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Judicial Admonishments in Illinois Guilty Plea Proceedings

John F. Decker*
and John F. Kennedy**

I. INTRODUCTION

Guilty pleas, which ordinarily are based on plea agreements, are a phenomenon born of necessity. The criminal justice system would, for all practical purposes, collapse under the heavy case load that would result if the state brought all defendants to trial.\(^1\) A substantial number of judgments of convictions are based on guilty pleas.\(^2\) Consequently, the United States Supreme Court has scrutinized the process whereby a guilty plea is accepted. Obviously, a defendant entering a guilty plea waives a number of substantial constitutional rights including the sixth amendment right to a fair trial. To be valid, a waiver must conform to the constitutional requirements enunciated in several United States Supreme Court decisions. The first section of this Article will examine the scope of the federal constitutional protections afforded a criminal defendant who enters a guilty plea. This section also will compare relevant Illinois decisions with the standards voiced by the Supreme Court of the United States.

Illinois Supreme Court rules supplement the federal constitutional protections afforded criminal defendants during guilty plea proceedings. Some of these rules were designed to assure Illinois trial court compliance with the various federal protections; others were promulgated to offer protections to defendants not necessarily guaranteed by federal law. The Illinois Supreme Court Rules direct the trial court to insure the integrity of the guilty plea proceed-

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2. See Miranda v. Arizona, 384 U.S. 436, 541 n.5 (1966) (White, J., dissenting) (of 33,381 criminal defendants disposed of in federal cases in 1964, only 12.5% of these cases were actually tried). Estimates vary as to the number of guilty pleas disposing of state and federal cases. One estimate puts disposition of criminal cases by guilty pleas at over 90 percent. See ABA STANDARDS RELATING TO PLEAS OF GUILTY 1-2 (1968).
by determining whether (1) a defendant, not represented by counsel, has validly waived counsel in the context of a guilty plea, (2) a defendant, whether represented by counsel or not, has been advised properly of the charges to which he is pleading guilty and the related sanctions which may be imposed following the plea, (3) a defendant understands the various trial rights he is waiving as a consequence of his plea, (4) a factual basis exists to support the entry of the plea, and (5) a defendant realizes the nature of his appeal rights following his plea. Thus, it is imperative that these Illinois Supreme Court Rules and the case law interpretation of these rules be examined. This matter will be considered in the second section of this Article.

II. CONSTITUTIONAL ISSUES IN GUILTY PLEA PROCEEDINGS

The first section of this Article will be devoted to the federal constitutional concerns that arise during guilty plea proceedings. This section will explore a variety of questions including whether a trial court judge is obligated to accept a defendant’s offer to plead guilty, the extent to which such judge must admonish the defendant about the charge, potential sanctions and the waiver of trial rights that attends a guilty plea before he accepts the defendant’s plea, and the extent to which the trial judge must inquire into whether the plea is voluntary.

A. No Right to Plead Guilty

Although a defendant entering a guilty plea is entitled to specific constitutional protections, the right to enter a guilty plea itself is not constitutionally protected. In 1970, the United States Supreme Court held that a criminal defendant does not have an absolute right under the federal constitution to have his guilty plea accepted by the trial court.\(^3\)

Illinois law reflects the same basic proposition. For example, in \textit{People v. Boyd},\(^4\) the Appellate Court for the First District concluded, “[i]t is clear that there is no absolute right to have a plea of guilty accepted by the trial court and such a plea may be rejected

\(^3\) North Carolina v. Alford, 400 U.S. 25 (1970). The Court stated: “[o]ur holding does not mean that a trial judge must accept every constitutionally valid guilty plea merely because a defendant wishes to so plead. \textit{A criminal defendant does not have an absolute right under the constitution to have his guilty plea accepted by the court . . . .}” \textit{Id.} at 38, n. 11 (emphasis added).

in the exercise of sound judicial discretion.” In fact, a guilty plea should not be accepted, and a motion to withdraw the plea should be granted, if a defense worthy of consideration exists.6

B. Admonitions Regarding Nature of the Charge

The sixth amendment requires in all criminal proceedings that the accused be informed of the “nature and cause of the accusation.”7 Due process further mandates that a guilty plea be both voluntary and intelligent.8 Consequently, a criminal defendant pleading guilty must be informed of the nature of the charge to which he is pleading guilty. Moreover, the defendant must understand the nature of those charges.

In Henderson v. Morgan,9 the United States Supreme Court explored the scope of these constitutional requirements. In Henderson, the defendant was indicted for first degree murder.10 Pursuant to a plea bargain with the prosecutor, and on advice of counsel, the defendant pleaded guilty to second degree murder.11 The Supreme Court reversed the conviction because neither the defense counsel nor the trial judge explained to the defendant the mental state requirement of second degree murder.12 Furthermore, the record did not indicate that the defendant had made any statement acknowledging the existence of such mental state.13 Accordingly, the fail-

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5. Boyd, 66 Ill. App. 3d at 588, 384 N.E.2d at 419.
7. U.S. CONST. amend. VI.
10. Id. at 638.
11. Id.
12. Id. at 647.
13. Id. at 646-47. It is noteworthy that the first, albeit unofficial, publication of Henderson contained the following cautionary footnote:

There is no need in this case to decide whether notice of the true nature, or substance, of a charge always requires a description of every element of the offense; we assume that it does not. Nevertheless, intent is such a critical element of the offense of second-degree murder that notice of that element is required.

Henderson v. Morgan, 96 S. Ct. 2253, 2258 n.18 (1976). However, this footnote was dropped in the official U.S. Reporter. W. LAFAYE & J. ISRAEL, CRIMINAL PROCEDURE 804 (1985). This suggests that an element of a crime need not be “critical” before it merits are mentioned by the trial court judge.

On the other hand, the text of the official Henderson opinion contains another statement which does limit the reach of the Henderson holding in a particular respect.

Normally the record contains either an explanation of the charge by the trial judge, or at least a representation by defense counsel that the nature of the offense has been explained to the accused. Moreover, even without such an
ure to inform the defendant of the mental state requirement, and the defendant's apparent lack of understanding of the requisite mental state of the charge, rendered his guilty plea "involuntary" and violative of due process. Thus, where the defendant is not informed of the basic elements of an offense, and the record lacks any affirmative suggestion that the defendant understands these elements, the proceeding is presumably constitutionally infirm.

Illinois case law does not seem to follow strictly the Henderson mandate. In People v. Stewart, the defendant entered a guilty plea to two murders, one attempted murder, and armed robbery. The defendant was sentenced to death for the murders. During his appeal, the defendant asserted that the guilty plea proceedings did not comport with due process inasmuch as the court failed to admonish him as to the nature of the charges.

The Illinois Supreme Court upheld the plea and the sentence. The court noted that in prior cases it had held that the "entire record may be considered in determining whether or not there was an understanding by the accused of the nature of the charge." The Stewart court observed that defense counsel stated he advised the defendant "at length" about the "consequences" of entering a guilty plea. Also, the defendant and his attorneys did not protest and, indeed, acquiesced in the recital of the prosecutor's statement of facts which demonstrated that the defendant's conduct fell within the charges to which he pleaded guilty. The court further

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express representation, it may be appropriate to presume that in most cases defense counsel routinely explain the nature of the offense in sufficient detail to give the accused notice of what he is being asked to admit.

Henderson, 426 U.S. at 647. In Marshall v. Lonberger, 459 U.S. 422 (1983), the Supreme Court clarified the meaning of the Henderson ruling by stating: "Under Henderson, respondent must be presumed to have been informed, either by his lawyers or at one of the pre-sentencing proceedings, of the charges on which he was indicted." Id. at 437. In Marshall, the Court ruled that the defendant's "intelligence and experience in the criminal justice system" as well as the entire record belied the conclusion that he did not understand the charge to which he pled guilty notwithstanding the trial judge's failure to explicitly explain the elements of said charge on the record. Id.

14. Courts often apply the labels "involuntary" and "unintelligent" interchangeably. Logically, if a guilty plea is based upon unlawful coercion it is involuntary. Where a guilty plea is entered following no, or inadequate admonishments, it is unintelligent. Henderson v. Morgan illustrates the use of "involuntary" where perhaps "unintelligent" is preferable.

16. Id. at 484, 463 N.E.2d at 683.
17. Id. at 484, 463 N.E.2d at 684 (citing People v. Krantz, 58 Ill. 2d 187, 317 N.E.2d 559 (1974)).
18. Stewart, 101 Ill. 2d at 485, 463 N.E.2d at 685.
19. Id.
20. Id.
found that the defendant had been admonished of the charges in open court at his earlier arraignment. Finally, the court pointed out that the defendant did not claim he did not understand the charges; rather, he complained that the judge erred in failing to explain the charges, which was insufficient by itself to establish constitutional error.

In People v. Barker, the defendant was indicted for attempted murder. The indictment stated that the defendant "knowingly with intent to commit the offense of murder, did acts which constitute a substantial step toward the commission of murder . . . ." The indictment did not allege that "intent to kill" was an essential element of the crime. Furthermore, prior to his entry of the guilty plea, the defendant was not admonished that the "intent to kill" was the requisite mental state of the offense.

The Illinois Supreme Court held that the indictment alleged the requisite intent. It noted that the indictment was given to, as well as read to, the defendant and that the defendant stated he understood the charge. Additionally, the court determined that a factual basis supported the charges.

The Barker decision is defective, however, in two critical respects. First, attempted murder requires proof of "intent to kill;" proof of a lesser mental state is insufficient. In holding that the "intent to murder" language in the indictment was sufficient, the court overlooked the fact that "intent to murder" can be proved if the defendant "either intends to kill or do great bodily harm . . . , or knows that such acts will cause death . . . , or knows such acts create a strong probability of death or great bodily harm." Intent to do great bodily harm or knowledge that one's acts might kill or do great bodily harm is not a basis for finding attempted murder.

21. Id.
22. Id. at 486, 463 N.E.2d at 685. It is noteworthy that Justice Simon, in dissent, determined that the proceeding was violative of due process because the trial judge "did not explain the nature of any of the charges." Id. at 499, 463 N.E.2d at 692 (Simon, J., dissenting).
23. 83 Ill. 2d 319, 415 N.E.2d 404 (1980).
24. Id. at 323, 415 N.E.2d at 405.
25. Id. at 323, 415 N.E.2d at 406.
26. Id.
27. Id. at 327, 415 N.E.2d at 407.
28. Id. at 329-30, 415 N.E.2d at 408-09.
29. Id. at 327, 415 N.E.2d at 408.
32. People v. Jones, 81 Ill. 2d 1, 405 N.E.2d 343 (1979). Indeed the dissent in Barker
Second, Barker, like Stewart, tolerated the trial court's failure to admonish correctly the defendant about the charge before accepting the guilty plea. The reading of the defective indictment to the defendant in Barker was no better than the complete failure to admonish in Stewart. The fact that the defendant in Barker stated "I never had no intentions of taking no one's life" during a subsequent sentencing hearing raises a serious question as to whether there actually was a factual basis supporting the charge. Yet both cases affirmed the respective convictions notwithstanding the Henderson v. Morgan pronouncement that the defendant pleading guilty must be informed properly of the charge.

A review of Illinois decisions in this area reveals that the appellate courts choose to focus upon whether the defendant actually knew and understood the nature of the charge to which a guilty plea is entered, rather than on whether the trial court ceremoniously informed the defendant at the guilty plea proceeding. Accordingly, Illinois shifts the burden to the defendant to show a lack of understanding of the charge.

For example, in People v. Cosey, the defendant was charged with two armed robberies and with unlawful use of weapons. Pursuant to a plea agreement, the defendant entered a guilty plea. During the proceedings, the trial court failed to indicate that the various offenses in question required proof of specific intent. Subsequently, the defendant sought relief under the Post-Conviction Hearing Act, claiming that he had not been admonished properly about the charge as required by the federal constitution. The petition was dismissed and the defendant appealed. The appellate court affirmed the dismissal. The reviewing court stated that the

recognized this deficiency. Barker, 83 Ill. 2d at 333-44, 415 N.E.2d at 410-16 (Moran, J., dissenting).

33. Barker, 83 Ill. 2d at 324, 415 N.E.2d at 406.
34. Id. at 342, 415 N.E.2d at 415 (Moran, J., dissenting).
36. See, e.g., id.
38. Id. at 671, 384 N.E.2d at 96.
39. Id. at 671, 384 N.E.2d at 96-97.
40. Id. at 672, 384 N.E.2d at 97.
41. Ill. Rev. Stat. ch. 38, para. 122-1 (1985). The Post-Conviction Hearing Act is a collateral attack remedy which affords relief to "[a]ny person imprisoned in the penitentiary who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both ...." Id.
42. Cosey, 66 Ill. App. 3d at 672-73, 384 N.E.2d at 97-98.
43. Id. at 672, 384 N.E.2d at 96-97.
44. Id. at 674-75, 384 N.E.2d at 98-99.
Guilty Plea Proceedings

remarks and advice of counsel must be read in a practical and realistic manner. The court held that "if under the totality of the circumstances the accused did not understand the nature of the charges, then the guilty pleas are involuntary." The court concluded that it was clear from the totality of the circumstances that the defendant was informed of the charges and understood them.

In Illinois, the question of whether a criminal defendant understands the nature of the charge against him requires an examination of the entire record. It has been held that due process is satisfied when the offense to which a guilty plea is entered merely is referred to by its name. Simply referring to the offense by its file number alone, however, is per se violative of due process.

C. Admonitions Regarding Potential Sentences

1. Lack of Proper Admonishments

In order to insure that a guilty plea is voluntary and intelligent, the defendant entering the plea must be aware of the sanctions which the court may impose upon him. The United States Supreme Court addressed whether the defendant can be afforded relief on a collateral attack for noncompliance with this requirement in United States v. Timmreck. In Timmreck, the defendant pleaded guilty to conspiracy to distribute controlled substances. At trial, the judge explained to the defendant that he could be sentenced to fifteen years imprisonment and fined, but failed to mention the mandatory special parole term of at least three years. The defendant was sentenced to ten years imprisonment, fined, and given five years mandatory special parole. Subsequently, the defendant filed a federal section 2255 petition, and moved to vacate the plea on the grounds that the judge's failure to mention the

45. Id. at 673, 384 N.E.2d at 98.
46. Id. at 674, 384 N.E.2d at 98.
47. Id. at 674, 384 N.E.2d at 99.
49. See id.
50. Chua Han Mow v. United States, 730 F.2d 1308 (9th Cir. 1984) (plea voluntary and consistent with due process when the defendant understands the consequences of entering a guilty plea, including the maximum sentence).
52. Id. at 781.
53. Id. at 782.
54. Id.
55. See 28 U.S.C. § 2255 (1982). The Timmreck Court noted that section 2255 allows for post-conviction relief only if defendant shows "a fundamental defect which inherently results in a complete miscarriage of justice" or an "omission inconsistent with the rudimentary demands of fair procedure." Timmreck, 441 U.S. at 783.
mandatory special parole term violated Rule 11 of the Federal Rules of Criminal Procedure. The district court determined that the Rule 11 violation did not entitle the defendant to relief under section 2255 because the defendant suffered no prejudice. The court of appeals, however, concluded that the violation was per se prejudicial.

The United States Supreme Court unanimously rejected the defendant's claim. The Court reasoned that collateral relief under section 2255 is appropriate only when "the error resulted in a complete miscarriage of justice or in a proceeding inconsistent with the rudimentary demands of fair procedure." The Court deemed the failure of the trial judge fully to inform the defendant about the mandatory special parole term as only a "technical violation" of Rule 11. The defendant was denied relief because temporal compliance with Rule 11 in its entirety is not constitutionally mandated and noncompliance with the sentencing admonishment was deemed a technical breach of the rule.

It is important to note that Timmreck dealt with a collateral attack of a guilty plea proceeding under Rule 11 rather than an appeal. The Court expressed concern about the "finality" served by limiting the scope of such collateral attacks, especially regarding convictions based on guilty pleas. A different outcome may very well have resulted had the defendant attacked the guilty plea on direct appeal. It must be understood that reviewing courts legally presume in a collateral attack that a defendant has been "fairly and finally" convicted, whereas no such principle of finality attaches to appeals.

56. Federal Rule of Criminal Procedure 11 states in relevant part:
   Advise to Defendant. 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 if 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 . . . .

57. Timmreck, 441 U.S. at 782-83.
58. Id. at 783.
59. Id. at 784.
60. Id.
61. Id. at 784-85.
62. Id. at 784.
63. See, e.g., McCarthy v. United States, 394 U.S. 459 (1969) (noncompliance with Rule 11 deprives the defendant of the rule's procedural safeguards, which are designed to facilitate a more accurate determination of the voluntariness of his plea; defendant allowed to plead over).
64. See, e.g., United States v. Frady, 456 U.S. 152 (1982). The court in Frady stated:
In Illinois, due process is satisfied where a criminal defendant is informed of the maximum sentence that the court can impose upon him. In *Stewart*, the defendant argued on appeal that the guilty plea proceeding did not comport with due process inasmuch as the trial court informed the defendant of the maximum penalty of death, but failed to inform the defendant of the lesser sentencing options available to the court. At the subsequent sentencing hearing, the defendant was sentenced to death. The Illinois Supreme Court rejected the defendant’s contention, stating that the trial judge is under no constitutional obligation to recite “all of the possible sentencing situations that might arise.” Furthermore, a constitutional defect in the proceedings did not result simply because the judge “did not ceremoniously inform the defendant of all the lesser sentences which could be imposed.”

In *People v. McCoy*, the Illinois Supreme Court held that the trial court’s failure to admonish the defendant regarding a mandatory parole term in a guilty plea proceeding was not a per se constitutional violation and did not entitle the defendant to collateral relief under the Post-Conviction Hearing Act. In *McCoy*, the court concluded that because the defendant’s actual sentence was substantially less than the maximum sentence about which the defendant was informed, there was no “substantial denial of rights under the Constitution of the United States or the State of Illinois requiring reversal upon a collateral attack.” Conversely, the United States Court of Appeals for the Seventh Circuit has ruled

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Once the defendant’s chance to appeal has been waived or exhausted, however, we are entitled to presume he stands fairly and finally convicted . . . . Our trial and appellate procedures are not so unreliable that we may not afford their completed operation any binding effect beyond the next in a series of endless post-conviction collateral attacks. To the contrary, a final judgment commands respect.

*Id.* at 164-65.

