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Criminal Procedure - Guilty Pleas - Procedure Prerequisite to Accepting a Guilty Plea in Wyoming - Cardenas v. Meacham

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CASE NOTES

CRIMINAL PROCEDURE — GUILTY PLEAS—Procedure Prerequisite to Accepting a Guilty Plea in Wyoming. Cardenas v. Meacham, 545 P.2d 632 (Wyo. 1976).

The plea of guilty is more than confession; "[i]t also serves as a stipulation that no proof by the prosecution need be advanced. . . . It supplies both evidence and verdict, ending controversy."[1] In effect, the defendant who pleads guilty enters his own conviction. In so doing, he waives "the entire array of constitutional rights designed to protect a criminal defendant against unjustified conviction, including the right to remain silent, the right to confront witnesses against him, the right to trial by jury, and the right to be proven guilty by proof beyond a reasonable doubt."[2] For this waiver to be valid, it must be "an intentional relinquishment . . . of a known right or privilege."[3]

Because of the significant constitutional consequences of the guilty plea, the United States Supreme Court has held that the trial court must exercise "the utmost solicitude"[4] in determining that the plea is entered with a full understanding of its consequences; the plea cannot be accepted without an affirmative showing that it is both intelligent and voluntary.[5]

Federal Rule of Criminal Procedure 11[6] outlines the procedure a federal judge must follow in determining whether to accept or reject a guilty plea; its counterpart in Wyoming is Wyoming Rule of Criminal Procedure 15.[7] Rule 15, identical to the 1966 version of Federal Rule 11,[8] provides that:

1. Woodard v. State, 42 Ala. App. 552, 558, 171 So. 2d 462, 469 (1965).
2. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, TASK FORCE ON COURTS 42 (1973).
3. McCarthy v. United States, 394 U.S. 459, 466 (1969), *quoting* Johnson v. Zerbst, 304 U.S. 458, 464 (1938).
4. Boykin v. Alabama, 395 U.S. 238, 243 (1969).
5. *Id.* at 242.
6. FED. R. CRIM. P. 11.
7. WYO. R. CRIM. P. 15.
8. Wyoming substantially adopted the Federal Rules of Criminal Procedure on November 21, 1968, effective February 11, 1969. Federal Rule 11 has since been amended. Except for subsection 11(e)(6), which took effect on August 1, 1975, Rule 11, as amended, became effective on December 1, 1975. Federal Rules of Criminal Procedure Amendments Act of 1975, Pub. L. No. 94-64, 89 Stat. 370 (1975).

> The court . . . shall not accept [a plea of guilty] without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea.

The new federal rule, as amended effective December 1, 1975,[9] is much more detailed. The amendment was designed to achieve two principal objectives:[10] (1) to prescribe the advice which the court must give to insure that the defendant who pleads guilty has made an informed plea;[11] and (2) to provide a plea agreement procedure designed to give recognition to the propriety of plea discussions, to bring the existence of a plea agreement out into open court, and to provide methods for court acceptance or rejection of a plea agreement.[12] By its holding in *Cardenas v. Meacham*,[13] the Wyo-

9. Federal Rules of Criminal Procedure Amendments Act of 1975, Pub. L. No. 94-64, 89 Stat. 370 (1975).

10. Rule 11, Advisory Committee Note, 62 F.R.D. 271, 277 (1974).

11. FED. R. CRIM. P. 11(c) provides as follows:

> Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and inform him of, and determine that he understands, the following:
>
> (1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law; and
>
> (2) if the defendant is not represented by an attorney, that he has the right to be represented by an attorney at every stage of the proceeding against him and, if necessary, one will be appointed to represent him; and
>
> (3) that he has the right to plead not guilty or to persist in that plea if it has already been made, and that he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself; and
>
> (4) that if he pleads guilty or nolo contendere there will not be a further trial of any kind, so that by pleading guilty guilty or nolo contendere he waives the right to trial; and
>
> (5) that if he pleads guilty or nolo contendere, the court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement.

