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Guilty Pleas

VOLUME 2

DAVID ROSSMAN
Professor of Law
Boston University School of Law

Updated by Elizabeth L. Inglehart

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Editorial Offices
121 Chanlon Rd., New Providence, NJ 07974 (908) 464-6800
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

MATTHEW BENDER

(Rel. 57-11/2012 Pub.198)

DEDICATION

To Rebecca Kaplan
who loved both justice
and learning

(Rel. 57-11/2012 Pub.198)

PREFACE

Guilty pleas and the system of plea bargaining have provoked a great deal of commentary. Some of it questions the moral consequences of resolving criminal cases without a trial. Some explores the effect of the process on the criminal justice system and society at large. This book approaches the topic from another perspective. It examines the legal doctrines which govern guilty pleas. It attempts to provide an analytical as well as practical framework to resolve the problems the legal system faces as a consequence of relying on plea bargaining. Social and moral issues are relevant, but only in the context of how they affect the prevailing law, and influence the direction it might take.

Most of the book addresses this concern from the vantage point of the defense attorney, who must translate theory into practice in the courtroom. The purpose, however, was not to be an advocate on any of these issues, but to present a clear picture of how courts deal with them, to illuminate the values which different positions implement, and to criticize as objectively as possible.

A caveat is in order for those who will use the book as a practical tool. Taken by itself, this volume does not purport to present a balanced picture of the approach an attorney should take in the defense of a criminal case. It addresses only one aspect of the process, and deals just peripherally with the equally central concern of how to prepare and implement a trial defense. Guilty pleas may represent the final outcome of far many more cases than do trials, but the weight of the numbers should not deflect a defense attorney's effort from the obligation to provide zealous and competent representation in whatever forum the client's interests can best be served.

An undertaking like this book has both humbling and exhilarating aspects. The problems it presented did not yield immediate or easy solutions. When the pieces fell into place, however, the sense of satisfaction was considerable. There were a number of people whose efforts contributed to the process, and helped shape the final product. Whatever merit the book has is due in no small measure to others.

Ann Weld Harrington and Noreen Abtahi types all of the drafts. Ron Fellman, Michael Saks, David Farman, Doug Perry, and Nancy Gottlieb provided indispensable research assistance and offered many useful suggestions. Stanley Fisher and Peter Arenella read portions of the manuscript and served as valuable critics. Michael Eisenstein of Matthew Bender was a patient and understanding editor. Wendy Kaplan, Fran Burns, and Eva Nilson lent a vital perspective by constantly providing an anchor in the reality of the courtroom, as well as being supportive colleagues. And Lynne Rossman provided encouragement that tempered the frustration, helped turned false starts from setbacks into building blocks, and offered a key insight into the approach the book should take.

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A COMPLETE SYNOPSIS FOR EACH CHAPTER APPEARS AT THE BEGINNING OF THE CHAPTER

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Introduction

Anyone reading the Constitution to get a sense of the American criminal justice system would come away with an impressive picture. It describes a trial process designed both to arrive at accurate results[1] and to restrict the power of the state in significant ways.[2] Defendants facing the "terrible engine of the criminal law"[3] can find considerable protection in the Bill of Rights.

If one turned to Supreme Court decisions for a more complete description of the type of trial a defendant could expect, the prospect might seem even more attractive. The state's burden of proof is much higher than in any other form of litigation.[4] The Court has limited the prosecution's access to several categories of probative evidence in order to ensure that the rights of defendants in general do not suffer by police investigation which oversteps the bounds of constitutional behavior.[5] And in a number of other respects, the Court's fleshing out of the constitutional skeleton has made an American criminal trial as attractive for defendants as any other on the face of the globe.[6] The truly curious, however, often do well to look beyond formal descriptions, especially with a system as complex as the criminal trial process. One need not be cynical, merely realistic, to suspect that theory and practice don't always coincide. Thus, a cautious investigator might expect the actual course of a criminal trial to fall somewhat short of the mark. What even a casual observer of American criminal courts would find, though, is not simply that some, or even most, trials deliver less than what

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[1] *See e.g.,* U.S. Const. amend. VI (guarantee of the right to cross-examine and compulsory process).

[2] *See e.g.,* U.S. Const. amend. VII (guarantee of the right to a jury trial); U.S. Const. amend. V (protection against double jeopardy).

