

Alford Pleas in the Age of Innocence

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In 1970, the Supreme Court handed down a decision in *North Carolina v. Alford* that has since allowed defendants who do not wish to risk their fates at trial to plead guilty while simultaneously asserting their innocence. Although “Alford pleas” have remained unexamined by researchers, the increasing number of identified wrongful convictions of those factually innocent highlights the need for an in-depth examination of them. In the present study, using the Department of Justice 2004 State Survey of Inmates in Correctional Facilities dataset, we examined the likelihood of entering Alford pleas over traditional guilty, no contest, and not guilty pleas for those convicted of murder/mauslaughter. Although we generally found few differences between the three guilty plea types, interesting differences between Alford and not guilty pleas emerged. Implications for actual innocence are discussed. Copyright © 2009 John Wiley & Sons, Ltd.

INTRODUCTION

Alford pleas are awful. There could hardly be a clearer violation of due process than sending someone to prison who has neither been found guilty nor admitted his guilt. If anything short of torture can shock your conscience, Alford pleas should.

Professor Albert W. Alschuler (2003, p. 1412)

Exonerations, a once rare occurrence, are now becoming commonplace. As addressed by the papers in this special issue on Actual Innocence, the number of identified miscarriages of justice in the United States continues to rise. Since 2001, in Dallas County, TX alone, for example, 19 wrongfully convicted individuals have been exonerated. Wrongful arrests and incarcerations that do not result in convictions are also increasingly identified but are harder to track and definitively count.

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Determining the prevalence of innocents is methodologically challenging, if not impossible. There is no litmus test to definitively determine who is innocent and who is guilty. Exonerations are long, costly, and arduous processes; efforts towards them are often unsuccessful for reasons having little to do with guilt or innocence. This paper is focused on a group of convicted offenders who publicly insist on their innocence: defendants who entered “Alford pleas.” In brief, Alford pleas allow defendants who do not wish to risk their fates at trial to plead guilty while simultaneously asserting their innocence. To be clear, Alford pleas are guilty pleas. As the above quote by noted professor of law Albert Alschuler indicates, the pleas are highly controversial.

Despite the controversy, the Alford plea and the people who enter them have largely been overlooked by researchers. However, this plea allows for an unambiguous method to dichotomize defendants into those who *claim* innocence and those who do not. Of course, entering into this plea is not proof of actual innocence; rather the defendants who enter this plea represent a group of people who want to publicly insist on their innocence (and are allowed to do so), but who may or may not actually be innocent.

In the present paper, we provide an overview of Alford pleas, particularly in consideration of the increasing number of wrongly convicted innocents identified. A main goal is to describe a sample of Alford pleaders and compare them with other types of pleader with regard to demographic, legal, and criminological factors, which to our knowledge has never been done. We rely on the latest dataset of state prison inmates collected by the U.S. Department of Justice, Bureau of Justice Statistics. First, we determine whether convicted murderers who pleaded guilty via the Alford mechanism look similar to the people who plead guilty via traditional mechanisms or no contest, or whether they look more similar to people pleading not guilty but who are then found guilty. Second, we examine data relevant to an assumption that sex offenses are overrepresented among Alford pleas. Third, we examine sentence-related outcomes for Alford pleaders versus other types of pleader. A secondary goal is to introduce Alford pleas as a viable and unexplored research topic. We note at the outset that we cannot provide data or insight into the proportion of persons who enter Alford pleas who are factually innocent.

The Alford Plea

In 1963, Henry C. Alford was accused of first-degree murder in North Carolina. Alford was an African American man in the South at the height of the civil rights movement. His lawyer, who was just a few years out of law school at the time, recently stated it was a case fraught with racial overtones (Barksdale, 2007).

Alford went to visit a prostitute at a drink house and allegedly got into a fight with Nathaniel Young. Young was later killed from a shotgun blast. Despite Alford’s claims of innocence, there was seemingly strong evidence of his guilt. Specifically, although there was no eyewitness to the crime, there were witnesses who claimed that shortly before the murder, Alford returned home to get his gun, stated he was going to kill the victim, and then upon returning home, stated that he carried out the killing. Alford also had a lengthy criminal history, including a prior conviction for murder.

At his arraignment, Alford was expected to plead guilty but then testified that he did not kill Young and was pleading guilty only to avoid the death penalty. Specifically, Alford stated, “I pleaded guilty on second degree murder because they said there is too much evidence, but I ain’t shot no man, but I take the fault for the other man. We never had an argument in our life and I just pleaded guilty because they said if I didn’t they would gas me for it, and that is all.”

After some discussion that Alford indeed spoke with his attorney and family members about his decision to plead and that he had been informed of his rights, the following exchange occurred between Alford and his attorney:

Attorney: “And you authorized me to tender a plea of guilty to second degree murder before the court?”

Alford: “Yes, sir.”

Attorney: “And in doing that, that you have again affirmed your decision on that point?”

Alford: “Well, I’m still pleading that you all got me to plead guilty. I plead the other way, circumstantial evidence; that the jury will prosecute me on - on the second. You told me to plead guilty, right. I don’t - I’m not guilty but I plead guilty.”

According to published news reports at the time, Alford was unable to read or write (Barksdale, 2007). Despite his claims of innocence, the trial judge allowed Alford to enter a guilty plea and sentenced him to the maximum 30 years for second-degree murder. Alford then repeatedly sought relief. Alford’s conviction was eventually overturned by the Fourth Circuit Court of Appeals, but then re-affirmed in the now famous Supreme Court decision, *North Carolina v. Alford*, U.S. 400 25 (1970). In this six to three decision, the court recognized that while there are usually two components of pleading guilty—the waiver of the right to a trial and the admission of guilt—the latter is not a constitutional requisite to imposing a criminal sanction. In his dissent, Justice Brennan remarked that Alford was “so gripped by fear of the death penalty that his decision to plead guilty was not voluntary but was the product of duress as much so as choice reflecting physical coercion” (p. 40). As a result of this landmark decision, defendants can now enter “Alford pleas” (sometimes called “best-interest pleas” or, in New York, Serrano pleas) when they claim to be innocent but perceive their chances for acquittal at trial to be too much of a risk. Alford died in prison in 1975.

The Alford case was decided 39 years ago. Although several law review articles have been written on Alford pleas (e.g. Alschuler, 2003; Bibas, 2003a,b; Shipley, 1987; Ward, 2003), we could not locate a single published empirical study. However, we did find an estimate of their prevalence. Wolf Harlow (2000) reported, using the 1997 dataset of the Survey of Inmates in State and Federal Correctional Facilities, that an estimated 65,150 state inmates (6% of the population of state prison inmates) and 2,472 federal inmates (3%) entered Alford pleas, rates that were near identical whether inmates had public or private counsel. Even if only a mere 1% of these combined 67,622 Alford pleaders were innocent (i.e. 676), the number is more than triple the number of Innocence Project exonerees identified to date (i.e. 223). (The number also represents only those inmates in prisons in 1997.) We now turn our attention to elements of the Alford plea relevant to the present study: (1) Alford pleas and evidence of guilt; (2) Alford pleas within the context of other plea types; and (3) characteristics found to affect plea decision-making.

Alford Pleas and Evidence of Guilt

Judges have wide discretion whether to accept an Alford plea (Bibas, 2003a; Shipley, 1987). In theory, courts are supposed to find a *sufficient factual basis of guilt* before allowing the plea. Although Alford pleas are guilty pleas, with traditional guilty pleas the admission of guilt via the plea itself or the in-court allocution serves as the factual basis. With Alford pleas, however, because the person insists on innocence, the judge must determine there is sufficient evidence of guilt in order to allow the plea. However, as Shipley (1987) argues, ‘sufficient’ was never defined, guidelines were never forthcoming, and as a result, the pleas are accepted—or not accepted—for a variety of reasons, with differential standards applied. Further, the judge often relies on a summary of the evidence provided only by the state without a similar summary provided by the defense (Shipley, 1987).