12. The relevant sections of the rule are as follows:
FED. R. CRIM. P. 11(e)(2):

> If a plea agreement has been reached by the parties, the court shall, on the record, require the disclosure of the agreement in open court or, on a showing of good cause, in camera, at the time the plea is offered. Thereupon, the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report.

ming Supreme Court has incorporated into Wyoming Rule 15 some major provisions of the amended federal rule.

ACCEPTANCE OF THE GUILTY PLEA IN *Cardenas*

At his pretrial proceeding, Thomas Cardenas entered pleas of guilty to charges of rape and of felonious assault. There had been four counts in the original Information, but the prosecuting attorney informed the court that two counts of robbery had been dropped in exchange for the pleas of guilty.

The court accepted the pleas after determining their factual basis and after specifically informing Cardenas of the maximum potential penalty for rape. The court did not, however, inform him of the maximum potential penalty for felonious assault; nor did it ask whether the pleas had been induced by threats or promises or whether the state had correctly stated the elements of the plea agreement as Cardenas understood them.

Immediately after the court pronounced that his sentences were to run consecutively, Cardenas objected. He had been led to believe, he stated, that the sentences would be imposed concurrently. This belief was similarly voiced by the attorney for one of Cardenas' co-defendants.

THE HOLDING IN *Cardenas*

In his petition for a writ of habeas corpus, Cardenas asserted that the trial court had erred in failing to inform

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FED. R. CRIM. P. 11(e)(3):
If the court accepts the plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

FED. R. CRIM. P. 11(e)(4):
If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact, advise the defendant personally in open court or, on a showing of good cause, in camera, that the court is not bound by the plea agreement, afford the defendant the opportunity to then withdraw his plea, and advise the defendant that if he persists in his guilty plea or plea of nolo contendere the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

13. 545 P.2d 632 (Wyo. 1976).

him of the maximum potential penalty for felonious assault and in failing to properly examine him on the record regarding his understanding of the plea bargain. The Wyoming Supreme Court agreed, holding that Rule 15 requires a *record* showing that the judge has informed the defendant of the maximum penalty for any and all crimes for which sentence is to be imposed,[14] and requires, in addition, that every aspect of a plea bargain and the court's reaction to it be reviewed at the Bar on the record before the plea is received.[15]

FAILURE TO INFORM THE DEFENDANT OF THE MAXIMUM PENALTY FOR FELONIOUS ASSAULT

Cardenas claimed that the trial judge's failure to inform him of the maximum potential penalty for felonious assault contravened the requirement of Wyoming Rule 15 that the court address the defendant personally with regard to "the consequences of his plea."[16] The state countered with the assertion that personal apprisal by the court is not mandatory where it can be inferred from the surrounding circumstances that the defendant was aware of his potential penalty. This must surely be the case, argued the state, where, as here, the defendant has consulted with counsel prior to entry of the plea.

Although it is well-settled that a plea of guilty cannot be understandingly entered if the defendant is unaware of the maximum penalty to which it may subject him,[17] it has not been uniformly held that the *trial judge* must be the source of the penalty information. The question, said the court in *Tucker v. United States*,[18] is:

14. *Id.* at 633-34.
15. *Id.* at 640.
16. WYO. R. CRIM. P. 15.
17. Marvel v. United States, 380 U.S. 262 (1965); United States v. Blair, 470 F.2d 331 (5th Cir. 1972); Marshall v. United States, 431 F.2d 355 (7th Cir. 1970); Berry v. United States, 412 F.2d 189 (3rd Cir. 1969); Combs v. United States, 391 F.2d 1017 (9th Cir. 1968); Bachner v. United States, 380 F. Supp. 193 (E.D. Ill. 1974).
18. 409 F.2d 1291 (5th Cir. 1969). The Fifth Circuit later adopted the position that the informed nature of the plea must appear affirmatively from the record. United States v. Blair, *supra* note 17.

