Voluntary, knowing, and intelligent pleas: Understanding plea inquiries

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When defendants plead guilty, they are asked a series of questions (the plea inquiry) in open court to ascertain whether pleas are made knowingly, intelligently, and voluntarily. There is a wealth of research on adjudicative competence, but little to none on the plea inquiry. Whereas competence is relevant to whether one has the ability to make knowing, intelligent, and voluntary decisions, the plea inquiry is relevant to whether one actually made such a decision. In the present study, 99 adult defendants who just pled guilty were interviewed and tested about aspects of the plea process. We found that whereas almost all defendants had little or no adjudicative competence deficits and claimed to have made a knowing plea decision, plea comprehension was generally poor. Two thirds of our sample was correct on less than 60% of questions.

Keywords: guilty plea, plea inquiry, competence, voluntariness

Since the inception of plea negotiations in the United States in the mid-1800s, plea bargaining has been the target of controversy because of concerns related to coercion and choice, cost, the innocent being wrongly convicted, and issues of comprehension (e.g., Gazal-Ayal, 2006; Langbein, 1992). Despite the controversy, a very consistent pattern has emerged: For all crimes except murder, 95% to 100% of convictions are the result of guilty pleas (Cohen & Kyckelhahn, 2010). Surprisingly, there has been little research surrounding the practice of pleas.

The law mandates that guilty pleas be entered knowingly, intelligently, and voluntarily. In the U.S. Supreme Court case Godinez v. Moran (1993), the Court acknowledged that competence to stand to trial and competence to plead guilty do not require different standards. However, at the same time, Justice Thomas noted in the majority opinion,

The focus of the competency inquiry is the defendant’s mental capacity; the question is whether he has the ability to understand the proceedings. The purpose of the “knowing and voluntary” inquiry, by contrast, is to determine whether the
defendant actually does understand the significance and consequences of a particu-
lar decision. (See Ft. 12, Godinez v. Moran, p. 401)

Our purpose here was to examine whether defendants who just pled guilty under-
stood the significance and consequences of their decision, over and above
adjudicative competence. In addition, we examined whether several factors,
including postplea custody status and judicial assignment, influenced perceptions
of voluntariness, satisfaction with the process, and overall comprehension.

Pleading Guilty

In the United States, nearly 14,500 defendants a day must choose whether to
plead guilty or proceed to trial (Lynch, 2003). Often, this choice is presented by
an overworked and underpaid attorney who the defendant just met for the first
time. In addition, the choice may be to plead guilty and get out of jail, or opt for
trial but remain in jail for an extended and unpredictable amount of time and risk
a much harsher sentence (Alschuler & Deiss, 1994; Bibas, 2004; Gross, Jacoby,
Matheson, Montgomery, & Patil, 2005, Redlich, 2010a). As mentioned, most
defendants who are convicted (95%) had eventually opted for pleading guilty. Of
the scant research that has been conducted on pleas, much focuses on the plea
decision itself, that is, the characteristics of defendants who enter guilty pleas and
the circumstances under which pleas are offered or accepted (e.g., Albonetti,
1990; Edkins, 2010; Gregory, Mowen, & Linder, 1978; Kramer, Wolbransky, &
Heilbrun, 2007; McAllister & Bregman, 1986; Smith, 1986; Tor, Gazal-Ayal, &
Garcia, 2010). Generally speaking, minorities and men have been found to be less
likely to plead guilty than nonminorities and women.

The present research is not on the plea decision, but rather whether those
defendants who opted for pleading guilty made voluntary, knowing, and intelli-
gent decisions. Although there is a wealth of research on adjudicative compe-
tence, there is little research on plea inquiries specifically. As highlighted in the
Justice Thomas quote above, the two—competence and the plea inquiry—are not
equivalent. Rather, competence refers to whether one has the ability to make a
voluntary, knowing, and intelligent decision, whereas the oral inquiry (and written
tender-of-plea form) measures whether one who is presumed or deemed to have
the ability (i.e., competent) actually makes a voluntary, knowing, and intelligent
decision. The focus here is on the latter.1

In attempts to ensure that guilty pleas are knowing, intelligent, and voluntary,
defendants are given a written tender-of-plea form and/or asked questions by the
judge during a plea colloquy (also called plea discussion or plea inquiry). These
forms and colloquies, which vary tremendously in comprehensibility and content
(Redlich, 2010b), typically focus on questions relating to understanding (e.g., age,
education, prior experiences with the criminal justice system as well as mental
health and intoxication), potential for coercion (e.g., whether any promises made),
and less frequently, plea withdrawals and immigration status. For example, during

1 In addition, our focus here is not on the initial plea inquiry at arraignment, where most
defendants plead “not guilty” (see Cochran, 2005), but rather on the plea discussion that occurs after
the defendant has decided to plead guilty and a negotiated plea arrangement has taken place.
the oral plea inquiry, the judge may (or may not) ask the defendant questions such as, “Do you speak and understand the English language?” “How far did you go in school?” “Has anyone promised you anything, or forced or threatened you to give up your rights and plead guilty?” and “Did you have enough time to think about your decision to plead guilty?” The American Bar Association in Criminal Justice Standards 14.1 to 14.4 specify the topics that should be covered during these attorney–judge–defendant interactions and the responsibilities of each actor (see American Bar Association, 1999; Redlich, 2010a).