In the original Alford case, the Supreme Court noted that “strong” and “overwhelming” evidence against the defendant met the sufficient factual basis criterion. However, it is entirely unknown whether in practice judges who have since accepted Alford pleas actively gauge the strength of the evidence against these defendants, or, if they do, what threshold of strength is sufficient. As a general standard, judges’ decision-making should be subject to intelligible review if questioned. Although there was seemingly strong evidence of Alford’s guilt (i.e. witnesses’ testimony), this may have not have been the case for the hundreds of thousands of defendants who have entered Alford pleas since.

It is also important to note that in the identified wrongful conviction cases seemingly strong evidence of guilt was present in every case. In their report of the first 200 exonerees, the Innocence Project revealed that 77% of the cases had eyewitness evidence against the defendants, 65% had forensic evidence, 25% had (false) confession evidence, and 15% had informant/snitch evidence. The “evidence” nonetheless was inaccurate, either mistakenly or intentionally. Almost all of these exonerees went to trial and thus had the opportunity to contest the evidence against them with the built-in safeguards inherent to the trial process. All were convicted nonetheless. Thus, it is reasonable to presume that if a judge had considered an Alford plea in these cases, the threshold for sufficient evidence of guilt would have been met. Only nine of the first 200 waived their right to a trial and falsely pleaded guilty (see Redlich, in press). David Vasquez, who is reportedly mentally retarded, is one of the nine, and his guilty plea was an Alford plea. He was sentenced to 35 years in prison for second degree murder and burglary (although first charged with rape and capital murder). There appeared to be strong evidence against Mr. Vasquez, including a confession (albeit false and coerced), eyewitnesses who placed him near the crime scene, ‘consistent’ hair analysis results, and lack of an alibi. After spending five years in prison, the true perpetrator was identified (and later executed), though only after raping and killing at least one other victim.

Alford and Other Plea Types

As mentioned, the Alford plea is in effect a guilty plea. In addition to Alford pleas, there are three other basic plea types: guilty (heretofore referred to as “traditional

guilty”), not guilty, and *nolo contendere* (no contest, or ‘nolo’). Defendants who plead guilty most often do so as part of an arrangement (deal or bargain) with the district attorney. These deals commonly include charge and/or sentence discounts, and depending upon the severity of the crime, can allow for the immediate release from jail, which can be a strong incentive to accept the plea offer (Bibas, 2004; Kellough & Wortley, 2002). Defendants who plead not guilty are those who take their chances at trial either in front of a judge (only) or a jury. Defendants who plead no contest are those who neither admit guilt nor assert innocence. The overwhelming majority of U.S. convictions—about 96%—are the result of guilty pleas, though this rate is typically not broken down by traditional guilty plea, Alford plea, or no contest. The severity of the crime can influence the guilty plea rate. In 2002, only 66% of defendants charged with murder pleaded guilty, whereas the guilty plea rates were 90% or higher for all other crimes (Cohen & Reeves, 2006).

Often, Alford and no contest pleas are discussed together. Indeed, the Supreme Court noted that it perceived no material difference between the two when rendering a decision in *North Carolina v. Alford*. However, important differences between them exist. First, defendants who enter Alford pleas assert their innocence whereas defendants who enter no contest pleas do not (rather they just do not acknowledge guilt). Second, no contest pleas do not require a factual basis (evidence of guilt) for judges to accept them, whereas as discussed above Alford pleas have this requirement. Third, the future legal implications of the pleas differ. Whereas no contest pleas do not count against defendants in future proceedings (e.g. in civil litigations), Alford pleas are strikes (Shipley, 1987). Fourth, although Alford pleas are theoretically permissible in more jurisdictions, no contest pleas appear to be more prevalent. According to Bibas (2003a), 47 states and the District of Columbia allow for Alford pleas. In contrast, only 38 states and DC allow for no contest pleas. However, Wolf Harlow (2000) found a 6% Alford-plea rate and a 10% no-contest-plea rate for state inmates, suggesting that judges may be more reticent to accept Alford pleas than no contest pleas.

Although research has not been conducted on Alford plea-takers, there is an assumption that persons accused of sex offenses are more prevalent among them (Wexler, 2003). For example, Bibas (2003a) states, “It is no coincidence that sex offenders are among the most frequent users of Alford and *nolo contendere* pleas” (pp. 1393–1394). We challenge this assumption in the present study. In part, this assumption is based on another assumption, one that we cannot test. Specifically, it is assumed that defendants who enter Alford pleas are in fact guilty and simply refuse to admit it. Even Alschuler (2003), who vehemently opposes the pleas, acknowledged that a substantial majority of Alford pleaders are “probably” guilty (see p. 1417). It is important to remember that the Alford plea is a guilty plea that allows defendants who (1) have met a threshold for sufficient evidence of guilt to (2) *state* that they are innocent, rather than actually be innocent. However, both innocent and guilty parties will utilize the plea, and without a litmus test it near impossible to distinguish between them.

Bibas (2003a) conducted an informal survey of 34 veteran prosecutors, public and private defense attorneys, and judges about their experiences with Alford pleas. All three groups agreed that the primary reasons for defendants refusing to admit guilt is embarrassment, shame, and psychological denial—reasons that relate to one’s guilt rather than innocence. Further, almost all of the survey respondents

agreed that completely innocent defendants enter the Alford plea infrequently (e.g. “occasionally,” “extremely uncommon,” “insignificant,” and “very rare”).

An aim of this paper is to determine whether there are individual and criminological differences, in addition to legal ones, that distinguish between Alford and other types of plea takers. Do people who enter Alford pleas look like people who enter other guilty plea types or are they more similar to people who enter not guilty pleas? Although Alford pleas are legally guilty pleas, defendants who enter Alford pleas and defendants who take their cases to trial (i.e. not guilty pleaders) both publicly insist on their innocence.

Characteristics of Defendants by Plea Type

As mentioned, to our knowledge, little is known about defendants who enter Alford pleas. Research has been conducted on factors that affect plea decision-making, more generally, however. Factors that are typically examined are (1) legal/case characteristics and (2) demographic characteristics, particularly race and ethnicity. With regard to legal and case factors, crime severity, criminal history, and pre-trial detention have been examined. Kellough and Wortley (2002) tracked over 1,800 criminal cases in Toronto, Canada, from bail hearings through adjudication. They found that defendants with more charges against them and those currently charged with failure to appear were more likely to plead guilty than their counterparts. In contrast, those currently and previously charged with crimes of serious violence were less likely to plead guilty (see also Cohen & Reeves, 2006). Of particular note, defendants who had been remanded to custody and were detained up until the time of adjudication were 2.5 times more likely to plead guilty than those who had been released. Based on these findings, in the present study, we predict that Alford pleaders in comparison with those pleading not guilty will be less likely to have been released. We also anticipate that Alford pleaders and the two other forms of guilty pleader (traditional and no contest) will appear similar to each other in terms of pre-plea release.

With regard to demographic factors, African American, Hispanic, and male defendants have been found to be less likely to plead guilty compared with White, non-Hispanic, and female defendants (Albonetti, 1990; Frenzel & Ball, 2007; Kellough & Wortley, 2002). However, within guilty plea arrangements, demographic characteristics have not made significant impacts. For instance, effects of race and gender were not found to influence count (charge) reductions in guilty pleas (Ball, 2006), or negotiated versus non-negotiated guilty pleas (Frenzel & Ball, 2007). Thus, similar to the above, we expect demographic differences to be found when contrasting the three guilty plea types with not guilty pleas, but not within guilty pleas.

For our purposes, characteristics of innocents are also important to consider. Because there is no reliable method to distinguish between innocent and guilty defendants, the characteristics of innocents have not been studied systematically. However, some commonalities can be discerned in exoneration samples, which represent a specialized subset of cases. Among the first 200 Innocence Project exonerees (almost all of whom were convicted of murder and/or rape), 11% were younger than age 18 and 62% were African American. According to the Bureau of

Justice Statistics (Durose & Langan, 2005), of convictions for U.S. murders in 2002, persons younger than 20 years accounted for 8% (note that this rate includes 18 and 19 year olds and is still lower) and African Americans accounted for 51%. Similarly, of forcible rape convictions in 2002, persons younger than 20 years accounted for 8% and African Americans accounted for 33%. Thus, in this subset of innocents wrongfully convicted and subsequently exonerated, it appears that juveniles and African Americans are disproportionately represented compared with conviction rates for these crimes.