> not whether he learned of such penalty from the judge, in a formal proceeding, but whether he had knowledge as to such matter, whether it was from the judge, his lawyer, his bondsman, or from some other source.[19]

The court remanded the case for the limited purpose of hearing and determining whether the defendant knew from *some* source the maximum possible penalties for the charges to which he had entered his pleas. Similarly, the court in *State v. Connor*[20] stated that:

> The question . . . is not whether appellant learned of the range of possible punishment from the judge at the formal plea proceeding, but whether at the time he gave his plea he had that knowledge from any source. . . . One circumstance which is evidence of awareness of the range of punishment for an offense is a defendant's prior conviction for the same offense. . . . Another . . . is consultation by a defendant with his lawyer before the plea was entered.[21]

It is in one sense an appealing argument that the knowledgeable defendant should not be allowed to attack his plea of guilty on the "technicality" that the trial judge failed to inform him of fully-known consequences. The better view, however, adopted by the Wyoming Supreme Court in *Cardenas*, seeks to eliminate needless post-conviction evidentiary hearings by requiring an affirmative *record* showing that the trial judge has personally informed the defendant "of the maximum penalty for any and all crimes for which sentence is to be imposed."[22]

The *Cardenas* decision was expressly based upon the holding in *McCarthy v. United States*,[23] in which the United States Supreme Court construed Federal Rule 11, at that time identical to Wyoming Rule 15. Although the petitioner in *McCarthy* entered a plea of guilty to a crime requiring a

19. 109 F.2d 1291, at 1295.
20. 500 S.W.2d 300 (Mo. Ct. App. 1973).
21. *Id.* at 304. *See also*, People v. Miller, 2 Ill. App. 3d 851, 277 N.E.2d 898 (Ill. App. Ct. 1972).
22. Cardenas v. Meacham, *supra* note 13, at 633-34.
23. McCarthy v. United States, *supra* note 3.

"knowing and willful" attempt to defraud the government, he contended throughout the sentencing hearing that his acts had been merely negligent and inadvertent. These remarks were found by the Court to cast considerable doubt upon the government's contention that petitioner's plea had been made with full awareness of the nature of the charge; conceivably, he had intended to acknowledge only that he in fact owed the Government the money it claimed. "[H]ad the District Court scrupulously complied with Rule 11," said the Court, "there would be no need for such speculation. . . . [P]etitioner's own replies to the court's inquiries might well have attested to his understanding of the essential elements of the crime. . . ."[24] Concluding that "there is no adequate substitute for demonstrating *in the record at the time the plea is entered* the defendant's understanding of the nature of the charge against him,"[25] the *McCarthy* Court held that the petitioner must be allowed to plead anew.

The purposes of Federal Rule 11, as construed by *McCarthy*, are two-fold: to assist the district judge in making the constitutionally required determination that a defendant's plea is truly voluntary, and to produce a complete record at the time the plea is entered of the factors relevant to this voluntariness determination.[26] This same construction has been given by *Cardenas* to Wyoming Rule 15:

> Our holding that a defendant whose plea has been accepted in violation of [the rule] should be afforded the opportunity to plead anew not only will insure that every accused is afforded those procedural safeguards, but also will help reduce the great waste of judicial resources required to process the frivolous attacks on guilty plea convictions that are encouraged, and are more difficult to dispose of, when the original record is inadequate.[27]

24. *Id.* at 471.
25. *Id.* at 470. [Emphasis in the original text].
26. *Id.* at 472.
27. Cardenas v. Meacham, *supra* note 13, at 635, expressly adopting the language of the United States Supreme Court from McCarthy v. United States, *supra* note 3, at 472.

