SEEKING JUSTICE, COMPROMISING TRUTH? CRIMINAL ADMISSIONS AND THE PRISONER'S DILEMMA

Robert J. Norris and Allison D. Redlich***

I. INTRODUCTION

When the body of twenty-eight-year-old Trisha Meili was found in Central Park in the early morning hours of April 20, 1989, a firestorm began.[1] At the time, New York City was rife with social problems: fear of terrorist attacks, the growing AIDS epidemic, homelessness, failing school systems, and increasing levels of crime had captivated residents' attention.[2] So when a successful white female was brutally attacked on the same night that a large group of black and Latino youths were "wilding"[3] in the park, a frenzy of media buzz and public outcry ensued.[4]

Although dozens of youths had been involved in the activities in the park that night,[5] five were eventually targeted as the prime suspects in the rape and assault: Raymond Santana and Kevin Richardson were fourteen years old; Yusef Salaam and Antron McCray were fifteen; and Korey Wise was sixteen, legally an adult in the state of New York.[6] The boys were surely frightened and confused, but, being young and innocent, certainly could not fathom the horror that was to come.[7]

* Ph.D. Candidate (ABD), School of Criminal Justice, University at Albany

** Associate Professor, School of Criminal Justice, University at Albany; Ph.D., University of California, Davis

1 *See* SARAH BURNS, THE CENTRAL PARK FIVE: A CHRONICLE OF A CITY WILDING ix, 29 (2011).

2 *See id.* at 8–12.

3 The term "wilding" was often used to describe the events in the park that night. *See id.* at 21, 69–70. It was described as "street slang for going berserk." *Id.* at 69 (quoting Pat Carroll, *Park Marauders Call it "Wilding" . . . and it's Street Slang for Going Berserk*, N.Y. DAILY NEWS, Apr. 22, 1989, at 1).

4 BURNS, *supra* note 1, at ix, 19, 66–67, 71–74.

5 *See id.* at 19, 21.

6 *See id.* at 3–4, 6, 19, 21, 56, 97–98.

7 The five men discuss their experiences in the recent documentary *The Central Park Five* (PBS television broadcast Apr. 16, 2013).

The five teens were all detained and interrogated over prolonged periods of time, some more than twenty hours.[8] All five youths eventually admitted to taking part in the rape and assault, and, despite the fact that no other meaningful evidence linked them to the crime, were convicted.[9] They all served between five and nearly twelve years.[10] It was not until 2002, when another inmate named Matias Reyes confessed to the crime and DNA testing showed him to be the perpetrator, that the Central Park Five were exonerated.[11]

The Central Park Jogger case stands as an infamous stain on the fabric of American criminal justice, displaying the fragility and vulnerability of the system to error. Overtones of race, class, and politics color the case in ways reminiscent of pre-Civil Rights-Era cases, such as that of the Scottsboro Boys in the 1930s.[12] But in terms of the investigatory process, perhaps the most important lesson to be learned from the Central Park Jogger case relates to interrogations and false confessions. The NYPD detectives used a variety of techniques in their attempts to elicit confessions from the suspects, including basic intimidation and the "good cop-bad cop" routine.[13]

Detectives also used a take on the classic Prisoner's Dilemma, meaning that each suspect was informed that the others were talking and implicating him in the crime. As Raymond Santana describes it, "[Detective] Hardigan sat down and he said, 'Look, Ray, I know you didn't do anything wrong, but the other guys, right now,

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[8] *See* BURNS, *supra* note 1, at 41–45, 60 (describing Raymond Santana's detention and questioning, including his video-recorded statement taken more than twenty-seven hours after he arrived at the precinct); *Raymond Santana*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Raymond_Santana.php (last visited July 19, 2014).

[9] *See* BURNS, *supra* note 1, at 56, 103, 177. In fact, the initial forensic analysis did not match any of the five suspects, and appeared to be from a single donor. *Id.* at 113–14; *The Central Park Five*, *supra* note 7, at 1:05:26.

[10] The four younger defendants served between five and six years. *See Antron McCray*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Antron_McCray.php (last visited July 21, 2014); *Kevin Richardson*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Kevin_Richardson.php (last visited July 21, 2014); *Raymond Santana*, *supra* note 8; *Yusef Salaam*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Yusef_Salaam.php (last visited July 21, 2014). Korey Wise, who was tried and convicted as an adult, served more than eleven years. *Korey Wise*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Korey_Wise.php (last visited July 21, 2014).

[11] *See* BURNS, *supra* note 1, at 188–89, 195; *Raymond Santana*, *supra* note 8.

[12] *See generally* N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1346–47, 1350, 1357–60 (2004) (discussing the role race played in the Central Park Five case and comparing the public discourse surrounding the case to the public discourse surrounding the Scottsboro case).

[13] *See* BURNS, *supra* note 1, at 37–48, 51–65. The five men also describe some of the tactics used in the documentary. *The Central Park Five*, *supra* note 7, at 23:30.

they're in other precincts and they're saying that you did it.'"[14] A similar approach was used with Kevin Richardson: "And they're telling me, 'Well, you're not saying nothing, but these guys put your name in it.'"[15] Basically, the detectives were using a version of the Prisoner's Dilemma paradigm by playing the juvenile suspects against one another, a tactic that would prove to be quite effective.

But why would seasoned law enforcement officers, so early into a major investigation and without physical evidence, press so diligently to secure confessions from a group of teenagers? Were the false confessions of these five youths knowingly coerced by rogue officers, or was this just a byproduct of a faulty, though well-intentioned, criminal investigation process?

We do not assert to provide complete answers to these questions in this article. We do, however, step back and contend that the difficulty in assessing many criminal admissions lies, to some degree, in the fundamental nature of attempting to do so. Specifically, many situations in which an admission of guilt is sought—whether by the police through interrogation or by the prosecutor through plea bargaining—call into question the core purpose of these processes. In seeking to obtain an admission of guilt from a suspect or defendant, is the system seeking both truth and justice? Or, perhaps, is one (or both) compromised?

After discussing these issues, we present an experimental study of one particular tactic commonly used to secure admissions: the well-known Prisoner's Dilemma. We report our study design and results, and then again broaden the discussion to what these results mean for the larger picture of criminal admissions, and the perennial debate on truth versus justice.

II. THE TENSION BETWEEN TRUTH AND JUSTICE

It is unlikely that the detectives who interrogated the Central Park Five believed they were doing anything wrong. And, in a sense, they were correct. Given the complex social and political situation in which the heinous crime occurred, it is far more likely that the officers felt enormous pressure to solve the case quickly, and truly believed they had the guilty parties in their grasp.[16]

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[14] *The Central Park Five*, *supra* note 7, at 30:21.

[15] *Id.* at 30:30.

[16] It is reported in the documentary that several of the officers were seen celebrating shortly after the arrests and confessions had been made. *Id.* at 51:29. Furthermore, even after the exoneration of the five young men—based on a confession of the real perpetrator

Thus, the actions of the officers may not have seemed wrong or unethical, but wholly justified and arguably even necessary.[17] But the fact that this process could lead to a series of factual errors calls into question the core of the process itself. Those involved in the case were following the procedures necessary to pursue what they, and much of the community, perceived to be justice, but in so doing, failed to find the truth, and even indirectly contributed to future injustices as Reyes committed additional rapes and a murder.[18]

At the heart of the tension between truth and justice is an issue of perceived meaning. In the context of a criminal case, there is ultimately one *truth* that really matters: a crime or set of crimes was committed,[19] and a person or group of people carried out the actions.[20] When it comes to justice, however, a question posed by Crank and Proulx serves as an important starting point: "Can justice ever be a known, or for that matter even a knowable quantity in any sort of scientific sense?"[21] Though they tackle the matter for esoteric academic purposes, the point is relevant for our discussion of criminal justice practice as well. Unlike pursuing

whom the DNA matched—the NYPD still believed they had taken part in the attack, challenging the perpetrator's claim that he had acted alone. *See* Susan Saulny, *Convictions and Charges Voided in '89 Central Park Jogger Attack*, N.Y. TIMES, Dec. 20, 2002, at A1.

[17] This may be referred to as "noble-cause corruption," which we discuss later in this article. *See infra* text accompanying notes 59–61. On noble-cause corruption generally, see MICHAEL A. CALDERO & JOHN P. CRANK, POLICE ETHICS: THE CORRUPTION OF NOBLE CAUSE *passim* (rev. 3d ed. 2011).

[18] *See* Chris Smith, *Central Park Revisited*, N.Y. MAG., Oct. 21, 2002, at 28, 32–33, 84.

[19] Or, alternatively, what is perceived to be a criminal action, even if none occurred. That is, it is possible that criminal justice actors may believe a crime occurred when, in fact, it did not. As reported by the National Registry of Exonerations, one in five exonerations is a "no crime" case. *One out of Five Known Exonerations Is for a Crime that Never Happened*, NAT'L REGISTRY EXONERATIONS (Nov. 13, 2013), http://hosted.verticalresponse.com/1438491/60b961faeb/546806695/58c46ec68e/. Even the very first wrongful convictions in the United States, those of Stephen and Jesse Boorn, involved a murder that did not actually occur. *See First Wrongful Conviction: Jesse Boorn and Stephen Boorn*, NORTHWESTERN L., http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/exonerations/vt/boorn-brothers.html (last visited July 21, 2014).

[20] This is not to say that there is generally one universal truth to all things. There is a long history of scholarship in the social constructionist tradition, which takes a critical approach to understanding social problems. For a more general discussion of this perspective and its application to criminal justice, see PETER B. KRASKA & JOHN J. BRENT, THEORIZING CRIMINAL JUSTICE: EIGHT ESSENTIAL ORIENTATIONS 151–56 (2d ed. 2011); Nicole Hahn Rafter, *The Social Construction of Crime and Crime Control*, 27 J. RES. CRIME & DELINQ. 376–77 (1990). For some discussion of the constructionist approach as applied specifically to miscarriages of justice, see Robert J. Norris & Catherine L. Bonventre, *Advancing Wrongful Conviction Scholarship: Toward New Conceptual Frameworks*, JUST. Q. 12–14 (2013), http://www.tandfonline.com/doi/full/10.1080/07418825.2013.827232#.UxzE5c7-Ics.