66. *Id.* at 483, 463 N.E.2d at 683.
67. *Id.*
68. *Id.* at 486, N.E.2d at 685.
69. *Id.* at 487, 463 N.E.2d at 685.
70. 74 Ill. 2d at 398, 385 N.E.2d 696 (1979).
71. *Id.* at 402-04, 385 N.E.2d at 698-99.
72. *Id.* at 400, 385 N.E.2d at 699. It is important to note that the Illinois Supreme Court ruled in 1975 that admonishments regarding mandatory parole terms are required with respect to pleas taken after May 19, 1975. *People v. Wills*, 61 Ill. 2d 105, 330 N.E.2d 505 (1975). Noncompliance with *Wills*, if raised on direct appeal, will be considered reversible error. *People v. Blackburn*, 46 Ill. App. 3d 213, 360 N.E. 1159 (5th Dist. 1977). Noncompliance with *Wills*, if raised on collateral attack under the PCHA, normally will not require reversal. *People v. Coultas*, 75 Ill. App. 3d 137, 394 N.E.2d 26 (5th Dist. 1979). The same approach presumably is the law with respect to admonish-
that the failure to inform a state criminal defendant of his mandatory parole term does not comport with due process because the unmentioned parole term exceeds the sentencing terms of his plea.\textsuperscript{73} Thus, the trial court's failure to admonish properly the defendant in this regard will open the door to reversible error.

2. Incorrect Admonishments

When the trial court inaccurately informs the defendant of the possible sanctions following conviction under a guilty plea, a constitutional violation exists only if the misrepresentation detrimentally affects the defendant.\textsuperscript{74} Illustrative of this proposition is \textit{People v. Wenger},\textsuperscript{75} an Illinois appellate court decision. In \textit{Wenger}, the defendant was placed on two years probation after pleading guilty to the offense of possessing less than 2.5 grams of heroin.\textsuperscript{76} At the time the court accepted the plea, it erroneously told the defendant that the minimum and maximum sentences were one and three years imprisonment respectively.\textsuperscript{77} The maximum sentence was actually ten years.\textsuperscript{78} The defendant's probation subsequently was revoked and he was sentenced to a term of 2.8 to 8 years imprisonment.\textsuperscript{79}

The defendant sought post-conviction relief and contended that the failure to admonish him properly of the correct maximum sentence rendered his plea involuntary and, therefore, violative of due process.\textsuperscript{80} The appellate court agreed. The court stated that "justice and fairness demand that if a guilty plea rests on an inaccurate representation as to the maximum penalty the promise implied in the representation should be fulfilled."\textsuperscript{81} Accordingly, the appellate court sentenced the defendant according to the terms of im-

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\textsuperscript{73} United States \textit{ex rel.} Williams v. Morris, 633 F.2d 71 (7th Cir. 1980). United States \textit{ex rel.} Baker v. Finkbeiner, 551 F.2d 180 (7th Cir. 1977) (failure to inform state criminal defendant of mandatory parole term accompanying prison sentence violates due process).


\textsuperscript{75} 42 Ill. App. 3d 608, 356 N.E.2d 432 (4th Dist. 1976).

\textsuperscript{76} \textit{Id.} at 609, 356 N.E.2d at 433.

\textsuperscript{77} \textit{Id.}

\textsuperscript{78} \textit{Id.} at 610, 356 N.E.2d at 434.

\textsuperscript{79} \textit{Id.} at 609, 356 N.E.2d at 433.

\textsuperscript{80} \textit{Id.} at 609, 356 N.E.2d at 433-34.

\textsuperscript{81} \textit{Id.} at 611, 356 N.E.2d at 434 (citing People v. Jackson, 13 Ill. App. 3d 232, 300 N.E.2d 557 (1st Dist. 1973)).
prisonment originally expressed by the trial court.\textsuperscript{82}

Five years after Wenger, the Illinois Supreme Court addressed the same issue in \textit{People v. Walker}.\textsuperscript{83} In \textit{Walker}, the defendant initially agreed to plead guilty to murder, attempted murder, armed robbery, and armed violence, pursuant to a plea agreement under which the defendant would receive a sentence of sixty years imprisonment.\textsuperscript{84} Before accepting the plea, the trial court explained the indictment to the defendant but inaccurately reported that the maximum penalty was eighty years imprisonment, rather than death.\textsuperscript{85} The States Attorney failed to correct the trial judge that the death penalty was in fact a punishment that the defendant could face upon entering a guilty plea.\textsuperscript{86} Ten days after submitting his guilty plea, the defendant claimed his guilty plea was defective and asked the judge for leave to withdraw the plea.\textsuperscript{87} Subsequently, the court permitted the defendant to withdraw his plea.\textsuperscript{88}

On the date the case was set for trial before a new judge, the defendant entered an unnegotiated guilty plea to each indictment count.\textsuperscript{89} During the sentencing hearing, the State recommended the death penalty and the court sentenced the defendant to death.\textsuperscript{90} On appeal, the Illinois Supreme Court vacated the sentence and remanded the matter to the circuit court for a sentence no greater than eighty years imprisonment.\textsuperscript{91} The court held that the State’s Attorney’s failure to correct the judges statement that eighty year imprisonment was the maximum possible sentence, constituted unmistakeable adoption of the trial court’s position. Accordingly, the defendant was entitled to rely on the trial judge’s statements to him prior to his original plea.\textsuperscript{92}

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{82}] Wenger, 42 Ill. App. 3d at 611, 356 N.E.2d at 435. \\
\item[\textsuperscript{83}] 84 Ill. 2d 512, 419 N.E.2d 1167 (1981). \\
\item[\textsuperscript{84}] Id. at 514, 419 N.E.2d at 1170. \\
\item[\textsuperscript{85}] Id. at 514-15, 419 N.E.2d at 1170. \\
\item[\textsuperscript{86}] Id. at 515, 419 N.E.2d at 1170. \\
\item[\textsuperscript{87}] Id. at 516, 419 N.E.2d at 1171. The defendant claimed his original plea was faulty because he was mentally incompetent to plead, did not understand the full consequences of his plea, and wanted to plead not guilty on the basis of incompetency. Later, he indicated he wanted to dismiss the attorney who counseled him to enter the original plea of guilty. \textit{Id.} \\
\item[\textsuperscript{88}] Id. at 517-18, 419 N.E.2d at 1172. \\
\item[\textsuperscript{89}] Id. at 518, 419 N.E.2d at 1172. \\
\item[\textsuperscript{90}] Id. \\
\item[\textsuperscript{91}] Id. at 526, 419 N.E.2d at 1176. \\
\item[\textsuperscript{92}] Id. at 523, 419 N.E.2d at 1174. The court also noted the vindictiveness principles underlying North Carolina v. Pearce, 395 U.S. 711 (1969), are relevant when a prosecutor increases the possible sanction for no valid reason after the defendant has exercised a procedural right. (\textit{Pearce} will be more fully discussed at infra notes 203-09 and accompanying text.) The prosecutor, in \textit{Walker}, failed to point to objective facts which would
\end{itemize}
\end{footnotesize}
D. Admonitions Regarding Constitutional Rights:
Right to Counsel

1. Guilty Plea Proceedings as "Critical Stage"

In *Hamilton v. Alabama*, a defendant charged with a capital offense was denied his request for appointed counsel at an "arraignment;" during the arraignment the defendant entered a plea of guilty. The United States Supreme Court held that the arraignment was a "critical stage" entitling the defendant to counsel. The court emphasized that state law viewed defenses not raised during arraignment as abandoned. In the light of this fact, the Court held that the denial of counsel at the arraignment mandated reversal of the conviction. In so holding, the Court opined that "only the presence of counsel could have enabled the accused to know all the defenses available to him and to plead intelligently."

Two years later, the U.S. Supreme Court applied *Hamilton* to a similar situation in *White v. Maryland*. In *White*, the Court ruled that a guilty plea to a murder at a "preliminary hearing" without benefit of appointed counsel violated the defendant's sixth amendment right to counsel. The Court stated that, similar to arraignment, the preliminary hearing must be viewed as a "critical stage" because state law allowed the guilty plea to be introduced into evidence against the defendant at trial. In a later decision, *Santobello v. New York*, the Supreme Court plainly declared, "[i]t is now clear . . . that the accused pleading guilty must be counseled, absent a waiver."

2. Waiver of Counsel

A defendant's right to waive counsel, appointed or retained, is supplemented by the right to proceed without counsel. In *Faretta v. California*, the defendant requested to represent himself. The trial court denied this request and instead appointed an attorney to justify his change of mind regarding the appropriate sentence as well as notify the defendant, prior to his plea withdrawal, of the consequences of such withdrawal. *Walker*, 84 Ill. 2d at 524, 419 N.E.2d at 1175.

94. Id. at 52.
95. Id. at 54.
96. Id. at 55.
97. 373 U.S. 59 (1963) (per curiam).
98. Id. at 60.
99. Id.
100. 404 U.S. 257 (1971).
101. Id. at 261 (dictum).
102. 422 U.S. 806 (1975).
against the defendant's will. The Supreme Court held that a defendant in a state criminal trial has a sixth amendment right to proceed pro se when he voluntarily and intelligently chooses to do so. The Court further ruled that the state may not force a lawyer upon a defendant when the defendant insists on conducting his own defense.

In Faretta, the Supreme Court endeavoured to insure that defendants make intelligent waivers of such a significant constitutional right. To insure intelligent waivers, the Court suggested that trial judges admonish defendants about the drawbacks associated with self-representation.

Whether the defendant is inclined toward self-representation or not, the trial judge is obliged to determine whether the defendant desires counsel, appointed or retained, to assist him in his plea decision and in his actual entry of a plea. In Boyd v. Dutton, the United States Supreme Court declared that a defendant must be

103. Id. at 807-11.
104. The Court stated:
   The Sixth Amendment does not provide merely that a defense shall be made for the accused, it grants to the accused personally the right to make his own defense. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails.

105. In so ruling, the Court noted the following:
   . . . [T]he language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant, not an organ of the State interposed between an unwilling defendant and his right to defend himself personally. To thrust counsel upon the accused, against his considered wish, thus violates the logic of the Amendment.

106. The Court stated:
   Although a defendant need not himself have the skill and experience of a lawyer in order to competently and intelligently choose self-representation, he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open.

107. 405 U.S. 1 (1972). In Boyd, the defendant pleaded guilty to three counts of forging checks and one count of possession of a forged check, and was sentenced to twenty-eight years imprisonment. The defendant sought habeas corpus relief in state court and alleged, among other issues, that he had been denied the assistance of counsel. At a post-conviction hearing, a deputy sheriff testified he was present at the arraignment, that the prosecutor asked the defendant if he wanted a lawyer, and that defendant replied he did not. The court denied the defendant relief. Subsequently, the defendant sought federal habeas corpus relief. The court denied relief without a hearing. Id. at 1-2.

The Supreme Court reversed the conviction and remanded to the federal district court for an evidentiary hearing due to the insufficiency of the record in support of the government's assertion that there was a waiver of counsel. Id. at 3.
appraised clearly of his right to counsel in a guilty plea proceeding and that trial judges should indulge every reasonable presumption against waiver. 108

The Illinois Supreme Court has followed the rulings of Hamilton, 109 White, 110 and Santobello 111 regarding the right to counsel at a guilty plea proceeding. In People v. Hessenauer, 112 the Illinois Supreme Court stated that an arraignment on a felony charge is a "critical stage" and that the defendant is "entitled to the assistance of counsel whether or not he requests it." 113 Hessenauer further determined that an effective waiver of counsel will not be found unless it appeared from the record that at each critical stage of the proceedings, the judge specifically offered, and the accused knowingly rejected, the representation of appointed counsel. 114 The Illinois Supreme Court subsequently retreated from this standard in People v. Baker. 115

In Baker, the court ruled that competent waiver of counsel at arraignment by an accused, who is advised therein that he has a right to counsel at all stages of the proceedings, normally is operative throughout all subsequent proceedings. 116 Unless there are circumstances which suggest that the waiver was limited to a

108. The Court noted in Boyd:

[T]here were apparently no questions from either the judge or the prosecutor during the arraignment inquiring whether the petitioner understood the nature and consequences of his alleged waiver of the right to counsel or of his guilty plea. A person charged with a felony in a state court has an unconditional and absolute constitutional right to a lawyer. This right attaches at the pleading stage of the criminal process . . . and may be waived only by voluntary and knowing action . . . . Waiver will not be 'lightly presumed' and a trial judge must indulge every reasonable presumption against waiver.

Id. at 2-3.

Notwithstanding Boyd's implication that the right to counsel, appointed or retained, attached to felonies only, the United States Supreme Court ruled later that same year that no defendant may be imprisoned where there has occurred at trial the unconstitutional denial of counsel, whether the offense was a felony or a misdemeanor. Argersinger v. Hamlin, 407 U.S. 25 (1972). In 1979, however, the nation's highest court ruled that appointment of counsel was not required at trial where imprisonment was a possible sanction but it was not actually imposed. Scott v. Illinois, 440 U.S. 367 (1979). The aforementioned rulings focus on trial situations, however, the line of demarcation appears equally applicable to guilty plea proceedings.

109. See supra notes 93-96 and accompanying text.
110. See supra notes 97-98 and accompanying text.
111. See supra notes 100-01 and accompanying text.
113. Id. at 67-68, 256 N.E.2d at 794.
114. Id. at 68, 256 N.E.2d at 794 (emphasis added).
115. 92 Ill. 2d 85, 440 N.E.2d 856 (1982).
116. Id. at 95, 440 N.E.2d at 860-61 (waiver at arraignment was operative at a sentencing hearing).
particular stage of the proceedings, the trial judge is not obliged to gain an affirmative waiver at subsequent critical stages.\textsuperscript{117}

Notwithstanding \textit{Hessenauer}'s ruling that the right to counsel attaches only to felonies, Illinois extends the right to counsel to all criminal defendants actually facing a term of imprisonment.\textsuperscript{118} To date, Illinois law precludes imposing a sentence of imprisonment on a defendant unless that defendant has been afforded the right to counsel or has competently waived that right.\textsuperscript{119} A waiver of the right to counsel must be unequivocal.\textsuperscript{120} In determining whether there has been a valid waiver of the right to counsel, the appellate court must consider the words and conduct of the defendant and must indulge in every reasonable presumption against waiver.\textsuperscript{121} Furthermore, consistent with \textit{Faretta},\textsuperscript{122} Illinois does require admonishments regarding the "dangers and disadvantages" of self-representation and a determination that the defendant has the mental capacity to make a proper waiver of counsel.\textsuperscript{123}

3. Competency of Counsel

Once it is determined the defendant is entitled to counsel, and the defendant exercises that right to counsel, the sixth amendment requires counsel to be reasonably effective.\textsuperscript{124} In the context of

\begin{footnote}
117. \textit{Id.}
119. \textit{See, e.g., People v. Morgese, 94 Ill. App. 3d 638, 418 N.E.2d 1124 (2d Dist. 1981) (stating that no unrepresented criminal defendant can be sentenced to a term of imprisonment absent a showing of waiver).}
120. \textit{See People v. Voight, 52 Ill. App. 3d 832, 838, 368 N.E.2d 165, 169 (3d Dist. 1977) ("the rejection of legal representation must be unequivocal").}
122. \textit{See supra} note 106 and accompanying text.
124. In United States v. Cronic, 466 U.S. 648 (1984), the Court stated that it has long been recognized that the sixth amendment right to counsel includes the right to the effective assistance of counsel. Effective assistance requires counsel to force the prosecution's case to a "meaningful adversarial testing." \textit{Id.} at 656. The Court instructed that the lawyer is presumed competent to provide effective assistance to the defendant and the burden rests on the accused to demonstrate incompetence. \textit{Id.} at 658. Incompetence is apparent when counsel entirely fails to subject the prosecution's case to meaningful scrutiny. Surrounding circumstances may overcome the presumption of competence. Otherwise, actual ineffectiveness must be demonstrated. \textit{Id.}

In Strickland v. Washington, 466 U.S. 668 (1984), the Supreme Court explained that the defendant must show two elements to establish a claim of incompetent counsel: (1) the defendant must show that counsel was not a reasonably effective advocate and (2) that his performance, in the case at hand, undermined the reliability of the finding of guilt. Absent proof of sufficient prejudice, it cannot be said that the defendant's conviction resulted from a breakdown in the adversarial system. \textit{Id.} at 687. The Court instructed
guilty pleas and guilty plea proceedings, incompetency of counsel claims may arise. A critical question in cases of this nature is whether counsel’s misjudgment of evidence, which results in his giving advice to the accused to plead guilty to a charge, constitutes per se incompetency and may lead to a subsequent reversal on grounds of involuntariness or unintelligentness.

In *McMann v. Richardson*,125 a defendant entered a guilty plea, motivated in part by the existence of an apparently coerced confession, upon advice of defense counsel.126 Thereafter, the defendant sought, by collateral attack, to vacate his guilty plea alleging it was prompted by the inadmissible coerced confession.127 The United States Supreme Court rejected the claim.128 The Court explained that a guilty plea effectuates not only a waiver of the defendant’s trial rights, but also a waiver of the right to contest the admissibility of any evidence the state may have offered against the defendant.129 The Court emphasized that a guilty plea entered upon reasonably competent advice from counsel is an intelligent plea not open to attack on grounds that counsel may have misjudged the admissibility of the defendant’s confession.130 Furthermore, a plea is not deemed unintelligent even if, in retrospect, a court would have found counsel’s advice wrong. Rather, the Court indicated that the relevant inquiry is whether the advice was within the range of competence demanded of attorneys in criminal cases.131

In 1985, the United States Supreme Court ruled in *Hill v. Lockhart*132 that its previously announced two-part standard for determining incompetency—(1) counsel’s representation fell below the objective standard of reasonableness and (2) the representation

that the standard to be used to measure counsel’s “effectiveness” is the objective test of “reasonableness.” *Id.* at 688. In other words, counsel’s conduct must amount to reasonably effective assistance. The Court reiterated that counsel enjoys a strong presumption of competency. *Id.* at 690. Further, the Court stated that where the defense attorney pursues a particular strategic choice, that in hindsight might not have been the preferred avenue of defense, this does not undermine a finding of competence unless it can be demonstrated the error had an effect on the judgment, to wit, without the error the defendant would have likely been exonerated. *Id.* at 689.

*See also* *Evitts v. Lucey*, 469 U.S. 387 (1985) (due process requires competency of counsel at first appeal which defendant enjoys as a matter of right).

