 13%, had also falsely confessed. Similarly, of those who falsely confessed, 6 of 32, or 19% pleaded guilty. Of the 177 who did not falsely confess, only 5 or 3%, pleaded guilty. While difficult to draw conclusions from 11 persons, it is telling that more than half of the false guilty pleaders had falsely confessed, and therefore knew that their self-incriminating statements would be used at trial. It is quite possible that because confession evidence is perceived as one of the strongest (if not the strongest) forms of evidence, these 11 false guilty pleaders presaged the trial outcome and did not risk harsher
sentences. Future research should focus on the situational and dispositional differences between false confessors who do and do not plead guilty.

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Though false confessions and false guilty pleas share the above commonalities, there are apparent differences. The differences concern perceived versus actual leniency, the legalities of promising leniency, and the appearance of coercion. First, a notable difference between false confessions and false guilty pleas is that whereas innocents who plead guilty receive a reduced sentence or probation, innocents who confess and who choose to go to trial are treated quite harshly (Drizin & Leo, 2004; Kassin, 2005). However, false confessors, especially those pressured by police, perceive lenient treatment to be forthcoming. Though the police are not allowed to explicitly promise leniency, as mentioned, implied leniency (via pragmatic implication; Kassin & McNall, 1991) is an extremely common interrogation tactic, and one that is evident in almost all false confessions. Many false confessors have self-reported that they believed they could go home after telling the police what they wanted to hear (Drizin & Leo, 2004; Kassin & Gudjonsson, 2004; Redlich et al., 2004). Thus, while the leniency associated with false guilty pleas is perceived and actual, the leniency associated with false confessions may only be perceived.

A second and related difference between false confessions and false guilty pleas are the techniques considered legally permissible in interrogations versus plea bargains. Interrogation-confession statements stemming from explicit promises of leniency or threats of punishment are in theory inadmissible in court and cannot be used against defendants. In contrast, the basis of
the plea bargaining system is predicated on promises of leniency, and to some, threats of harm. In essence, many of the same actions and statements that lend themselves to false confessions, and are impermissible for police interrogators because of the risk of false confessions—such as explicit threats of punishment (including death) and promises of leniency—are standard practice for prosecutors to use in obtaining plea agreements, and they are deemed legal by our highest courts (Bordenkircher v. Hayes). Again, Christopher Ochoa’s case serves as an example. The threats of death penalty in the interrogation room, as reported by Ochoa, were a primary factor for his proven false confession. The threat of the death penalty from the prosecutor was a primary factor for his false guilty plea. Whereas the threats in the interrogation were illegal, the threats in the plea offer were not. From a theoretical standpoint, this distinction between legal and illegal inducements offered in the interrogation room versus the prosecutor’s office makes little sense.

A third difference between false confessions and guilty pleas has to do with the appearance of coercion and how it is handled. Although electronic recording of interrogation is becoming more common among law enforcement (Sullivan, 2005; this volume), for the most part, interrogations take place in secrecy. Suspects/defendants who claim to have confessed in response to coercion often endure a credibility battle in which the police interrogator’s version of events is pitted against the suspect’s version (Redlich & Meissner, in press). Not surprisingly, police officers are often found more credible and suppressed confessions on the basis of coercion are uncommon.

In contrast, persons who plead guilty usually undergo a “plea colloquy” or “plea discussion.” Generally, this refers to a series of questions asked by the judge to the defendant aimed at determining whether the guilty plea was made voluntarily, knowingly, and intelligently.
This discussion serves as the formal record of the plea. The American Bar Association (ABA; 1999) specifies the legalities surrounding receiving and acting upon a guilty plea, withdrawal of the plea, plea discussions and agreements, and diversion and other alternative resolutions (Standards 14-1.1 to 14-4.1). The Standards require that prior to taking the plea, defendants be advised the nature and elements of the offense, the terms and conditions of the plea, the maximum sentence on the charge, the rights they are waiving, and other things that may affect, or be affected by, the plea (e.g., defendant’s past criminal history or immigration status). In contrast, in regard to one’s rights when arrested, the ABA states on its website “the police do not have to tell you the crime for which they are arresting you, though they probably will.”