[21] John P. Crank & Blythe Bowman Proulx, *Toward an Interpretive Criminal Justice*, 18 CRITICAL CRIMINOLOGY 147, 150 (2010).

truth through the criminal process, pursuing justice is less clear, as the meaning of justice itself is much more fluid. Rather than any sort of universal truths, the various definitions one can give for justice "at all levels, are cultural and social constructions of particular human traditions."[22]

Crank and Proulx describe several ways in which justice might be conceptualized. They first consider Siegel's "justice process," which, as the name suggests, thinks of justice as the actual process through which offenders are captured, convicted, and punished.[23] On the other hand is the concept of social justice as described by Lynch and Stretesky.[24] According to this definition, "a society is not just if it does not provide for its members' needs, or if it perpetuates inequalities," which calls into question the racial and socioeconomic inequalities seen in American criminal justice practice.[25]

Finally, Crank and Proulx describe a more normative approach to defining justice.[26] As they note, "[t]he Dictionary of Criminal Justice defines justice as . . . 'the purpose of a legal system.'"[27] This, however, is complicated by the fact that the purpose of the legal system is not itself an objective concept, but rather a subjective determination influenced by social, cultural, political, and historical factors.[28] Much wrongful conviction research, for instance, carries an implication that the protection of the innocent should be the highest priority of the system.[29] From this perspective, the pursuit of justice would be in line with the classic "Blackstone ratio," which proposes that it is more appropriate to allow a certain number of guilty offenders go free than to wrongly convict the innocent.[30] On the other hand, historically, it has often been put forth that the primary purpose of criminal justice is efficiency in executing some standard of crime control. Rather than focus on protecting the

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[22] *Id.* at 153.

[23] *See id.* at 151 (citing LARRY J. SIEGEL, CRIMINOLOGY 495 (9th ed. 2006)).

[24] Michael J. Lynch & Paul B. Stretesky, *Marxism and Social Justice: Thinking About Social Justice, Eclipsing Criminal Justice*, *in* SOCIAL JUSTICE/CRIMINAL JUSTICE 14, 16–17 (Bruce A. Arrigio ed., 1999).

[25] Crank & Proulx, *supra* note 21, at 151; *see also* Lynch & Stretesky, *supra* note 24, at 16–17 ("[A] society exhibits social justice when it (a) provides for the needs of the members of society and (b) when it treats its people in an equal manner.").

[26] Crank & Proulx, *supra* note 21, at 151.

[27] *Id.* at 151. It is unclear what "Dictionary of Criminal Justice" the authors are referring to, as several volumes share that name or some variation of that name.

[28] For a general discussion of this, see Norris & Bonventre, *supra* note 20, at 9–14.

[29] *Id.* at 8.

[30] The so-called "Blackstone ratio" comes from the words of William Blackstone who, in the mid-eighteenth century, declared, "it is better that ten guilty persons escape than that one innocent suffer." 4 WILLIAM BLACKSTONE, COMMENTARIES *358.

innocent, then, this crime control perspective might emphasize processing efficiency and conviction of the guilty, and would be willing to accept some factual error rate.[31] That is, the pursuit of justice is a desire to maintain systemic "equilibrium and efficiency, sometimes to the extent that efficient processing becomes a higher priority than achieving an accurate outcome."[32]

These different ways of thinking about the purpose of criminal justice are by no means exhaustive.[33] But the key point remains, what it means to pursue *justice*, and where and how finding the actual *truth* fits into that pursuit, is contingent on what one considers to be the fundamental purpose of the system.

Much of the previous discussion has focused on this tension between truth and justice in an abstract way, concerned only with ultimate outcomes: convicting the guilty versus protecting the innocent. There is no doubt, however, that the importance of this discussion trickles down throughout the entire criminal justice process. And a crucially important aspect of this process is the securing of a guilty admission. As recently stated by Barry Feld, "[t]he interrogation room is the trial—confessions determine guilt."[34] At its very core, the desire to have suspects and defendants admit guilt—whether through interrogations or plea bargains—and essentially provide the basis of factual guilt the state needs to meet its burden, raises questions regarding the search for truth and the pursuit of justice.

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[31] *See* Norris & Bonventre, *supra* note 20, at 8. Research has also found that a country's lower concern for punishing the innocent was associated with the country's higher reliance on plea bargaining. *See* Yehonatan Givati, *The Comparative Law and Economics of Plea Bargaining: Theory and Evidence* 16–18 (Harvard John M. Olin Ctr. for Law, Econ., & Bus., Discussion Paper No. 39, 2011), *available at* http://www.law.harvard.edu/programs/olin_center/fellows_papers/pdf/Givati_39.pdf.

[32] Norris & Bonventre, *supra* note 20, at 8 (citation omitted); *see also* Thomas J. Bernard et al., *General Systems Theory and Criminal Justice*, 33 J. CRIM. JUST. 203, 209 (2005) ("Systems normally strive to achieve an optimal rate of defectiveness that balances quality and efficiency . . . .").

[33] For more on social scientific theorizing about the criminal justice system, see generally, KRASKA & BRENT, *supra* note 20, *passim*. For a discussion of how their theoretical orientations relate specifically to miscarriages of justice, see Norris & Bonventre, *supra* note 20, at 3–15.

[34] BARRY C. FELD, KIDS, COPS, AND CONFESSIONS: INSIDE THE INTERROGATION ROOM 7 (2013).

A. Seeking Criminal Admissions: Interrogations and Plea Bargaining

Interrogations and plea bargaining occur at distinctly different points in the criminal process, but, as Richard Leo points out, the logic behind them is "remarkably similar."[35] Ultimately, they both are designed to induce the suspect or defendant to admit guilt in exchange for at least the perception of leniency.[36] That is, "both are based on creating resignation, fear, and the perception that the only way to mitigate punishment is by accepting the state's deal."[37] As such, both interrogation and plea bargaining can be remarkably effective in persuading a suspect or defendant to admit his or her involvement in a criminal act.

Beyond just seeking a similar outcome, interrogations and plea bargaining share in another aspect, in that "[b]oth play on our culture's equation of confession with truth while hiding from public view how the truth was determined or constructed."[38] And in both scenarios, the state agents involved tend to rationalize this sharing of the perceived truth as a remorseful act, rather than a human reaction to the coercive authority with which the suspect is presented.[39] It is these shared aspects that lead us to question whether the processes are designed to discover the truth or pursue some other notion of justice.

Both interrogations and plea bargaining are built on a presumption of guilt. As experts have noted, in the United States, suspects are not interrogated unless they are believed to be guilty.[40] The sole purpose of the interrogation, then, becomes securing a confession from the guilty party.[41] Surely, to get a confession from a

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[35] RICHARD A. LEO, POLICE INTERROGATION AND AMERICAN JUSTICE 31 (2008); *see also* Allison D. Redlich, *False Confessions, False Guilty Pleas: Similarities and Differences*, *in* POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY 49, 59–62 (G. Daniel Lassiter & Christian A. Meissner eds., 2010) (highlighting the similarities and differences between false confessions and false guilty pleas).

[36] *See* Redlich, *supra* note 35, at 61 ("[A]lthough the leniency associated with false guilty pleas is perceived and actual, the leniency associated with false confessions may only be perceived.").

[37] LEO, *supra* note 35, at 31.

[38] *Id.* at 32.

[39] *Id.*

[40] *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 LAW & HUM. BEHAV. 3, 6 (2010).

[41] *See id.*

truly guilty person is a step towards achieving justice, and if the police have already secured strong evidence of the suspect's guilt, this purpose might be warranted. Even with weak or no evidence, though, some police will formulate a theory of the crime and use their intuition, or "sixth sense," to focus on a particular subject.[42] Thus, regardless of the strength of the evidence against a suspect, the interrogation is built on the presumption of guilt. This presumption, and the resulting single-mindedness of the interrogation, may compromise the search for truth. Sometimes referred to as "tunnel vision," the focus of police on a particular suspect and their desire to secure a confession from that suspect may result in a sloppy, incomplete, or biased investigation, as was seen in the Central Park Jogger case and numerous others.[43] Some of these issues have been recognized in other parts of the world, such as England, Australia, and New Zealand, where the confrontational, guilt-presumptive style of interrogation has been replaced with more neutral "investigative interviewing" techniques.[44] Indeed, a defining feature of investigative interviewing is truth-seeking as opposed to confession-seeking.[45]

The problems with the presumption of guilt and tunnel vision are not unique to police officers and criminal interrogations. A prosecutor will, or at least should, be unlikely to pursue a plea bargain with a defendant if their guilt is in question.[46] As with an

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[42] LEO, *supra* note 35, at 29–30; Richard A. Leo, Miranda*'s Revenge: Police Interrogation as a Confidence Game*, 30 LAW & SOC'Y REV. 259, 268 (1996).

[43] *See* BURNS, *supra* note 1, at 126. For more on tunnel vision, see generally Keith A. Findley & Michael S. Scott, *The Multiple Dimensions of Tunnel Vision in Criminal Cases*, 2006 WIS. L. REV. 291, 292–295; Dianne L. Martin, *Lessons About Justice From the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847 *passim* (2002).

[44] *See, e.g.*, GISLI H. GUDJONSSON, THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK 619 (2003); MARY SCHOLLUM, INVESTIGATIVE INTERVIEWING: THE LITERATURE 44 (2005), *available at* http://www.police.govt.nz/sites/default/files/publications/investigative-interviewing-literature-2005.pdf.