126. *Id.* at 762-63.
127. *Id.*
128. *Id.* at 766.
129. *Id.*
130. *Id.* at 770.
131. *Id.* at 770-71.
likely may have affected the outcome of the case — applies to representations resulting in a guilty plea. The defendant in Hill pleaded guilty to murder and theft as part of a plea agreement in which the prosecutor agreed to recommend that a thirty-five year sentence for a murder and a ten year sentence for a theft run concurrently. The sentencing court accepted the recommendation and told the defendant he would be required to serve at least one-third of the sentence before he was eligible for parole. Despite the fact that the defendant had a prior conviction, the defendant’s counsel prepared, and the defendant signed, a plea statement indicating no prior convictions. Statutory law required a repeat offender to serve at least half of his sentence before reaching parole eligibility. The defendant collaterally attacked his conviction on grounds of incompetency based on counsel’s misinformation about his parole eligibility.

The Supreme Court upheld the defendant’s plea and held that the defendant had not been prejudiced by the misinformation. The Court noted that the defendant “did not allege in his habeas petition that, had counsel correctly informed him about his parole eligibility date, he would have pleaded not guilty and insisted on going to trial.” Accordingly, the Court found no prejudice to the defendant because the defendant would not have been eligible for an earlier parole even if he had gone to trial. The Court said it was unnecessary to determine if counsel’s advice regarding parole eligibility was outside the range of competence expected of defense attorneys because the “prejudice” part of the incompetency standard had not been met.

Regarding the requirement of competent counsel in Illinois, the state supreme court has ruled that representation of a criminal defendant is constitutionally deficient if counsel’s incompetence produced substantial prejudice to the defendant and has defined substantial prejudice as prejudice without which the result proba-

133.  See supra note 121.
134.  Hill, 474 U.S. at 58.
135.  Id. at 53-54.
136.  Id. at 54.
137.  Id. at 61 (White, J., concurring).
138.  Id. at 55.
139.  Id. at 54-55.
140.  Id. at 60.
141.  Id.
142.  Id.
143.  Id.
bly would have been different.\textsuperscript{144} The court has made no distinction between court appointed and privately retained counsel.\textsuperscript{145}

In \textit{People v. Hale},\textsuperscript{146} the Illinois Supreme Court ruled that it would never invalidate a guilty plea based on a suggestion of incompetency without objective proof of the alleged incompetence.\textsuperscript{147} In \textit{Hale}, the defendant pleaded guilty to armed robbery.\textsuperscript{148} The defendant mistakenly believed that he could withdraw the plea within thirty days, and less than one month later moved to withdraw the plea.\textsuperscript{149} At a subsequent hearing on the motion, he testified that he would not have entered the guilty plea had he known the he did not have an unqualified right to withdraw it within the thirty day period.\textsuperscript{150} At trial, the defendant offered no proof about how he acquired such a misapprehension and did not argue that he was innocent of the charge.\textsuperscript{151} The trial court therefore denied his motion.\textsuperscript{152} At a second hearing following a second motion to withdraw, the defendant alleged that his attorney advised him that he could withdraw his plea within thirty days.\textsuperscript{153} The supreme court affirmed the trial court's denial of defendant's motion to withdraw the plea.\textsuperscript{154} The court stated that the defendant's failure to offer substantial objective proof of defense counsel's alleged incorrect advice regarding his withdrawal rights justified dismissal of the motion to withdraw the plea.\textsuperscript{155} The court thus ruled that mistaken subjective impressions, without more, does not provide a basis to set aside a guilty plea.\textsuperscript{156}

It is the opinion of the authors that the cases outlined above offer

\begin{itemize}
  \item\textsuperscript{144} \textit{People v. Royse}, 99 Ill. 2d 163, 168, 457 N.E.2d 1217, 1220 (1983).
  \item\textsuperscript{145} \textit{Id.} at 170, 457 N.E.2d at 1220.
  \item\textsuperscript{146} 82 Ill. 2d 172, 411 N.E.2d 867 (1980).
  \item\textsuperscript{147} \textit{Id.} at 176, 411 N.E.2d at 868.
  \item\textsuperscript{148} \textit{Id.} at 173, 411 N.E.2d at 868.
  \item\textsuperscript{149} \textit{Id.} at 174-75, 411 N.E.2d at 868.
  \item\textsuperscript{150} \textit{Id.} at 175, 411 N.E.2d at 868.
  \item\textsuperscript{151} \textit{Id.}
  \item\textsuperscript{152} \textit{Id.}
  \item\textsuperscript{153} \textit{Id.}
  \item\textsuperscript{154} \textit{Id.} at 175-76, 411 N.E.2d at 868-69.
  \item\textsuperscript{155} \textit{Id.} at 176, 411 N.E.2d at 868.
  \item\textsuperscript{156} \textit{Id.} See also \textit{People v. Heral}, 54 Ill. App. 3d 527, 369 N.E.2d 922 (2d Dist. 1977).
\end{itemize}

In \textit{Heral}, the defendant attempted suicide seventy-two hours before she entered a guilty plea. The appellate court held that failure of defense counsel to disclose to the trial court the attempted suicide prior to entering the guilty plea was not violative of the defendant's right to competent counsel. \textit{Id.} at 530, 369 N.E.2d at 924-26. Here, the defendant failed to demonstrate a reasonable possibility that the trial judge would have acted differently had he been informed of the suicide attempt. \textit{Id.} at 530-31, 369 N.E.2d at 924-25. Additionally, it was not considered a due process violation that the prosecutor failed to advise the court about the suicide attempt. \textit{Id.} at 531-33, 369 N.E.2d 924-26.
a useful frame of reference for evaluating competency of counsel prior to a defendant's entry of a plea. In the context of a guilty plea proceeding, the defendant must show (1) that he was represented by an attorney who failed to offer reasonably effective assistance and (2) that, in his case, he actually was prejudiced by the attorney's poor quality of representation.

As to the first element, which focuses on the competence of the particular attorney, *McMann* insists the attorney's mere misjudgment of evidence does not alone prove incompetency so long as the advice was within the range of competence expected of defense attorneys. Here, then, if the defendant forgoes a meritorious defense because of advice that proves erroneous, given to him by an otherwise competent attorney, he will be unable to attack successfully his guilty plea because of his inability to satisfy the first element of the two-pronged test for incompetency of counsel.

With respect to the latter element, the defendant will have to show that if he had challenged the charges or sentence with competent counsel, in all likelihood he would have been found not guilty, found guilty of a lesser charge, or given a lesser sentence. In that connection, he will have to advance a meritorious defense or claim which affected the outcome of the case. Alternatively, as in *Hill*, he will not prevail if he cannot demonstrate any actual prejudice.

**E. Admonitions Regarding Other Fifth and Sixth Amendment Rights**

1. Personal Admonishments in Open Court

For all practical purposes, proceedings involving the defendant's guilt terminate when a guilty plea is entered. Nothing remains but to enter judgment and determine punishment. Consequently, when the court accepts a guilty plea, the accused effectively has waived his constitutional rights to challenge the charge. By pleading guilty, the defendant waives his fifth amendment privilege against compulsory self-incrimination. The sixth amendment right to a jury trial and the right to confront one's accusers is also waived. Furthermore, entry of a guilty plea relieves the state of its burden to prove guilt beyond a reasonable doubt. The defendant's presumption of innocence is effectively overcome.

In *Boykin v. Alabama*, the defendant pleaded guilty at his arraignment to five counts of robbery. The record did not reveal

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158. *Id.* at 239.
that the judge asked the defendant any questions concerning the pleas.\textsuperscript{159} Also absent were any statements by the accused regarding the voluntariness of his guilty pleas.\textsuperscript{160} On review, the Supreme Court reversed the convictions on due process grounds.\textsuperscript{161} The Court held that the trial judge has an affirmative duty to ensure that the record indicates that the guilty plea is both voluntary and intelligent.\textsuperscript{162} The Court added that the waiver of certain "important" constitutional rights inherent in entering a guilty plea—the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers—will not be presumed from a silent record.\textsuperscript{163} Implicit in \textit{Boykin} was the proposition that the court personally must admonish the defendant about these rights in open court, and must determine that the defendant understands them.

Whether the Illinois courts strictly comply with \textit{Boykin} may be in doubt. For example, in \textit{People v. Coughlin},\textsuperscript{164} the defendant pleaded guilty to two counts of deviant sexual assault.\textsuperscript{165} Although the trial judge did advise the defendant that he was waiving his sixth amendment right to a jury trial by entering a guilty plea, he failed to inform the defendant that his right to confront his accusers and his right to remain silent also were being waived.\textsuperscript{166} The appellate court affirmed the conviction. The court stated that \textit{Boykin} did not compel the trial court to articulate "specific and literal statements of all constitutional rights of an accused" as part of the admonishment process.\textsuperscript{167} The court noted that, in this case, there was nothing in the record to demonstrate that the defendant did not understand his rights.\textsuperscript{168}

\begin{footnotes}
\item[159] Id.
\item[160] Id.
\item[161] Id. at 242-44.
\item[162] Id. at 242.
\item[163] The Court stated:

Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the states by reason of the Fourteenth. [Citations omitted.] Second, is the right to a jury trial. [Citations omitted.] Third, is the right to confront one's accusers. [Citations omitted.] We cannot presume a waiver of these three important federal rights from a silent record.

\item[164] Id. at 243.
\item[165] 7 Ill. App. 3d 389, 287 N.E.2d 499 (2d Dist. 1972).
\item[166] Id. at 390, 287 N.E.2d at 500.
\item[167] Id.
\item[168] Id. at 391, 287 N.E.2d at 501.
\end{footnotes}
Coughlin appears to be inconsistent with the statement in Boykin that the court "cannot presume a waiver of these three important federal rights from a silent record." It is important to note that two of the three rights to which the Boykin Court explicitly referred were the privilege against self-incrimination and the right to confrontation. Moreover, Boykin indicated it was the judge's responsibility to assure that the defendant understands the implications of these rights and to make these assurances part of the record. In contrast, Coughlin retreats from the Boykin mandate by implying that the defendant insisted upon a reading of the specific language of all constitutional rights, even though the defendant never advanced such a claim. Although Boykin does not require a judge to articulate verbatim every constitutional guarantee affecting those charged with a crime, it does insist on some mention of the self-incrimination privilege, the jury trial right, and the right to confrontation. Boykin places the burden on the judge to inquire affirmatively as to whether the defendant understands his constitutional rights. In contrast, Coughlin shifted the burden to the defendant to show a lack of understanding of his rights before he can complain about the trial court's failure to admonish.

2. Use of Forms Not an Adequate Substitute

In an attempt to expedite matters, some Illinois trial courts have attempted to inform defendants of the consequences of entering a guilty plea by disseminating pre-printed forms. For example, in People v. Cummings, the defendant pleaded guilty to theft but was not personally admonished by the court regarding the consequences of the plea. The record reflected that the defendant, his attorney, and the trial judge each had signed a printed guilty plea form. The appellate court held that the use of pre-printed forms, purporting to inform the defendant of the serious consequences of

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170. See supra note 163.
171. Immediately after stating that a reviewing court cannot presume a defendant's understanding of these three important rights from a silent record, the Court added:

What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequences. When the judge discharges that function, he leaves a record adequate for any review that may be later sought [citations omitted] and forestalls the spin-off of collateral proceedings that seek to probe murky memories.

Boykin, 395 U.S. at 243-44 (emphasis added).
173. Id. at 308, 287 N.E.2d at 293.
entering a guilty plea, was an inadequate substitute for the personal admonishments regarding the waiver of constitutional rights as required by Boykin. Thus, the mere use of such forms are not a legitimate alternative to the judge's verbal inquiry.

F. Determining Voluntariness of Plea

A guilty plea is voluntary when it is made free of unlawful threats or coercion. A plea is intelligent when the defendant is informed, prior to entering the guilty plea, of the significant consequences of such a plea. As noted, the trial court has a duty, to a varying degree, to inform the defendant of the nature of the charge, the potential sanctions available against the defendant, and the important constitutional rights waived by a guilty plea. Other areas that may affect the voluntary and intelligent character of a plea are prosecutorial threats and the defendant's protestations of innocence.

The section which follows addresses "voluntariness" concerns that arise during an arraignment. In Boykin v. Alabama, the United States Supreme Court determined that the trial court has the burden of establishing that the plea was made freely. The defendant need not prove that the plea is involuntary. In order to satisfy this burden, "the record must affirmatively disclose that the defendant who pleads guilty enters his plea understandingly and voluntarily." The Court reasoned that a plea of guilty could be

174. Id. at 309, 287 N.E.2d at 293.
176. Id. at 242-43.
177. See supra notes 7-49 and accompanying text.
178. See supra notes 50-92 and accompanying text.
179. See supra notes 93-174 and accompanying text.
180. See infra notes 196-215 and accompanying text.
181. See infra notes at 224-31 and accompanying text.
182. It should be mentioned that while the terms "voluntary" and "intelligent" seemingly represent different areas of concern, many courts draw no distinctions. For example, in Henderson v. Morgan, 426 U.S. 637 (1976), the United States Supreme Court referred to a plea as "involuntary" and, therefore, void because the defendant was not adequately informed of the mental element of the offense to which he was pleading guilty. Id. at 647. It seems that where a defendant is ill-informed regarding the charge to which he is pleading guilty, it is an "unintelligent" plea rather than an "involuntary" plea. Practitioners and students should be aware of the fact that the terms are often used synonymously. In any event, the discussion which follows focuses on voluntariness, rather than intelligence, concerns.
183. 395 U.S. 238. See also Blackledge v. Allison, 431 U.S. 63 (1977) (summary dismissal of collateral attack of guilty plea based on claim of involuntariness reversed where trial record did not adequately demonstrate voluntariness).
184. Boykin, 395 U.S. at 244.
the result of coercion or threats.\textsuperscript{185} Consequently, the Court imposed the duty upon the trial court to show voluntariness and intelligence and thus made guilty pleas less susceptible to post-conviction challenge.\textsuperscript{186}

In 1984, the Illinois Supreme Court also raised serious doubt regarding its willingness to follow Boykin's language on voluntariness. In \textit{People v. Stewart},\textsuperscript{187} the trial record did not affirmatively indicate that the accused voluntarily entered a guilty plea.\textsuperscript{188} On appeal, the Illinois Supreme Court determined that the guilty plea conformed with due process standards because there was "no evidence in the record that the defendant was pressured or forced to enter a guilty plea."\textsuperscript{189} In a strong dissent, Justice Moran cited Boykin and pointed out that due process required "an affirmative showing in the trial court record" of a voluntary and intelligent plea.\textsuperscript{190} He stated that in this case "careful reading of the record . . . reveal[ed] a complete absence of dialogue between the court and the defendant regarding the voluntariness of the plea."\textsuperscript{191} Justice Moran contended that lack of any such dialogue justified the conclusion that the trial court "completely abrogated its duty to the defendant."\textsuperscript{192} Justice Moran also argued that the majority opinion rested upon the incorrect conclusion that the defendant had the burden to prove that his plea was less than voluntary.\textsuperscript{193} In a separate dissent, Justice Simon agreed with Justice Moran's assessment of the Boykin mandate. Justice Simon reasoned that "[w]hen a guilty plea is entered, the question of its voluntariness is a part of the state's case, not an affirmative defense as the majority appears to imply."\textsuperscript{194}

It is the opinion of the authors that the Stewart majority's will-

\textsuperscript{185} \textit{Id.} at 242-43.
\textsuperscript{186} The Court noted that "[b]y personally interrogating the defendant, not only will the judge be better able to ascertain the plea's voluntariness, but he also will develop a more complete record to support his determination in a subsequent post-conviction attack." \textit{Id.} at 244.
\textsuperscript{187} 101 Ill. 2d 470, 463 N.E.2d 677 (1984). Other aspects of Stewart were discussed at supra notes 15-22, 65-69 and accompanying text.
\textsuperscript{188} \textit{Id.} at 483, 463 N.E.2d at 683.
\textsuperscript{189} \textit{Id.} at 487, 463 N.E.2d at 685.
\textsuperscript{190} \textit{Id.} at 496, 463 N.E.2d at 690 (Moran, J., dissenting).
\textsuperscript{191} \textit{Id.}
\textsuperscript{192} \textit{Id.}
\textsuperscript{193} Justice Moran pointed out that such a conclusion necessarily implied that the burden was on the defendant to prove that his plea was coerced when, in fact, the burden was on the state to prove that the plea was voluntary. \textit{Id.} at 498, 463 N.E.2d at 691 (Moran, J., dissenting).
\textsuperscript{194} \textit{Id.} at 502, 463 N.E.2d at 693 (Simon, J., dissenting).
ingness to sidestep Boykin, by switching the burden of proof in voluntariness claims from the state to the defendant, reflects a complete misunderstanding of the principles and concerns that are at the heart of Boykin. Such a shift will add unnecessary confusion to the guilty plea proceeding, perpetuate needless appeals, and hinder the effective administration of justice. Strict compliance with Boykin can do nothing but insure the integrity of the guilty plea proceeding, protect the due process rights afforded the defendant by the United States Supreme Court, and provide a clear record which, in turn, will prevent subsequent attacks by those convicted through a guilty plea. The duties imposed upon the trial court by Boykin are not onerous when weighed against the substantial interests served.

G. Prosecutorial Threats and Vindictiveness

In Boykin, the United States Supreme Court stated, that “coercion, terror, inducements, subtle or blatant threats might be a perfect cover up of unconstitutionality.” Not all prosecutorial threats, inducement or coercion, however, render a guilty plea involuntary. In Bordenkircher v. Hayes, the prosecutor threatened during plea negotiations to seek indictment of the defendant as a habitual criminal if the defendant refused to accept the prosecutor’s offer to recommend a five year sentence in return for a guilty plea to the original indictment. When the defendant refused the prosecutor’s offer, the prosecutor followed through on his threat to prosecute the defendant as a habitual criminal, an offense carrying a sentence of mandatory life imprisonment. The Supreme Court held that due process was not violated. The Court reasoned that the prosecutor legally was exercising the discretion of his office. Accordingly, the Court held that absent a showing of prosecutorial vindictiveness, the exercise of such discretion does not render a guilty plea involuntary.