THE INCORPORATION INTO WYOMING RULE 15 OF FEDERAL RULE 11(c)(1)

Federal Rule 11, as amended, translates the general edict that the trial judge inform the defendant of the "consequences of his plea" into the specific requirement that the defendant be told "the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law" for the offense to which the plea is offered.[28] Although *Cardenas* expressly incorporates into Wyoming Rule 15 only the maximum penalty disclosure provision of the new federal amendment, the decision should be read to include Federal Rule 11's requirement that a mandatory minimum penalty also be revealed. Mandatory incarceration is clearly a consequence of conviction, and *Cardenas* is predicated upon an insistence that the defendant's understanding "of the nature of the charge and the consequences of the plea"[29] not be presumed from a silent record.[30]

It does not appear, however, that a plea made in ignorance of a mandatory minimum could be held subject, for that reason alone, to collateral attack.[31] Case law has emphasized only the necessity for *maximum* penalty disclosure, apparently reflecting the view that "a defendant who voluntarily enters a plea of guilty after being advised of the maximum punishment would have no reason to change his plea had he been advised that the punishment could be less severe."[32]

THE INCORPORATION INTO WYOMING RULE 15 OF ABA STANDARDS 1.4(c)(i) AND (iii)

While ordinarily the required penalty information will be provided by the statutory definition of the offense with

28. FED. R. CRIM. P. 11(c)(1). "The former rule required that the court determine that the plea was made with 'understanding of the nature of the charge and the consequences of the plea.' The amendment identifies more specifically what must be explained to the defendant. . . ." Advisory Committee Note, 62 F.R.D. 271, 278 (1974).
29. WYO. R. CRIM. P. 15.
30. *See* text accompanying note 27, *supra*.
31. ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO PLEAS OF GUILTY §§ 1.4(c)(i) and (ii), Commentary (Approved Draft, 1968) [hereinafter referred to as ABA STANDARDS].
32. People v. Kontopoulas, 26 Ill. 2d 388, 186 N.E.2d 312, 313 (1962).

which the defendant is charged, additional sentencing consequences may stem from a plea of guilty. Thus, for example, a defendant may be subject to a separate charge brought under a multiple offender statute, or may receive consecutive sentences where he pleads to more than one offense. Although the new federal amendment does not require the judge to inform a defendant about these matters, *Cardenas* appears to insist that he must. In this regard, Wyoming Rule 15, as interpreted by *Cardenas*, goes beyond the requirements of the amended federal rule and is in compliance with the more stringent provisions suggested by the American Bar Association Standards Relating to Pleas of Guilty.[33]

It seems clear that a defendant subject to additional sentencing under Wyoming's multiple offender statutes[34] should be told that he faces additional punishment. *Cardenas'* requirement that the defendant be informed of the "maximum penalty for *any and all* crimes for which sentence is to be imposed"[35] is unequivocal; moreover, Wyoming's statutory requirement that a multiple offender charge be attached to the information or indictment before the court[36] insures that the trial judge will be aware at the time he accepts the plea of the additional authorized punishment. This does not mean, of course, that the court must inform the defendant that his present conviction might subject him to multiple offender laws in the future. The procedural prerequisites of Wyoming Rule 15 are designed to insure a knowing waiver of all the rights which might void conviction in the present proceeding;[37] the rule does not require the court to assume that the defendant will be guilty of a subsequent offense.[38]

Also implicit in the *Cardenas* decision is a requirement that the trial judge explain the consecutive sentencing possibilities where the defendant pleads to more than one of-

33. ABA STANDARDS §§ 1.4 (c) (i) and (iii), require the court to inform the defendant of the maximum possible sentence on the charge, including that possible from consecutive sentences, and of possible added punishment under multiple offender statutes.
34. WYO. STAT. §§ 6-9 and 6-10 (Supp. 1975).
35. Cardenas v. Meacham, *supra* note 13, at 633-34. [Emphasis supplied].
36. WYO. STAT. § 6-11 (Supp. 1975).
37. *See* text accompanying note 2, *supra*.
38. *See* Fee v. United States, 207 F. Supp. 674, 676 (D.C. Va. 1962).

fense. This was not a point raised directly on appeal; the court's holding with regard to review of the plea bargain, however, included the admonition that every aspect of the bargain, *including any effect on concurrent or consecutive sentencing*, must be reviewed by the court "so that the record will forever reflect that it was made voluntarily . . . with a full understanding of the consequences."[39] Because the imposition of consecutive sentencing is no less a "consequence of the plea" outside the bounds of a plea agreement, the defendant should be informed of this possibility *whenever* it exists.