[45] *See* GUDJONSSON, *supra* note 44, at 619; SCHOLLUM, *supra* note 44, at 11.

[46] It is important to remember that the duty of a prosecutor, at least in theory, is to seek justice, not merely secure convictions. The American Bar Association's Model Rules of Professional Conduct state that "[a] prosecutor has the responsibility of a minister of justice and not simply that of an advocate." MODEL RULES OF PROF'L CONDUCT R. 3.8 cmt. 1 (2013). As such, a prosecutor theoretically should not steadfastly pursue a plea bargain if the guilt of the defendant is questionable. We do not mean to suggest, however, that the duty of the prosecutor is easy or especially clear. While they are, on the one hand, supposed to be agents of justice, they are, on the other, agents of the state, and may feel enormous pressure to secure convictions. For more on this general conundrum and its impact on innocent defendants, see DANIEL S. MEDWED, PROSECUTION COMPLEX: AMERICA'S RACE TO CONVICT AND ITS IMPACT ON THE INNOCENT 53–68 (2012).

interrogation, if this presumption of guilt is based on solid evidence of the defendant's guilt, the pursuit of a speedy resolution through plea bargaining might be warranted. But it is also important to remember that the prosecutor's beliefs about a suspect's guilt are heavily influenced by the investigation conducted by police. And if the investigation is substandard or tainted, the prosecutor's presumption of guilt may be unfounded. In this way, interrogations and plea bargaining are not only similar in logic, but closely linked in practice, in that the former can strongly influence the latter.

Interrogation has been described as "pre-plea bargaining"[47] or "'plea bargaining' *without* defense counsel."[48] A suspect who confesses during interrogation will often plead guilty; having already admitted involvement in a criminal act, he or she has little incentive to go to trial and attempt to prove innocence, while risking a harsher conviction and sentence.[49] Even *false* confessions serve to induce plea bargains.[50] Thus, both confessions and plea bargains serve the criminal justice process well by increasing "efficiency and predictability" in terms of case outcomes.[51] And, as noted earlier, if one believes the key goal of the criminal justice system is efficiency, even if at the expense of factual truth in some cases, this pursuit may be considered just. But the drive to increase efficiency in processing defendants and predictability in outcomes through interrogations and plea bargaining yields a more fundamental question regarding our system and the pursuit of truth versus justice.

The American adversarial system has several goals, chief among them are the checking of state power, protection of the accused's rights, and the promotion of truth-finding.[52] In theory, the system relies on a division of labor; the investigative function is supposedly separate from the prosecutorial, adjudicative, and penal functions.[53] In terms of deciding the truth that will shape the ultimate outcome, the adversarial system presumes both sides—prosecution and

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[47] LEO, *supra* note 35, at 32.

[48] YALE KAMISAR, POLICE INTERROGATION AND CONFESSIONS: ESSAYS IN LAW AND POLICY 40 (1980).

[49] *See* FELD, *supra* note 34, at 6–7; LEO, *supra* note 35, at 31.

[50] *See* Redlich, *supra* note 35, at 60 (reporting that among exonerated false guilty pleaders, 54.5% had also falsely confessed; in contrast, among exonerees who went to trial, only 13% had falsely confessed).

[51] LEO, *supra* note 35, at 30.

[52] *See, e.g.*, LEO, *supra* note 35, at 13–16; DAN SIMON, IN DOUBT: THE PSYCHOLOGY OF THE CRIMINAL JUSTICE PROCESS 209–10 (2012); Ellen E. Sward, *Values, Ideology, and the Evolution of the Adversary System*, 64 IND. L.J. 301, 302 (1989).

[53] LEO, *supra* note 35, at 16–17.

defense—will have equally-matched lawyers, with clearly-defined roles, who will advocate zealously for their side.[54] Through the ardent presentation of their cases, which includes evidence of guilt or innocence, the truth will emerge, as decided by a neutral judge or jury.[55] All this while the rights of the defendant are clearly articulated and upheld. In this way, the adversarial system, in theory at least, seeks both truth and justice.

The practices of interrogation and plea bargaining, however, are at odds with this theory of the adversarial system. First, the idea of independent investigatory and prosecutorial functions may not be as clear as intended. As Leo notes, interrogations are adversarial: "Interrogators have internalized the values and goals of the adversaries (i.e., the lawyers) and emphasize case-building over impartial investigation . . . ."[56] Interrogations thus serve to increase the likelihood of conviction at trial and thus weaken the bargaining position of the defendant in plea negotiations.

Furthermore, both interrogations and plea bargaining threaten the search for truth that is at the heart of the adversarial system. Rather than relying on evaluations of the case made by impartial decision-makers (i.e., judges and juries), interrogations and plea negotiations seek quick resolutions through processes that occur largely behind closed doors, reducing the outcome of a case to a single tactical decision.[57] This goes squarely against the adversarial search for truth. This was perhaps put most bluntly by famed legal scholar Albert Alschuler, who suggested that plea bargaining is "a system that's designed to keep the truth from coming out."[58] In addition to threatening the adversarial search for truth, these processes also potentially undermine the protection of the accused's rights; by its very nature, plea bargaining offers a defendant leniency in exchange for his or her sacrificing the constitutional right to a trial.

None of this is to suggest that police interrogators or prosecutors knowingly or maliciously abandon the search for truth in a single-minded attempt to expediently clear cases. Many of the problems we have discussed are not necessarily due to the maliciousness of

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[54] *Id.*

[55] *Id.* at 17.

[56] *Id.* at 33.

[57] For more on plea bargaining see *id.*; Albert W. Alschuler, *The Changing Plea Bargaining Debate*, 69 CALIF. L. REV. 652 (1981).

[58] *Interview: Albert Alschuler*, FRONTLINE (June 17, 2004), http://www.pbs.org/wgbh/pages/frontline/shows/plea/interviews/alschuler.html.

individual actors, but rather are rooted in systemic issues. And to the extent that the problems do fall on individual interrogators or prosecutors, we do not argue that it is usually the result of blatant misconduct or ill will, but rather may be what is sometimes referred to as "noble-cause corruption."[59] This suggests that law enforcement often use teleological reasoning, or the notion that the ends justify the means. They have a desire to carry out their moral duty of capturing offenders, keeping them off the street, and increasing public safety. In attempting to do so, officers use value-based judgments in their decision-making, and may rationalize corner-cutting, coercion, or other tactics to ensure that their ultimate duty is carried out.[60] These beliefs and practices are not unique to police officers; prosecutors also find themselves dedicated to noble causes in their line of duty.[61]

The noble-cause perspective thus throws yet another wrinkle into the truth-versus-justice discussion. If police officers and prosecutors are convinced they have the guilty party, their tactics in interrogations and plea bargaining—in which they are pursuing what they honestly believe to be legitimate outcomes—may be viewed as a pursuit of what they believe to be justice. However, it remains that the nature of these processes means that the search for actual truth may be compromised.

The preceding discussion has centered on how the processes of criminal interrogation and plea bargaining, at their very core, lead us to the tension between the system's search for truth and its pursuit of justice. But if there is one very real manifestation of this tension, it is the growing number of criminal admissions proven to be false.

B. False Admissions

False admissions are nothing new; the first wrongful conviction in the United States, dating back to the early nineteenth century,

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[59] *See generally* CALDERO & CRANK, *supra* note 17, *passim* (discussing noble-cause corruption).

[60] *See generally id.* at 2. ("[Noble-cause corruption] is corruption committed in order to get the bad guys off the street, [and] to protect the innocent and the children from the predators that inflict pain and suffering on them."); Randall Grometstein, *Prosecutorial Misconduct and Noble-Cause Corruption*, 43 CRIM. L. BULL. 63, 63 (2007) (concluding that prosecutorial misconduct is particularly prevalent in "highly-publicized cases where the cause is especially noble"); Sankar Sen, *Noble Cause Corruption*, INDIAN POLICE J., Oct.–Dec. 2007, at 66, 67–68 ("Adoption of impermissible means may ultimately undermine the end.").

[61] *See* Grometstein, *supra* note 60, at 65–74.

involved false confessions.[62] In modern collections of known criminal justice errors, false admissions are consistently among the leading contributing factors. Among the first 1200 cases collected by the National Registry of Exonerations, approximately 13% involved a false confession.[63] The Innocence Project reports that approximately one-fourth of DNA exoneration cases involve self-incriminating statements, false confessions, or guilty pleas.[64]

Psychological science has taught us much about why suspects falsely confess, from dispositional characteristics (traits of the suspects themselves that may make them more susceptible) to situational factors (features of the interrogation itself that may induce false confessions).[65] False guilty pleas, while emphasized less in the research literature, share many characteristics with confessions.[66] Importantly for our purposes, both begin with an inherent problem that we identified earlier: the presumption of guilt. Almost all false admissions begin with the "misclassification error": the moment when the interrogator or prosecutor determines that the suspect or defendant in front of them is guilty of the crime.[67] As described earlier, this presumption of guilt then carries on throughout the entirety of the process.

With what we now know about false admissions—the fact that

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[62] The first wrongful conviction in the United States is considered to be the case of Stephen and Jesse Boorn, who were wrongly convicted in Vermont in 1819. *See First Wrongful Conviction*, *supra* note 19.

[63] The National Registry is the largest collection of known exonerations, beginning in 1989. *The Registry, Exonerations and False Convictions*, NAT'L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/learnmore.aspx (last visited July 21, 2014).

[64] *See False Confessions*, INNOCENCE PROJECT, http://www.innocenceproject.org/understand/False-Confessions.php (last visited July 21, 2014).