Several states have developed statewide forms that standardize the plea discussion process. Minnesota developed a four-page form (www.courts.state.mn.us/forms), which includes 28 items (many with subparts) to help the court ensure that the guilty plea was not coerced or ill-informed. For example, Point 3 is “I understand the charge(s) made against me in this case.” Point 12 is “I do/do not make the claim that the fact I have been held in jail since my arrest and could not post bail caused me to decide to plead guilty in order to get the thing over with rather than waiting my turn at trial.” Similarly, Idaho utilizes a 7-page form with nearly 50 questions asked of the defendant prior to the plea (I.C.R., Rule 11).

On the one hand, a comparably detailed conversation (or written agreement) is unlikely to take place between law enforcement and an alleged confessor after the confession is obtained. One could argue that the Miranda warning prior to interrogation has a similar intent but reading the four or five Miranda components aloud (or having suspects read the warning themselves) does not replicate the detailed plea questions recommended by the ABA or seen within statewide plea discussion documents. Additionally, some jurisdictions’ warnings are ambiguous. For
example, Rogers et al. (2007) examined 560 *Miranda* warnings and found that only 32% explicitly informed suspects that if indigent, legal services were free.

On the other hand, it is unclear whether these plea discussions serve as true safeguards or whether they are indeed mere formalities. Without further research, it is difficult to say. However, once defendants have negotiated a plea and accepted the offer informally prior to coming before the judge, it is probable that some defendants will answer the questions in the plea discussion on the basis of ensuring that the plea bargain goes through, rather than on the basis of the truth of the matter. There is a wealth of empirical research demonstrating that individuals who commit to a position are much more willing to comply with future requests for the same or similar positions, especially when the commitments are made publicly (see Cialdini, 2001). Thus, in an overcrowded criminal justice system in which almost all convictions are the result of guilty pleas, plea discussions may be a formality that better protects the court than the defendant.

**Conclusion**

A goal of this chapter was to introduce a new topic for research, that of false guilty pleas, by comparing and contrasting them with false confessions. Given the sheer number of pleas that occur each day and the potential for error and abuse inherent within our criminal justice system, false guilty pleas pose a large problem, a problem most deserving of research Though it is premature to recommend specific policy reforms, the implications of allowing innocents to plead guilty to crimes they did not commit are clear. In addition to the immorality of imprisoning innocent individuals, there are public safety and cost-related concerns. True perpetrators are allowed to go free and commit crimes, and given the perennial problem with correctional overcrowding, jail and prison beds should be reserved for the truly guilty.
Several issues described in this chapter stand out. First, allowing promises of leniency and threats of punishment in the plea context but not in the interrogation context is nonsensical from a psychological standpoint. When innocent, promises of leniency and threats of harm increase the likelihood of false admissions regardless of the context. Second, the trend that false confessions and false guilty pleas often occur for the same crime is in need of further study. Studies could examine the differences between false confessors who do and do not accept pleas, as well as the confession cases in which pleas are and are not offered. Third, the techniques used to secure guilty pleas as well as the purported reasons for taking them have not been thoroughly examined. Fourth, the area of plea discussions is ripe for research, including the extent of the questioning and information provided by attorneys and judges, the extent to which such questions and information are understood by the defendant, and whether the discussion promotes voluntary and knowing pleas as intended. The steady attention paid to false confessions, such as the El Paso conference (from which this volume is derived), has highlighted plausible and practical reforms. Although some of the problems with false guilty pleas are systemic, an increased attention to the problem can shed light on policy reforms that could be implemented and effective.