[3] Culombe v. Connecticut, 367 U.S. 568, 581, 81 S. Ct. 1860, 6 L. Ed. 2d 1037 (1961) ("The terrible engine of criminal law is not to be used to overreach individuals who stand helpless against it.").

[4] *See In re* Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368, 51 Ohio Op. 2d 323 (1970).

[5] *See* Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081, 16 Ohio Op. 2d 384, 86 Ohio Law Abs. 513 (1961) (exclusionary rule applied to state courts' use of unconstitutionally seized evidence); Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 Ohio Misc. 9, 36 Ohio Op. 2d 237 (1966) (Prophylactic warnings required for defendant's admissions to police to be admissible).

[6] *See* Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799, 23 Ohio Op. 2d 258 (1963) (right to counsel); United States v. Wade, 388 U.S. 218, 87 S. Ct. 1926, 18 L. Ed. 2d 1149 (1967) (impermissibly suggestive identifications violate due process).

While one can debate whether a particular Supreme Court decision has expanded or contracted defendant's rights, most would agree that compared to the system as it existed at the time the Bill of Rights was enacted, the current trial process offers significant advantages as a result of the overall direction the Supreme Court has taken.

the Constitution promises. The large majority of criminal cases in this country are resolved without anything resembling a trial at all.[7] In fact, court systems often structure their internal operation to make it clear to defendants that guilty pleas are in their best interests.[8] Only a small proportion of defendants take full advantage of the opportunity for acquittal which a trial offers. The elaborate mechanisms the Constitution prescribes for ensuring a trial's accuracy and fairness are put into effect by only a few. The rest plead guilty.

A guilty plea is a formal decision by the defendant, in open court, to dispense with a trial and allow the state to obtain a conviction without following the otherwise difficult process of proving him guilty beyond a reasonable doubt.[9] In almost all cases, a guilty plea is accompanied by the defendant's admission that he did indeed violate the law.[10] The guilty plea procedure often takes no more than ten minutes of the court's time. There is usually only an abbreviated statement of the facts which underlie the charge against the defendant.[11] And typically, whatever interchange occurs between the judge and the defendant to ensure the quality of the decision to forego a trial never rises above the level of a mechanistic ritual.[12]

Viewing the nature of a guilty plea against the backdrop of the type of trial the Constitution describes raises a number of questions. The most pressing is why up to 90% of defendants find so little allure in a procedure that offers such advantage.[13] Even before one considers the question from the point of view of the defendant, however, there are implications society must confront in this startling prevalence of guilty pleas.

Trials don't just benefit the defendants whose fate they decide. They benefit the public at large, in several ways. First, they provide a relatively complete airing of the details of the crime with which the defendant is charged. Especially in notorious cases, such as James Earl Ray's conviction for the murder of Dr. Martin Luther King, a guilty plea may be too shallow an investigation into how the crime occurred to satisfy the need for information. Trials also allow individual citizens their only opportunity to participate in the process of administering the criminal law, by being on a jury. The

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[7] D. Newman, *Conviction, The Determination of Guilt or Innocence Without Trial* 3 and note 1 (1966).

[8] *See e.g.*, Sundance v. Municipal Court, 42 Cal. 3d 1101, 232 Cal. Rptr. 814, 729 P.2d 80 (Cal. 1986) (Rights of defendants charged with public drunkenness are not violated by the existing time schedule for trials which brings structural pressure to bear on them to enter guilty pleas, despite fact that over 99 percent enter guilty pleas for time served while those who insist on a trial have to wait an additional two to three weeks. The whole system of pleading guilty is premised on accepting the propriety of enticing defendants to waive trials in return for lighter sentences and the pressure of waiting in jail for a trial is an acceptable part of the price.).

[9] *See* Machibroda v. United States, 368 U.S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962).

[10] *But see* North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162, 56 Ohio Op. 2d 85 (1970), discussed in Chapter 38 *below*.

[11] *See* Chapter 33 *below*.

[12] *See* Chapter 37 *below*.

[13] D. Newman, *Conviction, The Determination of Guilt or Innocence Without Trial* 3 & n.1 (1966).

wider the responsibility for making decisions in the criminal justice system is spread, the less the possibility of abuse and the greater the sense of public satisfaction with the process.