Juveniles, as well as persons with mental impairment, are also over-represented in a subset of wrongful convictions: false confessions (Perske, 2004; Redlich, 2004; Redlich & Drizin, 2007). False confessions or false guilty pleas, which account for approximately 25% of identified wrongful convictions (Garrett, 2008; Kassin & Gudjonsson, 2004; Redlich, *in press*), are relevant to Alford pleas. On the one hand, Alschuler (2003) likens Alford pleas to coerced (and false) confessions in that they force innocent defendants to accept guilty plea deals. On the other hand, innocent defendants who enter Alford pleas refuse to falsely confess (to prosecutors) by refusing to plead guilty via traditional mechanisms and admit guilt. Thus, differences in age and mental impairment may distinguish Alford pleaders from other types of pleader. Mental impairment is also highly relevant to competence in plea decision-making (Appelbaum & Appelbaum, 1994; Bonnie, 1992; Hoge et al., 1997), and thus may influence the types of plea entered by defendants. In the present study, we examine differences in mental health by plea type, which to our knowledge has not been done.

PRESENT STUDY OVERVIEW

A purpose of the present study is to describe a sample of state prison inmates who entered Alford pleas (particularly pleas for murder), and who thus maintained their innocence despite pleading guilty. The results reported here are secondary analyses of the 2004 U.S. Department of Justice, Bureau of Justice Statistics Survey of Inmates in State Correctional Facilities (SISCF). The data, which were released for public use in 2007, are part on an ongoing series of data collection, which includes surveys from 1974, 1979, 1986, 1991, and 1997.

In addition, we compare persons who entered Alford pleas with persons who entered no contest, guilty, and not guilty pleas. We compare on individual difference characteristics such as race, gender, and mental health, as well as on legal characteristics. One particular focus is on sentence outcomes. We anticipate that, because Alford pleas are guilty pleas, sentence discounts typically offered in plea deals will be apparent (when contrasted against not guilty pleas). An open question, however, is whether in comparison to guilty and no contest pleas Alford pleas will result in harsher sentences because of an insistence on innocence.

Because there are many variables that serve to confound decisions surrounding pleas and a comparison by plea type (such as gender, socioeconomic status, offense severity, length of time to be served), we limit the comparison to inmates who were convicted of murder/manslaughter charges. First, guilty plea rates for crimes other than murder approach ceiling levels and would not allow for comparisons of not guilty plea takers. Second, 28% of the first 200 exonerated individuals were

convicted of murder. (In contrast, murder comprised less than 1% of all arrests in the 75 largest urban counties in 2002: Cohen & Reeves, 2006.) Murder also carries the longest sentence, and thus, miscarriages of justice that involve murder are among the most egregious. As the first in-depth examination of people who enter into Alford pleas, limiting analyses to homicide is appropriate.

METHOD

In the 2004 SISCf dataset, 16,152 state inmates were sampled, 14,449 were interviewed, and 1,653 (10.2%) refused to be interviewed. Inmates were interviewed in person by the Bureau of the Census from October 2003 through May 2004. For more on sampling and weighting procedures, see “Survey of Inmates in State and Federal Correctional Facilities, 2004” (U.S. Department of Justice, Bureau of Justice Statistics, 2007).

The interview, which lasted approximately one hour (depending on how inmates answered), included the following 10 sections: (1) individual characteristics; (2) current offenses; (3) pretrial release and trial; (4) current sentence; (5) incident characteristics; (6) criminal history; (7) socioeconomic characteristics; (8) alcohol and drug use and treatment; (9) health care and treatment; and (10) prison programs and activities. Interview responses were entered on a computer with built-in skip patterns. Below are descriptions of questions in the present study.

Plea Type

The first question in the “pretrial release and trial” section was “In your trial for [*insert current offense(s)*], did you enter an Alford plea, a no contest plea, a guilty plea, or did you plead not guilty?” The answer to this question was used to categorize inmates for purpose of analysis. If the inmate or interviewer needed clarification, the following ‘help’ definitions were provided.

- *Alford plea.* A guilty plea to a charge by the defendant, despite his claim of innocence, because the evidence of guilt is overwhelming. Usually the plea is to a charge less than the original charge. The defendant agrees to plead guilty because he realizes that there is little chance to win acquittal on the original charge because of the strong evidence of his guilt.
- *No contest plea.* A defendant’s formal answer in court to the charge(s) contained in a complaint, information, or indictment, stating that he or she will not contest the charge(s), but neither admits guilt nor claims innocence.
- *Guilty plea.* A defendant’s formal answer in court to the charge(s) contained in a complaint, information, or indictment, stating that he or she will not contest the charge(s) and admits that he/she committed the offense(s) listed.
- *Not guilty plea.* A defendant’s formal answer in court to the charge(s) contained in a complaint, information, or indictment, claiming that he or she did not commit the offense(s) listed.

In the same section, inmates were asked whether they had a private or public defender and how many times they spoke with their lawyers about the charges before

entering their plea or going to trial. Inmates were also asked how long they were in jail after their arrest but prior to going to prison, and whether they had been released prior to their plea or trial.

Demographics and Criminal History

In the “individual characteristics” section, gender was observed (and inquired about if not apparent), and inmates were asked about their dates of birth and age, and race/ethnicity. In the public-use dataset, inmates were subsequently coded as Black or Non-Black, and thus this variable is used in the present study when examining race. Inmates were queried about their education (number of years completed).

In the “criminal history” section, inmates were asked how many times prior to their most current arrest they had been arrested as an adult or as a juvenile. In the “health care and treatment” section, inmates were asked about mental health and whether they had ever been diagnosed with a learning disability. One series of questions (Section B, Subsection A: Current Mental Health Condition Screener) asked about 22 mental health symptoms (yes/no) that the inmate might have experienced in the previous year. These included “Have you become angry more often than usual?” “Have you felt that other people could read your mind?” and “Have there been periods when you felt numb or empty inside?” A summary score was created by tallying the number of symptoms endorsed, Cronbach $\alpha = .88$.

In addition, inmates were asked: “Have you ever been told by a mental health professional, such as psychiatrist or psychologist, that you had ____?” Then seven disorders/conditions were inquired about: depressive disorder; manic depression, bipolar disorder, or mania; schizophrenia or another psychotic disorder; post-traumatic stress disorder; another anxiety disorder, such as panic disorder; personality disorder; or any other mental or emotional condition.

Current Offense and Sentence

In Section 2, inmates were asked about the offense(s) and number of counts for each offense for which they were currently incarcerated. The 2004 SISCF dataset and accompanying materials included a 21-page appendix of offense codes, which included the following categorizations: violent offenses (e.g. murder/manslaughter; rape and sexual assault, robbery, aggravated assault, etc); property offenses (e.g. burglary, forgery/fraud, larceny); drug offenses (e.g. trafficking, possession); and public order offenses (e.g. weapon charges, rioting, habitual offender, technical violations).

The current prison sentence was asked for each current offense. The sentence was entered as a “flat sentence” (e.g. 10 years, 2 months, “life without parole,” or “death”), or as a sentence range with a minimum and maximum (e.g. 2–5 years, 25 years to life).

RESULTS

In answer to the question concerning plea type, a total of 949 (6.5%) of state inmates entered Alford pleas; 1,604 (11.1%) entered no contest pleas; 8,511 (58.7%)

Table 1. Population estimates by plea type

| | Population estimate | 95% confidence interval |
|------------|---------------------|-------------------------|
| Alford | 76,058 (6.6%) | 67,609–84,507 |
| No contest | 131,123 (11.3%) | 120,298–141,948 |
| Guilty | 685,429 (59.2%) | 668,019–702,839 |
| Not guilty | 265,819 (23.0%) | 251,383–280,255 |
| Total | 1,158,429 (100.0%) | 1,150,303–1,166,555 |

entered guilty pleas; and 3,153 (21.7%) entered not guilty pleas. (An additional 342 inmates (2.4%) were categorized as ‘other’ and are not included in analyses.) Total population estimates with 95% confidence intervals are shown in Table 1. Within the three types of guilty plea, Alford pleas accounted for 8.5%. The proportion of Alford-pleaders in this 2004 dataset is very similar to that of the 1997 dataset (see Wolf Harlow, 2000).