[65] For example, among known false confessors, juveniles and those suffering from mental illness or developmental disabilities are overrepresented. Regarding situational factors, certain interrogation tactics may be particularly effective, including intimidation and the presentation of false evidence. For a general review of police-induced false confessions see Kassin et al., *supra* note 40, at 14–23; *see also* LEO, *supra* note 35, at 195–236 (discussing, among other things, how police employ psychological coercion to induce confessions); Robert J. Norris & Allison D. Redlich, *At-Risk Populations Under Investigation and at Trial*, *in* CONVICTION OF THE INNOCENT: LESSONS FROM PSYCHOLOGICAL RESEARCH 13, 16–19 (Brian L. Cutler ed., 2012) (examining the psychological factors that cause police interrogation techniques to have greater effect on juveniles, the mentally ill, and those with developmental disabilities).

[66] *See* Redlich, *supra* note 35, at 59–60.

[67] Richard A. Leo & Steven A. Drizin, *The Three Errors: Pathways to False Confession and Wrongful Conviction*, *in* POLICE INTERROGATIONS AND FALSE CONFESSIONS: CURRENT RESEARCH, PRACTICE, AND POLICY RECOMMENDATIONS 9, 13 (G. Daniel Lassiter & Christian A. Meissner eds., 2010). It should be noted that this term was developed specifically in the context of interrogations. It is, however, applicable to plea bargaining as well.

they do happen with some degree of frequency, that certain tactics may induce them, and that some suspects might be more susceptible to those tactics—that we continue to pursue confessions and guilty pleas with such diligence leads to a legitimate question about whether these processes are actually seeking the *truth*, or if they are pursuing some other form of *justice*.

Another interesting fact jumps out when we examine the rates of false confessions among known wrongful convictions. Of the first 311 DNA exonerations, 19% were group exonerations (those involving more than one person). Yet when we look specifically at false confession cases (eighty-two cases), more than half of them were group exonerations.[68] Viewed in a slightly different, but perhaps more telling manner, 76% of group exonerations involved false admissions.[69] These include several very prominent cases, including the Central Park Jogger case discussed above and the infamous Ford Heights Four case in Illinois.[70]

Why is it that cases involving groups seem more likely to involve false confessions? A string of related reasons seems possible. First, juveniles are one of the groups overrepresented among known false confessors, suggesting that they are more vulnerable to modern tactics that are used to elicit admissions.[71] In addition, juveniles are more likely to commit crimes in pairs or groups than are adult offenders.[72] Thus, it may just be a perfect storm of offending patterns among those most vulnerable to false confessions. But it may also be attributable, at least in part, to the tactics used to elicit confessions and/or guilty pleas from suspects in group cases. One particular method used in group cases, the Prisoner's Dilemma[73] (PD), may be a particularly effective tactic for eliciting criminal admissions.

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[68] Stephen Saloom & Emily West, The Innocence Project, Presentation to the American Society of Criminology Annual Meeting: 300 and Counting: A Look at DNA Exonerations Today and Trends Over Time (Nov. 22, 2013).

[69] Emily West, personal communication with authors (Dec. 9, 2013).

[70] The Ford Heights Four were a group of four young African American men—Kenneth Adams, Verneal Jimerson, Willie Rainge, and Dennis Williams—who were convicted of the rape and murder of a young white couple in Chicago, Illinois. They were falsely placed at the scene by a fifth person, Paula Gray, who has also been exonerated. *See* DAVID PROTESS & ROB WARDEN, A PROMISE OF JUSTICE *passim* (1998).

[71] Kassin et al., *supra* note 40, at 19–20; Norris & Redlich, *supra* note 65, at 16–18.

[72] NAT'L INST. OF JUST., CO-OFFENDING AND PATTERNS OF JUVENILE CRIME ii (2005), *available at* https://www.ncjrs.gov/pdffiles1/nij/210360.pdf.

[73] *See* WILLIAM POUNDSTONE, PRISONER'S DILEMMA 8–9, 116–31 (1992).

III. THE PRISONER'S DILEMMA

The PD was one of the first prototypes to study decision-making. The paradigm involves two suspects, isolated from one another and questioned separately.[74] The dilemma arises in the suspect's determination to confess or deny involvement in light of his or her expectations about the decision of the co-suspect.[75] In the original PD, first developed by two RAND scientists, and then formalized by Albert Tucker,[76] suspects were told that if they and the co-suspect both confess to the crime ("CC"), each would be fined one unit; if both deny ("DD"), both would go free; and if one confessed but the other denied ("CD" or "DC"), the confessor would be rewarded one unit and the denier be fined two units.[77] Outcomes for suspects are relative and pareto-optimal, in that CD > DD > CC > DC.[78] Nevertheless, most do not defect from the expected actions of their partner; those who confess generally do so because they anticipate their co-suspect to confess, and those who deny anticipate their co-suspect to deny.[79] In the original PD studies, 54% of participants confessed and 85% cooperated with their co-suspect (i.e., CC or DD).[80]

Over the past sixty years, the PD paradigm has been used thousands of times in studies of game theory and strategy, altruism, morality, and so forth;[81] in short, to identify the conditions under which subjects do and do not cooperate.[82] Interestingly, although it takes its name and basic structure from criminal justice, it has rarely, if ever, been used to actually study criminal investigations.

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[74] *See id.* at 117–19.

[75] *See id.*

[76] *Id.* at 8; Albert Tucker, *A Two-Person Dilemma*, *in* READINGS IN GAMES AND INFORMATION 7–8 (Eric Rasmusen ed., 2001).

[77] POUNDSTONE, *supra* note 73, at 117–20.

[78] Peter Kollock, *Social Dilemmas: The Anatomy of Cooperation*, 24 ANN. REV. SOC. 183, 186 (1998).

[79] *See* Simon Gächter, *Behavioral Game Theory*, *in* BLACKWELL HANDBOOK OF JUDGMENT AND DECISION MAKING 485, 489 (Derek J. Koehler & Nigel Harvey eds., 2004).

[80] *See* David E. Kanouse & William M. Wiest, *Some Factors Affecting Choice in the Prisoner's Dilemma*, 11 J. CONFLICT RESOL. 206, 209 (1967).

[81] *See* Christian Donninger, *Is it Always Efficient to Be Nice? A Computer Simulation of Axelrod's Computer Tournament*, *in* PARADOXICAL EFFECTS OF SOCIAL BEHAVIOR 123, 124 (Andreas Diekmann & Peter Mitter eds., 1986).

[82] *See generally* POUNDSTONE, *supra* note 73, at 103–31 (providing a history of the development and application of the Prisoner's Dilemma). For example, one study found that people were more likely to cooperate if they were informed that their co-subject shared the same birthday as themselves. Dale T. Miller et al., *Minimal Conditions for the Creation of a Unit Relationship: The Social Bond Between Birthdaymates*, 28 EUR. J. SOC. PSYCHOL. 475, 477 (1998).

The basic paradigm is, however, highly germane to police and military interrogations as well as plea-bargaining in cases with multiple suspects. It is recommended and commonly used as an interrogation tactic.[83] The popular Reid Technique of interrogation methods refers to it as "playing one against the other."[84] And as one military intelligence interviewer describes, "During tactical interrogations, we were two interrogators on the scene and we used the prisoner's dilemma technique. We leveraged each other to conduct simultaneous interrogations. . . . You put people in different cells and share one fact, making one think that the other is talking."[85]

Presumably, then, this tactic is useful for the purpose of eliciting criminal admissions, as illustrated in the Central Park Five case. And, if everything up to that point works as intended, these admissions will come from guilty suspects and defendants. But we now know, with a high level of scientific certainty, that innocent people can and do become caught up in the criminal justice system.[86] What if innocent individuals are subjected to a PD-like scenario?

Unfortunately, the research literature is limited in helping find an answer to this question. In studies using the PD paradigm, the guilt or innocence of the suspects is not specified, though guilt appears to be presumed. In one version, for example, Bob and Al are described as "two burglars . . . captured near the scene of a burglary."[87] In another, the dilemma begins, "There are two

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[83] *See* FRED E. INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 246 (2013); OFFICE OF THE DIR. OF NAT'L INTELLIGENCE FOR HUMAN INTELLIGENCE, INTELLIGENCE INTERVIEWING, PAPER #2, at 27 (2010) [hereinafter ODNI PAPER #2]; Lesley King & Brent Snook, *Peering Inside a Canadian Interrogation Room: An Examination of the Reid Model of Interrogation, Influence Tactics, and Coercive Strategies*, 36 CRIM. JUST. & BEHAV. 674, 674 (2009). For an example of a similar scenario being used in plea bargaining, see the case of Arthur Mumphrey, discussed later in this article. *See* Nathan Levy, *Freed by DNA Test, Texas Man Cautiously Returns to Society*, N.Y. TIMES, Mar. 28, 2006, at A13; *Arthur Mumphrey*, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Arthur_Mumphrey.php (last visited July 21, 2014); *infra* text accompanying notes 133–40.

[84] INBAU ET AL., *supra* note 83, at 246 (internal quotation marks omitted).

[85] ODNI PAPER #2, *supra* note 83, at 27.

[86] With the advent of new technology, specifically DNA testing, and the flood of exonerations on the basis of factual innocence over the past few decades, we can now say with near-certainty that innocent people are sometimes convicted of crimes. For more, see *About the Registry*, NAT'L REGISTRY EXONERATIONS, http://www.law.umich.edu/special/exoneration/Pages/about.aspx (last visited July 21, 2014); INNOCENCE PROJECT, http://www.innocenceproject.org (last visited July 21, 2014).

[87] *See The Prisoners' Dilemma*, DREXEL.EDU http://faculty.lebow.drexel.edu/McCainR/top/eco/game/dilemma.html (last visited July 21,

prisoners whose aim is to minimize the years of imprisonment. They have committed a crime jointly."[88] But what if innocence was introduced? Would confession and cooperation rates be affected if both suspects were innocent? What if one was guilty and the other innocent?