The information that is asked of or told to defendants may be judge-specific, such that individual judges may routinely ask certain questions, whereas others may ask different types or numbers of questions. Presumably, some judges exert more influence than others. For example, the Colorado Supreme Court recently overturned a case in which the judge was “improperly involved” in the plea discussions and who later refused to allow the defendant to withdraw his guilty plea. In this case, James M. Crumb v. The People of State of Colorado (2010), the judge implied leniency if the defendant agreed to enter a plea and later stated that he was “not going to be a happy judge” if a plea deal had not been negotiated. Thus, in the present study, we examined comprehension and perceptions of voluntariness by judge.

Voluntary Plea Decisions

The seemingly most common way for the courts to assess voluntariness is simply to ask defendants whether their choices were voluntary. Of the thousands of defendants who plead guilty every year, most, if not all, claimed that their plea was voluntary (or, in theory, the plea should not be accepted). However, voluntariness is an elusive concept that our legal system has grappled with for centuries. As recently as 2002, in United States v. Speed Joyeros, S.A., the court addressed the question of “intensive pressure” (in this case, prolonged prior detention and the offer of lesser imprisonment) and the capacity to enter into plea agreements. In discussing coercion, it was noted,

There is no single clear definition of “voluntary” for all legal purposes. Even in the criminal-law-plea context, it is unclear whether “voluntary” means freedom from any coercion or whether it means freedom only from “wrongful” or “undue” coercion. A pristine rule of “no coercion” would preclude many plea agreements. Requiring plea negotiations to be free from “any coercion” would contradict the basic notions of bargaining. (p. 14)

Although there are many who view plea bargaining as unduly coercive and advocate for its abolishment (e.g., Langbein, 1992; Schulhofer, 1992), there are also those who view plea bargaining as a positive benefit for defendants. Indeed, defendants who are guilty and offered a plea bargain may be quite pleased with the outcome in that they often avoid jail via time served or probation (Bowers, 2008). Defendants who plea bargain may hold more feelings of procedural justice than those who opt for trial (see O’Hear, 2008), particularly as trial acquittals are quite rare.

In the present research, we examined how perceptions of voluntariness, satisfaction, and procedural justice relate to plea understanding. It may be that those who understand and appreciate the voluntariness of the decision will have a better understanding and appreciation for other plea aspects, and in turn, feel that the process was
fairer. In a strict legal sense, defendants who are incapacitated because of medication, intoxication, or are otherwise incompetent are considered incapable of making a voluntary decision. But, the three components—knowing, intelligent, and voluntary—are specifically separate, and although it may not be legally possible to make a voluntary choice when uninformed, it is possible to make an involuntary choice when informed.

Knowing and Intelligent Plea Decisions

Although our focus here is on the plea colloquy, the research on adjudicative competence is clearly relevant. Adjudicative competence research often examines the abilities of vulnerable populations in comparisons to nonvulnerable ones. For example, the large-scale MacArthur competence studies examined the understanding, reasoning, and appreciation capabilities (Bonnie, 1992) of defendants with and without mental health problems (see, generally, Poythress, Monahan, Bonnie, Otto, & Hoge, 2002). Of defendants without known mental health problems, 7% were found to be impaired on competence to assist counsel and 9% on decisional competence (Hoge, Bonnie, et al., 1997). Similarly, Grisso and his colleagues (2003), using the same MacArthur competence measure, compared juveniles and young adults (controlling for mental health issues). They found that 12% of the young adults had deficient legal understanding and/or reasoning abilities. Thus, approximately 88% or more of adults without mental health problems have been found to have minimal or no impairments on adjudicative competence.

In addition to mental illness and youth, other factors consistently have been found to correlate with competence, although, typically, these factors have been examined within samples with known vulnerabilities. Persons from lower socioeconomic status, with lower intellect, and with less serious charges are typically found to be more impaired than those from higher statuses, with higher intellect, and with more serious charges (Cooper & Zapf, 2003; Grisso et al., 2003; Hoge, Bonnie, et al., 1997). Gender, however, has not been found to affect competence (Poythress et al., 1998).