PLEA BARGAINING—MISTAKEN BELIEF IN THE EXISTENCE OF A DEAL

In his petition for a writ of habeas corpus, Cardenas asserted that his plea was not voluntary within the meaning of Wyoming Rule 15 because it had been induced by his attorney's erroneous promise that concurrent sentences were part of the plea bargaining agreement.

Appellate courts are frequently faced with post-conviction litigation based on allegations that a defendant has been falsely promised by his attorney that a promise as to sentence has been made by the judge.[40] The standard of proof in this area, "formidable in many jurisdictions,"[41] was discussed by a federal district court in *Mosher v. Lavallee.*[42] Mosher's attorney had told him that he would receive the maximum penalty if he were convicted after trial, but that the judge had promised the minimum penalty if he entered a plea of guilty. When he in fact received the maximum, Mosher petitioned to have his guilty plea set aside. The court expressed concern over espousing a proposition which would allow the easy invalidation of pleas of guilty. It cited *Bullock v. Warden*[43] to the effect that a belief induced by defense

39. Cardenas v. Meacham, *supra* note 13, at 640.
40. Underwood, *Let's Put Plea Discussions—And Agreements—On Record*, 1 LOYOLA U.L.J. 1, 6 (1970).
41. Comment, *Plea Bargaining Mishaps—The Possibility of Collaterally Attacking the Resultant Plea of Guilty*, 65 J. CRIM. L. & CRIMINOLOGY 170, 177 (1974).
42. 351 F. Supp. 1101 (S.D.N.Y. 1972).
43. 408 F.2d 1326 (2d Cir. 1969).

counsel's erroneous sentence estimate did not render a plea involuntary, and *United States ex rel. Curtis v. Zelker*[44] to the effect that a plea made under a subjective mistaken belief was not involuntary unless the circumstances, judged by objective standards, reasonably justified the mistaken impression. Petitioner Mosher was held to have met the burden of the objective test announced in *Zelker*:

> What induced Mosher to plead guilty was not merely an erroneous estimate or expression of opinion by defense counsel. . . . Nor was it a subjective mistaken impression. . . . [His attorney] told Mosher that Judge Trainor had promised a minimum . . . and the tenor of the entire discussion was such as to make Mosher believe that this promise had been made.[45]

The Fifth Circuit[46] has discussed the problem facing an appellate court when a defendant insists that a "promise" has been breached:

> The defendant is often told by his attorney that a "promise" of a certain sentence has been made in exchange for his plea of guilty when, in fact, the "promise" has come from one . . . who is in no position to make promises concerning sentencing or has been made by the trial judge in terms of "probably," "maybe," or "I am inclined toward."[47]

The court concluded that reliance on the attorney's representation may in some cases render a plea invalid, but stated that "[T]here must be some basis in the record for an appellate court to find that a 'bargain' has been made which acted as an inducement and destroyed voluntariness. . . . [Courts] are extremely reluctant to go behind a guilty plea because of mere conclusory statements by a defendant."[48]

It seems likely that Cardenas would have prevailed under the tests announced in *Frontero* and in *Mosher*. Although the Wyoming Supreme Court did not pass upon the question

44. 466 F.2d 1092 (2d Cir. 1972).
45. Mosher v. Lavallee, *supra* note 42, at 1110.
46. United States v. Frontero, 452 F.2d 406 (5th Cir. 1971).
47. *Id.* at 411.
48. *Id.* at 411 and 413.