196. Id. at 242-43.
198. Id. at 358-59.
199. Id.
200. Id. at 365.
201. Id. at 364-65.
202. Id. at 362-65. See also United States v. Goodwin, 457 U.S. 368, 381-84 (1982) (no presumption of prosecutorial vindictiveness when prosecutor indicted defendant on additional, more serious charges after defendant abandoned plea negotiations and requested jury trial).
In *North Carolina v. Pearce*, the Supreme Court delineated the circumstances under which prosecutorial vindictiveness may violate due process. In *Pearce*, two defendants were reprosecuted after their original convictions had been overturned. After being convicted a second time of the same charges, the defendants were sentenced, upon the prosecutor's recommendations, to terms which exceeded those of the original sentences. The Court ruled that although double jeopardy permitted the retrials, it also required that the defendants be credited for time already served following the original conviction. The Court added that due process prohibits vindictiveness directed at the defendant during resentencing for exercising his right to appellate or collateral review. In order to prohibit such prosecutorial or judicial vindictiveness, it is incumbent upon the court to point to "identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding" before it imposes a sentence following retrial which is in excess of the original sentence. Further, the "factual data" supporting any greater sentence following retrial must be placed in the record for purposes of possible review.

It is the opinion of the authors that the teachings of *Bordenkircher* and *Pearce* offer a useful frame of reference when the defense claims that a prosecutor has exceeded the bounds of due process during plea bargaining, guilty plea proceedings, or sentencing hearings following guilty pleas. When a prosecutor during plea negotiations merely threatens an accused with more serious charges or sanctions if he does not agree to a proposed plea agreement, the defendant usually will not be considered as having suffered prosecutorial vindictiveness in violation of due process. Furthermore, if the accused, following such threats, moves to vacate his plea on grounds of involuntariness, it is unlikely that he...
will succeed. Similarly, if the prosecutor elevates the charge or requests more serious sanctions following the defendant's refusal to accept a plea agreement, the defendant seldom will have grounds to complain. On the other hand, when the defendant successfully moves for a new trial or appeal, the prosecutor's efforts to elevate the charge or sanctions normally will be viewed as based on prosecutorial vindictiveness, and be barred by due process.

In *People v. Scott*, the Illinois Supreme Court followed the approach outlined in *Bordenkircher*. The defendant in *Scott* was indicted for murder. After discussing the matter with his attorney, the defendant entered a guilty plea to the charge and was sentenced to imprisonment. Subsequently, the defendant filed a pro se petition under the Post-Conviction Hearing Act alleging, among other issues, that his constitutional rights had been violated inasmuch as the State's Attorney had told him that if he did not plead guilty a request for the infliction of the death penalty would be made. The Illinois Supreme Court stated that the fear of the death penalty was not sufficient to invalidate the defendant's otherwise knowing and intelligent plea.

**H. Breach of Prosecutorial Promise**

When the state's attorney makes certain promises to a defendant in exchange for a guilty plea, breach of those promises may render the plea violative of due process. In *Santobello v. New York*, the United States Supreme Court ruled that in such circumstances, the trial court must provide the defendant with specific performance on the promise, or in the alternative, must permit him to withdraw his plea. Conversely, in *Mabry v. Johnson*, the United States

211. 434 U.S. 357 (1978).
213. *Id.* at 232, 274 N.E.2d at 39-40.
214. *Id.* at 233, 274 N.E.2d at 40.
215. *Id.*
216. 404 U.S. 257 (1971). It is immaterial as to whether the trial court would have accepted the sentence recommendation. *Id.* at 262. The *Santobello* rule would apply in other circumstances as where, for instance, a defendant entered a plea to a charge upon his understanding with the prosecutor that other charges would be dismissed. *See also* *People v. Starks*, 106 Ill. 2d 441, 478 N.E.2d 350 (1985) (where State agreed to dismiss charge if defendant passed polygraph examination, it was obligated to specifically perform promise); *People v. Mitchell*, 46 Ill. 2d 133, 262 N.E.2d 915 (1970) (unfulfilled prosecutorial promise to recommend probation deprives the plea of the character of a voluntary act violative of due process).
Supreme Court ruled that a defendant does not have a right to specific performance on a plea bargain where the government retracts its plea agreement offer after the defendant communicates to the state his acceptance of the state's original offer. Thus, strict contract law principles do not apply to plea agreements. In such circumstances, the defendant has not yet entered his plea; he therefore retains the option of not entering a guilty plea and cannot argue that he was prejudiced.

During plea negotiations, it is conceivable that a prosecutor unwittingly will promise a defendant more than he has the legal authority to deliver. In People v. Morgan, the defendant alleged that the prosecutor promised to waive the mandatory supervised release period that attaches to all sentences of imprisonment by operation of law. The appellate court held there was no right to specific performance for the alleged promise because waiver of mandatory supervised release is not allowed by law. The court further found that the defendant was informed fully by the trial court of the mandatory supervised release term when the defendant entered his plea. Accordingly, the court upheld the plea.

I. Protestations of Innocence

Of course, justice would not be served if the courts allowed innocent people to plead guilty to crimes and sentenced them to jail. What then, must the trial court do when a defendant enters a guilty plea but simultaneously persists in maintaining his own innocence? In North Carolina v. Alford, the defendant claimed his negotiated guilty plea to a charge of second degree murder was invalid because he denied any culpability when he entered his plea. He explained that he felt compelled to enter his plea in order to avoid the original charge of murder in the first degree

219. Id. at 510-11. See also People v. Boyt, 109 Ill. 2d 403, 488 N.E.2d 264 (1985) (defendant's claim that the guilty plea was involuntary and violative of due process inasmuch as it was entered in reliance on a plea agreement with the prosecution denied because the prosecution withdrew the plea agreement prior to the actual entry of the guilty plea by the defendant); People v. Navarroli, 146 Ill. App. 3d 466, 497 N.E.2d 128 (3d Dist. 1986) (defendant has no right to specific performance on government's plea bargain offer).


221. Id. at 299-300, 470 N.E.2d at 1119.

222. Id. at 300-01, 470 N.E.2d at 1120; See ILL. REV. STAT. ch. 38, para. 1005-8-l(d)(1), (d)(2) & (d)(3) (1985) (provides applicable mandatory supervised release term for Class X felonies and Class 1, 2, and 3 felonies in Illinois).


225. Id. at 28-30.
which carried the death penalty.\textsuperscript{226} The United States Supreme Court ruled that the plea was valid because the trial court found that a strong factual basis supported the defendant's involvement in the illegal homicide and there was no indication that the plea was not a product of the defendant's free will.\textsuperscript{227}

In \textit{People v. Ealey},\textsuperscript{228} the defendant pleaded guilty to murder apparently because he did not believe he could not refute the testimony which the State could produce.\textsuperscript{229} In response to the court's question of whether he understood everything the Assistant State's Attorney said in presenting the factual basis, the defendant said that he did not agree with the prosecution's version of what had occurred.\textsuperscript{230} The Illinois Appellate Court for the Fifth District, citing \textit{Alford}, affirmed the conviction because the defendant's plea was voluntary and intelligent, and because the State offered the court a sufficient factual basis to underly the plea.\textsuperscript{231}

In summary, when a defendant enters a plea to a charge which has no factual basis, acceptance of the plea would not be appropriate. If a factual basis pointing to guilt supports the plea, however, the plea can be accepted notwithstanding the defendant's protestations of innocence. Cases like \textit{Alford} and \textit{Ealey} suggest, then, that a factual basis finding is probably warranted as a matter of consti-

\textsuperscript{226} North Carolina law provided for life imprisonment for first degree murder following a guilty plea, while a guilty verdict following a jury trial involving this charge could result in the imposition of the death penalty. \textit{Id.} at 27, n.1. When the defendant entered his negotiated plea, he testified that he had not committed the alleged murder, but that his plea had been motivated by his desire to avoid the death penalty and to obtain a lesser sentence. \textit{Id.} at 28. Upon further inquiry by the trial judge, the defendant persisted with his wish to plead guilty. \textit{Id.} at 29. The plea was accepted by the trial court judge inasmuch as there was strong evidence connecting the defendant to the crime. \textit{Id.} at 28. On appeal, the state's court of review found the defendant's plea to have been willingly and knowingly entered. \textit{Id.} at 29.

\textsuperscript{227} \textit{Id.} at 37. The court stated an individual may voluntarily, knowingly, and understandably consent to the waiver of trial and the imposition of sentence even if he is unwillingly or unable to admit to his involvement in the crime. \textit{Id.} An acknowledgment of actual guilt on the part of the defendant is not a constitutional requisite to the imposition of a criminal penalty. \textit{Id.} When the accused intelligently concludes his interests require a guilty plea, the plea is voluntary and intelligent regardless of his unwillingness to admit guilt. \textit{Id.}

\textsuperscript{228} 36 Ill. App. 3d 32, 343 N.E.2d 203 (5th Dist. 1976).

\textsuperscript{229} \textit{Id.} at 35, 343 N.E.2d at 204-05.

\textsuperscript{230} \textit{Id.} at 34, 343 N.E.2d at 204.

\textsuperscript{231} \textit{Id.} at 35, 343 N.E.2d at 204-205. \textit{Accord People v. Cope}, 61 Ill. 2d 226, 335 N.E.2d at 431 (1973) (Even though the defendant who entered guilty pleas to two charges of burglary stated he was guilty of one burglary charge but only "partially guilty" of the other because he had not participated in the burglary itself but had bought the stolen property, the trial court did not violate the defendant's constitutional rights by accepting the pleas.).
tutional law if the defendant refuses to acknowledge his guilt to the crime charged.

III. ISSUES INVOLVING ILLINOIS SUPREME COURT RULES 401, 402, & 605 IN GUILTY PLEA PROCEEDINGS

Beyond the federal constitutional concerns that accompany guilty pleas, several important Illinois Supreme Court Rules bear upon the guilty plea process. Some of these rules were designed to give meaning and effect to federal constitutional mandates, others, not mandated by the Constitution, were designed to advance the orderly administration of criminal justice in the context of guilty pleas. These Supreme Court Rules are central to the discussion which follows. This section also will consider the obligation these rules impose upon a trial judge to admonish defendants who plead guilty. The rules involve: (1) the defendants' right to counsel throughout the guilty plea proceedings, (2) the charges lodged against them, (3) the potential sanctions which may follow their plea, (4) the constitutional rights they are waiving as they enter their pleas, and (5) their appeal possibilities following such pleas.

A. Rule 401 — Waiver of Counsel

If a defendant opts to enter a guilty plea without representation of counsel, the trial court must act in conformity with the provisions of Illinois Supreme Court Rule 401. Although Rule 401

The objective of rule 401(a) is to provide a mechanism which will eliminate any doubt that an accused understands the nature and consequences of the charges brought against him before a trial court accepts his waiver of the right to counsel; the rule sets forth the procedure which precludes a defendant from waiving the assistance of counsel without full knowledge and understanding.
Id. at 359, 447 N.E.2d at 499.
240. Illinois Supreme Court Rule 401(a) states:
applies to both civil and criminal proceedings of various types,\textsuperscript{241} this section will examine only the applicability of Rule 401 in a criminal proceeding when a defendant is entering a plea of guilty. Furthermore, this section will discuss the standard of compliance expected of the trial court in exacting a valid waiver of counsel from a criminal defendant.

The language of Rule 401 requires that the court provide specific admonitions whenever a "person accused of an offense punishable by imprisonment" enters a plea.\textsuperscript{242} Furthermore, the rule provides that these admonitions must be given in open court, transcribed, and made a part of the common law record.\textsuperscript{243}

The language of Rule 401 mandates that the trial court affirmatively secure a knowing waiver of counsel from a criminal defendant proceeding pro se, when that defendant is charged with an offense possibly punishable by incarceration.\textsuperscript{244} In contrast, the sixth amendment right to counsel, as interpreted by the United States Supreme Court, attaches only if the criminal defendant is actually imprisoned.\textsuperscript{245} The Illinois Supreme Court likewise has ruled that the mere possibility of incarceration does not trigger the defendant's right to counsel.\textsuperscript{246} It is unclear whether Rule 401 offers protections which exceed those guaranteed by the sixth amendment because various statutes and rulings exist which give rise to contrary points of view.\textsuperscript{247}

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(a) Waiver of Counsel. Any waiver of counsel shall be in open court. The Court shall not permit waiver of counsel by a person accused of an offense punishable by imprisonment without first, addressing the defendant personally in open court, informing him of and determining that he understands the following:

1. the nature of the charge;
2. the minimum and maximum sentence prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences; and
3. that he has a right to counsel and, if he is indigent, to have counsel appointed for him by the court.

(b) Transcript. The proceedings required by this rule to be in open court shall be taken verbatim, and upon order of the trial court transcribed, filed and made a part of the common law record.

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\textsuperscript{241} ILL. S. CT. R. 401, ILL. REV. STAT. ch. 110A, para. 401.
\textsuperscript{242} ILL. ANN. STAT. ch. 110A, para. 401 (Smith-Hurd 1985), 1982 Supreme Court Note, at 368.
\textsuperscript{243} ILL. S. CT. R. 401(a), ILL. REV. STAT. ch. 110A, para. 401(a).
\textsuperscript{244} ILL. S. CT. R. 402(b), ILL. REV. STAT. ch. 110A, para. 402(b).
\textsuperscript{245} ILL. S. Ct. R. 401(a), ILL. REV. STAT. ch. 110A, para. 401(a).
\textsuperscript{248} See infra notes 245-83 and accompanying text.
One interpretation of the reach of Rule 401 appears in People v. Harpole. In Harpole, the defendant was charged with driving under the influence of intoxicating liquor and improper lane usage. The defendant entered an uncounseled guilty plea to the offenses and was fined. A court reporter was not present during the plea and sentencing proceedings. Thereafter, the defendant, represented by counsel, filed a motion to vacate the guilty pleas. Additionally, the defendant asserted his innocence and further alleged that his pleas were not voluntary or intelligent because he did not waive his right to counsel and to a jury trial. At the hearing on the motion to vacate the plea, the defendant testified that at the time he entered the guilty plea, he was not represented by counsel. Further, he asserted he was neither advised of his right to counsel by the trial court, nor did he waive his right to counsel.

The appellate court held that there was no violation of Rule 401 and affirmed the convictions. The court reasoned that Rule 401 was designed to "provide a procedure which will remove any doubt that a defendant understands the nature and consequences of what he is charged with before a court accepts his waiver. . . ." The court stated that, notwithstanding the statutory language of Rule 401, its protections apply only if a criminal defendant actually is sentenced to a term of imprisonment. According to the Harpole court, it made little sense to inform the defendant of a right to counsel, let alone secure a valid waiver of that counsel, as no constitutional right to counsel attaches unless the defendant actually suffered a term of imprisonment. Accordingly, the court held that Rule 401 was not applicable because the defendant in this case merely was fined, and the transcript requirement was deemed

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249. Harpole, 135 Ill. App. 3d at 80, 481 N.E.2d at 818.
250. Id. at 80-81, 481 N.E.2d at 818.
251. Id. at 80, 481 N.E.2d at 818.
252. Id.
253. Id. at 80-81, 481 N.E.2d at 818.
254. Id.
255. Id. at 81, 481 N.E.2d at 818.
256. Id. at 80-81, 481 N.E.2d at 818-19.
257. Id. at 81-84, 481 N.E.2d at 820-21.
258. Id. at 82, 481 N.E.2d at 819.
259. Id. at 82-83, 481 N.E.2d at 819-20.
260. Id. at 83-84, 481 N.E.2d at 820.
261. Id. at 83, 481 N.E.2d at 820.
inapplicable. The court in Harpole interpreted Rule 401(a) and (b) as necessarily interrelated. Based on that premise, if Rule 401(a) did not apply to a situation, Rule 401(b) necessarily did not apply.

The dissent in Harpole offered an alternative approach. Justice Jones submitted that "Rule 401(b) has a purpose and a function that operate independently of Rule 401(a)." He stated that "many are the serious consequences that may flow from the imposition of a fine" and, accordingly, a transcript of the waiver of counsel could take on great significance. Although Justice Jones did not quarrel with the majority's view that Rule 401(a) did not require counsel, he implied that Rule 401(b) would require a waiver of counsel reflected in the record if important consequences were at stake. Justice Jones cited People v. McCarty to illustrate the necessity of following this approach.