Outside of adjudicative competence, there is little research on defendant understanding and appreciation of the information supplied in plea colloquies, specifically. One notable exception is a study of Massachusetts juveniles. Kaban and Quinlan (2004) questioned juveniles 9 to 17 years of age awaiting adjudication about their understanding of 36 words used in the plea form (e.g., disposition, default, assurance, restitution). Even with instruction and consideration of prior experience with the legal system, on average, only five words (14%) were correctly defined. Many times, the juveniles claimed to know the meaning of the word but when tested, it was clear that they did not. The authors made specific note that attorneys, judges, and other legal professionals should not rely on the question, “Do you understand?” or the answer “yes” to signify sufficient understanding.

In another study, Bordens and Bassett (1985) interviewed 67 convicted (adult) defendants who had pled guilty. The time at which defendants had pled guilty in relation to their study participation was not reported. However, in the limitations, the authors note specifically that participants may have been reporting on their current feelings, and that a “solution to this problem would be to secure a sample of defendants immediately after their plea bargains were accepted” (p. 107).
reasons why defendants pled guilty, the authors also examined what they called “knowledge of plea information.” Bordens and Bassett concluded that, “In general, the data show that defendants have a knowledge [sic] of the information necessary to make an informed decision” (p. 106). However, the knowledge examined was awareness of the sentence to be received if the plea was accepted or rejected and the likelihood of conviction at trial. Whether participants’ awareness of the sentences and likelihood were actually accurate was not measured, nor were any other possible indications of understanding (e.g., that the plea was a voluntary choice, that rights were being ceded). Furthermore, not all participants indicated awareness; for example, only 78% claimed to have been aware of the sentence if the plea had been accepted.

In the present study, we interviewed and assessed defendants who recently pled guilty. We were especially interested in knowledge and understanding of plea information, adjudicative competence, and perceived voluntariness, and whether these factors vary by judge. In addition, because pretrial detention can affect plea decision making (Bibas, 2004; Kellough & Wortley, 2002), we examined how postplea detention influenced plea comprehension and perceived voluntariness.

Method

Participants

Participants were 99 (51% male) individuals initially charged with a felony (90%) or gross misdemeanor and who had pled guilty within the month prior to the study. The mean age was 32.12 years ($SD = 11.49$) and the mean number of years of completed education was 12.00 ($SD = 1.68$). The majority was White (71%), non-Hispanic (81%), and employed (52%) at the time of participation. Half of the sample had been arrested for property crimes, 20% for person crimes, 22% for drug crimes, and 8% for minor crimes.

In addition, half of the participants were incarcerated ($n = 50$) immediately after their plea (all but two of whom had also been incarcerated preplea), whereas the other half were in the community. Persons were ineligible to participate if they had mental health problems (see below for screening procedures). Of 129 people approached, 12% refused ($n = 16$) and 11% ($n = 14$) were considered ineligible because of mental health problems or because they could not speak and understand English well enough ($n = 2$). Age, race, and gender were collected on all those approached. Participants not in the study did not differ significantly on these three characteristics compared with those in the study ($ps \geq .28$).

Measures

An in-person, standardized interview was used in the present study. In large part, the questions were based on those used in Redlich, Hoover, Summers, and Steadman (2010), a study examining whether newly enrolled mental health court (MHC) participants made voluntary, knowing, and intelligent decisions to enter the court. As a condition of enrolling in the MHC, persons had to plead guilty, and thus some of the questions required simply replacing the terms MHC and plea.

Questions were first asked about demographics, criminal history, and current legal experiences. For their current legal experiences, questions were asked about their
attorneys (whether they had one, and if so, whether they liked, trusted, and told
him/her the truth) and about feelings of involvement. Questions were also asked about
the awareness of the voluntary nature of the plea (plea voluntariness), about com-pre-
hension of the plea process (plea comprehension), and the information that was asked
or told to defendants when pleading (plea information). To measure competence, we
used the MacArthur Competence Assessment Tool—Criminal Adjudication (Mac-
CAT–CA). Administration of plea measures was counterbalanced with the MacCAT–
CA. Each is described below.

**Plea voluntariness.** This part consisted of a series of questions aimed at
determining whether the decision to plead guilty was voluntary. In addition to
asking, “Was it your choice to plead guilty?” we also asked, “Did anyone ever
explain to you that you had a choice to enter a plea of not guilty and go to trial,
or to enter the guilty plea that you did?” If participants answered “yes,” they were
asked when this explanation was given (before, the day of, or after the plea). We
also asked similar questions of whether and when plea conditions were explained.

Five procedural justice questions, using the scale of 1 (not at all) to 7 (definitely),
were asked about opportunity, interest, respect, fairness, and satisfaction (see Poyth-
ress, Petrila, McGaha, & Boothroyd, 2002; e.g., “At court, did the judge treat you
respectfully?”). Also included was the MacArthur Perceived Coercion Scale (MPCS;
Gardner et al., 1993), adapted for pleas. This scale included five statements concern-
ing the choice to plead guilty (e.g., “I chose to take the guilty plea”; “I had a lot of
control over whether I took the guilty plea”). A 5-point Likert scale was used, with 0
(strongly agree) to 4 (strongly disagree; lower scores indicate increased perceptions
of voluntariness). In this study, the Cronbach’s alphas for the procedural justice and
perceived coercion scales were both .88.