There were a total of 81 inmates with multiple current offenses who entered an Alford plea in addition to one of the other plea types: 20 who entered both Alford and not guilty pleas, 52 who entered Alford and guilty pleas, four who entered Alford and no contest pleas, and five who entered Alford and an ‘other’ plea. These 81 defendants entered separate pleas presumably on the perceived strength of evidence against them and/or their perceived innocence.

Table 2 provides a breakdown of criminal offense by violent/property/drug/public order by plea type, as well as the percentages of murder/manslaughter, sexual offenses, and rape. Sexual offenses, which included rape, child molestation, and sodomy, did not appear to be overrepresented in Alford or no contest pleas, particularly when contrasted with not guilty pleas. However, within the three guilty plea types, traditional guilty pleas had a slightly lower rate of sexual offenses than the other two types. When rape was examined separately, rates appeared similar for the three guilty plea types, which were approximately half the rate of not guilty pleas. Rape accounts for the majority of DNA-based exonerations to date. In comparison,

Table 2. Criminal offenses by plea type

| | | Alford (<i>n</i> = 829) | No contest (<i>n</i> = 1,406) | Guilty (<i>n</i> = 7,425) | Not guilty (<i>n</i> = 2,943) |
|-----------------------|----------|-----------------------------|-----------------------------------|-------------------------------|-----------------------------------|
| Violent offenses | <i>N</i> | 422 | 693 | 3,272 | 2,220 |
| | % | 50.9 | 49.3 | 44.1 | 75.4 |
| Property offenses | <i>N</i> | 205 | 349 | 1,903 | 337 |
| | % | 24.7 | 24.8 | 25.6 | 11.5 |
| Drug offenses | <i>N</i> | 168 | 292 | 1,857 | 317 |
| | % | 20.3 | 20.8 | 25.0 | 10.8 |
| Public order offenses | <i>N</i> | 34 | 72 | 393 | 69 |
| | % | 4.1 | 5.1 | 5.3 | 2.3 |
| Special interest | | | | | |
| Murder/manslaughter | <i>N</i> | 91 | 109 | 774 | 1040 |
| | % | 11.0 | 7.8 | 10.4 | 35.3 |
| Sexual offenses | <i>N</i> | 110 | 221 | 800 | 444 |
| | % | 13.3 | 15.7 | 10.8 | 15.1 |
| Rape | <i>N</i> | 40 | 53 | 297 | 233 |
| | % | 4.8 | 3.8 | 4.0 | 7.9 |

Inmates with missing data and multiple pleas were excluded. Sexual offenses include rape.

when rates of murder/manslaughter were examined separately by plea, rates for not guilty pleas were at least three times those of the guilty plea types.

The remaining analyses focus on inmates incarcerated for murder by plea type. The category of plea type for murderers was determined by the murder offense. That is, for inmates with multiple plea types, the plea that corresponded to the murder charge dictated their plea type categorization. In the total sample, there were 2,029 “murderers” (14%). Of these, 91 (4.5%) had entered Alford pleas, 109 (5.4%) no contest pleas, 774 (38.2%) guilty pleas, and 1040 (51.3%) not guilty pleas. We first conduct bivariate analyses, and then examine multiple factors simultaneously to determine predictive characteristics of entering one plea versus another. Because of the large differences in n by plea type, we categorized continuous variables into four groups using quartile splits of the base variable, and presented differences by plea type in a series of figures. We conducted chi-square analyses to test for significant differences. To describe the strength of relations, we present the Φ statistic for dichotomous data, and Cramer’s V when there are more than two categories. As a general rule, Φ values and Cramer’s V values of .30 or below are small, .30–.50 are medium, and above .50 are large.

Bivariate Analyses

Demographic and Clinical Factors

We compared individuals convicted of murder/manslaughter by plea type on the following factors: age, gender, race (Black versus Non-Black), number of prior arrests, years of schooling, and whether they had been diagnosed with a learning disability. In the present dataset, only 19 inmates of 14,499 were younger than 18 (and of these, only four were “murderers”), and thus we could not examine juvenile status.

Table 3 presents analyses when variables were dichotomous. We found no significant differences in regard to gender, ethnicity (Hispanic: yes/no), or whether inmates reported being diagnosed with at least one mental health disorder. Not

Table 3. Dichotomous characteristics of murderers by plea type (percentages)

| | Alford ($n = 90$) | No contest ($n = 109$) | Guilty ($n = 774$) | Not guilty ($n = 1,040$) | $\chi^2(3)$ | Φ |
|---------------------------------------|------------------------|-----------------------------|-------------------------|-------------------------------|-------------|--------|
| Demographic factors (%) | | | | | | |
| Gender: male | 92.3 | 91.7 | 94.3 | 94.5 | 2.01 | .03 |
| Race: Black | 46.7 | 37.6 | 44.5 | 50.0 | 9.42* | .07 |
| Ethnicity: Hispanic | 14.4 | 19.8 | 17.0 | 17.3 | 3.53 | .02 |
| Learning disability | 13.3 | 12.0 | 12.5 | 8.3 | 9.61* | .07 |
| Clinical factors (%) | | | | | | |
| Any MH diagnosis | 25.3 | 29.4 | 27.6 | 22.9 | 6.24 | .06 |
| Legal factors and sentence (%) | | | | | | |
| Released before trial | 17.6 | 12.0 | 12.0 | 13.9 | 3.00 | .04 |
| Life sentence | 20.9 | 26.6 | 24.9 | 45.7 | 96.93*** | .22 |
| Death sentence | 0 | 0 | 0.40 | 3.2 | 26.23*** | .11 |

* $p < .05$; ** $p < .01$; *** $p < .001$.

surprisingly, the majority of convicted murderers were male; percents ranged from a low of 91.7% for no contest pleaders to 94.5% for not guilty pleaders.

The differences by plea type for race (Black/Non-Black) and whether inmates had a learning disability were statistically significant, though the strengths of the effects were quite small (.07 in both cases). Fifty percent of the not guilty pleaders were African American in comparison with 37.6% of no contest pleaders. Percents of African Americans entering Alford and traditional guilty pleas were similar (~45%; see Table 3) to each other and not too dissimilar from not guilty and no contest pleaders. With regard to having a learning disability, not guilty pleaders were the least likely to have been diagnosed with one (8.3%) compared with the three types of guilty pleader, which ranged from 12 to 13.3%.

Chi-square results with demographic and clinical variables with more than two categories are shown in Figures 1–4. Inmates did not differ significantly by plea type on their number of prior arrests (Figure 3) or on the number of mental health symptoms endorsed (Figure 4). Moreover, similar to the above, although there were significant findings for age groups and years of education, the effects were very small, and not particularly meaningful. Not guilty pleaders appeared to be slightly older

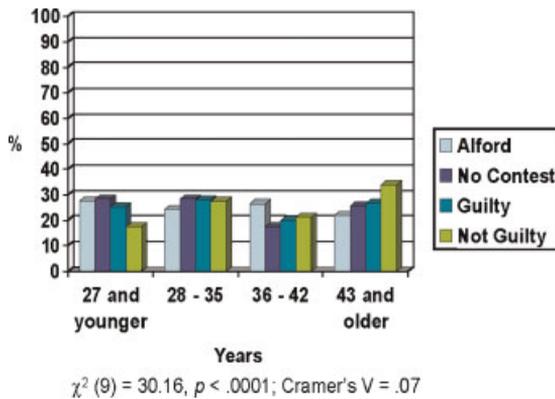


Figure 1. Age by plea type.