Even without participation on a jury, trials validate one's sense that the criminal justice system is a fair one. Whether a trial ends in a conviction or an acquittal, the process which led to the verdict is open to public view. Individuals can form their own conclusions whether the procedure was fair, and the results deserving of respect. With a guilty plea conviction, there is almost no process to examine to reach a similar conclusion about the appropriateness of the result. One must rely on the fact that the defendant consented to the result to validate the procedure. This delegation of responsibility makes it harder for the system to lay claim to widespread support.

Trials also serve a useful function by virtue of their ritualistic aspect. They are a public affirmation of the values the Constitution protects. They represent an example of the state's willingness to limit the reach of its own power, even at the cost of failing to convict a person who otherwise deserves a criminal sanction. They serve an educational role not only in this regard, but also in providing a graphic reminder of what type of behavior the state allows and what it condemns.

Guilty pleas rob the criminal process of this potential. They are too brief and call into play too few of the limitations on the state's power to serve the same function. If anything, they are simply reminders of the fact that the state is too powerful to contest, or perhaps that a lesser punishment follows confession. They tell us very little about the limits on the relationship our government maintains between itself and the individual.

Trials moreover allow the law to develop in useful ways, which guilty pleas do not. The judicial system can't continually redefine the contours of both the substantive criminal law and the procedural system for implementing it, unless contested cases provide the opportunity for appellate courts to render decisions. Guilty pleas don't raise many of these issues, and when they do defendants who pled guilty are often foreclosed from asserting them.[14] A system that depends on guilty pleas will be more static than one where trials predominate.

Trials provide an additional advantage over guilty pleas. They ensure that disputes over important issues are resolved in an orderly way, with the balance of advantage struck to take into account those values society considers important. A defendant who pleads guilty rather than rely on self defense at trial, for example, may have the greatest stake in the resolution of the question whether he or she acted reasonably to defend against a threat of harm. But the defendant's decision to forego litigating the issue may not satisfy society's need to decide whether the defendant deserves to be punished according to the procedure it set up to arrive at accurate and fair results. There are too many vagaries in the process of self-condemnation to assert that a defendant's decision to plead guilty is always an accurate prediction of how a trial would have ended. If the defendant indeed deserves to be punished, there is some

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[14] *See* Chapter 34 *below*.

value in going beyond his or her guilty plea in exploring the underlying facts. Especially where the stakes are high, the defendant's admission of guilt may be an inadequate basis.[15]

If the consequences of relying on guilty pleas were entirely one sided, they would hardly be so prevalent. In order to thrive to such a degree, they must offer the criminal justice system some advantage which outweighs the costs. The benefits of guilty pleas, in fact, are quite tangible. Since the costs are largely symbolic ones, any calculus is likely to favor the concrete over the abstract, and the primary value of guilty pleas is extremely concrete. Guilty pleas, by virtue of the very nature of the trials which they make unnecessary, save money. Because our trial system is so elaborately weighted down with protections for the individual, it is an inordinately expensive undertaking. Proponents of the guilty plea process often point to a potential collapse of our criminal courts if guilty pleas did not serve to stem the tide of an ever mounting caseload.[16] Because we are unwilling to either cut back on the protections a trial affords, or fund the court system sufficiently to give everyone a trial, guilty pleas present a pragmatic solution.

Trials not only devour tangible resources, they represent an emotionally taxing experience for many of the participants. Witnesses and jurors may not be pleased to participate in their civic duty at a trial, but at least this chore is one that falls upon only a small proportion of the population. If trials were the norm, rather than the rule, they may exact too much both in terms of resources, and emotional wear.

There are even intangible benefits of a guilty plea system. By weeding out most cases before they require a trial, guilty pleas may help preserve the integrity of the trials that remain.[17] If every case were tried to the hilt, society might find it too much to ask for courts to put into effect all the procedural protections the constitution provides in theory. By reserving concepts like proof beyond a reasonable doubt only for the exceptional case, trials can remain more faithful to the limitations that the Constitution places on the state's power to convict.

Finally, guilty pleas may represent the ultimate expression of our system's commitment to the importance of the individual in confronting the power of the state. If a guilty plea is anything, it is a decision by the person most closely affected that he or she considers his or her best course of action to avoid a trial. Any step the state takes to move toward more trials would mean ignoring the wishes of those defendants who choose to plead guilty. One corollary of respect for the individual within the trial process itself, is respect for the individual's choice to forego a trial altogether. Another corollary is that if a defendant decides that he or she is guilty, and agrees to let the state

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[15] *See generally* Alschuler, *The Changing Plea Bargaining Debate,* 69 Cal. L. Rev. 652 (1981).