of whether Cardenas' attorney had in fact made the representation claimed, it noted that it was reasonable to assume from the evidence in the record that there had been extensive discussion about concurrent and consecutive sentencing, that Cardenas' allegations of misrepresentation stood uncontradicted, and that both Cardenas and an attorney for one of his co-defendants had promptly objected to the imposition of consecutive sentences at the sentencing proceeding. Decision was not, however, based upon this "objectively verified"[49] lack of voluntariness. Instead, the *Cardenas* decision obviates the need for post hoc determinations of the justifiability of a defendant's reliance upon the private assurances of his attorney by requiring that the defendant's understanding of those assurances be made a part of the record.[50]

Stating that "one of the main reasons for Rule 15 is to avoid the kind of confusion and misunderstanding that we find confronting us here,"[51] the Wyoming Supreme Court interpreted the rule to require that the trial court determine, before the plea is entered, whether it has been made pursuant to plea negotiations. If this is the case, then:

> [the bargain] must be made a part of the record. The court must . . . inquire of the defendant if the purported bargain is as he understood it to be when making his plea decision. The court must explain the bargain's effect with respect to maximum sentence and its effect on concurrent or consecutive sentencing, if that be a part of the bargain, and all other aspects of the agreement must be reviewed by the court with the defendant. The court must make known to the defendant whether there is anything about the bargain which is abhorent to the court or which violates any aspect of the sentence which the court intends to impose. If the bargain purports to improperly bind the court, the defendant should know this and should be told that the court will not be bound by any such impropriety.[52]

49. "The petitioner must bear the burden of showing that the circumstances as they existed at the time of his plea, judged by objective standards, reasonably justified his mistaken impression." United States ex rel. Curtis v. Zelker, *supra* note 44, at 1098.
50. Cardenas v. Meacham, *supra* note 13, at 639-40.
51. *Id.* at 639.
52. *Id.*

In the absence of this required showing, the defendant must be allowed to plead anew.[53]

PLEA BARGAINING: THE TREND FROM SECRECY TO RECORD DISCLOSURE

There has been increasing criticism of the courtroom secrecy which has traditionally surrounded plea bargaining.[54] Although the practice is admittedly widespread, the fact that a guilty plea has been negotiated is not ordinarily given formal recognition.[55] The resulting courtroom ritual, according to Chief Justice Underwood of the Supreme Court of Illinois,[56] "sometimes takes a form similar to the following:

> Court: [often aware that a promise has been made and sometimes a party to the agreement] Have any promises or inducements been offered to prompt this plea?
>
> Defendant: [usually aware of any promise when one has been made (always aware of a promise according to the allegations made in those cases which reach appellate litigation on this point)] No sir."[57]

Nor is the defendant likely to contradict the prosecutor's ritual denial that a promise has induced the plea:

> If the judge, the prosecution, or the defense counsel makes a statement in open court that is contrary to what he has been led to believe, especially as to promises by the prosecutor or his defense counsel, . . . [the defendant] would no more challenge that statement in open court than he would challenge a clergyman's sermon from the pulpit.[58]

53. *Id.*
54. Paradiso v. United States, 482 F.2d 409, 412-13 (3rd Cir. 1973); Raines v. United States, 423 F.2d 526, 530 (4th Cir. 1970); ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 350.5, Commentary at 623 (Proposed Off. Draft, 1975); THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS 9-10 (1967); Underwood, *supra* note 40, at 7; Comment, *People v. Selikoff: The Route to Rational Plea Bargaining*, 21 CATH. L. 144, 158 (1975).
55. THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: THE COURTS, supra note 54.
56. Underwood, *supra* note 40, at 7 and 8.
57. *Id.*
58. TREBACH, THE RATIONING OF JUSTICE 159-60 (1964).