Steven Drizin and Richard Leo offer some insight here. In their study of 125 proven false confession cases, one-third involved multiple confessors.[89] It was often the case that a (false) confession from one suspect was used to leverage (false) confessions from the other suspects. From this study we can infer that the PD may be so effective as to encourage even innocents to admit guilt. Such was the case with the Central Park Five, in which the teens were played against one another. As described earlier, each suspect was told that the others had implicated him in the crime, a tactic that proved to be effective. Kevin Richardson describes his thought process in response to this tactic: "At this point, I'm like, you know, I don't know these guys . . . so I'm just gonna make up something, and, and include these guys' names."[90] The tactic worked on Raymond Santana as well: "If you're gonna do it to me, then I'm gonna do it to you."[91]

The cases discussed thus far have involved only innocent parties. In other cases, though, a guilty party may snitch or provide a "secondary confession," implicating an innocent person to divert attention or receive leniency.[92] One study of Innocence Project exonerations found that 24% of the cases involved either a false confession or a snitch, some in which the snitch was the true (guilty) perpetrator.[93]

2014).

[88] *See Prisoners' Dilemma*, ECONOMICS.LI (Apr. 15, 2010), http://www.economics.li/downloads/egefdile.pdf.

[89] Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C. L. REV. 891, 891, 974–75 (2004).

[90] *The Central Park Five*, *supra* note 7, at 31:07.

[91] *Id.* at 31:17.

[92] For more on secondary confessions, see generally Jessica K. Swanner & Denise R. Beike, *Incentives Increase the Rate of False but Not True Secondary Confessions from Informants with an Allegiance to a Suspect*, 34 LAW & HUM. BEHAV. 418, 418 (2010) ("A secondary confession is confession evidence provided by someone other than the suspect and purported to be direct information from the suspect." (citation omitted)); Jessica K. Swanner et al., *Snitching, Lies and Computer Crashes: An Experimental Investigation of Secondary Confessions*, 34 LAW & HUM. BEHAV. 53, 54 (2010) (stating that false secondary confessions are often induced by incentivizing suspects to provide testimony and employing "extended and pressuring interrogation tactics").

[93] *See* Saul M. Kassin et al., *Confessions that Corrupt: Evidence from the DNA Exoneration Case Files*, 23 PSYCHOL. SCI. 41, 43 tbl.1 (2012).

Still, to this point, relatively little is known about decision-making in cases involving multiple suspects or defendants, as studies have not manipulated guilt or innocence.

IV. THE PRESENT STUDIES

Through two experimental studies, we attempt to build on this knowledge base by manipulating the guilt/innocence of the participant and the co-suspect using the PD scenario. When guilt is presumed in the PD, as appears to be the case in previous studies, the majority of suspects confess (because they anticipate their co-suspect to also confess). If confession decisions are truly made to optimize benefits[94]—and guilt or innocence is irrelevant—we would expect the majority to confess. We do not expect this to be the case here, though, for several reasons.

First, we do not anticipate guilt or innocence to be irrelevant, as studies have consistently found that mock guilty subjects are more likely to confess than innocent ones.[95] We therefore expect that guilty mock subjects will confess at higher rates than innocent ones, though we also expect the magnitude of differences to depend on the guilt or innocence of co-subjects. Second, some individuals consider themselves immune from false confessions, though they may acknowledge that others are susceptible.[96] Suspects paired with an innocent friend, then, may be more likely to think that the friend would (falsely) confess compared to when they (the suspects) are innocent. Finally, a perennial debate exists about whether individual decision-making is optimizing or merely "satisficing."[97] A hybrid of satisfying and sufficient, a satisficing decision results in

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[94] *See* Richard J. Ofshe & Richard A. Leo, *The Decision to Confess Falsely: Rational Choice and Irrational Action*, 74 DENV. U. L. REV. 979, 985 (1997).

[95] *See, e.g.*, Kenneth S. Bordens, *The Effects of Likelihood of Conviction, Threatened Punishment, and Assumed Role on Mock Plea Bargaining Decisions*, 5 BASIC & APPLIED SOC. PSYCHOL. 59, 66 (1984); W. Larry Gregory et al., *Social Psychology and Plea Bargaining: Applications, Methodology, and Theory*, 36 J. PERSONALITY & SOC. PSYCHOL. 1521, 1524 (1978); Melissa B. Russano et al., *Investigating True and False Confessions Within a Novel Experimental Paradigm*, 16 PSYCHOL. SCI. 481, 484 (2005).

[96] For example, Woody and Forrest asked individuals if they and others would ever falsely confess absent physical coercion; whereas 87% believed that others would falsely confess, only 32% believed they themselves would. William Douglas Woody & Krista D. Forrest, *Effects of False-Evidence Ploys and Expert Testimony on Jurors' Verdicts, Recommended Sentences, and Perceptions of Confession Evidence*, 27 BEHAV. SCI. & L. 333, 346–47 (2009); *see generally* LEO, *supra* note 35, at 197–98 ("[M]ost people cannot imagine that they themselves would falsely confess, especially to a serious crime.").

[97] The term was first coined by Herbert A. Simon. Herbert A. Simon, *Rational Choice and the Structure of the Environment*, 63 PSYCHOL. REV. 129, 129 (1956).

an acceptable, rather than optimal, outcome.[98] Thus, it may be that when either you or your co-suspect is innocent, decisions are not made to obtain the most optimal outcomes (i.e., reduced sentences), but rather to obtain acceptable ones. For example, if you, the suspect, are guilty, and your friend is innocent, making an optimal decision for yourself would mean putting your innocent friend in prison for a lengthy time.

In addition to guilt/innocence, relationship closeness is another factor that can conceivably influence cooperation and confession rates.[99] By design, the PD is a game of imperfect information; subjects must make an educated guess about what their co-subject will do, and then decide accordingly. It follows, then, that the more intimately you know your co-subject, the more likely your guess about their decision will be accurate. As noted above, most PD participants choose to cooperate (approximately 85%),[100] despite the fact that dual denials and dual confessions do not result in the most optimal payoff. Thus, in the studies that follow, we manipulate whether the co-subject was a same-sex acquaintance or best-friend[101] to determine how relationship closeness affects confession and cooperation rates when subjects and co-subjects are innocent or guilty. Because best friends will be better positioned to judge the decisions of their co-suspects than acquaintances, we expect best friends to demonstrate more concordance with co-suspects' decisions (i.e., CC or DD) than acquaintances, especially if decision-making is done to optimize outcomes, defined here as attaining the lowest possible sentence.

A. Study 1

Study 1 utilized the original PD paradigm (non-iterative), manipulating guilt and innocence of suspects, as well as their relationship. Our two main outcomes are suspect confession, and suspect/co-suspect cooperation rates.

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[98] *Id.*; Bordens, *supra* note 95, at 61.

[99] *See, e.g.*, Swanner & Beike, *supra* note 92, at 425.

[100] *See* Kanouse & Wiest, *supra* note 80, at 209.

[101] It is worth noting that the sex of the subject, partner, or the combined partnership has typically not been found to significantly influence cooperation rates. *Id.*

1. Method

a. Participants

Participants were 175 undergraduates (58% men) from a university in the Northeast. They were recruited from social science classes and asked to volunteer their time. Age ranged from 18 to 37 years (M = 20.17, SD = 2.70) and 29% were minorities.

b. Procedure

Participants were asked to role-play that they and a friend were arrested for armed robbery. This hypothetical methodology has been the typical way to study plea decision-making.[102] The "friend" was manipulated such that half were asked to imagine it was either their same-sex (non-romantic) best-friend or acquaintance.[103] The guilt/innocence of the subject and friend, respectively, was also manipulated, creating four conditions: 1) Guilty/Guilty ("G/G"); 2) Guilty/Innocent ("G/I"); 3) Innocent/Guilty ("I/G"); and 4) Innocent/Innocent ("I/I").

Participants read a hypothetical scenario, which indicated that strong evidence existed against them, that confessions resulted in leniency (plea bargains), and that the risk of conviction at trial was high, at 90%. This high rate was chosen because we were interested in comparing decision-making when subjects and co-subjects were guilty versus innocent, and previous research has demonstrated that innocent subjects are more likely to plead when faced with a higher probability of conviction.[104] Furthermore, according to the Bureau of Justice Statistics, 71% of robbery defendants are convicted,[105] making the 90% conviction rate not entirely unrealistic. It is also important to remember that the 90% rate is what participants were told, not necessarily what they believed when weighing their options.

Finally, participants were given explicit detail about and shown

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[102] *See, e.g.*, Bordens, *supra* note 95, at 63–64; Gregory et al., *supra* note 95, at 1522; Avishalom Tor et al., *Fairness and the Willingness to Accept Plea Bargain Offers*, 7 J. EMPIRICAL LEGAL STUD. 97, 103–06 (2010).

[103] More specifically, half were asked to imagine their best friend who is not their significant other. The other half was asked to imagine someone in their class whom the participant would "consider to be only an acquaintance (that is, not a good friend or a complete stranger)."

[104] *See, e.g.*, Bordens, *supra* note 95, at 72; Tor et al., *supra* note 102, at 106 fig.1.

[105] U.S. DEP'T OF JUSTICE BUREAU OF JUSTICE STATISTICS, NCJ 228944, FELONY DEFENDANTS IN LARGE URBAN COUNTIES, 2006, at 11 tbl.11 (2010).

this table of sentence outcomes:

		YOUR FRIEND	
		Deny	Confess
YOU	Deny	You: 8 years Friend: 8 years	You: 25 years Friend: 3 years
	Confess	You: 3 years Friend: 25 years	You: 12 years Friend: 12 years

Participants were then asked for two dichotomous decisions: confession or denial for themselves, and whether they expected their friend to confess or deny. Participants then answered demographic questions.