**Plea comprehension.** This section included the questions “Can a person
withdraw their plea and change their mind if he or she wants to?” and “After the court
has said you are allowed to plead guilty, who makes the final decision about whether
or not you take the plea?” For the latter, answers that reflected the defendant (e.g.,
“me,” “myself”) were scored as correct. Three series of true–false–I don’t know
questions were also included, which were aimed at assessing participants’ accuracy in
understanding of the plea process, requirements, and consequences.

The first series of true–false–I don’t know statements incorporated 14 state-
ments, including “Guilty pleas do not have to be a voluntary choice of the
defendant,” “The court or judge must accept the prosecutor’s plea offer to the
defendant,” and “A defendant’s previous convictions (criminal history) can affect
the punishment or sentencing that results from a guilty plea.” The next two series
included the opening stems: “When taking a guilty plea, people are agreeing to . . .” [14 statements] and “If people do [or do not] follow the conditions of a guilty
plea, they can . . .” [12 statements]. The statements consisted of actual procedures,
requirements, and consequences (e.g., agreeing to admit guilt, giving up their
rights to a trial, letting the judge have the final say about their sentence). False
statements of plea procedures, requirements, and consequences were also in-
cluded, such as making the prosecutor prove their guilt beyond a reasonable

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3 Significant differences for the order of measures were not found for any of variables of
interest and thus is not discussed further.
doubt, having the same lawyer for any future cases, never being arrested again, and being charged again for the same crime. Each answer was scored as correct or incorrect; don’t know answers were scored as incorrect. We then created one summary score by summing the 40 correct–incorrect scores; Cronbach’s alpha was .82.

**Plea information.** In addition to examining plea voluntariness and plea comprehension, we were interested in what information was either asked of or told to defendants. Seven questions had the opening stem, “As part of your guilty plea, were you *asked* . . .” (e.g., if you understood the charges against you, if you were pleading guilty to get out of jail, if you spoke and understood the English language). Six questions had the opening stem, “As part of your guilty plea, were you *told* . . .” (e.g., what evidence the prosecution had against you, that the judge did not have to accept the sentence recommendation from the prosecutor). To determine the total amount of information provided, the “yes” answers were summed.

**MacCAT–CA.** To measure adjudicative competence, the MacCAT–CA (Poythress et al., 1999) was used. The MacCAT–CA tests (a) understanding, (b) reasoning, and (c) appreciation as related to the Dusky standard of adjudicative competence (see Bonnie, 1992). The MacCAT–CA was developed as a research instrument for use with adult defendants with and without known mental health problems. In the beginning of the instrument, respondents are read a brief story about two men who get into a fight at a bar. The understanding and reasoning questions follow from this story. Appreciation questions relate to the defendant’s own pending criminal case. Because the participants in this sample already pled guilty, these questions were not appropriate and were not asked. The MacCAT–CA has well-established psychometric properties: understanding and reasoning have strong internal consistency, with alphas of .85 and .81, respectively, and interrater reliability correlations ranging from very good to excellent (i.e., from .85 to .90; see Otto et al., 1998).

**Procedure**

All study procedures and instrumentation were approved by a human subjects review board. The county in which data were collected is in the Northwest United States and is the second largest county (population size) in the state. The county had eight general jurisdiction judges, all of whom had cases represented in this study (range of five to 21 participants per judge).

Potential participants were approached between the time of their plea and sentencing hearings by four intensively trained interviewers. The interviewers were either doctoral students or had terminal master’s degrees and were trained to ask and record questions and answers verbatim. All potential participants were screened for mental health problems using a series of established questions (e.g., “Have you ever been diagnosed with a mental health disorder?” “Have you ever been prescribed medication?”). The community and in-custody samples were recruited differently. For the community sample, interviewers would observe court and attempt to make contact with persons who just pled guilty. The contact could have been quite brief, that is, just an introduction and request for contact information, or could have turned
into the actual interview conducted in a private room in the courthouse. The mean number of days between plea date and interview for the community sample was 5.16 days ($SD = 8.52$); however, 47% of this sample was interviewed on the same day of their plea.

The in-custody sample was recruited from lists supplied by the county jail. The lists included names, guilty plea dates, location in jail, age, gender, and race for persons who had recently pled guilty (and were awaiting sentencing). It was not possible to approach jailed defendants at their plea hearings, although the interviewers observed some of the hearings. The mean number of days between plea date and interview for the in-custody sample was 16.58 days ($SD = 9.80$); the median was 15 days and the mode was 9 days. These interviews were conducted in the jail.