The result of this charade is a bargaining process "largely invisible, informal, and not subject to any systematic control."[59]

One of the several factors which Justice Underwood has suggested might underlie the persistent invisibility of the plea negotiation process is the feeling "that plea negotiations are inherently evil and somehow endanger the validity of the plea."[60] The constitutional validity of plea bargaining, however, is no longer in question. In *Brady v. United States*[61] and in *Santobello v. New York*,[62] the United States Supreme Court acknowledged both the prevalence and the propriety of the negotiated plea. In light of the Court's express approval, there has been increasing judicial and critical demand that plea bargained agreements receive full disclosure in open court.[63]

Cardenas illustrates one benefit of such disclosure: by promoting an honest discourse between defendant and judge, wherein mistaken conceptions of the bargain can be corrected before the plea is entered, disclosure helps to assure the constitutional validity of the plea. Because the defendant's honest cooperation is essential to the fulfillment of this goal, it seems desirable that the court dispel potential notions that the bargained plea is somehow suspect by informing the defendant that the United States Supreme Court has recognized the propriety of plea bargaining.

In addition to the correction of errors, the requirement of record disclosure serves as a check upon the integrity of the negotiation process;[64] protects "the defendant in the event that a prosecutor does not subsequently abide by his bargain and . . . the state against later false claims of unkept bargains";[65] exposes frivolous appeals; and avoids the necessity for costly and time-consuming evidentiary hearings.

59. ABA STANDARDS, § 3.1(a), Commentary at 61.
60. Underwood, *supra* note 40, at 8.
61. 397 U.S. 742 (1970).
62. 404 U.S. 257 (1971).
63. *See* authorities *cited supra* note 54.
64. Underwood, *supra* note 40, at 5.
65. ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 350.5, Commentary at 623 (Proposed Off. Draft, 1975).

THE INCORPORATION INTO WYOMING RULE 15 OF FEDERAL RULE II(e)(2)

Cardenas' requirement of full disclosure is consistent with the American Bar Association Standards,[66] proposals of the Council of the American Law Institute,[67] and with the new amendment to Federal Rule 11,[68] all of which require the disclosure of plea bargaining in open court at the time the plea is offered. The Wyoming court's holding in this regard reflects the same reasoning that lay behind its decision to require record disclosure of the maximum potential penalty. More is at stake than judicial administrative convenience; a guilty plea cannot be constitutionally accepted unless it is truly voluntary, and, as the Ninth Circuit has observed:

> knowledge of the existence of such an agreement, its terms and the negotiations which led to it, are crucial to the effective discharge of the court's responsibility to assure that the plea is not accepted unless it is voluntarily made.[69]

Had the trial court conducted a record examination of Cardenas' understanding of the terms of the plea bargain, and had it then informed him that the court had made no promises with respect to sentencing, Cardenas could have withdrawn his plea or at least entered it with a realistic understanding of the consequences. In *Ecker v. Wyoming*,[70] a case handed down the same day as *Cardenas*, the Wyoming Supreme Court held that the trial court's "exhaustive voir dire of defendant before accepting plea makes it abundantly clear that the plea was entered voluntarily, with full understanding of its consequences."[71] The record permitted no such conclusion in *Cardenas*.

CONCLUSION

The Wyoming Supreme Court has held that Rule 15 of the Wyoming Rules of Criminal Procedure requires a record

66. ABA STANDARDS § 1.5.
67. ALI MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 350.5(1) (Proposed Off. Draft, 1975).
68. FED. R. CRIM. P. 11(e).
69. Jones v. United States, 423 F.2d 252, 255 (9th Cir. 1970).
70. 545 P.2d 641 (Wyo. 1976).
71. *Id.*

showing that the trial judge has informed the defendant of the maximum penalty for any and all crimes for which sentence is to be imposed, and requires, in addition, that every aspect of a plea bargain and the court's reaction to it be reviewed at the Bar on the record before the plea is received. The court's decision, which incorporates into Wyoming Rule 15 significant provisions of the recent amendment to Federal Rule of Criminal Procedure 11, should further a policy directed toward minimizing "the escalating number of cases complaining of aborted plea bargains, involuntary pleas, or frustrated plea expectations,"[72] while at the same time assisting the court in making the constitutionally required determination that the guilty plea is voluntarily made.

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72. Paradiso v. United States, *supra* note 54, at 413.