2. Results and Discussion

Overall, 34% of subjects confessed. However, rates ranged from 0% to 70% depending on the condition, $\chi^2(7) = 44.15$, $p < .001$, $\phi = .50$ (Table 1). Significant effects of guilt-innocence, $\chi^2(3) = 33.21$, $p < .001$, $\phi = .44$, and friend status, $\chi^2(1) = 8.93$, $p < .01$, $\phi = .23$, emerged. The overall diagnosticity ratio, or rate of true to false confessions (of subjects), was 2.94, with 53% of guilty subjects confessing versus 18% of innocents. When both suspects were guilty, confession rates most closely approximated the original PD rates of 54%[106] (particularly when the co-suspect was a best-friend), supporting the presumption of guilt in the paradigm. In contrast, when both were innocent, 13% of subjects in the acquaintance condition confessed compared to none in the best-friend condition. In the G/I condition, acquaintances were three times more likely to confess than best-friends. In the I/G condition, acquaintances were about twice as likely to confess as best-friends.

[106] Kanouse & Wiest, *supra* note 80, at 208.

Table 1: Subject Confession Rates by Relationship and Guilt-Innocence Conditions

STUDY 1	G/G (n = 45)	G/I (n = 38)	I/G (n = 44)	I/I (n = 47)	*TOTAL*
Best-Friend	55%	21%	20%	0	*24%*
Acquaintance	70%	63%	38%	13%	*45%*
TOTAL	*62%*	*42%*	*30%*	*6%*	*34%*
STUDY 2	G/G (n = 46)	G/I (n = 38)	I/G (n = 50)	I/I (n = 55)	*TOTAL*
Best-Friend	50%	29%	35%	10%	*30%*
Acquaintance	65%	29%	29%	12%	*32%*
TOTAL	*56%*	*29%*	*32%*	*11%*	*31%*

A logistic regression was conducted to determine what predicted subject confession rates when multiple variables were considered. In addition to the guilt/innocence and friendship manipulations, characteristics about the subject (age, gender, and minority status) and expected friend decisions were entered. The regression was significant, $\chi^2(8) = 96.93$, Nagelkerke $R^2 = .59$; 82.8% were correctly classified (Table 2).

Table 2: Logistic Regression Analyses Predicting Subject Confession Rates

	B (SE)	Wald (df)	Exp(B)	95% CI
STUDY 1				
Guilt condition	—	18.31(3)***	—	—
Guilt condition: G/I	0.03 (.59)	0.002(1)	1.03	.32 – 3.29
Guilt condition: I/G	-1.18 (.62)	3.67(1)*	0.31	.09 – 1.03
Guilt condition: I/I	-3.28 (.85)	15.04(1)***	0.04	.01 – .20
Friend condition	1.00 (.47)	4.53(1)*	2.73	1.08 – 6.87
Age	-0.11 (.11)	1.09(1)	0.89	.73 – 1.10
Male (0 = no; 1 = yes)	-0.80 (.47)	2.90(1)	0.45	.18 – 1.13
Minority (0 = no; 1 = yes)	0.22 (.51)	0.18(1)	0.67	.30 – 2.19

Expected friend decision (0 = deny; 1 = confess)	3.02 (.55)	30.10(1)***	20.50	6.97 – 60.29
STUDY 2				
Guilt condition	—	11.18(3)**	—	—
Guilt condition: G/I	-1.08 (.67)	2.64(1)	0.34	.09 – 1.25
Guilt condition: I/G	-1.51 (.65)	5.39(1)*	0.22	.06 – .79
Guilt condition: I/I	-2.37 (.73)	10.40(1)***	0.09	.02 – .40
Friend condition	0.13 (.48)	0.77(1)	1.14	.44 – 2.94
Age	-0.19 (.09)	4.80(1)*	0.82	.69– .98
Male (0 = no; 1 = yes)	-1.23 (.52)	5.50(1)*	0.29	.11 – .82
Minority (0 = no; 1 = yes)	0.55 (.58)	0.92(1)	1.74	.56 – 5.38
Believed friend decision (0 = deny; 1 = confess)	3.78 (.53)	50.20(1)***	43.77	15.39 – 124.49

Notes: The reference category for Guilt Condition is G/G. * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$.

Guilt/innocence and friend status remained significant in line with analyses reported above. However, when subject confession rates by condition were contrasted against rates in the G/G condition, only subject rates in the two innocent conditions (i.e., I/G and I/I) were significantly different than those in the G/G condition. Confession rates in the G/G (62%) and the G/I (42%) conditions did not significantly differ (albeit a 20% difference in confession rates, $t(81) = 1.85$, $p = .07$). The I/G and I/I confession rates were significantly different from one another, $t(89) = 3.01$, $p < .01$. However, subject confession rates in the G/I condition (42%) did not differ significantly from those in the I/G condition (30%), $t(80) = 1.18$, $p = .24$. Thus, although most laboratory studies have found that guilty subjects confess at significantly higher rates than innocent subjects,[107] we found that when one suspect is innocent and the other guilty within the PD scenario, the influence of guilt status on confession rates dissipates, indicating that there are circumstances under which false confession rates can be induced to be similar to true confession rates.

The only other factor to predict subject confession rates was the expected decision of the friend (Table 2). As found in the original PD studies, concordance between subject and expected friend decisions was high: 82% opted to do what they thought their friend would do. We next examined how our manipulations influenced cooperation/defection rates (Table 3). The dominant equilibrium

[107] *E.g.*, Bordens, *supra* note 95, at 66; Gregory et al., *supra* note 95, at 1524; Tor et al., *supra* note 102, at 104.

strategy for PD is typically for suspects to confess,[108] even though this is not the "rational" (maximum benefit) decision. In the G/G condition, we found this to be true, as 48% chose confess-confess (of four options total). In all other conditions, the dominant equilibrium strategy was dual denials (the same pattern emerged within friend status).

Table 3: Cooperation-Defection Rates by Guilt-Innocence Condition

	G/G (n = 45)	G/I (n = 38)	I/G (n = 44)	I/I (n = 47)	TOTAL
STUDY 1					
Deny-Deny [8 years both]	36%	58%	59%	87%	60%
Deny-Confess [25, 3 years]	2%	0	11%	6%	5%
Confess-Deny [3, 25 years]	11%	26%	16%	0	13%
Confess-Confess [12 years both]	51%	16%	14%	6%	22%
STUDY 2	G/G (n = 46)	G/I (n = 38)	I/G (n = 50)	I/I (n = 55)	TOTAL
Deny-Deny [8 years both]	41%	66%	56%	82%	62%
Deny-Confess [25, 3 years]	2%	5%	12%	7%	7%
Confess-Deny [3, 25 years]	9%	11%	6%	4%	7%
Confess-Confess [12 years both]	48%	18%	26%	7%	24%

In regard to defections, both friend status, $\chi^2(3) = 17.58$, $p = .001$, $\phi = .32$, and guilt/innocence, $\chi^2(9) = 53.18$, $p < .001$, $\phi = .55$, were influential. Only seven total in the best-friend condition (8%) defected; six who confessed when they expected their friend to deny,

[108] Tucker, *supra* note 76, at 7.

indicating they would receive a three-year sentence while their friend would get 25 years. Twenty-four (27%) acquaintances defected; eight denied when they expected their friend to confess, and sixteen confessed when they expected their friend to deny.

For guilt/innocence, there were nine subjects—eight of whom were innocent—who denied (25 years) when they expected their friends to confess (3 years). In contrast, twenty-two subjects confessed (3 years) when they expected their friend to deny (25 years); fifteen of these involved guilty subjects, most (n = 10 or 67%) of whom implicated their innocent friend! Of the remaining seven innocent subjects who confessed, all were in conditions in which the friend was guilty (Table 3).

The present study has implications for the truth-justice debate, false admissions (confessions and pleas) and snitch testimony, two leading factors connected to wrongful convictions. Introducing innocence into the PD greatly affected rates of cooperation and confession. However, the technique used by police interrogators is somewhat different than the original PD. Police sometimes lie or strongly imply that co-suspects in a different room confessed, a modification we make to the PD scenario in Study 2.

B. Study 2

Study 2 utilized an altered PD paradigm that more closely approximates the interrogation tactic of "playing one against the other."[109] The same study design of four guilt/innocence conditions, and two friendship-status conditions was utilized. The main difference was that subjects based their decisions not on expected co-suspect behavior, but rather on what they were led to believe their friend had done.

1. Method

a. Participants

Participants were 218 undergraduate volunteers (52% men) in social science classes who had not participated in Study 1. Age ranged from 18 to 46 years (M = 20.09, SD = 2.97) and 26% were minorities.

[109] INBAU ET AL., *supra* note 83, at 246.

b. Procedure

For comparison purposes, the procedures and written scenario were near identical to Study 1. Participants were told that the police and prosecutor had strong evidence against them, that their possibility of conviction at trial was 90%, and were given the same pay-off structure. However, the below paragraph, adapted from the most often-cited police interrogation training manual,[110] was added to the scenario:

> The detective interrogating you is saying things like, "Your friend is trying to straighten out, how about you?" The detective is also claiming that he already knows all about your involvement in the robbery but wants to hear the details from you. The detective leaves you alone and during this break, you see another police officer go into the room where your friend is being interrogated with a pen and some paper. You overhear the officer asking how to spell your friend's name. Twenty minutes later, the detective interrogating you comes back with the same kind of paper, claiming to have your friend's confession. The detective then says to you, "Now, tell me your version of the story."

Thus, the strong implication was that the co-suspect confessed, though it was purposefully left ambiguous to examine decision-making. Again, subjects were asked for their confession decisions and beliefs about what friends had done.