Written, informed consent was first obtained, followed by the in-person interview. On average, the interview lasted 63.86 min ($SD = 12.48$). Participants were paid $20.

Results

Preliminary Analyses

The community and jail subsamples did not differ significantly by age, gender, race (majority or minority status), years of completed education, or current crime severity. They did, however, differ on number of prior arrests, $F(1, 97) = 9.13, p < .01$. On average, the community sample had 5.02 prior arrests ($SD = 8.59$), whereas the jail sample had 10.42 ($SD = 9.17$), $d = 0.61$. It is probable that prior arrests were influential in detention decisions. In addition, the number of days between the plea and study interview differed significantly for these two subgroups, $F(1, 97) = 38.18, p < .0001, d = 1.24$ (means and standard deviations above). When applicable, we controlled for these differences in the analyses reported below.

Almost all participants entered traditional guilty pleas (two people entered no-contest pleas) and most pled guilty to a lesser charge than the original charge (73%). Almost all had attorneys advising them (three people did not); of those with attorneys, the majority liked (72%), trusted (63%), and claimed to have told them the truth (90%).

Plea Voluntariness and Satisfaction

When asked directly whether their plea was a voluntary choice, 93% of participants answered in the affirmative. When asked whether the option of taking a plea versus going to trial was presented to them, a small minority said that they were never presented this option (6%) and 21% claimed that this option was presented for the first time on the day of entering their plea. Similarly, when asked whether someone had explained to them the conditions of the plea, 30% claimed they received an explanation on the day of their plea, 3% claimed receipt after taking their plea, and 7% claimed never to have been told. Participants were also administered the MPCS to further examine plea voluntariness. Mean scores ranged the gamut from 0 (voluntary) to 4 (coerced), but on average, people were on the lower end of the scale, $M = 1.28$ ($SD = 0.94$).
When asked directly whether their experience with the legal system was fair, 60% said “yes.” When asked about being involved in their case, 52% felt that they had enough time to discuss the case with their attorney, 66% felt that their attorney was fully informed, 64% felt that they were part of the decision-making process, and 55% claimed to have been asked about decisions that concerned them. A majority (79%) also felt that taking a plea was easier than going to trial.

For perceptions of procedural justice (e.g., opportunity to talk, treated respectfully, satisfaction), the average was 4.81 (SD = 1.61; 1 = not at all to 7 = definitely), indicating perceptions of somewhat just treatment. As would be expected, MPCS scores and procedural justice scores were significantly correlated (r = −.39, p < .001), and both MPCS and procedural justice were correlated with whether plea conditions were explained prior to the day of the plea (rs = −.26, p < .01, and .23, p < .05, respectively), although not with whether they were told they had a choice before the day of the plea.

Perceptions of procedural justice did not vary by judge, F(7, 91) = 0.87, although perceptions of voluntariness did, F(7, 91) = 2.11, p = .05. Least square differences postcomparison tests revealed that the two judges with the lowest means (indicating high perceptions of voluntariness, M = 0.89, n = 17; M = 0.56, n = 5) differed significantly from the two judges with the highest means (M = 1.86, n = 14; M = 1.63, n = 13); ps ≤ .03; ds range from 0.73 to 1.73.

Plea Knowledge and Intelligence

When we asked directly about legal understanding, 89% said that they understood the plea process, 96% said that they understood the possible penalties associated with their plea, and 87% said that they understood the legal proceedings. Nevertheless, about 30% were unaware that they themselves make the final decision about whether to plead (after the court has said they could) or that pleas can be withdrawn.

A perfect score on the true–false–I don’t know plea comprehension measure would be 40. In the present sample, scores ranged from 12 to 30, M = 21.91 (SD = 3.70). Sixty-four participants or 65% of the sample were correct on less than 60% of the information. The highest score of 30, which one person achieved, was 75%.

To investigate what factors potentially influence plea comprehension scores, we computed bivariate correlations. Several factors were significantly associated with the scores, including the number of days between plea entry and study participation (r = .20, p < .05). Older participants and those with more years of completed education achieved higher scores than their counterparts (rs = .26, ps < .01). In addition, participants with more prior arrests and more severe current arrest charges scored higher (rs = .21 and .20, respectively, ps < .05).

We also examined scores by judge. An analysis of variance was not significant, F(7, 91) = 0.85; mean scores by judge ranged from a low of 21.00 (SD = 3.37) to a high of 23.57 (SD = 3.39). When time from plea to interview was controlled, results remained nonsignificant, F(7, 90) = 0.78.