[16] *Cf.* Brady v. United States, 397 U.S. 742, 752, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970) (plea bargaining benefits the state by conserving "scarce judicial and prosecutorial resources . . .").

[17] **Guilty pleas weed out cases before they require a trial.** *See* Enker, *Perspectives on Plea Bargaining,* printed in The Task Force on the Administration of Justice, The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts,* Appendix A, (1967).

convict him or her, then respect for the individual mandates respect for the results of his or her choice. A guilty plea under this view provides whatever sense of legitimacy we need before we apply a criminal sanction.[18]

The shortcoming of this description of the drawbacks and advantages of a guilty plea system is that it has yet to take into account the reason why most defendants plead guilty. If the predominant motivation for most guilty pleas were an overwhelming sense of contrition and genuine repentance, the system would have much to commend. However, the reason for almost all guilty pleas is far less noble. Defendants plead guilty, by and large, because they hope to gain some advantage. The source of the advantage and the form it takes, provide a far more controversial aspect of our system's reliance on guilty pleas than one sees simply focusing on the guilty plea itself.

The advantage a defendant seeks by pleading guilty concerns how harshly the criminal justice system will treat him or her. This is a function of two factors, the charge for which the defendant is convicted and the sentence he or she receives. A misdemeanor conviction is preferable to one for a felony. Probation is less onerous than a jail sentence. If the defendant must serve time, the shorter the better. A guilty plea is a means towards these ends. The benefits of waiving a trial can be presented to the defendant explicitly, in the form of a plea bargain, or can form the backdrop of the unstated practice by which the system rewards those who enter a guilty plea.[19]

Most public attention has focused on the explicit plea bargain. While the public has a right to know the terms of an explicit plea bargain, it is not until the parties file a plea agreement with the court that the First Amendment right of access applies.[20] When a

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[18] **Right to plead guilty respects individual's right to choose.** *See* Church, *In Defense of "Bargain Justice,"* 13 Law and Soc. Rev. 509 (1979).

[19] *See* Chapter 37 *below.*

[20] **Terms of plea bargain made public after parties file plea agreement with court.**

D.C. Circuit: Washington Post v. Robinson, 935 F.2d 282, 290 U.S. App. D.C. 116 (D.C. Cir. 1991) (government must show a compelling interest to justify sealing a plea agreement and shield it from public view. The First Amendment right of access guarantees the press the right to inspect a plea agreement that has been filed with the court under seal after the defendant has entered a guilty plea, unless the government can show a compelling need such as the protection of the defendant's safety or the need to ensure the secrecy of grand jury proceedings). *See also Doe v. Hammond*, 502 F. Supp. 2d 94 (D.D.C. 2007) (there are significant public interests in full disclosure of a plea agreement, including the right of the public and the press to have access to court proceedings, and the victims' right of access to the terms of a plea agreement under the Crime Victim Rights Act).

7th Circuit: See also United States v. Blagojevich, 662 F. Supp. 2d 998 (N.D. Ill. 2009) (First Amendment right of public access to documents submitted in a judicial proceeding does not attach to all aspects of a criminal trial, including, for example, presentence reports, withdrawn plea agreements, or affidavits supporting search warrants).

9th Circuit: See also United States v. Kott, 380 F. Supp. 2d 1122 (C.D. Cal. 2004) (First Amendment right of access extended to previously sealed search warrant applications and indictment).