2. Results and Discussion

The overall confession rate was 31%. As found in Study 1, the rate ranged broadly from 10% to 65% depending on condition (Table 1), $\chi^2(7) = 25.76$, $p < .001$, $\phi = .37$. Guilt/innocence again played a role, $\chi^2(3) = 24.39$, $p < .001$, $\phi = .36$. The largest difference in confession rates was in the G/G condition (56%) versus the I/I condition (11%). Unlike Study 1 though, the relationship manipulation did not influence confession rates, perhaps because the police strongly implied that the co-suspect had confessed. Belief that their friend had indeed confessed was not influenced by relationship, $\chi^2(1) = 0.32$, $p = .57$, but was influenced by guilt/innocence status, $\chi^2(3) = 16.75$, $p < .001$, $\phi = .30$. Innocent co-

[110] *See id.* at 246–50.

suspects were believed to have denied more often than guilty ones. The rates of guilty and innocent subjects confessing was 44% and 21%, respectively, for a diagnosticity ratio of 2.10, a ratio 29% lower than found in Study 1.

A logistic regression, using the same variables as above, was conducted and was significant, $\chi^2(8) = 113.14$, Nagelkerke $R^2 = .63$; 86.8% were correctly classified. Again, we found that G/G (56%) and G/I (29%) confession rates did not differ significantly (although a mean comparison revealed a different result, $t(82) = 2.61$, $p = .01$). G/G rates were significantly different from I/G and I/I rates.[111] Also, subject confession rates in the G/I condition (29%) and in the I/G condition (32%), were near identical, $t(86) = 0.30$, $p = .76$. Finally, I/G and I/I confession rates were significantly distinct, $t(103) = 2.72$, $p < .01$.

Age and gender emerged as influential factors in the regression analysis. However, the bivariate correlation between age and confession was non-significant, Spearman's $r = -.09$, $p = .21$. In a chi-square analysis, gender was found to significantly influence confessions, $\chi^2(1) = 4.29$, $p = .04$, $\phi = -.15$. Whereas only 24% of men confessed, 38% of women did so. Examining this trend further revealed that the significant gender difference only emerged when the subject was guilty, $\chi^2(1) = 4.13$, $p = .04$, $\phi = -.22$, but not when innocent, $\chi^2(1) = 0.31$, $p = .58$, $\phi = -.05$.

Similar to Study 1, expected or believed confession decisions were quite influential in confession-denial decisions. A similar level of concordance between suspect and friend was found (Spearman's $r = .68$, $p < .0001$); 86% of subjects did what they believed their friend had done. The dominant equilibrium strategy was dual confessions only in the G/G condition; in the other three conditions, it was again dual denials (Table 3).

Unlike Study 1, friendship status did not significantly influence cooperation/defection rates, $\chi^2(3) = 2.33$, $p = .51$, $\phi = .11$. Guilt/innocence status, however, remained influential, $\chi^2(9) = 30.06$, $p < .001$, $\phi = .40$. Subject denial (25 years) rates when the friend was believed to have confessed (3 years) were 1.4 to 6 times more likely when the subject was innocent than guilty. When the friend was guilty (and expected to confess), only 2% of subjects who were also guilty chose to deny compared to 12% of subjects who were innocent. But when the friend was innocent (and believed to have confessed), guilty (5%) and innocent (7%) subjects had similar rates.

[111] *See supra* Tables 1 & 2.

In contrast, subject confession rates (3 years) when the friend was believed to have denied (25 years) were about 1.5 to 2.75 times more likely when subject was guilty than innocent (Table 3), though overall this type of defection ranged from only 4% to 11%.

V. GENERAL DISCUSSION

Police interrogators and prosecutors want the guilty—not the innocent—to confess. This desire represents both truth and justice in that, ideally, guilty perpetrators would be convicted and mistakenly identified innocent ones would be set free. However, in the pursuit of confessions (either through interrogation or plea bargaining), sometimes the truth—what actually happened—becomes obfuscated in the pursuit of what is perceived to be just—the presumed-to-be-guilty person confesses and accepts a guilty plea. It is now well recognized that innocent persons, misidentified as guilty, can be induced to confess in the interrogation room and plead guilty in the courtroom.[112] Though several dispositional and situational factors have been identified as contributing to the likelihood of false admissions,[113] in the present research our focus was on a strategy, the PD (a situational factor), employed by law enforcement when two or more suspects have been identified. The dilemma for the suspects is to confess and possibly receive leniency or deny and possibly receive harsher punishment, depending on what the co-suspect does. It is important to note that this dilemma is entirely fabricated by law enforcement, such that the dilemma only exists if the police officer or prosecutor opts to "play one against the other."[114] Across two studies, we examined the conditions under which guilty and innocent suspects make admissions in light of what they expected or believed their friend to have done. We first discuss our findings and then conclude with implications for the truth/justice debate.

In the first study, we utilized the original PD paradigm. Rather than presume guilt, however, mock suspects were told that they and/or their co-suspect were innocent or guilty. We also asked half

[112] *See generally* JAMES R. ACKER & ALLISON D. REDLICH, WRONGFUL CONVICTIONS: LAW, SCIENCE, AND POLICY 141–209 (2011) (examining the "legal rules and psychological principles" relating to false confessions); Leo & Drizin, *supra* note 67, at 9–30 (discussing three errors that contribute to producing false confessions: the misclassification error, the coercion error, and the contamination error); Redlich, *supra* note 35, at 49 (noting that "false confessions and false guilty pleas are not uncommon").

[113] *See* Kassin et al., *supra* note 40, at 16–22; Redlich, *supra* note 35, at 51–53.

[114] INBAU ET AL., *supra* note 83, at 246.

to imagine the co-suspect was their best-friend or acquaintance. In the second study, we modified the original PD to make it more similar to what the police actually do—lie or strongly imply to suspects that their co-suspect sequestered in a separate room confessed.[115] Though the PD has been used in thousands of studies in the sixty years since it was first developed, to our knowledge, this is the first time that the concept of innocence has been introduced. By introducing innocence, we were able to influence confession rates quite significantly. Specifically, depending upon the circumstances, confession rates varied from a low of 0% to a high of 70%.

Results revealed similarities and differences in the two studies. In both studies, the guilt/innocence manipulation had a robust effect. In Study 1, subjects were ten times more likely to have confessed in the G/G condition (62%) than the I/I condition (6%). Though found to a lesser degree in Study 2, subjects in the G/G condition were five times more likely to have confessed (56% when both guilty, 11% when both innocent). In the G/I and I/G conditions of both studies, however, confession rates were not statistically different for guilty versus innocent subjects, in contrast to findings from previous studies indicating that guilty suspects confess at much higher rates than innocent ones.[116] Thus, in situations where one suspect is guilty and the other innocent, using the original or police version of the PD has the potential to 1) lower the true confession rate (compared to when both are guilty), 2) increase the false confession rate (compared to when both are innocent), and 3) induce true and false confession rates to be similar.

In addition, for both studies, we found that when the subject was guilty, confession rates for when the co-suspect was guilty (i.e., G/G) versus innocent (i.e., G/I) were not significantly different (according to the logistic regression results), though trends were present. However, when the subject was innocent, the guilt/innocence of their co-suspect was influential: subject confession rates in the I/G condition were significantly higher than those in the I/I condition for both studies. Thus, whereas guilt status of the co-suspect affected decision-making of innocent suspects, it did not similarly affect guilty suspects.

Another common result across the two studies was the subject's dominant strategy by guilt/innocence condition. When both the

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[115] *Id.* at 246–50.

[116] Bordens, *supra* note 95, at 66; Gregory et al., *supra* note 95, at 1524; Russano et al., *supra* note 95, at 484; Tor et al., *supra* note 102, at 104.

subject and friend were guilty, the dominant equilibrium strategy was dual confessions; in all other conditions—after innocence was introduced—it was dual denials. And, although most subjects chose to do what they expected or believed their friend had done, the 14% to 18% defection rate was influenced by guilt/innocence. On the one hand are the defectors who chose to confess (and get 3 years) when they expected their friends to deny (who would get 25 years). Although such people were a small minority overall, those who were most likely to defect in this manner were guilty subjects with innocent friends (26% in Study 1 and 11% in Study 2).[117] One possible interpretation is that this subset of guilty individuals felt it was the "morally right" decision to confess, regardless of their co-suspect's guilt and decision. That is, they followed the notion that guilty people should own up to their crimes. Another interpretation is that though these subjects may be viewed negatively, from a purely rational standpoint, they saved themselves five years in prison by confessing rather than denying. That is, they optimized their outcomes.[118] In contrast were the roughly 60% overall (in both studies) who chose to deny when their friend was expected to deny or believed to have denied; these subjects, who settled for an eight-year sentence (but could have received a three-year sentence if they had confessed), can be seen as having made a satisficing decision.

On the other hand are the defectors who chose to deny (and get 25 years) when they expected their co-suspect to confess (3 years). Significant minorities were unwilling to confess to crimes they did not commit, no matter the cost. About one-tenth of innocent subjects (6% to 12%) chose to spend 25 years in prison rather than confess, suggesting that some believe it is never prudent to admit guilt if innocent. These subjects can be said to have made decisions that were neither optimizing nor satisficing. Rather, this set of defectors may have made confession decisions based on moral rather than legally relevant factors.[119] Similar to the defectors discussed above, some people may think that innocents should never confess to something they did not do, despite such a decision not being in their best long-term interest.[120]

It is important to consider the above results in light of the fact

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[117] *See supra* Table 3.

[118] *See* Ofshe & Leo, *supra* note 94, at 985.

[119] *See* Michele Peterson-Badali & Rona Abramovitch, *Grade Related Changes in Young People's Reasoning About Plea Decisions*, 17 L. & HUM. BEHAV. 537, 538–39 (1993).

[120] *See* Allison D. Redlich, *The Susceptibility of Juveniles to False Confessions and False Guilty Pleas*, 62 RUTGERS L. REV. 943, 955 (2010).

that participants in both studies were told by the interrogators that the risk of conviction at trial was 90%. Nevertheless, many subjects, especially when innocent suspects and/or co-suspects were involved, chose to deny and take their chances at trial. Kassin theorized that innocence itself places suspects at risk because they (innocents) hold the naïve belief that their innocence will be apparent to others and ultimately set them free.[121] Thus, it may be that in the present study, the innocent participants (who had the lowest confession rates) were less likely than the guilty to believe that their chances of conviction were 90% at trial. It may also be, as noted above, that some innocents refuse to admit to a crime they did not do despite a high chance of conviction and lengthy sentence.