To examine multiple factors simultaneously, we conducted a multilinear regression, which was significant, F(15, 80) = 4.72, p < .001, adjusted $R^2 = .37$. First, demographic and time from plea to study were entered, followed by
criminal factors (number of prior arrests, severity of current charge, and community/custody status), and then legally relevant factors (perceived coercion, procedural justice, MacCAT–CA scores, and told choice and explained conditions prior to plea). Only three factors significantly predicted plea comprehension scores: Men ($\beta = -.19, p < .05$), those with more serious charges ($\beta = .21, p < .05$), and those with better understanding competence scores ($\beta = .44, p < .001$) had higher comprehension scores than their counterparts. Time to study, age, education, and criminal factors (history and charge) were no longer significant as they were in the bivariate analyses.

Plea Information

Participants were asked a series of 13 questions about the information they had been asked or told by their attorney and/or judge. As shown in Table 1, most information was not consistently asked or told, with three exceptions; all or most participants said they had been asked whether they understood the charges before them, whether it was their choice to plead guilty, and were told that they would be giving up certain Constitutional rights. Only about half claimed that they had been told of the evidence the prosecution had against them or that their plea could influence past and future charges against them.

Answers to these 13 questions were summed to create one score, such that “yes” answers were counted as 1, thereby yielding a total possible score of 13 (higher scores = being asked/told more information). This new score ranged from 3 to 13, $M = 7.87$ ($SD = 2.15$). The summed information score was not significantly correlated with plea comprehension scores, current charge severity, or time to interview. Amount of plea information was related to procedural justice perceptions ($r = .22, p < .05$) and modestly to perceived coercion ($r = -.19, p < .10$). Plea information was also significantly correlated with MacCAT–CA reasoning scores ($r = .21, p < .05$), but not understanding scores, such that those who received more information had higher reasoning scores.

Adjudicative Competence

As would be expected in a sample of adult defendants without mental health problems, most participants—91% for understanding and 96% for reasoning—were found to have minimal or no deficits in their adjudicative competence. Only 2% and 3% of the sample demonstrated clinically significant impairment on the understanding and reasoning portions, respectively. The community and jail subsamples did not differ significantly on either of the two MacCAT–CA scores, $\chi^2s \leq 2.31, ps \geq .32, \varphi s \leq .15$. MacCAT–CA scores also were not significantly correlated with time from plea to interview, $rs \leq .14, ps \geq .16$. As previously noted in the regression analysis, MacCAT–CA understanding scores were strongly related to plea comprehension scores.

Discussion

In the present study, we addressed the following question, “Do defendants presumed to have the ability to make voluntary, knowing, and intelligent plea decisions actually make such decisions?” In our sample of 99 defendants, all had been presumed to be competent to have entered the plea (as the plea was allowed
Table 1
Plea Information by Judge (% Yes) and Mean Summary Score

<table>
<thead>
<tr>
<th>Question</th>
<th>Judge (number of defendants)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(n = 21)</td>
</tr>
<tr>
<td>As part of your guilty plea, were you asked:</td>
<td></td>
</tr>
<tr>
<td>If you understood the charges against you?</td>
<td>100</td>
</tr>
<tr>
<td>If you ever had or now have a mental illness?</td>
<td>24</td>
</tr>
<tr>
<td>If you were claiming you committed the crime in self-defense?</td>
<td>14</td>
</tr>
<tr>
<td>If you were pleading guilty in order to get out of jail?</td>
<td>5</td>
</tr>
<tr>
<td>If you were intoxicated on alcohol or drugs or if you were on medication?</td>
<td>10</td>
</tr>
<tr>
<td>If you spoke and understood the English language?</td>
<td>57</td>
</tr>
<tr>
<td>If it was your choice to plead guilty?</td>
<td>90</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Question</th>
<th>Judge (number of defendants)</th>
<th>Total (N = 99)</th>
</tr>
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<tbody>
<tr>
<td>As part of your guilty plea, were you TOLD:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What evidence the prosecution had against you?</td>
<td>52 (n = 21)</td>
<td>54</td>
</tr>
<tr>
<td>That your guilty plea could affect past and future charges against you?</td>
<td>43 (n = 21)</td>
<td>50</td>
</tr>
<tr>
<td>That you would be giving up certain Constitutional rights you have?</td>
<td>95 (n = 21)</td>
<td>95</td>
</tr>
<tr>
<td>That the judge did not have to accept the sentence recommendation from the prosecutor?</td>
<td>81 (n = 21)</td>
<td>86</td>
</tr>
<tr>
<td>That you could withdraw your guilty plea without penalty?</td>
<td>33 (n = 21)</td>
<td>40</td>
</tr>
<tr>
<td>What your maximum punishment could have been if you were found guilty at trial?</td>
<td>81 (n = 21)</td>
<td>83</td>
</tr>
<tr>
<td>Mean summary score (SD)</td>
<td>7.14 (2.29) 8.27 (2.37) 7.15 (2.67) 8.35 (2.21) 8.50 (1.61) 7.27 (1.50) 8.40 (1.95) 8.86 (1.68) 7.87 (2.15)</td>
<td></td>
</tr>
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to be entered); indeed, we found that most—91% to 96%—were found to be competent as measured by a standardized, normed research instrument. Thus, the questions that remain are whether voluntary, knowing, and intelligent plea decisions were actually made. We discuss our findings for each in turn. We also discuss the factors that may affect comprehension and voluntariness, including whether defendants were in the community or in custody and the information supplied to plea decision makers.