Alabama: Ex Parte Birmingham News Co. Inc., 624 So. 2d 1117 (Ala. Crim. App. 1993) (because public access to plea negotiations could significantly impair the process, the press has no right of access until the parties actually reach a plea agreement and file it in court. It is only at that point that plea

plea bargain is presented to the court, however, it becomes open to scrutiny. Usually the prosecutor, but occasionally the judge, provides the defendant with the terms of the choice he or she faces.[21] If the defendant pleads guilty, he or she will receive a more lenient disposition than if he or she goes to trial and loses. The concession for pleading guilty can come in the form either of a reduced sentence on the charge which the defendant faces, or by being able to limit his or her eventual conviction to something less serious than all the original charges.[22]

With this feature added to the description of our system's reliance on guilty pleas, a host of other concerns arise. By allowing the criminal justice system to settle the sentence the defendant receives and the appropriate charge for which he is convicted by negotiation rather than adjudication, the courts abandon control over the factors which influence the result. At a trial, a judge can enforce rules designed to confine the process only to those matters which are relevant. In plea bargaining, the essentially private nature of the decision allows improper factors to play a role, without much chance that they will come to light. Prosecutors may concede more than is necessary in a particular case because they are unusually friendly with defense counsel.[23] Defendants may be willing to accept a particularly meager concession for pleading guilty because they are extremely sensitive to the personal strain of living with the

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negotiations become subject to the First Amendment right of access).

[21] **Prosecutor or judge tells defendant terms of agreement.** 624 So. 2d 1117.

[22] **Forms of plea agreements.** *But see* State v. Livanos, 151 Ariz. 13, 725 P.2d 505 (Ariz. Ct. App. 1986). The plea bargaining process often involves the defendant's pleading guilty to a less serious crime than the one he or she faces in the original charges the prosecutor filed against him or her. At times, the process of "charge bargaining" requires the defendant to plead guilty to an offense that he or she did not actually commit. However, charge bargaining to a crime the defendant did not actually commit involves a degree of misrepresentation which the Arizona courts feel approaches fraud on the public. Therefore, an Arizona trial judge may not accept a guilty plea to a crime the defendant did not actually commit. Every Arizona guilty plea must be supported by a factual basis which establishes that the defendant violated the law under which he is convicted.

[23] **Improper factors may play a role in plea bargaining.** 151 Ariz. 13, 725 P.2d 505.

3d Circuit: See also United States v. Larkin, 629 F.3d 177 (3d Cir. 2010) (in determining whether government violated a plea agreement, court considers description of the alleged improper conduct of the government, then evaluates whether the conduct violates the government's obligations under the plea agreement, and if so, fashions appropriate remedy).

4th Circuit: See also People v. Labora, 190 Cal. App. 4th 907, 118 Cal.Rptr.3d 606 (2010) (trial court engaged in improper judicial plea bargaining).

Georgia: See also Works v. State, 301 Ga. App. 108, 686 S.E.2d 863 (2009) (trial court did not improperly participate in plea negotiations when it stated that it would not accept a plea recommendation due to the severity of the charges and that it would accept a recommendation of a certain longer sentence, which defendant had already declined).

Montana: See also State v. Brinson, 351 Mont. 136, 2009 MT 200, 210 P.3d 164 (guilty plea is "involuntary" if the court, the prosecutor, defense counsel, or some other party induced the plea by threats, by promises to discontinue improper harassment, by misrepresentation, by unfulfillable promise, or by promises that are by their nature improper as having no proper relationship to prosecutor's business).

uncertainty and risk that a trial entails.[24] In either event, the process suffers on two accounts. Not only does it let the ultimate result of the defendant's case depend on factors unrelated to the theory on which society judges a particular conviction and sentence to be just,[25] it also inevitably creates the danger of unequal application. Two cases, alike in every relevant respect, may emerge from the plea bargaining process with different results because of the influence of factors which should not play a role, but go undetected.

Moreover, depending on the point of view one takes, plea bargaining detracts from the moral force of the criminal justice system either because it is too lenient a process, or too harsh. If the original charge the defendant faces is appropriate, and if the sentence he or she would receive if convicted after a trial is deserved, then a plea bargain which gives him or her a concession in either area is too lenient. Either the defendant will spend less time in jail than he or she deserves, or the defendant will bear a conviction for a crime which doesn't accurately convey the seriousness of what he or she actually did. In either event, society is cheated to some degree. The advantages of the plea, if they relate solely to saved resources or to some abstract value, may not be appreciated by a public that sees only a criminal who was able to take advantage of the system.