In McCarty, the defendant committed a misdemeanor theft while on probation for an earlier felony theft offense. The defendant entered a guilty plea to the latter misdemeanor charge without the benefit of counsel. A verbatim transcript of the proceeding was not kept. Several days later, the State sought to revoke the defendant's probation on the felony theft conviction. After the State presented the misdemeanor theft conviction in the probation revocation proceeding, the court sentenced the defendant to imprisonment for his violation of the conditions of his earlier

262. ILL. S. CT. R. 401(b), ILL. REV. STAT. ch. 110A, para. 401(b). 263. Harpole, 135 Ill. App. 3d at 83, 481 N.E.2d at 820. 264. Id. 265. Id. 266. Id. at 85, 481 N.E.2d at 821 (Jones, J., dissenting). 267. Justice Jones stated:

Under the view adopted by the majority, when punished by a fine only, a defendant will never be able to point back to any facet of his understanding, or lack thereof, of the nature of his right to counsel, the consequences that might flow from lack of counsel or of his need for counsel to represent him. Yet, to many defendants the consequences of punishment by a fine only may run far beyond that entailed in the obligation to pay the fine. What of a defendant on probation or parole at the time he is 'fined'? What of the defendant who loses his employment because he suffers a conviction and is 'merely fined'? Id. at 84, 481 N.E.2d at 821 (Jones, J. dissenting). 268. Id. 269. 101 Ill. App. 3d 355, 427 N.E.2d 1382 (3d Dist. 1981), modified, 94 Ill. 2d 28, 445 N.E.2d 298 (1983). 270. Harpole, 135 Ill. App. 3d at 85, 481 N.E.2d at 821. 271. 101 Ill. App. 3d at 356, 427 N.E.2d at 1383. 272. Id. 273. Id. at 359, 427 N.E.2d at 1385. 274. Id. at 356, 427 N.E.2d at 1383.
probation.\textsuperscript{275} On appeal, the defendant claimed that the State could not revoke his probation and imprison him on the basis of the uncounseled misdemeanor theft conviction.\textsuperscript{276}

The appellate court reversed.\textsuperscript{277} The court ruled that the trial court could not order imprisonment of the defendant on the basis of the uncounseled misdemeanor conviction without violating his right to counsel.\textsuperscript{278} Further, the court held a mere “docket entry” did “not sufficiently demonstrate” a waiver of counsel at the proceeding where the defendant entered his plea to the misdemeanor theft.\textsuperscript{279} Here, the trial court’s failure to abide by the terms of Rule 401, which requires the making of a record of the alleged waiver of counsel, undermined the State’s claim that the defendant understood his right to counsel and waived it.\textsuperscript{280}

It is the opinion of the authors that at least two, and perhaps three, different positions regarding the application of Rule 401 are available to a court. Each of these positions appears to be supported by law. First, the court may adopt the position expressed by the majority in \textit{Harpole}, that Rule 401(a) and (b) are interrelated. Consistent with this view, the Rule 401(b) transcript requirement applies only if Rule 401(a) is relevant and Rule 401(a) arises only if the defendant will actually be imprisoned.\textsuperscript{281} Second, a trial court could adopt the position expressed in the \textit{Harpole} dissent that Rule 401(a) and Rule 401(b) stand independent of each other. This interpretation of Rule 401 suggests that regardless of whether or not Rule 401(a) applies, Rule 401(b) always requires an admonition regarding counsel and a transcript of the waiver proceedings whenever the criminal defendant may ultimately suffer “serious consequences” as a result of that waiver.\textsuperscript{282}

The authors submit a third possible approach, namely, one which follows a plain reading of Rule 401(a). The statute clearly states the “court shall not permit a waiver of counsel by a person \textit{accused of an offense punishable by imprisonment}” without first

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{275} \textit{Id.}
\item \textsuperscript{276} \textit{Id.} at 357-58, 427 N.E.2d at 1384-85.
\item \textsuperscript{277} \textit{Id.} at 360, 427 N.E.2d at 1386.
\item \textsuperscript{278} The appellate court did not quarrel with the State’s ability to gain a revocation of the probation but did conclude imprisonment therefor would violate the principles of Baldasar v. Illinois, 446 U.S. 222 (1980) (per curiam) (a prior uncounseled misdemeanor conviction could not be used to enhance a subsequent misdemeanor theft to a felony theft). \textit{McCarty}, 101 Ill. App. 3d at 358, 427 N.E.2d at 1385.
\item \textsuperscript{279} \textit{McCarty}, 101 Ill. App. 3d at 359, 427 N.E.2d at 1385.
\item \textsuperscript{280} \textit{Id.} at 359-60, 427 N.E.2d at 1385-86.
\item \textsuperscript{281} \textit{See supra} notes 248-65 and accompanying text.
\item \textsuperscript{282} \textit{See supra} notes 266-68 and accompanying text.
\end{itemize}
\end{footnotesize}
complying with Rule 401(a) and (b). The underlying rationale of Rule 401 is to “eliminate any doubt that an accused understands the nature and consequences of the charges.” It is the opinion of the authors that the first position, limiting Rule 401(a) to situations where the criminal defendant actually is incarcerated, defeats the policy as well as the plain language of Rule 401. Further, it unnecessarily narrows the court’s options in later sentencing the defendant to imprisonment if a valid waiver is not secured. The second approach, applying the protections of Rule 401(a) through the transcript requirements of Rule 401(b) when “serious consequences” will result from the waiver, may serve the policy of assuring that intelligent waivers exist but is at odds with the statutory language. Further, it requires the trial court to engage in the often impossible task of predicting whatever “serious consequences” may result from a waiver of counsel with any particular defendant. The third approach, complying with the plain meaning of the rule, most closely serves the purpose of Rule 401. Rule 401(a) is, by design, concerned with defendants facing a possible prison term sometime in the future as a consequence of the plea at hand. Providing such defendants with a full understanding of the consequences of the waiver of counsel insures the integrity of the proceedings and allows the trial court to maintain unhampered its sentencing options. It is preferred, given the significance of the right to the assistance of counsel, that Illinois courts follow the plain meaning of Rule 401 even though the terms of the Rule exceeds, in some circumstances, the requirements of the federal constitution.

Once it is determined that Rule 401 applies to a defendant, the next issue is to determine the extent to which the trial court must comply with the admonitions of the rule. Rule 401(a) states that “the court shall not permit a waiver of counsel by a person accused of an offense . . . without first . . . informing him of and determining that he understands” the consequences of such waiver. Obviously, the statutory language is mandatory.

At first glance, it may seem important to contrast the mandatory language of Rule 401 with that of Rule 402, which deals with

285. U.S. Const. amend VI.
admonitions regarding the waiver of other rights when entering guilty pleas. Only "substantial compliance" with Rule 402 is required. Conspicuous by its absence is similar "substantial compliance" language in Rule 401 regarding the waiver of counsel. Accordingly, several appellate courts have attached significance to the mandatory language of Rule 401 and the glaring omission of the "substantial compliance" language which appears in Rule 402. Thus, the courts have held that there must be "rigorous compliance" or "strict compliance" with the rule. However, the Illinois Supreme Court recently ruled that only "substantial compliance" with Rule 701 is required.

Whether a trial court has adequately complied with Rule 701 is best discerned by examining the case law. In Illinois, the courts focus upon the following two factors: (1) whether the record reflects technical compliance with the rule, and, (2) whether the record reflects the defendant's actual knowledge of the consequences of waiving counsel. The trial judge "is required to conduct more than a routine inquiry" when making the determination that the defendant understands the consequences of his waiver. For example, in People v. Nieves, the Illinois Supreme Court was satisfied that there was sufficient compliance with Rule 401(a) when the record showed the defendant wanted to represent himself and was actually aware of the charge, the sentences available, and his right to counsel. In People v. Lyons, however, the appellate court found noncompliance with Rule 401(a) where the only element in

289. Id.
294. See supra notes 290-93 and accompanying text.
295. Kessler, 113 Ill. App. 3d at 359, 447 N.E.2d at 499. The Kessler court noted: [T]he trial court must determine for itself whether the defendant has the requisite capacity to make an intelligent and knowing waiver of his right to counsel. The criteria generally utilized in making that decision are the defendant's age, level of education, mental capacity and prior involvement, if any, in legal proceedings.
Id. at 359, 447 N.E.2d at 499.
296. Id.
297. 92 Ill. 2d 452, 442 N.E.2d 228 (1982).
298. Id. at 466, 442 N.E.2d at 235-36.
the common law record was a notation which read "Def't. advised of his rights." This notation was deemed insufficient to show that the defendant was advised of his right to counsel where nothing else in the record suggested an actual knowing waiver.

B. Rule 402 — Its Purpose and Scope

In addition to conforming with federal constitutional concerns, all Illinois guilty plea hearings involving adult criminal defendants must substantially comply with Illinois Supreme Court Rule 402. The rule provides that a trial judge must personally admonish the defendant in open court about certain aspects and consequences of his guilty plea and determine if he understands such aspects and consequences. First, the court must refer to the nature of the charge. Second, it must consider potential sentence possibilities. Third, it must inquire into whether the defendant understands the dimensions of his trial rights and the consequences of his guilty plea as it waives such rights. Beyond the admonitions regarding the charge, sentence possibilities and rights waived, the court also is obligated to determine if the plea is voluntary and if a factual basis supports the plea. If the guilty plea is based on a plea agreement, the terms of the agreement must be made part of the record and the judge must indicate whether he concurs with the agreement. In addition, the Rule requires that these matters be transcribed.

According to the Committee Comments accompanying Rule 402, the Illinois Supreme Court sought to accomplish two objectives when it promulgated the rule. First, the rule attempts to conform Illinois guilty plea hearings with due process requirements by insuring an affirmative record is kept reflecting that the defendant voluntarily and intelligently entered his plea. Second, the rule

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300. Id. at 295, 311 N.E.2d at 371.
301. Id.
308. ILL. S. Ct. R. 402(c), ILL. REV. STAT. ch. 110A, para. 402(c).
310. ILL. S. Ct. R. 402(e), ILL. REV. STAT. ch. 110A, para. 402(e).
312. Id.
gives "visibility to the plea agreement process and thus provide[s] the review court with a record containing an accurate and complete account of all relevant circumstances surrounding the guilty plea."\textsuperscript{313}

Rule 402 applies to all proceedings involving an adult defendant who enters a guilty plea to a crime, regardless of the nature of the pending charges.\textsuperscript{314} Although the requirements of Rule 402 place a substantial burden on high volume courts, Illinois has taken the position that judicial economy is better served by following the rule in the first instance.\textsuperscript{315}

Notwithstanding the broad application of Rule 402, Illinois courts have set forth limited exceptions that do not require compliance with the rule. For example, Rule 402 is inapplicable to juvenile delinquency proceedings\textsuperscript{316} and contempt proceedings.\textsuperscript{317} It

\begin{itemize}
\item \textsuperscript{313} Id.
\item \textsuperscript{314} See People v. Sutherland, 128 Ill. App. 3d 415, 431-32, 470 N.E.2d 1210, 1222 (4th Dist. 1984).
\item \textsuperscript{315} With reference to the Rule 402 requirements, the Sutherland court stated:
\begin{quote}
Rule 402 admits of no exceptions based upon the nature of the charge. It applies with equal force to all pleas of guilty, whether to felonies or misdemeanors. We are aware that this condition imposes a considerable burden on high volume courts where the daily call may run upwards of a hundred cases or more in this district, and even more in larger communities elsewhere. Nevertheless, the rigor of the Rule must be satisfied. 
\end{quote}
\textit{Id.} at 431-32, 470 N.E.2d at 1222.
\item \textit{See also} People v. Williams, 125 Ill. App. 3d 284, 288, 465 N.E.2d 1044, 1046-47 (4th Dist. 1984). In Williams, the defendant was found guilty of battery in a bench trial. Defendant had signed a written waiver of his right to a jury trial. At no time during the proceedings was the question of the jury waiver raised by the defendant or counsel. Defendant appealed citing noncompliance with ILL. REV. STAT. ch. 38, para. 103-6 (1983), which stated that "[e]very person accused of an offense shall have the right to a trial by jury unless understandingly waived by defendant in open court." \textit{Id.}
\item The appellate court reversed the conviction. The defendant's waiver did not occur in open court and the record was silent as to his comprehension of that right. The violation of the statute governing waiver of a jury trial constituted plain error which was not waived by defendant's failure to raise it at the trial level. The Court stated:
\begin{quote}
We are aware that many of the requirements of the Code of Criminal Procedure of 1963 place great burdens on high volume courts, such as traffic and misdemeanor tribunals. However, there are no safe shortcuts, and judicial economy is better served by following the statute in the first instance. 
\end{quote}
\textit{Williams}, 125 Ill. App. 3d at 288, 465 N.E.2d at 1046-47.
\item \textsuperscript{316} See In Interest of S.W.C., a Minor, 110 Ill. App. 3d 695, 442 N.E. 2d 961 (4th Dist. 1982) (Rule 402 is inapplicable to juvenile proceedings; minors admission of guilt is not the same as an adult guilty plea; lack of admonishments regarding incarceration is not error). \textit{Accord} In re Beasley, 66 Ill. 2d 385, 362 N.E.2d 1024 (1977), cert denied, 434 U.S. 1016 (1978); In Interest of S.B., 128 Ill. App. 3d 75, 470 N.E.2d 39 (1st Dist. 1984); \textit{In Interest of L.E.J.}, 115 Ill. App. 3d 993, 451 N.E.2d 289 (4th Dist. 1983).
\item \textit{But see} ILL. REV. STAT. ch. 37, para. 701 (1985) (authorizing the extension of adult criminal court protection to juvenile proceedings).
\item \textsuperscript{317} See People v. Mowery, 116 Ill. App. 3d 695, 452 N.E.2d 363 (4th Dist. 1983)
has also been held that stipulated bench trials\(^3\) do not rise to the level of a guilty plea proceeding and therefore do not necessitate Rule 402 admonishments.\(^3\)

Rule 402 applies only to a criminal defendant who enters a guilty plea at the arraignment; it does not apply to proceedings where the defendant enters a plea of not guilty.\(^3\) In *People v. Perez*,\(^3\) the defendant was charged with murder and rejected the State's plea agreement offer.\(^3\) The defendant subsequently was found guilty in a jury trial.\(^3\) On appeal, the defendant alleged that the trial court erred in failing to admonish him regarding the penalties authorized by law.\(^3\) The court upheld the conviction, stating Rule 402 provides that "the possible penalties must be known to the defendant, on the record at the time of his plea of guilty . . . . [This rule] does not address any other situation . . . ."

\(^3\) A stipulated bench trial refers to a bench trial where all, or substantially all, of the testimony that would have been presented by witnesses is agreed to between the parties. Such proceedings are normally used where the parties do not dispute the facts but differ as to the applicability of certain law to the facts.

\(^3\) People v. Hancock, 130 Ill. App. 3d 903, 473 N.E.2d 708 (5th Dist. 1980); People v. Stinette, 49 Ill. App. 3d 134, 363 N.E.2d 945 (2d Dist. 1977); People v. Ford, 44 Ill. App. 3d 94, 357 N.E.2d 865 (4th Dist. 1976); People v. Ruas, 31 Ill. App. 3d 385, 334 N.E.2d 108 (1st Dist. 1975); People v. Fair, 29 Ill. App. 3d 939, 332 N.E.2d 51 (4th Dist. 1975); People v. Young, 25 Ill. App. 3d 629, 323 N.E.2d 788 (1st Dist. 1975). *But see* People v. Bonham, 106 Ill. App. 3d 769, 436 N.E.2d 269 (3d Dist. 1982). This court stated: "[a]dmonishing the defendant would eliminate the confusion and misunderstanding that the procedure creates. Ideally, the record should reflect the defendant's understanding of the procedures about to be employed against him and that his appeal of any resulting conviction will be limited to the issues he is preserving." *Id.* at 773, 436 N.E.2d at 272.

\(^3\) People v. Perez, 113 Ill. App. 3d 143, 446 N.E.2d 1229 (1st Dist. 1983).  
\(^3\) *Id.*

\(^3\) Id. at 146, 446 N.E.2d at 1232.

\(^3\) Id. at 145, 446 N.E.2d at 1231.

\(^3\) Id. at 150, 446 N.E.2d at 1234-35.
Thus, Rule 402 violations cannot be advanced after conviction following a trial.

C. The "Substantial Compliance" Standard of Rule 402

1. The Meaning of "Substantial Compliance"

Rule 402 provides that in hearings on pleas of guilty, there must be "substantial compliance" with the aforementioned procedures. This section will examine Illinois courts' interpretation of this important standard. Further, this section will inquire into the adequacy of procedural devices such as written forms, mass admonishments by the trial court, and extra-judicial admonishments. Such procedures have been employed by Illinois trial courts as either a substitute for the duties imposed upon the trial court by Rule 402, or as an abbreviated form of those duties.

Case law provides a sense of the parameters of the "substantial compliance" standard. In 1984, the Illinois Supreme Court stated that Rule 402 requires "only substantial, not literal compliance with its provisions." Similarly, in People v. Hickman, the Illinois Appellate Court for the Third District called for "substantial" rather than "total" compliance with Rule 402. Thus, failure to comply strictly with all aspects of the provisions of Rule 402 will not necessarily render void a conviction following a guilty plea.

In People v. Miller, the court found substantial compliance with Rule 402 despite the defendant's allegation that the trial court failed to admonish the defendant of the minimum and maximum sentences of the offense at the defendant's arraignment. The record in Miller revealed that (1) the defendant was in open court with retained counsel; (2) the State made reference to the minimum and maximum sentence on the charges during the arraign-

325. Id. at 150, 446 N.E.2d at 1235.
331. Id. at 852-53, 277 N.E.2d at 898-900.
332. Id. at 852, 277 N.E.2d at 899.
ment;\textsuperscript{333} (3) the defendant was fully advised of his other rights;\textsuperscript{334} and (4) the defendant did not contend that he did not understand the possible sentences.\textsuperscript{335} Despite the trial court's omissions of the provisions outlined in Rule 402, the appellate court determined that there was "substantial compliance" with the rule.\textsuperscript{336}

A similar result was reached in \textit{People v. Krouse}.\textsuperscript{337} In \textit{Krouse}, the defendant was admonished at his arraignment that the State carried the burden of proving his guilt beyond a reasonable doubt.\textsuperscript{338} The defendant contended on appeal that because he was not specifically informed by the court that (1) he had a right to plead not guilty and (2) that he was waiving the right to a trial and the right to confront his accuser by entering a guilty plea, Rule 402 was violated.\textsuperscript{339} The appellate court held that there was "substantial compliance" with Rule 402.\textsuperscript{340} The court stated that lack of specific admonitions at a guilty plea proceeding does not, by itself, indicate that the defendant was unaware of the consequences of his plea.\textsuperscript{341} Such omissions, therefore, are not necessarily fatal to the proceeding.\textsuperscript{342} Thus, it appears that unless the defendant can claim he was actually ignorant of the rights he waived by pleading guilty, his assertions of prejudice will be discounted.\textsuperscript{343}

The foregoing cases reveal that not every admonishment enunciated in Rule 402 must be delivered to the defendant in open court in order for the proceeding to comply substantially with Rule 402. In \textit{People v. Bennett},\textsuperscript{344} the court articulated the standard against which "substantial compliance" was to be measured. In \textit{Bennett}, the trial judge failed to admonish the defendant about the nature of the charge.\textsuperscript{345} The appellate court asserted that the entire record may be considered to ascertain whether the defendant understood

\begin{itemize}
\item \textsuperscript{333} Id.
\item \textsuperscript{334} Id.
\item \textsuperscript{335} Id.
\item \textsuperscript{336} Id. at 852-53, 277 N.E.2d at 899-900.
\item \textsuperscript{337} 7 Ill. App. 3d 754, 288 N.E.2d 543 (5th Dist. 1972).
\item \textsuperscript{338} Id. at 757, 288 N.E.2d at 546.
\item \textsuperscript{339} Id.
\item \textsuperscript{340} Id.
\item \textsuperscript{341} Id. (citing \textit{People v. Mendoza}, 48 Ill. 2d 371, 270 N.E.2d 30 (1971)).
\item \textsuperscript{342} \textit{Krouse}, 7 Ill. App. 3d at 757, 288 N.E.2d at 546.
\item \textsuperscript{344} 82 Ill. App. 3d 596, 403 N.E.2d 50 (5th Dist. 1980).
\item \textsuperscript{345} The defendant claimed the trial court failed to (1) admonish him of the nature of the charge, (2) advise him he could be convicted of a lesser included offense, (3) advise him he could persist in a plea of not guilty, and (4) inquire into the voluntariness of his plea. \textit{Id.} at 599, 403 N.E.2d at 54.
\end{itemize}
the nature of the charges. The court held that there is "substantial compliance" if an ordinary person in the circumstances of the defendant would understand the charges. In the situation at issue, the defendant was informed of the charge by name and the State's Attorney summarized what the evidence would prove. The court therefore concluded that the entire record demonstrated that the defendant did understand the nature of the offense involved even though each element of the offense was not mentioned explicitly.