With each passing year, the number of identified miscarriages of justice increases. From 2000 to 2007, the Innocence Project exonerated an average of 18 persons per year. False confessions and false guilty pleas play a role in one-quarter of these miscarriages. As Borchard (1932) noted 75 years ago, “sheer good luck” has much to do with the uncovering of these wrongs, which is readily apparent today as well. The serendipitous nature of detecting wrongful arrests and convictions, although sure to continue, can be decreased with increasing knowledge and insight into their causes.
References


*State v. Kaufman*, 51 Iowa 578 (1879).


Table 3.1. Characteristics of 11 false guilty plea-takers from the Innocence Project

<table>
<thead>
<tr>
<th>Name (State)</th>
<th>Crime, Plea, and Sentence</th>
<th>False Confession: Yes/No</th>
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</table>
| Larry Bostic (FL)  | • Pleaded guilty to sexual battery and robbery  
                     • Faced possible life sentence at trial  
                     • Received 8 year sentence  
                     • Served 3 years [though re-imprisoned on new charges and probation violation of this crime, spending a total of 17 years in prison]                                                               | FC: No                   |
| Marcellius Bradford (IL) | • Pleaded guilty to aggravated kidnapping  
                        • Murder, rape, and armed robbery charges dropped  
                        • Had to agree to testify against co-defendant  
                        • Received 12 year sentence  
                        • Served 6.5 years                                                                                                                                                  | FC: Yes  
                                                                 | Claim of police coercion Juvenile                                                                                                                                       |
| Keith Brown (NC)   | • Pleaded guilty to second degree rape and second degree sexual offense  
                     • Received 35 year sentence  
                     • Served 4 years                                                                                                                                                 | FC: Yes  
                                                                 | Mentally retarded                                                                                                                                                |
| John Dixon (NJ)     | • Pleaded guilty to sexual assault, kidnapping, robbery, and unlawful possession of a weapon  
                        • Dixon claimed he pleaded guilty because he feared the jury would convict and receive a harsher sentence.  
                        • After entering his guilty plea, Dixon asked the Judge to withdraw his plea and perform DNA testing. The Judge denied his request.  
                        • Received 45 year sentence  
                        • Served 10 years                                                                                                                                                  | FC: No       |
| Anthony Gray (MD)   | • Pleaded guilty to murder and rape  
                     • Received two life sentences  
                     • Served 7 years                                                                                                                                                 | FC: Yes  
                                                                 | Borderline Retarded Police deception                                                                                                                                    |
| Eugene Henton (TX)  | • Pleaded guilty to sexual assault  
                     • Received 4 year sentence  
                     • Served 18 months                                                                                                                                              | FC: No       |
| Christopher Ochoa (TX) | • Pleaded guilty to murder and sexual assault, reportedly to avoid death sentence  
                        • Had to agree to testify against co-defendant  
                        • Received life sentence  
                        • Served 11.5 years                                                                                                                                                 | FC: Yes  
                                                                 | Police pressure  
                                                                 | Threatened with death penalty                                                                                                                                           |
| James Ochoa (CA)    | • Pleaded guilty to carjacking and armed robbery  
                        • DNA had excluded Ochoa prior to the trial, but “prosecutors were sure he did the crime.”  
                        • Judge allegedly threatened Ochoa with a sentence                                                                                                      | FC: No       |
| Jerry Frank Townsend (FL) | Of 25 years to life  
• Received 2 year sentence  
• Served 10 months | FC: Yes  
Mentally retarded; mental capacity of an 8-year-old  
Wanting to please authority |
| David Vasquez (VA) | Pleaded guilty to homicide and burglary  
• Received 35 year sentence  
• Served 4 years | FC: Yes  
Borderline mentally impaired  
Dream Statement  
Confession |
| Arthur Lee Whitfield (VA) | Tried and convicted on first rape charge, received 45 years  
Pleaded guilty to second rape charge, receiving a lighter sentence (18 years to run consecutively with the 45 years) and have other charges dropped  
Received a total sentence of 63 years  
Served 22.5 years | FC: No |