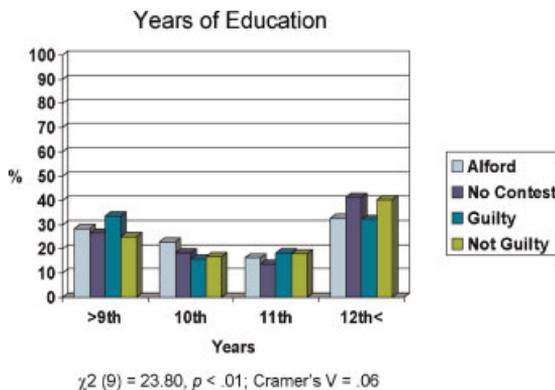


Figure 2. Years of education by plea type.

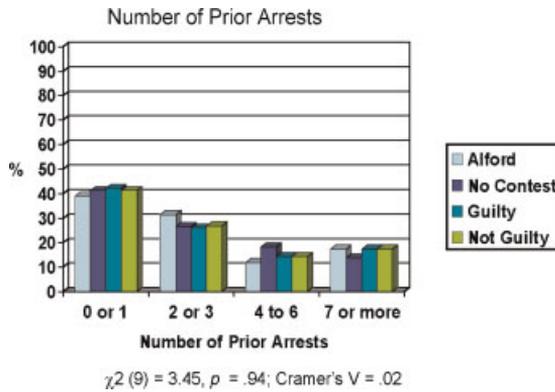


Figure 3. Number of prior arrests by plea type.

and slightly more educated than the three forms of guilty pleader (although years of education were more similar for not guilty and no contest plea takers).

Legal Factors

Across the 2,029 murderers, only 23 inmates did not have a public defender, which did not vary by plea type, $\chi(3) = 1.75, p = .63$. None of the Alford pleaders had a private attorney, whereas 2, 10, and 11 of the no contest, guilty, and not guilty pleaders respectively had a private attorney (approximately 1% within these three plea types).

In contrast to our prediction, whether inmates had been released from jail prior to their plea did not differ significantly by plea type (Table 3). Approximately 18% of Alford pleaders had been released compared with 12% of no contest and traditional guilty, and 14% of not guilty pleaders. The numbers of times that an inmate had talked to a defense attorney and the number of days in jail served prior to prison were highly skewed variables, with some large outlying values. Thus, we transformed these variables to square roots before analysis. Plea type did influence number of

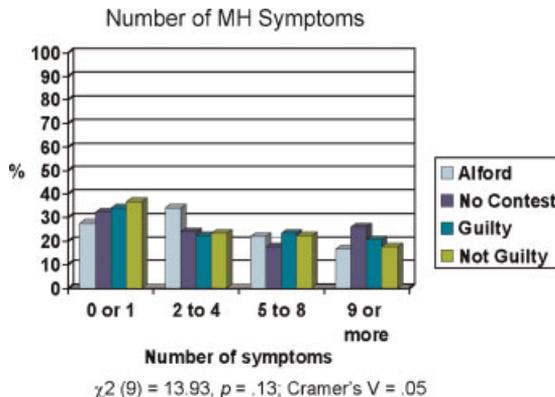


Figure 4. Number of mental health symptoms by plea type.

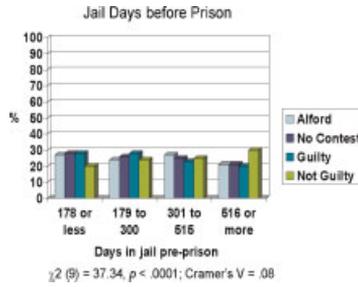


Figure 5. Jail days before prison by plea type.

days spent in jail prior to prison (Figure 5). Not guilty pleaders spent more days in jail than the other plea takers; 30% of not guilty pleaders spent 516 or more days in jail pre-prison compared with approximately 20% of the three guilty pleaders. Cramer's *V* for this finding was again small (.08), indicating that differences were not meaningful. Differences by plea type for the number of times inmates spoke with their attorney pre-plea reached statistical significance, though again there was a small effect size (Cramer's *V* = .06). As shown in Figure 6, most inmates spoke to their attorneys prior to entering their plea 16 times or fewer.

Multivariate Analyses

The previous analyses have examined differences between plea types one factor at a time. We were interested in determining the characteristics that predicted an inmate entering an Alford plea versus other plea types. We considered differences with respect to multiple factors (see Table 4) simultaneously with multinomial logit modeling (Long, 1997). In these simultaneous models, the relative probabilities of all four plea types function as covariates. In the setup, three logistic equations are fit, one each for "no contest," "guilty," and "not guilty" plea types. (Since the four probabilities add to one, only three equations are needed; this is analogous to

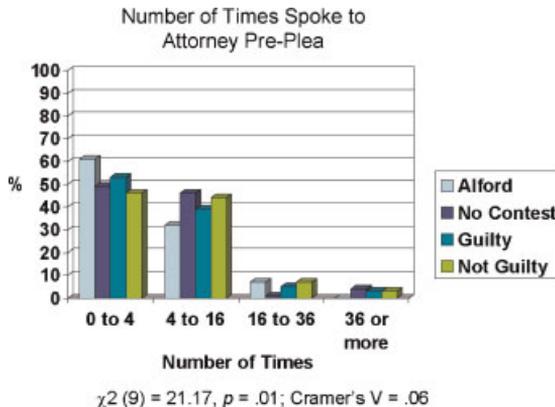


Figure 6. Number of times spoke to attorney pre-plea by plea type.