The difference between compliance and noncompliance with Rule 402 is merely a matter of degree. The greater the number of omissions by the trial judge, the greater is the likelihood that there has been no "substantial compliance." For instance, in People v. Waldorf, the appellate court reversed a conviction because the guilty plea proceeding did not comply substantially with Rule 402. The defendant in Waldorf pleaded guilty to three counts of aggravated battery and was sentenced to five years probation. Thereafter, with new counsel, the defendant sought to vacate the plea; the court denied this motion. On appeal, the defendant contended that the lower court did not comply substantially with Rule 402 inasmuch as the transcript revealed that the defendant was not advised (1) of his right to plead not guilty and persist in that plea, (2) that if he pleaded guilty there would be no trial, and (3) that he was waiving his right to confront the witnesses against him. In addition, the defendant alleged that the trial court failed to state in open court the terms of the plea agreement and his concurrence to the agreement as required by Rule 402(d).

In reviewing the conviction, the court held that given the significant constitutional rights at issue, and given the fact that the trial court failed to inform the defendant of the consequences of waiver of these rights in the event a guilty plea is accepted, the trial court clearly erred. The court then concluded that these omissions,
combined with the defendant’s claim the plea was coerced unlawfully, permitted withdrawal of the guilty plea.\textsuperscript{357}

In \textit{People v. Sutherland},\textsuperscript{358} the defendant pleaded guilty to driving under the influence of intoxicating beverages and was sentenced to a jail term.\textsuperscript{359} During trial, the judge failed to admonish personally the defendant that (1) he had the right to plead not guilty and persist in that plea, and (2) if he did plead guilty, such plea would effectively waive his constitutional rights to a jury trial and to confront his accusers.\textsuperscript{360} On appeal, the defendant contended that the trial court failed to advise him that the court was not bound by the terms of the plea agreement arranged between the prosecutors and the defendant and that the court could impose a sentence different from that agreed to by the parties.\textsuperscript{361} The defendant’s plea agreement contemplated that no jail term would result.\textsuperscript{362}

Following an extensive review of the case law,\textsuperscript{363} the appellate court held that the trial court violated the protective measures prescribed by Rule 402.\textsuperscript{364} The record in \textit{Sutherland} revealed only that the trial court inquired whether defense counsel had fully informed the defendant of his constitutional rights.\textsuperscript{365} Although defense counsel had assured the trial judge that the defendant had been fully informed, the appellate court did not find this to be satisfactory because counsel’s statement to the defendant did not disclose “the scope of the admonition.”\textsuperscript{366} The appellate court added that the record was ambiguous as to whether the defendant actually understood what rights he waived by pleading guilty.\textsuperscript{367} Finally, the court stated that it was not clear whether the defendant understood the court’s right to ignore the arranged plea agreement.\textsuperscript{368} Thus, the \textit{Sutherland} court held that the trial court’s failure to admonish the defendant pursuant to Rule 402, \textit{in addition to} the fact that the record failed to reveal the defendant’s knowledge of his rights and the consequences of entering a guilty plea, ren-

\textsuperscript{357} \textit{Id.} at 982, 419 N.E.2d at 433.
\textsuperscript{359} \textit{Id.} at 415, 470 N.E.2d at 1211.
\textsuperscript{360} \textit{Id.} at 418, 470 N.E.2d at 1213.
\textsuperscript{361} \textit{Id.}.
\textsuperscript{362} \textit{Id.} at 416, 470 N.E.2d at 1212.
\textsuperscript{363} \textit{Id.} at 419-26, 470 N.E.2d at 1214-21.
\textsuperscript{364} \textit{Id.} at 426, 470 N.E.2d at 1221.
\textsuperscript{365} \textit{Id.} at 426, 470 N.E.2d at 1218.
\textsuperscript{366} \textit{Id.}.
\textsuperscript{367} \textit{Id.} at 428, 470 N.E.2d at 1219-20.
\textsuperscript{368} \textit{Id.} at 429-31, 470 N.E.2d at 1220-21.
dered the guilty plea invalid.369

In summary, to determine whether a guilty plea proceeding substantially complies with Rule 402, the Illinois courts examine the entire record. Illinois courts apply an objective standard; the test is whether an ordinary person in the circumstances of the defendant would understand the charges against him, the constitutional rights afforded him, and the waiver of those rights which are inherent whenever his guilty plea is accepted by the court. Appellate courts focus on the apparent knowledge of the defendant at the time of the plea rather than on literal compliance with the rule. When the record reflects a voluntary and intelligent plea, most Illinois courts conclude that Rule 402 is complied with substantially.

2. Alternatives to Oral Admonishments of Individual Defendants

Substantial compliance with Rule 402 imposes a considerable burden on high-volume courts.370 In an effort to reduce the time that Rule 402 consumes in the trial courts, some alternative schemes have been employed from time to time. These procedures, such as written forms, mass admonishments, and extra-judicial admonitions, however, have met with mixed reactions from the appellate courts.

Although some of these alternative schemes may serve the interests protected by Rule 402,371 the courts insist that the constitutional rights of the accused at a guilty plea proceeding carry a higher value than judicial economy even in high-volume courts.372 In order for an appellate court to evaluate whether the trial judge substantially complied with Rule 402, it must be able to examine the trial court record.373 Without a complete record, the appellate court lacks a sufficient basis from which to render its determination and will normally assume noncompliance with the rule.374

The use of a written form signed by the defendant acknowledging that he fully understands the consequences of entering a guilty plea, the nature of the charge, and the constitutional rights waived

369. Id. at 426-28, 470 N.E.2d at 1219-20.
370. Id. at 432, 470 N.E.2d at 1222.
371. See supra notes 311-13 and accompanying text.
372. The court stated that it "was . . . aware that this condition imposes a considerable burden on high-volume courts, . . . [but] the rigor of the Rule must be satisfied." Sutherland, 128 Ill. App. 3d at 432, 470 N.E.2d at 1222.
373. Id.
in the proceeding does not constitute substantial compliance with Rule 402.\footnote{375} For example, in \textit{People v. Cummings},\footnote{376} the court held that a circuit court judge may not substitute a printed form for the oral admonitions mandated pursuant to Rule 402.\footnote{377} On the other hand, in high-volume courts, such as traffic court, mass admonishments \textit{may} be employed to alleviate the time consumed by Rule 402.\footnote{378} For example, in \textit{People v. Henderson},\footnote{379} the appellate court upheld the use of mass admonishments in traffic court.\footnote{380} The defendant had pleaded guilty to driving with a revoked or suspended license and was sentenced to jail.\footnote{381} The traffic court judge delivered admonishments en masse to all the defendants pleading guilty.\footnote{382} These admonishments reviewed the constitutional rights afforded all defendants.\footnote{383} The traffic court judge also informed each defendant individually regarding the specific consequences of entering a guilty plea in his specific situation.\footnote{384} The court informed the defendant, Henderson, individually of the nature of the charges filed against him and the possible minimum and maximum penalties.\footnote{385} Finally, the traffic court judge learned from the defendant whether (1) he wished to plead guilty; (2) he understood the admonishments; (3) he had any questions concerning the waiver of his constitutional rights; and (4) his plea was voluntary.\footnote{386}

On appeal the defendant argued that the traffic court judge did not comply with Rule 402 because he failed to explain the constitutional rights afforded all defendants.\footnote{387} The appellate court, how-

\footnote{375}{See, e.g., People v. Carle, 8 Ill. App. 3d 56, 288 N.E.2d 876 (3d Dist. 1972).}
\footnote{376}{Id. at 308, 287 N.E.2d at 293. Similarly, the courts have held that a trial court's mere utilization of jury waiver forms does not effectuate a valid waiver of a jury trial. See, e.g., People v. Feliciano, 93 Ill. App. 3d 642, 417 N.E.2d 824 (1st Dist. 1981); People v. Myles, 83 Ill. App. 3d 843, 404 N.E.2d 385 (1st Dist. 1980), rev'd on other grounds, 86 Ill. 2d 260, 427 N.E.2d 59 (1980); People v. Rambo, 123 Ill. App. 2d 299, 260 N.E.2d 119 (1st Dist. 1970).}
\footnote{377}{104 Ill. App. 3d at 62, 432 N.E.2d 660 (4th Dist. 1982).}
\footnote{378}{Id. at 63-64, 432 N.E.2d at 660-61.}
\footnote{379}{104 Ill. App. 3d at 63, 432 N.E.2d at 660.}
\footnote{380}{Id. at 62-63, 432 N.E.2d at 660.}
\footnote{381}{Id. at 63, 432 N.E.2d at 660-61.}
\footnote{382}{Id. at 63, 432 N.E.2d at 660-61.}
\footnote{383}{Id. at 63, 432 N.E.2d at 661.}
\footnote{384}{Id. at 63, 432 N.E.2d at 661.}
\footnote{385}{Id.}
\footnote{386}{Id.}
\footnote{387}{Id.}
ever, affirmed the conviction and expressed approval of mass admonishments as employed in this situation. The appellate court noted that the lower court had dealt with each defendant individually regarding the particular consequences of entering a guilty plea which were unique to him. Accordingly, the appellate court found that the mass admonitions respecting the general constitutional rights afforded all defendants substantially complied with Rule 402.

Another procedure that reduces the time consumed by Rule 402 is allowing the prosecutor or defense attorney rather than the trial judge to admonish the defendant. Generally, where the prosecutor or defense attorney admonishes the accused in the presence of the trial judge and the trial judge is satisfied that the plea is voluntary and intelligent, there is substantial compliance with Rule 402.

In People v. Larrabee, the prosecutor admonished the defendant in the trial judge’s presence. The judge asked the defendant if he understood the prosecutor’s statements. The defendant replied affirmatively. The appellate court affirmed the conviction stating that there was substantial compliance with Rule 402 when the trial court “incorporated by reference” the admonitions offered by the prosecutor.

Similarly, in People v. Torres, the accused was admonished by his own counsel in the trial judge’s presence. The appellate court approved the admonishment. Thus, when admonitions are given to the accused by an attorney from either side, Rule 402 is satisfied if a review of the entire trial court record by the appellate court supports the conclusion that the plea was voluntary and intelligent.

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388. Id.
389. Id.
391. Id.
392. 7 Ill. App. 3d 726, 288 N.E.2d 538 (5th Dist. 1972).
393. Id. at 727-28, 288 N.E.2d at 539-40.
394. Id. at 729, 288 N.E.2d at 540.
395. Id.
396. Id.
398. Id. at 397-98, 287 N.E.2d at 489.
399. Id. at 399, 287 N.E.2d at 490.
Non-judicial admonitions supplemented by judicial inquiry were approved by the Illinois Supreme Court in *People v. Krantz*. In *Krantz*, the prosecutor's litany of anticipated evidence during the guilty plea proceeding clarified what criminal conduct the State expected to prove. The trial court then directly inquired of the accused as to whether he understood the nature of the charge. Having received the accused's assurance that he understood the charge, in addition to the reasons why he committed the offense of forgery, the trial court determined that the defendant understood the nature of the charge. The Illinois Supreme Court upheld the plea after finding substantial compliance with Rule 402.

The substantial compliance standard permits the prosecutor or defense attorney to assume a portion of the judge's admonitory role to the extent that the non-judicial admonitions are in court and on the record. The substantial compliance standard does not, however, admit out-of-court non-judicial admonitions. In *People v. Sutherland*, the appellate court ruled that the accused received insufficient protection afforded by Rule 402 when the trial court merely elicited from defense counsel that he had informed the defendant of the nature of the charge, the prescribed penalties, and the trial rights waived by entering a guilty plea. The court observed that in *Sutherland*, the defense counsel did not admonish the defendant in open court in the judge's presence. Consequently, no record was made of the content and scope of defense counsel's admonishments to his client. Furthermore, the *Sutherland* court emphasized that the trial judge failed to question the defendant to determine whether he understood what defense counsel had told him.

D. Rule 402 Admonitions Regarding Charge

Rule 402(a)(1) addresses the trial judge's obligation to admonish
the defendant about the charge against him.\footnote{411} This rule requires that the trial court personally address the defendant,\footnote{412} that the admonition be in open court,\footnote{413} that the trial court inform the defendant of the nature of the charge,\footnote{414} and that the trial court determine the defendant understands the charges.\footnote{415} These must be read in light of the "substantial compliance" standard set forth in Rule 402.\footnote{416}

The Illinois Supreme Court, in People v. Stewart,\footnote{417} measured "substantial compliance" with the admonishment requirement in light of the defendant's apparent ability to understand the nature of the charge.\footnote{418} In Stewart, the court stated that the entire record may be considered in ascertaining whether the defendant understood the nature of the charge.\footnote{419} In Stewart, the defense counsel stated that he had advised the accused "at length" about the "consequences" of his guilty plea.\footnote{420} Additionally, both the accused and his attorney did not protest and, indeed, acquiesced in the recital of the State's statement of facts which demonstrated the accused's conduct fell within the charges to which he pleaded guilty.\footnote{421} Further, the accused was admonished of the charges in open court at his earlier arraignment.\footnote{422} Finally, the defendant did not claim that he did not understand the charges.\footnote{423} Rather, he complained that the trial judge erred in not explaining the charges to him personally; the court found that this fact did not undermine its finding of substantial compliance.\footnote{424}

Stewart, in effect, seriously undermines the requirement of Rule 402(a)(1) that the trial judge personally admonish the defendant about the charge in open court prior to accepting the guilty plea. Based on (1) the defense counsel's pledge that the accused was in-

\footnote{411} Rule 402(a)(1) provides in relevant part that "[t]he court shall not accept a plea of guilty without first, by addressing the defendant personally in open court, informing him of and determining that he understands the . . . nature of the charge . . . . ILL. S. CT. R. 402(a)(1), ILL. REV. STAT. ch. 110A, para. 402(a)(1) (1985).}
\footnote{412} Id.}
\footnote{413} Id.}
\footnote{414} Id.}
\footnote{415} Id.}
\footnote{416} Id.}
\footnote{417} 101 Ill. 2d 470, 463 N.E.2d 677 (1984).}
\footnote{418} Id. at 483-86, 463 N.E.2d at 684-85.}
\footnote{419} Id. at 484, 463 N.E.2d at 684 (quoting People v. Krantz, 58 Ill. 2d 187, 317 N.E.2d 559 (1974)).}
\footnote{420} Stewart, 101 Ill. 2d at 485, 463 N.E.2d at 685.}
\footnote{421} Id. at 486, 463 N.E.2d at 685.}
\footnote{422} Id.}
\footnote{423} Id.}
\footnote{424} Id.
formed of the nature of the charges, (2) the silence and subsequent acquiescence of the defendant and defense counsel as to the factual basis established by the state, (3) the prior admonishment to the accused of the charges at the arraignment, and (4) the trial court’s compliance with most of the remaining aspects of Rule 402, the Illinois Supreme Court was satisfied there was substantial compliance with Rule 402. This approach to Rule 402, however, has disturbing potential. First, the Stewart court appeared to be concerned only with substantial compliance with Rule 402 as a whole rather than if there was substantial compliance with Rule 402(a)(1) and its requirement pertaining to admonishing the defendant about the charge. Second, it tolerated the type of out-of-court non-judicial admonishment, condemned in Sutherland, which failed to reflect the scope of the admonition. Third, it appears to minimize the importance of the general policy considerations behind the rule, namely, to assure the appellate court on the record that the defendant actually understood the true dimensions of the charge.

In any event, there are other Illinois decisions, such as People v. Trinka, in which the reviewing court reflects more concern with the issue of whether the defendant understood the charge than with the issue as to whether the trial court has faithfully followed the terms of the rule. In Trinka, the defense counsel stated in open court in the accused’s presence that he had reviewed the information with the accused and that the accused thereafter acknowledged that this was true. The court then asked the defendant if he had any questions before he entered his plea; the

425. Id. at 485, 463 N.E.2d at 685.
426. Id. at 486, 463 N.E.2d at 685.
427. Id.
428. It had, for instance, admonished the defendant about his constitutional rights, as well as the maximum sentence and established a factual basis, whereas it had not mentioned the minimum sentence or inquired into whether the plea was voluntary. Id. at 481-83, 463 N.E.2d at 682-83.
429. Id. at 483-87, 463 N.E.2d at 683-86.
430. Id.
431. See supra notes 406-10 and accompanying text. On the other hand, Sutherland could be distinguished because the defendant in that case had not been the subject of an earlier judicial admonishment about the charge as was the case in Stewart.
432. See supra notes 406-10 and accompanying text.
433. Although the Stewart opinion states the judge asked the defendant “if he understood the severity of the charges,” there is no indication that it determined if the defendant understood the nature thereof. Stewart, 101 Ill. 2d at 481, 463 N.E.2d at 682.
435. Id. at 185, 293 N.E.2d at 181-82.
436. Id. at 184, 293 N.E.2d at 181.
defendant replied that he did not. The appellate court held that the defendant had been advised adequately of the nature of the charge.

Illinois courts consider an admonishment sufficient under Rule 402 when the trial court admonishes the accused about the charge by referring to the offense by name only. For example, in *People v. Robinson*, the defendant argued that he was not admonished properly as to the nature of the charge against him when the trial court merely referred to the charge as "rape" without setting forth the essential elements of the offense. In *Robinson*, the Illinois Supreme Court stated, as in *Stewart*, that it would consider the entire record in determining whether the trial court properly informed the accused of the nature of the charge. The court held that Rule 402 was complied with substantially considering the fact that the defendant was represented by counsel and that his plea was entered pursuant to a plea agreement. The court stated that a detailed exposition of the essential elements of the crime was not necessary to insure that the defendant understood the nature of the charge.

Central to establishing that the accused understands the nature of the charge is a dialogue between the trial judge and the defendant. In *People v. Warship*, the trial court provided the defendant with a copy of the indictment. In addition, the judge recited almost all of the essential elements of the crime on the record in open court and, accordingly, the appellate court found no violation

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437. *Id.* at 185, 293 N.E.2d at 181.
438. *Id.* at 185, 293 N.E.2d at 181-82.
440. 63 Ill. 2d 141, 345 N.E.2d 465 (1976).
441. *Id.* at 144, 345 N.E.2d at 466.
442. *Id.* at 146, 345 N.E.2d at 467.
443. *Id.*
444. *Id.* at 145, 345 N.E.2d at 467.
447. *Id.* at 463, 285 N.E.2d at 226.
of Rule 402. On the other hand, providing the defendant with a copy of the indictment, without more, is insufficient to inform the defendant of the nature of the charge.