Voluntary Plea Decisions

During plea colloquies, one of the most important questions is whether the defendant is making a voluntary plea decision; within our sample, 95 of 99 participants said they had been asked this question as part of their guilty plea. When defendants are asked this in open court, we would assume that most say “yes” because a “no” answer could (and should) result in the plea not going forward. When we asked this question of the defendants in our sample, most (93%) also answered “yes.” Most also claimed to have been made aware that the decision was voluntary, although one in five claimed to have been told for the first time on the day of the plea. An additional 6% claimed never to have been told that the choice was voluntary. Furthermore, nearly one third of the sample erroneously believed that someone other than themselves (e.g., the judge or their attorney) made the final plea decision (after the court had accepted their plea).

Using the MPCS, we found scores to be generally low, reflecting that most indeed felt their guilty plea was voluntary. Poythress et al. (2002) reported perceived coercion scores of five different samples of involuntary psychiatric inpatients concerning their admittance decision. These mean scores ranged from 2.90 to 3.68, whereas the mean found here for plea decisions was 1.28, a mean similar to scores found for voluntary psychiatric in- and outpatients admissions (however, see Hoge, Lidz, et al., 1997, for lower scores). Finally, perceived voluntariness/coercion varied by judge, although the range of means was still limited to 0.56 to 1.86 (on a 5-point scale). There was also a correlation of small magnitude ($r = -.19$) between perceived coercion and plea information (what was asked of and told to defendants), such that those who had more information felt less coerced. Although the total amount of information provided did not vary significantly by judges, the two judges (Judges 4 and 7) with the lowest perceived coercion scores tended to give slightly more information (see Table 1).

Perceptions of procedural justice would also be theorized to relate to perceptions of voluntariness in that those who feel they have a voice and feel respected may perceive their choice to be voluntary. Bordens and Bassett (1985) found that defendants who felt more pressure from the prosecutor and defense attorney to plead guilty reported less satisfaction with the plea process. We also found the two to be correlated significantly; those who felt less coercion also felt more fairly treated, and vice versa. About 40% of our sample did not feel that their experiences with the legal system were fair. Similar percentages also reported feeling uninvolved in what was happening and in the decision making, and not having enough time to consult with their lawyers. In a large-scale analysis of more than 400 felony defendants, Casper, Tyler, and Fisher (1988) also reported that 45% perceived not being treated fairly. And, finally, although others have reported that
procedural justice can vary by demographic characteristics such as race (e.g., Albonetti, 1990; Casper, 1978), we did not find procedural justice perceptions to correlate significantly with defendant characteristics.

**Knowing and Intelligent Plea Decisions**

Like the question about voluntariness of the plea decision, questions about the understanding of plea decision making are mainstays in plea inquiries; within our sample, 100% said that they had been asked whether they understood the charges. And, when we asked direct questions about understanding, 87% to 96% said that they understood the plea process, the possible penalties against them, and the legal proceedings more generally. Scores on the plea comprehension instrument painted a somewhat different picture of understanding, however. The average score on our measure (i.e., 21.91) indicated correct scores on 55% of the questions. Most (two thirds of our sample) were correct on less than 60% of the information and the participant with the highest score was correct on only 75%. There are several possible reasons for the disconnect between competency status and plea understanding, although clearly the two are related. First, competence does not require perfect or complete understanding. Attorneys recognize that it is relatively easy to be considered competent (Huss, 2009). One prosecutor remarked that one only need know the difference between a judge and a grapefruit to be considered competent (Frontline, 2002). Second, defendants may have trouble with “legalese” that can be found in some oral colloquies and written plea forms. The National Adult Literacy Survey found that 70% of adult inmates read at or below the sixth grade level (Haigler, Harlow, O’Connor, & Campbell, 1994). In contrast, preliminary research found that adult tender-of-plea forms are, on average, written at an 8.6 grade level (Redlich, 2010b). The statewide tender-of-plea form for the state in which the present data were collected is written at a 10.9 grade level. Our data demonstrate that meeting the (low) threshold for competence may not necessarily be indicative of making a knowing, intelligent, and voluntary plea decision despite having the ability to do so.