Table 4. Multivariate regression models predicting plea type

| | Coeff. | SE | <i>t</i> | <i>p</i> | [95% conf. interval] |
|--|-------------|------------|--------------|-------------|-------------------------|
| <u>Alford versus no contest</u> | | | | | |
| Age | .01 | .02 | 0.41 | 0.68 | [-.03 to .04] |
| Mental health symptoms | .03 | .03 | 0.82 | 0.42 | [-.04 to .09] |
| Gender: male | .14 | .52 | 0.27 | 0.79 | [-.90 to 1.18] |
| No. of prior arrests | .03 | .03 | 1.00 | 0.32 | [-.03 to .10] |
| Education | .02 | .07 | 0.37 | 0.71 | [-.11 to .15] |
| Race: Black | .39 | .41 | 0.96 | 0.34 | [-.41 to 1.20] |
| Learning disability | .32 | .57 | 0.56 | 0.58 | [-.80 to 1.44] |
| Times talked to lawyer | .20 | .11 | 1.80 | 0.07 | [-.02 to .43] |
| Days in jail pre-prison | -.01 | .02 | -0.62 | 0.54 | [-.05 to .03] |
| Global test that all coefficients are zero: $F(9, 255) = 0.72, p = 0.69$. | | | | | |
| <u>Alford versus guilty</u> | | | | | |
| Age | .01 | .01 | 0.72 | 0.47 | [-.02 to .04] |
| Mental health symptoms | .01 | .03 | 0.58 | 0.57 | [-.04 to .06] |
| Gender: male | .35 | .37 | 0.95 | 0.34 | [-.37 to 1.07] |
| No. of prior arrests | .03 | .03 | 1.27 | 0.21 | [-.02 to .08] |
| Education | -.02 | .04 | -0.37 | 0.71 | [-.10 to .07] |
| Race: Black | .03 | .34 | 0.08 | 0.94 | [-.65 to .70] |
| Learning disability | .15 | .42 | 0.36 | 0.72 | [-.68 to .99] |
| Times talked to lawyer | .17 | .10 | 1.69 | 0.09 | [-.03 to .38] |
| Days in jail pre-prison | -.02 | .02 | -1.18 | 0.24 | [-.05 to .01] |
| Global test that all coefficients are zero: $F(9, 255) = 0.88, p = 0.54$ | | | | | |
| <u>Alford versus not guilty</u> | | | | | |
| Age | .04 | .01 | 2.82 | 0.01 | [.01 to .06] |
| Mental health symptoms | .02 | .02 | 0.63 | 0.53 | [-.03 to .07] |
| Gender: male | .48 | .40 | 1.19 | 0.24 | [-.31 to 1.27] |
| No. of prior arrests | .03 | .03 | 1.25 | 0.21 | [-.02 to .08] |
| Education | .06 | .04 | 1.61 | 0.11 | [-.01 to .14] |
| Race: Black | -.20 | .34 | -0.59 | 0.56 | [-.87 to .47] |
| Learning disability | .60 | .45 | 1.33 | 0.18 | [-.29 to 1.49] |
| Times talked to lawyer | .22 | .10 | 2.26 | 0.03 | [.03 to .43] |
| Days in jail pre-prison | .01 | .02 | 0.74 | 0.46 | [-.02 to .04] |
| Global test that all coefficients are zero: $F(9, 255) = 2.95, p = 0.002$ | | | | | |
| <u>Guilty versus no contest</u> | | | | | |
| Age | .00 | .01 | 0.21 | 0.84 | [-.02 to .03] |
| Mental health symptoms | -.01 | .02 | -0.50 | 0.62 | [-.06 to .03] |
| Gender: male | .21 | .35 | 0.60 | 0.55 | [-.47 to .89] |
| No. of prior arrests | -.00 | .02 | -0.00 | 0.99 | [-.05 to .05] |
| Education | -.04 | .06 | -0.71 | 0.48 | [-.15 to .07] |
| Race: Black | -.37 | .30 | -1.23 | 0.22 | [-.95 to .22] |
| Learning disability | -.17 | .40 | -0.41 | 0.68 | [-.96 to .63] |
| Times talked to lawyer | -.03 | .09 | -0.38 | 0.70 | [-.20 to .13] |
| Days in jail pre-prison | -.01 | .02 | -0.44 | 0.66 | [-.04 to .02] |
| Global test that all coefficients are zero: $F(9, 255) = 0.36, p = 0.95$ | | | | | |
| <u>Not guilty versus no contest</u> | | | | | |
| Age | .03 | .01 | 2.37 | 0.02 | [.01 to .05] |
| Mental health symptoms | -.01 | .03 | -0.42 | 0.67 | [-.06 to .04] |
| Gender: male | .34 | .34 | 1.00 | 0.32 | [-.32 to 1.00] |
| No. of prior arrests | -.00 | .02 | -0.04 | 0.97 | [-.05 to .04] |
| Education | .04 | .05 | 0.75 | 0.45 | [-.07 to .15] |
| Race: Black | -.59 | .28 | -2.13 | 0.03 | [-1.14 to -.05] |
| Learning disability | .28 | .43 | 0.65 | 0.52 | [-.57 to 1.14] |
| Times talked to lawyer | .02 | .08 | 0.23 | 0.82 | [-.14 to .18] |
| Days in jail pre-prison | .03 | .02 | 1.68 | 0.10 | [-.00 to .05] |

(Continues)

Table 4. (Continued)

| | Coeff. | SE | <i>t</i> | <i>p</i> | [95% conf. interval] |
|---|-------------|------------|--------------|-------------|-----------------------|
| Global test that all coefficients are zero: $F(9, 255) = 2.13, p = 0.03$ | | | | | |
| <u>Not guilty versus guilty</u> | | | | | |
| Age | .03 | .01 | 5.05 | 0.00 | [.02 to .04] |
| Mental health symptoms | .00 | .01 | 0.09 | 0.93 | [-.03 to .03] |
| Gender: male | .13 | .17 | 0.77 | 0.44 | [-.20 to .46] |
| No. of prior arrests | -.00 | .01 | -0.09 | 0.93 | [-.02 to .02] |
| Education | .08 | .03 | 3.09 | 0.00 | [.03 to .13] |
| Race: Black | -.23 | .12 | -1.85 | 0.07 | [-.47 to .01] |
| Learning disability | .45 | .21 | 2.12 | 0.04 | [.03 to .87] |
| Times talked to lawyer | .05 | .04 | 1.15 | 0.25 | [-.04 to .14] |
| Days in jail pre-prison | .03 | .01 | 4.29 | 0.00 | [.02 to .05] |
| Global test that all coefficients are zero: $F(9, 255) = 9.94, p < 0.001$ | | | | | |

Bold lines indicate $p < .05$; italic lines indicate $p < .10$.

ordinary logit modeling, where only one equation is needed to model two outcomes.) Because our primary interest was in Alford pleas, this was set as the reference for the three equations with other plea types. The equation for a given type models the odds that an inmate had a plea of that type relative to the odds that that the inmate had an Alford plea. The models were fit with the survey multinomial logistic program in Stata (StataCorp, 1997). Standard errors were based on jackknife replicate information furnished in the data set (Codebook for ICPSR 4572 Survey of Inmates in State and Federal Correctional Facilities, 2004; U.S. Department of Justice, Bureau of Justice Statistics, 2007).

To guard against the problem of false positive results with multiple outcomes and significance tests, for each equation we included an adjusted *F* test that all coefficients (except the constant) were zero; the alternative hypothesis is that one or more coefficients are non-zero. A value of zero for a coefficient for an equation indicates that the variable did not distinguish the equation plea type from the Alford plea. A positive coefficient indicates that inmates with a higher value for the variable are more likely to have entered the plea type than an Alford plea; a negative coefficient indicates that inmates with lower values for the variable are more likely to have an Alford plea than the equation plea type. We note that coefficients are not to be interpreted as correlations. Rather, the coefficients are logarithms of the ratios of relative risks. Finally, the constant terms are omitted, as they reflect only the relative prevalence of the different pleas.

As shown in Table 4, no meaningful differences emerged between Alford pleas and traditional guilty or no contest pleas. The global *F* tests show that most, if not all, of the variables, have minimal impact. Those who conferred more times with their attorney were slightly more likely to be Alford plea takers than guilty or no contest plea takers, but these variables did not quite achieve significance (i.e. $p < .10$).

In contrast, the global *F* test was significant for factors related to the probability of an Alford plea relative to a not guilty plea. Individually significant factors were age and number of times an individual spoke to a lawyer. When multiple factors were considered simultaneously, higher age and a higher number of times inmates claimed to have spoken with their lawyer increased the probability of entering an Alford plea in comparison to a not guilty plea. We note that the effects are “adjusted” for the presence of all other variables in the model, and as such these results can appear

different from the bivariate analyses. Failure of other individual variables to achieve statistical significance may have arisen because of multicollinearity.

Although we found that the global test was only significant for Alford versus not guilty plea takers, we questioned whether traditional guilty and no contest would show similar results when contrasted against not guilty. Thus, we conducted the same models to compare not guilty against guilty and no contest, as well as guilty against no contest (Table 4). The global F test comparing guilty and no contest pleaders was not significant, and none of the individual factors was significant.

When guilty and no contest plea were contrasted with not guilty pleas, both global F tests were significant. As shown in Table 4, in comparison to not guilty plea takers, both no contest and traditional guilty plea takers were significantly younger, less likely to be African American, and spent fewer days in jail pre-prison (this latter effect was only marginally significant for no contest pleaders). Further, when contrasting guilty and not guilty pleaders, more years of schooling and having been diagnosed with a learning disability increased the likelihood of pleading not guilty. These education-related findings did not emerge when not guilty pleas were contrasted with Alford and no contest pleas.

Sentence Outcomes

Our final set of analyses concerned sentence outcomes. We examined the maximum number of years sentenced and rates of life and death sentences. In the sample, the maximum number of years that inmates reported ranged from 0 to 370 years. We thus categorized the data into four groups: 0–15 years, 16–35 years, 36–99 years, and 100 years or more. In the last category, we included inmates who received life or death sentences. As shown in Figure 7, inmates in the three guilty plea groups received consistent sentences across the four categories. Not surprisingly, inmates who pleaded not guilty and were subsequently convicted received much harsher sentences than all guilty pleaders.