Discrepancies between Studies 1 and 2 were also found. First, friendship status was influential in Study 1 only. Here, about twice as many subjects confessed when the co-suspect was an acquaintance versus a best friend; in Study 2, confession rates by relationship were nearly identical. Friendship status also influenced defection rates in the first, but not the second study. As noted earlier, the PD is a game of imperfect information; knowing your opponent can certainly improve your ability to predict the opponent's actions. In Study 1, only seven in the best friend condition defected versus twenty-four in the acquaintance condition. In Study 2, subjects were led to believe that their co-suspect had already confessed. However, this aspect was left ambiguous and belief was influenced by guilt/innocence, but not by friendship condition. Thus, when the police strongly implied that the co-suspect confessed, relationship closeness was no longer relevant, but whether s/he was innocent or guilty remained pertinent to decisions of confession and cooperation.

A second discrepancy between the two studies relates to the diagnosticity ratios. We found the original PD version to be 29% more diagnostic than the police-used version in that it resulted in a greater proportion of true to false confessions. The surgical objective of interrogations should be to obtain true but not false confessions, and thus the finding that the police version of the PD is less diagnostic can be viewed as problematic.[122] Although police are, in theory, not allowed to discuss sentences or leniency explicitly, a common belief is that the police imply such

[121] Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOLOGIST 215, 224 (2005).

[122] *See* Kassin et al., *supra* note 40, at 27.

information.[123] Because the police typically do not know with certainty who is guilty and who is innocent, "playing one [suspect] against the other"[124] is a risky game with the potential to result in wrongful arrests or convictions.

Third, age and gender emerged as significant predictors of subject confession rates in Study 2 only. Age, however, was unrelated to confessions in bivariate analyses, and age did not vary much in the samples as the majority of participants were between 18 and 22 years old. In Study 2, but not Study 1, men were less likely to confess than women. Further exploration determined that the gender-effect was driven by the guilty subjects only. When innocent, men and women confessed (falsely) at similar rates. Most research examining true and false confessions and pleas has not found gender differences.[125] However, there is some evidence that men are more likely to self-report false confessions than women.[126]

The present set of studies, though offering novel and intriguing results, is limited by a few factors. The studies involved hypothetical situations with undergraduate students. Participants were explicitly told that their sentence outcomes were contingent on their confession/denial decisions. In theory, police interrogators are not allowed to make such assertions, but at times imply this information.[127] Prosecutors, who sometimes attend interrogations, are allowed to make explicit references to possible punishment. Whether actual suspects accused of robbery would make similar decisions remains an open question.

Interestingly, however, actual and presumably true confession rates are commonly estimated to be around 65%, a rate similar to what was found in our G/G conditions.[128] Furthermore, police

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[123] *See id.* at 29; Ofshe & Leo, *supra* note 94, at 1118.

[124] INBAU ET AL., *supra* note 83, at 246.

[125] *See, e.g.*, Jeremy D. Ball, *Is It a Prosecutor's World?: Determinants of Count Bargaining Decisions*, 22 J. CONTEMP. CRIM. JUST. 241, 256 (2006); Saul M. Kassin & Katherine L. Kiechel, *The Social Psychology of False Confessions: Compliance, Internalization, and Confabulation*, 7 PSYCHOL. SCI. 125, 127 (1996); Gail Kellough & Scot Wortley, *Remand for Plea: Bail Decisions and Plea Bargaining as Commensurate Decisions*, 42 BRIT. J. CRIMINOLOGY 186, 202 (2002).

[126] Gisli H. Gudjonsson et al., *Confessions and Denials and the Relationship with Personality*, 9 LEGAL & CRIMINOLOGICAL PSYCHOL. 121, 125–26 (2004); Gisli H. Gudjonsson et al., *Interrogation and False Confessions Among Adolescents in Seven European Countries. What Background and Psychological Variables Best Discriminate Between False Confessors and Non-False Confessors?*, 15 PSYCHOL. CRIME & L. 711, 715 (2009); Allison D. Redlich et al., *Self-Reported False Confessions and False Guilty Pleas Among Offenders with Mental Illness*, 34 L. & HUM. BEHAV. 79, 86 (2010).

[127] Kassin et al., *supra* note 40, at 29.

[128] *See* Saul M. Kassin et al., *Police Interviewing and Interrogation: A Self-Report Survey of*

estimates of false confessions are around 5%, a rate similar to what was found in the I/I conditions.[129] Nevertheless, we assume that confession rates would be different than found here if actual suspects accused of robbery were involved. Our intent, however, was not to develop prevalence estimates of true and false admissions when the PD is used. Rather, our intent was to compare confession and cooperation rates under differing circumstances, specifically the four guilt/innocence combinations and friendship status. All participants were asked to make hypothetical decisions, and the differences in magnitude between conditions are noteworthy.

In addition, the probability of conviction at trial was set at 90% in both Studies 1 and 2. Lowering this probability would likely result in different confession rates, but not necessarily different patterns by condition than those found here. Despite this high probability of conviction, overall the majority (66% to 69%) chose to deny and take their chances at trial, although clearly confession/denial rates were influenced by condition.

VI. CONCLUSIONS

The present research begins to illuminate the factors that may prompt innocent and guilty people to incriminate themselves and others. In this first endeavor into examining the influence of guilt and innocence on confession decision-making in the PD context, we found that suspect admission rates can be greatly affected depending upon the guilt or innocence of themselves and that of their co-suspects. In this current "Age of Innocence," gaining insight into the circumstances under which individuals do and do not confess, either primarily or secondarily, is of the upmost importance in preventing these most egregious of errors.[130] About one-third of proven false confession cases have involved multiple confessors,[131] and one-fourth of Innocence Project cases have involved either primary or secondary confessions as a contributing cause.[132] In most cases, the snitch did not commit the crime in question, but in others, the snitch was the true perpetrator. We

Police Practices and Beliefs, 31 LAW & HUM. BEHAV. 381, 396 (2007).

[129] *See id.*

[130] See the articles collected for the special issue of *Behavioral Sciences & the Law*. *The Age of Innocence: Miscarriages of Justice in the 21st Century*, 27 BEHAV. SCI. & L. 297 (2009).

[131] *See, e.g.*, Drizin & Leo, *supra* note 89, at 974–75.

[132] *See* Kassin et al., *supra* note 93, at 42.

conclude with an actual case in which this very scenario occurred to demonstrate how truth and justice can be at odds.

The case begins with a tragic event, as most, if not all, known miscarriages of justice do. On February 28, 1986 in Conroe, Texas, a thirteen-year-old girl was taken into a wooded area by two men and raped multiple times at knifepoint.[133] The ensuing investigation eventually led to the questioning of Steve Thomas, an illiterate man with intellectual disabilities.[134] Thomas implicated Arthur Mumphrey and agreed to testify against him in exchange for a fifteen-year sentence.[135] Mumphrey, however, insisted on his innocence, went to trial, was convicted, and sentenced to thirty-five years for aggravated sexual assault.[136] He would serve almost eighteen years before DNA testing excluded him as a perpetrator.[137] Astonishingly, the DNA results inculpated Thomas, the man who pointed the finger at Mumphrey.[138] Mumphrey was granted a gubernatorial pardon and exonerated in 2006.[139]

Though cases like Mumphrey's may seem fantastical, there is reason to believe they are not entirely atypical.[140] Cases like Mumphrey's also illustrate how the PD can lead to neither truth nor justice. Here we presented the novel idea that the practice of seeking a criminal admission, a practice that is a highly entrenched part of police investigation and prosecution, may compromise truth in pursuit of what is believed to be justice. Without truth, however, there can be no justice. If the wrong person is convicted, the true perpetrator is free to commit more crimes, the misidentified person is left to languish in prison or jail for a potentially excessive period of time, and the victim or victim's family is misled to believe that the harm done to them was met with an appropriate, accurate response by the criminal justice system. The compromise of truth, then, creates a series of injustices that impact all involved in the process, and may even compromise the legitimacy of the criminal justice system itself.

In our estimation, the reliance on admissions (both confessions and pleas) weighs too heavily in the American criminal justice

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[133] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[134] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[135] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[136] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[137] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[138] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[139] Levy, *supra* note 83, at A13; *Arthur Mumphrey*, *supra* note 83.
[140] *See, e.g.*, JOHN GRISHAM, THE INNOCENT MAN: MURDER AND INJUSTICE IN A SMALL TOWN *passim* (2006).

system. The United States now stands in stark contrast to many western countries in their interviewing and likely their plea practices.[141] Many European countries, as well as Australia and New Zealand, have moved away from confession-focused interrogation to a method that is focused on truth-seeking.[142] In addition, given that more than 90% of American criminal convictions are via guilty plea, the United States presumably has one of the highest plea rates among countries that allow the practice.[143] As stated by Justice Goldberg in *Escobedo v. Illinois*,[144]

> We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the "confession" will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation.[145]

Justice Goldberg made this statement fifty years ago, but his message has gone unheeded, as the confession has continued to be a prominent part of the criminal justice process. We believe, however, that a system that relied less on admissions and more on independent evidence would lead to a process that could more successfully pursue both truth and justice.

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[141] For example, Givati reported that France's guilty plea rate was 4% in 2005 in contrast to the United States rate of 86% the same year. Givati, *supra* note 31, at 2.

[142] *See* GUDJONSSON, *supra* note 44, at 619; SCHOLLUM, *supra* note 44, at 44.

[143] *See* Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2466 n.9 (2004).

[144] Escobedo v. Illinois, 378 U.S. 478 (1964).

[145] *Id.* at 488–89 (footnotes omitted).