It appears from these cases that the Illinois courts, with the approval of the Illinois Supreme Court, assume the defendant has an understanding of the nature of the charges if the judge in open court explains the crime in question at some earlier point in the proceedings. When the state establishes a factual basis supportive of the charge without objection from the accused, the court assumes he understands the charge. When the defendant’s attorney advises the court that he or she has explained the charge to the accused, some Illinois decisions consider this to be an adequate assurance that the defendant understands. When the accused is represented by counsel and the trial court makes reference to the offense by name only, it normally will be assumed that the defendant understands the nature of the charge, even though no reference is made to the elemental composition of the crime. In any event, it is the opinion of the authors, which is supported by Justice Simon’s dissent in Stewart, that opinions such as Stewart, which concentrate on the defendant’s apparent understanding of the charge rather than the judge’s obligation to insure the defendant’s actual understanding, undercut the Boykin and Rule 402 requirement that the record of the guilty plea proceeding reflect an affirmative showing by the trial judge that the defendant’s plea is truly

448. Id. at 463-64, 285 N.E.2d at 227.
449. People v. Ingeneri, 7 Ill. App. 3d 809, 811, 288 N.E.2d 550, 551 (5th Dist. 1972) (dicta). See also People v. Porter, 61 Ill. App. 3d 941, 378 N.E.2d 788 (4th Dist. 1978) (noncompliance with Rule 402 where trial court merely referred to the offense by its file number; the defendant cannot be held to understand the nature of the charge confronting him by reference to the file number alone).
450. Stewart, 101 Ill. 2d at 486, 463 N.E.2d at 685. Justice Simon’s dissent points out the trial judge read the indictment to the defendant at his arraignment more than five months earlier, which he considered inadequate because there was no inquiry at that point as to whether he understood the charge. Id. at 500, 463 N.E.2d at 692 (Simon, J., dissenting).
451. Id. at 486, 463 N.E.2d at 685. However, Simon pointed out “[t]he defendant’s silence at this stage of the proceedings can hardly be equated with an understanding of the nature of the charges.” Id. at 503, 463 N.E.2d at 693 (Simon, J., dissenting). Stewart is especially troublesome in this regard because the “factual basis was not recited until after the guilty plea had been accepted, and it therefore could not have assisted the defendant in understanding the nature of the charges at the time he entered his plea.” Id.
452. Id. at 485-86, 463 N.E.2d at 677. But see Sutherland, supra notes 406-10 and accompanying text (appellate court held this practice to be inadequate).
453. See supra notes 439-44 and accompanying text.
454. Stewart, 101 Ill. 2d at 499-503, 463 N.E.2d at 691-93 (Simon, J., dissenting).
E. Rule 402 Admonitions Regarding Sentence

The Illinois Criminal Code provides that if a defendant pleads guilty, such plea shall not be accepted until the court has explained to the defendant the "maximum penalty" required by law.\textsuperscript{456} Supreme Court Rule 402(a)(2) provides an additional requirement.\textsuperscript{457} Pursuant to Rule 402(a)(2), the court must inform the defendant pleading guilty of "the minimum and maximum sentence," including those sentences required because of prior convictions or consecutive sentences.\textsuperscript{458} The Committee Comments accompanying the rule explain that the defendant pleading guilty should have a "realistic picture of what might happen to him."\textsuperscript{459}

This section will examine the scope of these statutory sentencing admonition requirements in light of relevant Illinois case law. First, admonitions regarding the range of sentencing possibilities will be considered including whether the trial court must inform the defendant of the possibility of consecutive sentences and whether the trial court is required to list the mandatory supervised release terms\textsuperscript{460} prescribed by law. Second, a discussion of the "collateral consequences" doctrine will follow. This doctrine involves the extent to which the trial court must inform the defendant of all the consequences, direct or collateral, of pleading guilty. Of course, the sufficiency of the sentencing admonitions is reviewed by reference to the substantial compliance standard. As stated, Rule 402(a)(2) requires a trial court judge to advise the defendant pleading guilty of the minimum and maximum sentences for the offense charged. Whether a trial court substantially complied with this admonition mandate, however, requires an examination of all circumstances surrounding the guilty plea proceeding at issue.

In the Illinois Supreme Court decision of \textit{People v. Walker},\textsuperscript{461} the defendant pleaded guilty to two counts of murder and one count of armed robbery and was sentenced by a jury to death.\textsuperscript{462}
On appeal, the defendant alleged that the trial court erred in admonishing the defendant of the sentences prescribed by law.\textsuperscript{463} Specifically, the defendant alleged that the court erroneously told the defendant that (1) the two murder counts would be considered separately in sentencing and that the defendant could be sentenced on each count from twenty years imprisonment to imposition of the death penalty, and (2) that it had discretion to enhance or double any term of years imposed and that one possible sentence was natural life imprisonment.\textsuperscript{464} The defendant argued that this advice was erroneous because certain case law\textsuperscript{465} required, at a minimum, a natural life sentence for two murders.\textsuperscript{466} The defendant claimed the admonition that he might receive a term of years was misleading because he was pleading guilty to two murders. Consequently, the defendant contended that the plea was involuntary and unintelligent.\textsuperscript{467}

The Illinois Supreme Court rejected the defendant's claim that the plea was involuntary or unintelligent.\textsuperscript{468} The court focused upon the fact that the case law upon which the defendant based his argument did not apply to situations occurring during the time of the defendant's sentencing hearing.\textsuperscript{469} Further, the record revealed that the defendant was aware that the prosecutor was seeking the death penalty before he entered his guilty pleas.\textsuperscript{470} The court found that the defendant was not misled and, accordingly, the pleas were voluntary and intelligent.\textsuperscript{471} It stated that the trial court substantially complied with Rule 402 and that the defendant was not denied due process.\textsuperscript{472}

In \textit{People v. Stewart},\textsuperscript{473} the defendant entered a guilty plea to two

\textsuperscript{463} \textit{Id.} at 496, 488 N.E.2d at 534.
\textsuperscript{464} \textit{Id.} at 496-97, 488 N.E.2d at 534.
\textsuperscript{465} \textit{Id.} The defendant argued that according to \textit{People v. Taylor}, 102 Ill. 2d 201, 464 N.E.2d 1059 (1984), the Illinois Supreme Court ruled Illinois law mandated that a sentence not less than natural life imprisonment upon conviction of murdering more than one person. This ruling, however, was not in effect when the defendant was sentenced.
\textsuperscript{466} \textit{Walker}, 109 Ill. 2d at 496-97, 488 N.E.2d at 534.
\textsuperscript{467} \textit{Id.} at 497, 488 N.E.2d at 534.
\textsuperscript{468} \textit{Id.} at 497-99, 488 N.E.2d at 534-36.
\textsuperscript{469} \textit{Id.} at 497-98, 488 N.E.2d at 534.
\textsuperscript{470} \textit{Id.} at 499, 488 N.E.2d at 535.
\textsuperscript{471} \textit{Id.} at 498-99, 488 N.E.2d at 535-36.
\textsuperscript{472} \textit{Id.} The court stated that:
\textit{[t]his court has held that the requirements of Rule 402 need only be substantially, as the rule states, complied with to satisfy the requirements for due process. The entire record will be considered to determine whether the defendant understood the nature of the charge or charges to which he was pleading.}
\textit{Id.} at 498-99, 488 N.E.2d at 535.
\textsuperscript{473} 101 Ill. 2d 470, 463 N.E.2d 677 (1984).
counts of murder, one count of attempted murder, and one count of armed robbery. Following his guilty plea, the defendant was sentenced to death. On appeal, the defendant argued that the minimum and maximum penalties were not explained adequately to him and that the guilty pleas, therefore, did not comport with Rule 402(a)(2). Notwithstanding Rule 402(a)(2), the Illinois Supreme Court upheld the pleas and sentence. The court explained that the record indicated the defendant had been informed of the possible death penalty which subsequently was imposed.

The court maintained that Rule 402(a)(2) does not require "a recital of all the possible sentencing situations that might arise." In conclusion, the court determined that there was no failure on the part of the trial judge to substantially comply with Rule 402 simply because he did not ceremoniously inform the defendant of all the lesser sentences which possibly could be imposed.

In People v. Nichols, the court considered the issue of whether a defendant pleading guilty must be admonished fully regarding the maximum penalty even if there is no real chance of the imposition of the maximum sentence. In Nichols, the defendant pleaded guilty to murder in exchange for the State's promise not to seek the death penalty or natural life imprisonment, and not to recommend any specific sentence to the trial court. The defendant was sentenced to thirty-nine years imprisonment.

On appeal, the defendant contended that his guilty plea was involuntary inasmuch as he was led to believe that the death penalty was a viable sentence as a consequence of the trial judge's admonishment about this possibility. The defendant argued that the trial court misrepresented the law and, thus, unduly encouraged him to plead guilty. The defendant believed that the absence of evidence of aggravating factors made it unlikely that he receive the death

474. Id. at 473, 463 N.E.2d at 679.
475. Id. at 474, 463 N.E.2d at 679.
476. Id. at 483, 463 N.E.2d at 683.
477. Id. at 487, 463 N.E.2d at 685.
478. Id. at 486, 463 N.E.2d at 685.
479. Id.
480. Id. at 487, 463 N.E.2d at 685.
482. Id. at 355-56, 420 N.E.2d at 1167-68.
483. Id. at 355, 420 N.E.2d at 1167.
484. Id.
485. Id. at 355-56, 420 N.E.2d at 1167-68.
486. Id.
487. Id. at 356, 420 N.E.2d at 1168.
The appellate court rejected this argument and affirmed the conviction. The court reasoned that Rule 402(a)(2) requires the trial court to inform the defendant pleading guilty of the minimum and maximum penalties prescribed by law. According to the Nichols court, the trial court's obligation to mention possible sentences extended even to the remote possibility of the death penalty. Furthermore, an allegation of fear of possibly receiving the death penalty is not sufficient to invalidate an otherwise voluntary and intelligent plea. The defendant must be admonished about the maximum penalty, even if there is no real chance the maximum sentence will be imposed.

In People v. Lundeen, the appellate court dealt with the impact of consecutive sentence possibilities on Rule 402(a)(2) sentencing admonitions. In Lundeen, the defendant entered an unegotiated plea of guilty to the offense of burglary. In accepting the plea, the trial court advised him of the minimum and maximum penalties. At sentencing, however, the trial court discovered that the defendant previously was sentenced to four to twelve years imprisonment for involuntary manslaughter and was in a work release program at the time of the commission of the burglary. The trial court then imposed a sentence of four to twelve years imprisonment on the defendant to run consecutive to the prior sentence. The defendant, on appeal, argued that the trial court's failure to admonish him concerning the possibility of

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488. *Id.* at 355-56, 420 N.E.2d at 1167-68.
489. *Id.* at 356, 420 N.E.2d at 1168.
490. *Id.* at 359, 420 N.E.2d at 1171.
491. *Id.* at 356, 420 N.E.2d at 1168.
492. *Id.*
493. *Id.* at 357, 420 N.E.2d at 1168-69.
494. *Id.* at 356-57, 420 N.E.2d at 1168-69. *Accord* People v. Kraus, 122 Ill. App. 3d 882, 461 N.E.2d 1036 (2d Dist. 1984) (defendant's mistaken belief when he entered guilty plea that he would receive the death penalty and, thereby, avoid lengthy incarceration when in fact the death penalty was unavailable, did not invalidate the plea or sentence); People v. Turner, 111 Ill. App. 3d 358, 443 N.E.2d 1167 (2d Dist. 1982) (guilty plea and sentence of imprisonment for attempted murder not revocable, where defendant admonished thoroughly, merely because defendant subjectively believed that he would receive a certain sentence but did not, especially where there is no reasonable justification for defendant's mistaken impression).
496. *Id.* at 800, 371 N.E.2d at 329.
497. *Id.*
498. *Id.* at 800, 371 N.E.2d at 329-30.
499. *Id.* at 800-01, 371 N.E.2d at 330.
500. *Id.* at 800, 371 N.E.2d at 329.
consecutive sentences rendered the plea invalid.\textsuperscript{501}

The appellate court agreed with the defendant.\textsuperscript{502} The court stated that it is imperative that all possible penalties be known to the defendant on the record at the time of the plea.\textsuperscript{503} The court noted that although the defendant was made aware of the possible imposition of consecutive sentences at the sentencing hearing, he had not been made aware of it prior to entering the guilty plea.\textsuperscript{504} Based upon the foregoing, the court vacated the plea and allowed the defendant to plead anew.\textsuperscript{505}

The Illinois Criminal Code provides that "every sentence [of imprisonment] shall include" a term of mandatory supervised release beyond the imprisonment except when a term of natural life is imposed.\textsuperscript{506} Illinois courts have interpreted this section to mean that the mandatory supervised release term is, indeed, mandatory and its imposition cannot be changed by the defendant, the state, or the court.\textsuperscript{507}

\textit{People v. Wills} addressed whether a defendant must be informed by the trial court of the mandatory supervised release term that attaches to the offense prior to entering a guilty plea.\textsuperscript{508} In \textit{Wills}, the defendant pleaded guilty to three offenses.\textsuperscript{509} The trial court imposed concurrent sentences but admonished the defendant only regarding the mandatory supervised release term for the greatest sentence.\textsuperscript{510} On appeal, the defendant contended that the trial court erred in failing to admonish the defendant of the mandatory supervised release terms for the other two offenses.\textsuperscript{511} The Illinois

\begin{thebibliography}{99}
\bibitem{501} \textit{Id.}
\bibitem{502} \textit{Id.} at 800-01, 371 N.E.2d at 330-31.
\bibitem{503} \textit{Id.} at 802, 371 N.E.2d at 331.
\bibitem{504} \textit{Id.}
\bibitem{505} \textit{Id.} Accord \textit{People v. Brownell}, 86 Ill. App. 3d 697, 408 N.E.2d 304 (2d Dist. 1980). \textit{Compare People v. Hoyer}, 100 Ill. App. 3d 418, 426 N.E.2d 1139 (2d Dist. 1981) (defendant not entitled to withdraw guilty plea where court failed to admonish defendant about extended term inasmuch as extended term was not actually imposed and such failure precluded the imposition of an extended term); \textit{People v. Reed}, 3 Ill. App. 3d 293, 278 N.E.2d 524 (1st Dist. 1971) (defendant need not be informed at time guilty plea is entered that consecutive sentences might be imposed if trial court otherwise complied substantially with Rule 402).
\bibitem{506} ILL. REV. STAT. ch. 38, para. 1005-8-1(d) (1985).
\bibitem{508} 61 Ill. 2d 105, 330 N.E.2d 505, \textit{cert. denied}, 423 U.S. 999 (1975).
\bibitem{509} \textit{Wills}, 61 Ill. 2d at 107, 330 N.E.2d at 506 (burglary, escape, and armed robbery).
\bibitem{510} \textit{Id.} at 107-08, 330 N.E.2d at 507.
\bibitem{511} \textit{Id.} at 108, 330 N.E.2d at 507.
\end{thebibliography}
Supreme Court, however, ruled that the trial court’s failure to admonish the defendant of the mandatory supervised release term for the two remaining offenses was not reversible error because the court informed the defendant of the mandatory supervised release term on the greatest sentence, and because the sentences ordered were to be served concurrently.512 The court therefore concluded that the defendant was not prejudiced by the trial court’s admonition omissions relating to the other charges because eligibility for both parole and discharge were governed by the sentence imposed on the greater charge.513

In a supplemental opinion, the Wills court ruled that admonitions regarding mandatory supervised release terms would be required with respect to guilty pleas accepted after May 19, 1975.514 More importantly, in 1977, the United States Court of Appeals for the Seventh Circuit ruled, in United States ex rel. Baker v. Finkbeiner,515 that the failure to inform a defendant of a mandatory parole term did not comport with due process.516

Pursuant to Rule 402, it is evident that the trial court must inform the defendant of the direct consequences of his plea, to wit, the penal sanctions prescribed by law. This section next considers whether the trial court must, in addition, admonish the defendant about the “collateral consequences” of entering a guilty plea.

In People v. Warship,517 the defendant pleaded guilty to burglary.518 At the time the plea was entered, the defendant was on probation by virtue of two prior convictions.519 The defendant was not advised that his guilty plea possibly could lead to the revocation of his probation.520 Following the plea, the defendant’s probation in fact was revoked and the defendant was sentenced to imprisonment on all of the offenses in question; the sentences ran concurrently.521 The defendant appealed from the judgment on his guilty plea to the burglary charge, and argued that Rule 402 demanded an admonition regarding the possible revocation of proba-

512. Id. at 109-10, 330 N.E.2d at 508.
513. Id. at 110, 330 N.E.2d at 508.
514. Id. at 110-11, 330 N.E.2d at 509.
515. 551 F.2d 180 (7th Cir. 1977).
516. Id. at 184. In a post-Timmreck opinion, the Seventh Circuit ruled Finkbeiner was still good law. United States ex rel. Williams v. Morris, 633 F.2d 71 (7th Cir. 1980).
517. 59 Ill. 2d 125, 319 N.E.2d 507 (1974).
518. Id. at 126, 319 N.E.2d at 508.
519. Id.
520. Id. at 127, 319 N.E.2d at 508.
521. Id. at 126, 319 N.E.2d at 508-09.
tion. The Illinois Supreme Court affirmed the conviction, and ruled that the trial court is not obligated to admonish the defendant regarding the possibility of revoked probation because probation revocation is a "collateral consequence" of entering a guilty plea, and admonitions regarding collateral consequences are not required.

People v. Isringhaus extended the "collateral consequences" doctrine to the possibility of parole revocation. The defendant in Isringhaus, charged with armed robbery, pleaded guilty to robbery and received a sentence of two to six years imprisonment. At the time, the defendant was on parole from a prior conviction. The trial court admonished the defendant, pursuant to Rule 402, of the penal consequences of entering a guilty plea; it failed, however, to inform the defendant that his robbery conviction, which arose pursuant to his guilty plea, could cause a revocation of his parole on the prior conviction.

On appeal, the defendant argued that parole revocation was not a collateral consequence of the guilty plea but rather a direct penal consequence of the guilty plea. Thus, the defendant contended that he should have been informed of this possibility. The appellate court, following the reasoning of Warship, rejected this argument. The appellate court defined "direct consequences" as those sanctions which the trial court has sentencing authority to impose upon a defendant as an immediate consequence of his plea of guilty. The court held that parole revocation was not a direct penal consequence of his plea but rather a "collateral consequence" and, therefore, admonitions regarding such a potential consequence were not required under Rule 402.