We also examined life and death sentences separately. Life sentences included sentences that were provided as a range (e.g. 20 to life) and as a flat sentence. Consistent with common knowledge about plea bargains, persons who pleaded not

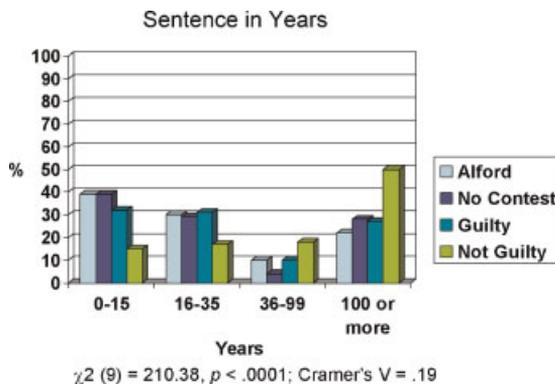


Figure 7. Sentence in years by plea type.

guilty (and were convicted) were much more likely to receive a life sentence (45.7%) than the three types of guilty pleader (20.9–26.6%; Table 3). Similarly, only three traditional guilty pleaders received a death sentence, whereas 32 not guilty pleaders did. None of the Alford and no contest pleaders received a death sentence. Overall, findings on sentence-related outcomes revealed that inmates who pleaded guilty, regardless of the mechanism, received sentence discounts not afforded to inmates who pleaded not guilty and were convicted at trial.

DISCUSSION

The overarching purpose of the present paper was to examine the demographic and legal characteristics of individuals who enter Alford pleas, as well as to compare them with individuals who enter no contest, traditional guilty, and not guilty pleas. In doing so, we aimed to invigorate more research on Alford pleas and the people who enter them.

Similar to the state inmate data collected in 1997 (Wolf Harlow, 2000), we found that about 6.5% of all pleas were Alford pleas. Using the weights provided to estimate population rates, there were approximately 76,000 state prison inmates in 2004 who reported entering an Alford plea. Approximately half of the “Alford plea” inmates were incarcerated for violent crimes, such as murder, sexual offenses, and assault. About one-quarter were incarcerated for property crimes, one-fifth for drug-related crimes, and only 4% for public-order crimes. These proportions by type of crime for Alford pleaders were very similar to rates for no contest and traditional guilty pleaders. In contrast, not guilty pleaders were much more likely to be convicted and incarcerated for violent crimes (about 75%; see Table 2).

In regard to sexual offenses specifically, we found that the rate of 13.3% for Alford pleaders was in the mid-range between rates of 10.8% for traditional guilty, and rates of 15.7% for no contest and 15.1% for not guilty pleaders. Of inmates convicted of sexual offenses, only 7% were Alford pleaders, 14% were no contest, 51% were traditional guilty, and 28% were not guilty pleaders (Table 2). Although there is speculation that Alford pleas are over-represented among sexual offenders or that sexual offenders are over-represented among Alford pleas, we did not find support for this. It is commonly held that, because sex offenders are among the most reticent to admit their crimes (when guilty), they will take the Alford plea option when allowed (Bibas, 2003a,b; Wexler, 2003). What we cannot discern from these data is the number of defendants charged with sex offenses who attempted to enter Alford pleas but were denied by judges.

In the introduction, we presented two possible scenarios concerning similarities of Alford pleaders versus other types of pleader. The first possibility was that Alford pleaders would appear similar on individual difference and legal characteristics to no contest and traditional guilty pleaders because all fall under the label of “guilty pleader.” Moreover, Alford and no contest pleas often are lumped together despite differences between them. The second possibility was that Alford pleaders would appear similar to not guilty pleaders because both groups publicly claim to be innocent. In the below discussion, we focus on the multivariate findings, as they considered several factors simultaneously. In addition, although there were some

statistically significant effects in the bivariate analyses, all had quite low effect sizes, indicating that differences were not especially meaningful.

At a general level, we found more support for the first scenario. When we examined factors that predicted likelihood of entering Alford pleas against traditional guilty and no contest pleas, few differences arose. Further, we found that Alford, no contest, and traditional guilty pleaders received very similar sentences. All three types were nearly equally likely to receive a sentence that included life in prison or death. In contrast, not guilty pleaders were almost two times more likely to receive a life sentence. And, although death sentences were rare in this sample, not guilty pleaders who were convicted were much more likely to be handed down this sentence. It is clear from these sentence data that Alford (and no contest) pleaders benefit from the deals or bargains that typify guilty pleas. We did not find that Alford pleaders were 'punished' for insisting on their innocence.

At the same time, however, despite finding few differences between the three types of guilty pleader, when each form was contrasted against not guilty pleas we did not always uncover the same patterns when multiple factors were considered. First, whereas older age increased the possibility of pleading not guilty when contrasted against no contest and traditional guilty pleas, an opposite pattern (i.e. younger age) was detected when not guilty and Alford pleas were contrasted. Second, significant findings pertaining to education (years in school and learning disabilities) only emerged when not guilty and guilty pleaders were contrasted (though we note that Alford and no contest pleas had smaller sample sizes and possibly less power to detect differences). Third, being an African American significantly decreased the likelihood of pleading not guilty in comparison to no contest and traditional guilty pleas, but being African American did not affect likelihood of pleading not guilty when compared against Alford pleas. Thus, although previous studies have typically found that African Americans are less likely to plead guilty than non-African Americans (Frenzel & Ball, 2007; Kellough & Wortley, 2002), the present data indicate that when guilty pleas are broken down into the three types this group's plea patterns may be more nuanced.

The patterns concerning legal factors, including pre-plea/trial release, days spent in jail pre-prison, and number of times spoke to attorney pre-plea, also showed interesting differences when the three guilty plea types were contrasted against not guilty pleas. Although we had expected inmates who had pleaded guilty (all three forms) to have been less likely to have been released from jail than not guilty pleaders, we did not find this to be the case. It is possible that because we only studied inmates convicted of the most serious crime (i.e. murder) pre-plea or pre-trial release becomes less influential in plea decision-making. In less serious crimes, pleading guilty may be the ticket out of jail, as the deal could include 'time served' or probation (Kellough & Wortley, 2002). In the case of murder, prison time is almost guaranteed.

In the multivariate analyses, number of days spent in jail pre-prison significantly discriminated between risks of pleading not guilty versus traditional guilty and marginally so for no contest pleas, but not for Alford pleas. Lengthier stays in jail increased the probability of not guilty pleas over traditional guilty and no contest pleas. That a similar finding did not emerge when Alford and not guilty pleaders were contrasted is interesting, and may relate to our findings concerning the number of times inmates spoke with their attorneys before entering their pleas. First, we found

an increased likelihood of an Alford plea over that of not guilty, guilty, and no contest pleas (though only marginally more for the latter two) for inmates who spoke more often with attorneys. Second, this pattern was not found when other plea types were compared. That is, the number of times inmates spoke with their attorneys before entering a plea did not influence the likelihood of entering not guilty, guilty, or no contest pleas when contrasted against each other. A possible explanation for these findings is that Alford plea takers first rejected traditional guilty plea deals, necessitating numerous plea discussions with their attorneys before all parties agreed on the Alford plea, which in turn prolonged their pre-prison jail stays.

Finally, across all six possible plea comparisons (see Table 4) the following factors were never significant predictors of one plea type over another: male status, number of prior arrests, and number of mental health symptoms endorsed. Because we limited our comparison to murderers, the findings concerning gender and prior arrests are not surprising. Although prior studies have found gender effects when contrasting likelihood of pleading guilty versus not guilty, these studies were not limited to one crime type: a crime that is most often perpetrated by men. With regard to mental health, we had singled it out because of its relevance to plea decision-making (e.g. adjudicative competence) and to false confessions/admissions. Although we found no significant effect, we encourage future research on mental health and plea decision-making, especially for less serious crimes and when actual innocence can be determined.