Defendants, on the other hand, are not apt to see plea bargaining in the same light. From their perspective, it is reasonable to believe that the potential consequences of a trial are not what they truly deserve, but merely a threat to force them to plead guilty. Thus, plea bargaining results in too harsh treatment for those who exercise their right to a trial, because prosecutors take plea bargaining into account when they bring charges originally. A defendant may risk a first degree murder conviction not because the prosecutor believes he or she deserves to face the consequences of such a crime, but in order to give the prosecutor leverage to convince the defendant to plead guilty to manslaughter. The same process can be at work in the sentence a defendant receives for going to trial, as well as the charges he or she faces.[26]

Finally, the process of plea bargaining detracts from whatever respect a defendant's guilty plea might otherwise deserve as a means to justify a criminal conviction. A defendant's uninfluenced choice to forego a trial calls into play basic assumptions about respect for the individual. But when the defendant is either threatened or bribed into abandoning a process which may benefit him or her and disadvantage the state, different considerations are relevant. At the very least, before one placed confidence in the system's result because of the defendant's choice, one would need a great deal of information about the terms of the bargain the defendant was offered and his or her ability accurately to assess the prosecutor's chance of convicting him or her. If the plea bargaining concession were huge, so there was a great element of risk attached to a

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[24] *See* Chapter 39 *below*.

[25] *See generally* Alschuler, *The Changing Plea Bargaining Debate,* 69 Cal. L. Rev. 652 (1981).

[26] A prosecutor may threaten a defendant with a 20 year sentence if he or she loses a trial, when the prosecutor really wants the defendant to receive a 10 year sentence, which the prosecutor offers as a condition to the defendant's guilty plea.

trial, it leaves room to doubt the basis for the defendant's guilty plea. The same is true if the defendant pled guilty out of a misconception of how easily the prosecutor could convict him or her.

The danger in the influence of these two factors is twofold. First, they may tempt even a defendant who ought not to be convicted to plead guilty rather than run the risk of a trial. To the extent that these "inaccurate" convictions occur more frequently than when cases are actually tried in court, the guilty plea process suffers by comparison. Second, plea bargaining may well achieve and in fact is designed to accomplish the result of convicting those who would have been acquitted at trial, because the trial process is skewed in favor of releasing some defendants who actually committed the crime. Accepting the social utility of this result requires one to rec—ognize that it comes only at the sacrifice of the values which we consider important enough to make a part of the trial process. For example, a defendant may plead guilty to possession of heroin rather than advance what would ultimately have been a successful argument at trial that the prosecution could not offer the drugs into evidence because the police seized it as a result of an unconstitutional search. The plea may result in the conviction of someone who undoubtedly broke the law in possessing an illegal drug. But it comes at the cost of relying on the fruits of unconstitutional police conduct, a cost we consider too high in the trial process. Whatever the feature of the trial that would have lead to an acquittal rather than a guilty plea conviction, plea bargaining condones explicit attempts by the prosecutor to achieve indirectly what the Constitution forbids him to do directly.

In the context of the criminal justice system's increasing reliance on guilty pleas, and the inducements that are offered to obtain them, the Supreme Court has developed a constitutional doctrine to judge the validity of guilty plea convictions. The Court has always recognized that a constitutional guarantee that a criminal defendant shall enjoy a certain right would be relatively meaningless unless some safeguard is attached to the process of convicting him without its benefit. The most important of these safeguards has come to be known under the general heading of voluntariness.[27]

A guilty plea must be voluntary to be constitutionally valid.[28] The Federal Rules[29] and almost all of the model codes[30] and state provisions[31] require a judge to determine that a guilty plea is voluntary before accepting it. This voluntariness requirement flows directly from the consequences of entering a guilty plea—convicting the defendant

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[27] The factual basis requirement also serves as a safeguard, but it is neither constitutionally compelled nor as important as voluntariness.

[28] Machibroda v. United States, 368 U.S. 487, 82 S. Ct. 510, 7 L. Ed. 2d 473 (1962).

[29] Fed. R. Crim. P. 11.

[30] *See e.g.,* ABA Standards for Criminal Justice, *Pleas of Guilty,* standard 14–15 at 14.29 (2d ed. 1980). *But see* ALI Model Code of the Pre-Arraignment Procedure § 350.4 at 621 (1975) ("Code does not use voluntariness as the standard for judging the plea.").

[31] *See e.g.,* Ariz. R. Crim. P. 17.3 (1973); Ark. R. Crim. P. 24.5 (1976); Colo. Rev. Stat. § 16-7-207 (2b) (1973); Ind. Code Ann. § 35-4.1-1-4 (Burns 1979).