We also found the severity of the current charge positively and significantly predicted plea comprehension scores. It may be that attorneys and judges alike took more time to explain plea procedures and requirements to those facing more serious charges (and thus more serious penalties). Poythress, Bonnie, Hoge, Monahan, and Oberlander (1994) found consistently that attorneys reported spending more time interacting with their clients on felony (e.g., 2.5 hr) than on misdemeanor (e.g., 0.4 hr) cases, as well as spending more time with clients whose competence was in doubt. We also found here that women had higher plea comprehension scores than men. In general, previous research has found that men are less likely to plead guilty than women (Albonetti, 1990; Kellough & Wortley, 2002). Thus, it may be that men who plead guilty are distinct from men who do not plead guilty.

We did not find plea comprehension scores or the amount of plea information provided to vary by judge. In a system premised on equal justice, it would be distressing for plea comprehension and receipt of plea information to vary on such an arbitrary factor as judicial assignment. And although we did not find the total amount of information asked of or told to defendants to vary by judge, specific
pieces of information were found to vary widely. For example, only 31% of Judge 3’s defendants claimed to have been told that the guilty plea could affect past and future charges, whereas 71% of Judge 8’s defendants claimed to have been told this information. Although these results are intriguing, we recommend cautious interpretation (and more research) because the number of defendants by judge ranged from only five to 21.

Conclusions and Limitations

To our knowledge, this is the first research to examine plea understanding, specific to the plea inquiry, in a sample of adult defendants. Kaban and Quinlan (2004) examined juvenile defendants’ preplea understanding and found that most had insufficient levels of understanding. In our sample of postplea adult defendants, we also found understanding to be less than adequate. Although most claimed that they understood when asked, “Do you understand?” at the same time, most did not perform well on our measure of plea comprehension.

What are the policy and legal implications of these findings? Recently, Redlich (2010a) stated,

[I]t is unclear whether [these] plea discussions serve as true safeguards or whether they are indeed mere formalities . . . . In an overcrowded criminal justice system in which almost all convictions are the result of guilty pleas, plea discussions may be a formality that better protects the court than the defendant. (p. 62)

Although the present study was not designed to address who is better protected, the results do seem to indicate that a significant proportion of defendants—ones who were considered to be competent (and thus had the ability)—may not fully understand and appreciate the rights they are ceding, the collateral consequences, the voluntariness associated with pleading guilty, and other important safeguards. As we see it, the problem is not so much with the standards set forth (i.e., the American Bar Association standards) but rather is likely to lie in the translation and interpretation of, and fidelity to, the standards. More specifically, are judges and attorneys across the nation (or even within jurisdictions) abiding by the suggested standards (e.g., is all information covered)? And if so, are they conveying the information in a manner that is understandable and meaningful to defendants? In turn, are defendants actively engaged in understanding, or does the resultant outcome (reduced charges, deincarceration) become the most important consideration above all else? In many ways, our findings generate more questions than answers. We hope that policy discussions and more investigation follow.

The present research has limitations. First, we did not assess what was actually said to and asked of by defendants concerning their pleas. Conversations and plea negotiations with attorneys are confidential and generally researchers do not have access to these situations. The plea inquiry by the judge in open court, however, is not confidential, and although we often observed these hearings, systematic notes were not taken. An important next research step will be to document plea hearings. Our data are self-report, which can be subject to errors relating to memory and bias, although it must be noted that the court also relies on self-report to assess competence and voluntary and knowing plea decision making. Second, we did not assess understanding among defendants who were offered plea bargains but chose to plead not guilty.
Our research question was intended to specifically address plea comprehension among those who had already (and recently) pled guilty. Nevertheless, future research should include samples of defendants who did not plead guilty for comparison purposes. Third, our findings represent one county and thus may not generalize. And finally, the psychometric properties have yet to be established for our measure of plea comprehension. The original measure from which questions were devised (Redlich et al., 2010) was found to have a Cronbach’s alpha of .66. The current measure of plea comprehension demonstrated better internal reliability with an alpha of .82, but an important next step will be to continue to test and demonstrate validity and reliability.

As remarked by Justice Thomas in Godinez v. Moran (1993), having the ability to make a voluntary, knowing, and intelligent decision and actually making one are not one in the same. In the same vein, simply asking defendants whether their decisions were informed and made of their own volition may not be the same as demonstrating that the decisions were indeed made in this manner. Because our criminal justice system is overcapacity and subsequently overreliant on pleas, it is imperative that we learn more about the abilities of the thousands of defendants who plead guilty every day. At the current time, the main and sometimes only mechanism to determine whether plea decisions are knowing, intelligent, and voluntary is to ask ready-to-plead defendants in open court questions about these issues. From a scientific standpoint, there are numerous social and cognitive influences that could impede the validity and reliability of these assessments. Although the present research was one initial foray into investigating plea comprehension, our findings revealed that the plea colloquy may not be providing the protection it seeks to ensure.

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