Conclusions and Limitations

There are several limitations to the present study that deserve mention. First, the findings are limited to the characteristics of the individuals who entered the different pleas and do not take into consideration the characteristics of the case or other legal players, which are sure to be quite important. For example, we did not have access to details of the crimes, including a measure of the strength of the evidence. We could not assess possible pressures exerted by defense attorneys on their clients to plead one way or another or the willingness of judges to accept Alford, no contest, or guilty pleas (see Bibas, 2004). The dataset was de-identified and it was not possible to determine the jurisdictions from which inmates came, which may indicate possible trends in acceptance or non-acceptance of these pleas. Second, the inmates who pleaded not guilty in our dataset were all convicted, and thus may be different from those who are acquitted. However, acquittal rates are typically low (Cohen & Reeves, 2006). Third, the data, including our main variable of plea type, were self-report and not independently verified.

Despite these limitations, to our knowledge, the present study provides for the first time in-depth information on Alford pleaders, and for the first time examines factors distinguishing between traditional, no contest, and Alford guilty pleas. Although Alford pleas represent only 6.5% of all pleas and 8.5% of guilty-type pleas, the sheer number of them—76,000—is quite striking. As stated at the outset, we could not address whether Alford pleaders are truly innocent in the present study. Whether innocent defendants are equally distributed among the four plea types is also an open question. If there were a mechanism to determine who was innocent and who was guilty (sans DNA), wrongful arrests and convictions would not be the

problem that they are. Nevertheless, there are many who would argue that, even if only a small percentage of these 76,000 inmates were innocent, it would be too many.

Given that the identification of wrongfully convicted persons is only going to increase, further research on Alford pleas and the innocent insisters who enter into these pleas is needed. Although the majority of exonerees in identified wrongful conviction cases pleaded not guilty, it is widely believed that innocents who pleaded guilty would be more difficult to identify but more prevalent given the sheer number of cases resolved via guilty pleas (see Garrett, 2008; Gross, Jacoby, Matheson, Montgomery, & Patil, 2005; Redlich, in press). Arguably, an appropriate starting point to systematically investigate actual innocence among those who have pleaded guilty would be Alford pleas. First, they unambiguously claim to be innocent. Second, unlike traditional guilty pleas, sufficient evidence of guilt should have been established (by means other than the plea itself), indicating that there may be a richer set of documentation and legal records from which to investigate.

A commonly held belief is that defendants allowed to take Alford pleas are indeed guilty, despite their protestations of innocence (Bibas, 2003a, b). Of course, there are innocents among guilty pleaders and the truly guilty among not guilty pleaders (even among those acquitted). This commonly held belief that most Alford pleaders are guilty is bolstered by the notion that a third party (i.e. a judge) reviewed the evidence and found there to be sufficient indices of guilt. However, with the increasing number of wrongful arrests and convictions being identified along with an increased understanding of the contributing causes, whether one person's subjective review of the strength of evidence can be considered reliable is highly questionable. Defendants' and inmates' claims of innocence can no longer be automatically viewed with disdain and disbelief, even when there is seeming evidence to the contrary. The 223 to-date identified wrongfully convicted persons and the countless others yet to be identified demonstrate this all too well.

REFERENCES

- Albonetti, C. A. (1990). Race and the probability of pleading guilty. *Journal of Quantitative Criminology*, 6, 315–334.
- Alschuler, A. W. (2003). Straining at gnats and swallowing camels: The selective morality of Professor Bibas. *Cornell Law Review*, 88, 1412–1424.
- Appelbaum, K. L., & Appelbaum, P. S. (1994). Criminal justice-related competencies in defendants with mental retardation. *Journal of Psychiatry and Law*, 22, 483–503.
- Ball, J. D. (2006). Is it a prosecutor's world? Determinants of count bargaining decisions. *Journal of Contemporary Criminal Justice*, 22, 241–260.
- Barksdale, T. (2007). Piedmont profile—(Not) guilty: Lawyer in case that led to Alford plea says he worried about later questions. *Winston Salem Journal*. Retrieved June 5, 2007 from http://www.accessmylibrary.com/coms2/summary_0286-30144461_ITM.
- Bibas, S. (2003a). Harmonizing substantive criminal law values and criminal procedure: The case of Alford and Nolo Contendere pleas. *Cornell Law Review*, 88, 1361–1412.
- Bibas, S. (2003b). Bringing moral values into a flawed plea bargaining system. *Cornell Law Review*, 88, 1425–1432.
- Bibas, S. (2004a). Plea bargaining outside the shadow of trial. *Harvard Law Review*, 117, 2463–2547.
- Cohen, T. H., & Reaves, B. A. (2006). *Felony defendants in large urban counties, 2002* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.
- Durose, M. R., & Langan, P. A. (2005). *State court sentencing of convicted felons, 2002 statistical tables*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

- Frenzel, E. D., & Ball, J. D. (2007). Effects of individual characteristics on plea negotiations under sentencing guidelines. *Journal of Ethnicity in Criminal Justice*, 5, 59–82.
- Garrett, B. L. (2008). Judging innocence. *Columbia Law Review*, 100, 101–190.
- Gross, S. R., Jacoby, K., Matheson, D. J., Montgomery, N., & Patil, S. (2005). Exonerations in the United States 1989 through 2003. *The Journal of Criminal Law and Criminology*, 95, 523–560.
- Hodge, S. K., Poythress, N. G., Bonnie, R. J., Monahan, J., Eisenberg, M., & Feucht-Haviar, T. (1997). The McArthur adjudicative competence study: Diagnosis, psychopathology, and competence-related abilities. *Behavioural Sciences and the Law*, 15, 329–345.
- Innocence Project Report. (2007). *200 exonerated: Too many wrongfully convicted*. New York: Benjamin N. Cardozo School of Law, Yeshiva University.
- Kassin, S. M., & Gudjonsson, G. H. (2004). The psychology of confessions: A review of the literature and issues. *Psychological Science in the Public Interest*, 5, 33–67.
- Kellough, G., & Wortley, S. (2002). Remand for plea: Bail decisions and plea bargaining as commensurate decisions. *British Journal of Criminology*, 42, 186–210.
- Long, J. S. (1997). *Regression models for categorical and limited dependent variables*. Thousand Oaks, CA: Sage.
- North Carolina v. Alford, 400 U.S. 25 (1970).
- Perske, R. (2004). Understanding persons with intellectual disabilities in the criminal justice system: Indicators of progress? *Mental Retardation*, 42, 484–487.
- Redlich, A. D. (2004). Mental illness, police interrogations, and the potential for false confession. *Psychiatric Services*, 55, 19–21.
- Redlich, A. D. (in press) False confessions, false guilty pleas: Similarities and differences. In G. D. Lassiter, & C. Meissner (Eds.), *Interrogations and confessions: Current research, practice, and policy*. Washington, DC: APA Books.
- Redlich, A. D., & Drizin, S. (2007). Police interrogation of youth. In C. L. Kessler, & L. Kraus (Eds.), *The mental health needs of young offenders: Forging paths toward reintegration and rehabilitation* (pp. 61–78). Cambridge, U.K.: Cambridge University Press.
- Shipley, C. J. (1987). The Alford plea: A necessary but unpredictable tool for the criminal defendant. *Iowa Law Review*, 72, 1063–1089.
- StataCorp. (2007). *Stata statistical software: Release 10*. College Station, TX: StataCorp.
- U.S. Department of Justice, Bureau of Justice Statistics. (2007). *Survey of inmates in state and federal correctional facilities, 2004* [computer file]. ICPSR04572-v1. Ann Arbor, MI: Inter-University Consortium for Political and Social Research [producer and distributor]. Retrieved April 16, 2007 from <http://www.icpsr.umich.edu/cocoon/ICPSR/STUDY/04572.xml>.
- Ward, B. H. (2003). A plea not taken: Why criminal defendants should avoid the Alford plea. *Missouri Law Review*, 68, 913–943.
- Wexler, D. B. (2003). Sex offenders and the plea process. In B. J. Winick, & D. B. Wexler (Eds.), *Judging in a therapeutic key: Therapeutic jurisprudence and the courts* (pp. 165–169). Durham, NC: Carolina Academic.
- Wolf Harlow, C. (2000). *Defense counsel in criminal cases*. Bureau of Justice Statistics Special Report. U.S. Department of Justice, Office of Justice Programs.