In contrast, in People v. Correa, the defendant pleaded guilty to three charges of delivery of a controlled substance. He was sentenced to three years imprisonment on each charge, with the

522. Id. at 127, 319 N.E.2d at 508.
523. Id. at 128, 319 N.E.2d at 509.
524. Id.
526. Id. at 535, 347 N.E.2d at 835.
527. Id.
528. Id. at 536, 347 N.E.2d at 835.
529. Id.
530. Id.
531. Id. at 536-37, 347 N.E.2d at 835-36.
532. Id. at 537, 347 N.E.2d at 836.
533. Id. at 537, 347 N.E.2d at 835-36.
535. Id. at 544, 485 N.E.2d at 307.
sentences to run concurrently. Following his release from prison, and during his mandatory supervised release terms, the defendant was taken into custody by the United States Immigration and Naturalization Services for deportation purposes. It was at this time that the defendant first learned that his prior convictions arising from his guilty pleas were grounds for deportation. The defendant filed a petition under the Illinois Post-Conviction Hearing Act alleging involuntariness of the guilty pleas and ineffective assistance of counsel because he was not correctly informed about the deportation possibility. At an evidentiary hearing, the trial court vacated the convictions and sentences, set aside the guilty pleas, reinstated all charges against the defendant, and set them for trial. The State appealed, arguing that the defendant had not been entitled to relief under the Post-Conviction Hearing Act because the defendant was no longer imprisoned. Therefore, the State argued that the trial court lacked jurisdiction to rule on the defendant's claims. The appellate court affirmed the trial court's actions in vacating the pleas.

The Illinois Supreme Court concurred with the appellate court's ruling that the defendant was still in the State's "custody" when his petition was filed because he was serving a mandatory supervised release term. The court, therefore, concluded that the trial court possessed jurisdiction under the Post-Conviction Hearing Act to entertain his claims of error. In reaching the merits of defendant's claim of ineffective assistance of counsel, the court responded that although deportation is a "collateral consequence" of a guilty plea, it is nonetheless a "drastic consequence." The court noted that for most defendants, deportation is a more severe penalty than those a trial court could impose after accepting a guilty plea. Accordingly, the court ruled that although the trial

536. Id. at 544, 485 N.E.2d at 307-08.
537. Id. at 544, 485 N.E.2d at 308.
538. Id.
539. Id. Defense counsel advised defendant deportation was not possible.
540. Id.
541. Id.
542. Id. at 545, 485 N.E.2d at 308.
543. Id. at 553, 485 N.E.2d at 312. The appellate court assumed the trial court had jurisdiction if the defendant was on parole at the time he filed his claim. See People v. Correa, 124 Ill. App. 3d 668, 465 N.E.2d 507 (1st Dist. 1984), aff'd, 108 Ill. 2d 541, 485 N.E.2d 307 (1985).
545. Id. at 546-47, 485 N.E.2d at 309.
546. Id. at 550, 485 N.E.2d at 311.
547. Id. at 550-51, 485 N.E.2d at 311.
court had no obligation to admonish the defendant about the collateral consequence in question. The defense counsel's failure to correctly inform the defendant of this important collateral consequence constituted ineffective assistance of counsel. The court therefore deemed the guilty plea unintelligent and involuntary.

Warship, Isringhaus, and Correa illustrate the point that a trial court itself need not invariably inform the defendant of the collateral consequences of entering a plea because direct penal consequence admonishments are all that are required. As previously stated, Illinois case law defines direct consequences as those sanctions which a trial court has the power to impose upon the defendant as an immediate consequence of his guilty plea. As a practical matter, however, Correa represents a weakening of the theory that a trial judge is not obligated to inform defendants of collateral consequences. Specifically, Correa dealt with a claim of ineffective assistance of counsel. By ruling that a plea is involuntary when defense counsel fails to correctly inform the defendant of the collateral consequences of his guilty plea, however, the Illinois Supreme Court, in effect, is calling for a more fully informed defendant. Because a trial court judge cannot assume, as proved true in Correa, that the defendant was properly advised of drastic collateral consequences by his attorney, it seems the trial judge is best advised, for reasons of judicial economy, to admonish the defendant about such consequences to assure finality with respect to entry of the plea even though technically the judge is not so required.

548. *Id.* at 550, 485 N.E.2d at 310.
549. *Id.* at 551-53, 485 N.E.2d at 311-12. The attorney had actually advised the defendant that deportation was not a realistic possibility. This constituted ineffective counsel, although the court did not specify if its conclusion was based on sixth amendment grounds.
550. *Id.* at 553, 485 N.E.2d at 312.
551. *See supra* notes 517-48 and accompanying text.
554. *Id.*
555. Whether the trial court must be assured that the defendant understands the implications of other collateral consequences of a felony conviction in Illinois is not clear. It is noteworthy that in Correa, the court in its discussion of collateral consequences referred to an article which deals with a multitude of possibilities in this regard. 108 Ill. 2d at 548, 485 N.E.2d at 310 (citing Decker, *Collateral Consequences of a Felony Conviction in Illinois*, 56 CHI-KENT L. REV. 731 (1980)).
F. Rule 402 Admonitions Regarding Constitutional Rights

Illinois Supreme Court Rules 402(a)(3) and (a)(4) are designed to effectuate a valid waiver of a defendant's constitutional rights.\textsuperscript{556} They provide that the trial judge shall inform the accused that he has (1) a right to plead not guilty and persist in that plea,\textsuperscript{557} (2) a right to a jury trial,\textsuperscript{558} and (3) a right to confront his accusers.\textsuperscript{559} The Committee Comments which explain the purposes of these rules state that Rules 402(a)(3) and (a)(4) were designed to remedy the Boykin concern regarding "three important federal rights," namely, the fifth amendment privilege against self-incrimination, the sixth amendment right to trial by jury, and the sixth amendment right to confrontation.\textsuperscript{560} Thus, without proper admonishments designed to secure a voluntary and intelligent plea, waiver of such significant constitutional rights will not be presumed.\textsuperscript{561} As noted above, however, Illinois courts do not require literal compliance with Rule 402; Illinois courts merely require "substantial compliance" with Rule 402, a standard which generally permits less than thorough admonishments.\textsuperscript{562}

When the trial court completely abrogates its duty to properly admonish the defendant about his constitutional rights, the appellate court will not find substantial compliance with Rule 402.\textsuperscript{563} For example, in People v. Sutherland,\textsuperscript{564} the trial judge's failure to admonish pursuant to Rule 402(a)(3) and (a)(4) did not constitute substantial compliance and resulted in reversible error.\textsuperscript{565}

Similarly, if the trial judge fails to admonish the accused about most, but not all, of his constitutional rights, the reviewing court is unlikely to find substantial compliance.\textsuperscript{566} For example, in People

\textsuperscript{559} Id.
\textsuperscript{561} See supra note 163.
\textsuperscript{562} See supra notes 326-411 and accompanying text.
\textsuperscript{563} See, e.g., Sutherland, 128 Ill. App. 3d 415, 470 N.E.2d 1210 (4th Dist. 1984).
\textsuperscript{564} Id.
\textsuperscript{565} See supra notes 358-69 and 408-11 and accompanying text.
\textsuperscript{566} See, e.g., People v. Waldorf, 94 Ill. App. 3d 976, 419 N.E.2d 428 (1st Dist. 1981) (no substantial compliance where defendant not advised of his rights to plead not guilty and confront his accusers).
v. Thompson,\textsuperscript{567} the trial court's failure to advise the defendant about his right to plead not guilty, in accordance with Rule 402(a)(3), and his right to confront his accusers, pursuant to Rule 402(a)(4), was grounds for a reversal.\textsuperscript{568}

On the other hand, exact compliance with Rule 402 admonitions regarding constitutional rights is not required.\textsuperscript{569} For example, in People v. Cohn,\textsuperscript{570} the trial judge referred to the defendant's right to a "trial" without reference to a "jury."\textsuperscript{571} Other aspects of the judge's admonishments were complete.\textsuperscript{572} The appellate court ruled that although the trial court's reference to a "trial" rather than "trial by jury" might mislead a defendant in certain circumstances into believing no right to a jury exists,\textsuperscript{573} the trial court record did not indicate that the defendant actually was prejudiced by the omission.\textsuperscript{574} In Thompson, the court indicated that it was evident that the defendant understood the existence of her right to a jury trial because she later remarked during sentencing that she had not exercised her right to a jury in order to avoid publicity.\textsuperscript{575} In addition, the defendant had advanced degrees, including a doctorate in philosophy, and was an experienced professional counselor-psychologist, which belied the notion that she did not understand her rights.\textsuperscript{576}

\textbf{G. Rule 402 Inquiry Regarding Voluntariness of the Plea}

As has been stressed at various points in this Article, in Boykin v. Alabama\textsuperscript{577} the United States Supreme Court ruled that all guilty pleas must be entered voluntarily and intelligently. Further, the Court insisted that due process requires that the record in a guilty plea proceeding \textit{affirmatively} set forth whether the trial court determined the voluntary nature of the plea.\textsuperscript{578}

\textsuperscript{567} People v. Thompson, 10 Ill. App. 3d 455, 294 N.E.2d 104 (5th Dist. 1973) (per curiam).
\textsuperscript{568} Id. at 456, 294 N.E.2d at 104-05. In addition, the trial court did not establish that the defendant's plea was voluntary.
\textsuperscript{569} See, e.g., People v. Montgomery, 22 Ill. App. 3d 1075, 318 N.E.2d 86 (1st Dist. 1974) (substantial compliance found even though defendant not advised of his right to plead not guilty and persist in that plea).
\textsuperscript{570} 91 Ill. App. 3d 209, 414 N.E.2d 543 (2d Dist. 1980).
\textsuperscript{571} Id. at 210-11, 414 N.E.2d at 544-45.
\textsuperscript{572} Id.
\textsuperscript{573} Id. at 212, 414 N.E.2d at 546.
\textsuperscript{574} Id. at 212-13, 414 N.E.2d at 546-47.
\textsuperscript{575} Id. at 213, 414 N.E.2d at 546.
\textsuperscript{576} Id. at 213, 414 N.E.2d at 546-47.
\textsuperscript{577} 395 U.S. 238.
\textsuperscript{578} Id. at 243-44.
In order to comply with the mandates of Boykin, Rule 402(b) provides that the trial judge cannot accept a guilty plea without first determining that the plea is voluntary.\(^7\)\(^9\) The Committee Comments explain that this rule is designed to prompt the trial judge to ascertain whether the plea of guilty is a product of force, threats, or promises.\(^5\)\(^8\)\(^0\)

Notwithstanding the rather clear cut responsibility that Boykin and Rule 402(b) impose upon the trial court to inquire affirmatively into the voluntariness of guilty pleas, one would be remiss to not examine, in the context of Rule 402, the very troublesome opinion of People v. Stewart.\(^1\)\(^5\)\(^8\)\(^1\) In Stewart, the Illinois Supreme Court ruled that even though the trial court failed to make any inquiry of the defendant regarding the voluntariness of the plea, there was no error because there was "no evidence in the record that he [the defendant] was pressured or forced to enter a guilty plea."\(^5\)\(^8\)\(^2\) According to Justice Simon's dissent, the net effect of Stewart is to relieve Illinois trial judges of the important responsibilities of making an inquiry on the record into the voluntariness of the plea which allows a reviewing court to determine if the plea was coerced.\(^5\)\(^8\)\(^3\)

In a separate dissent, Justice Moran condemned the majority ruling and insisted that due process and Rule 402 require "an affirmative showing, in the trial court record," that the plea was voluntary.\(^5\)\(^8\)\(^4\) Citing Boykin, the dissent noted that the trial court and, in effect, the majority "completely abrogated its duty to the defendant to determine if his plea was voluntary."\(^5\)\(^8\)\(^5\) Justice Moran's dissent also concluded that the Stewart majority ruling implies that the burden falls on the defendant to prove the guilty plea is involuntary when, in fact, Boykin and Rule 402 clearly assign the burden of establishing voluntariness to the trial court.\(^5\)\(^8\)\(^6\)

\(^{579}\) ILL. S. CT. R. 402(b), ILL. REV. STAT. ch. 110A, para. 402(b).
\(^{580}\) ILL. S. CT. R. 402, ILL. ANN. STAT. ch. 110A, para. 402, Committee Comments, at 395.
\(^{581}\) 101 Ill. 2d 470, 463 N.E.2d 677. \textit{See supra} notes 187-95 and accompanying text for prior discussion of this aspect of Stewart.
\(^{582}\) Stewart, 101 Ill. 2d at 487, 463 N.E.2d at 685.
\(^{583}\) Justice Simon, dissenting in Stewart, remarked as follows about this problem: "I am unable to determine from the record whether the plea was entered voluntarily.... [T]here is nothing in the record to indicate that any determination was made that no force, threats or promises had been made to obtain the guilty plea." \textit{Id.} at 502, 463 N.E.2d at 693 (Simon, J., dissenting).
\(^{584}\) \textit{Id.} at 496, 463 N.E.2d at 690 (Moran, J., dissenting).
\(^{585}\) \textit{Id.} at 497, 463 N.E.2d at 690 (Moran, J., dissenting).
\(^{586}\) \textit{Id.} at 497-98, 463 N.E.2d at 691 (Moran, J., dissenting).
Ten years earlier, in *People v. Ellis*, the Illinois Supreme Court held that the trial court’s failure to ask the accused in accordance with Rule 402(b) whether the guilty plea was induced by force, threats, or unlawful promises did not constitute reversible error. In any event, neither the *Stewart* nor *Ellis* decision precisely clarifies what the defendant must do in order to warrant the trial court’s inquiry into the voluntariness of the plea. One Illinois Supreme Court decision, *People v. Dudley*, implies that the defendant must at least make a claim of involuntariness on the record at the time the plea is accepted in order to justify inquiry by the trial court of the voluntariness of the plea. Absent such a claim, the failure of the trial court to inquire into the voluntariness of the guilty plea will at most be deemed harmless error.

### H. The Rule 402 Factual Basis Requirement

Although it is doubtful that it is invariably required as a matter of federal constitutional law, Rule 402(c) states that the trial court shall not enter final judgment on a guilty plea without establishing that a “factual basis” supports the plea. The trial judge has relatively broad latitude in terms of how he satisfies this requirement. Case law has defined a “factual basis” as information from which the trial judge could reasonably conclude that the defendant actually committed the offense to which he is pleading guilty.

An example of an adequate factual basis supporting a plea can be found in *People v. Hudson*. In *Hudson*, the defendant pleaded guilty to armed robbery and was sentenced to imprisonment. On appeal, the defendant claimed that the trial court did not prop-

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588. 118 2d 257, 320 N.E.2d at 16.
589. 58 Ill. 2d 57, 316 N.E.2d 773 (1974). See also *People v. Scott*, 9 Ill. App. 3d 626, 292 N.E.2d 583 (3d Dist. 1973) (trial court’s failure to inquire whether any force or threats or unlawful promises prompted entry of plea is not reversible error absent prejudice established by the accused).
590. *Dudley*, 588 Ill. 2d at 60-61, 316 N.E.2d at 774-75.
591. *Id.*
592. 111. S. CT. R. 402(c), ILL. REV. STAT. ch. 110A, para. 402(c).
593. The Committee Comments state that “no particular kind of inquiry is specified; the court may satisfy itself by inquiry of the defendant or the attorney for the government, by examination of the presentence report, or by any means which seem best for the kind of case involved.” 111. S. CT. R. 402, ILL. ANN. STAT. ch. 110A, para. 402 Committee Comments, at 395.
595. 7 Ill. App. 3d 800, 288 N.E.2d 533 (5th Dist. 1972).
596. *Id.* at 802, 288 N.E.2d at 534.
erly establish a factual basis as required by Rule 402(c). The appellate court concluded that a dialogue in court between the defendant and the trial judge, wherein the defendant expressly admitted his involvement in the armed robbery, satisfactorily complied with Rule 402. In addition, the appellate court in *Hudson* noted three other acceptable ways to demonstrate a factual basis for a guilty plea: (1) the prosecutor may be permitted to summarize the testimony that he would have presented; (2) the witnesses themselves may testify to the facts indicating the defendant's guilt; and (3) the pre-sentence report may provide a factual basis.

The quantum of proof necessary to establish a factual basis is less than that necessary to sustain a conviction. It is only necessary that the record reflect a basis from which the judge reasonably could conclude that the accused committed the acts and had the requisite mental state, if any, required of the crime. On the other hand, if a defendant enters a guilty plea while simultaneously protesting his innocence, the record behind the factual basis must be in accordance with one "from which a jury could find the de-

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597. *Id.*
598.

THE COURT: And do you understand that the offense is of armed robbery of a motel...?
DEFENDANT: Yes, I understand it was a motel where an armed robbery was committed.
THE COURT: And do you understand that by pleading guilty you are admitting some participation in the armed robbery?
DEFENDANT: I don't know.
THE COURT: I think you should discuss this further with your attorney out of the presence of the court.
DEFENDANT'S ATTORNEY: In regard... to that last question, would you answer that question?

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600. *Id.* at 803-04, 288 N.E.2d at 536.
fendant guilty of the offense ...."603 Thus, it appears that a higher quantum of proof may be involved in circumstances such as the latter.

Although a factual basis apparently is not constitutionally required,604 lack of a factual basis may give rise to reversible error on appeal.605 However, if this same issue is raised in a collateral Post-Conviction Hearing Act petition, it is doubtful that relief will be granted because such an omission does not rise to the level of constitutional irregularity.606

I. Rule 604 and 605 Admonishments Regarding Motion to Vacate and Right to Appeal

The final section of this Article examines the criminal defendant’s appellate rights following judgment entered upon a guilty plea. This section discusses four specific issues which arise under Illinois Supreme Court Rule 604 and 605: (1) admonishments regarding the defendant’s motion to withdraw a guilty plea and vacate the judgment; (2) establishing a basis for the defendant’s motion to withdraw the guilty plea and vacate the judgment; (3) admonishments regarding the defendant’s right to appeal; and (4) the timeliness of a notice of appeal.

Illinois Supreme Court Rules 604 and 605 dictate the procedures imposed upon the trial court in order to protect the criminal defendant’s right to appeal. Rule 604 provides that a defendant cannot appeal a judgment of conviction based on his guilty plea unless he files a motion to vacate his plea within thirty days of the trial court’s sentence on the conviction.607 Rule 605 states that a defendant entering a guilty plea must be advised by the trial judge at sentencing that (1) he has a right to appeal, (2) a condition of his appeal is filing a motion to vacate his plea within thirty days of sentencing, and (3) if his motion to vacate is granted, a new trial date will be set on the charges which were the subject of his successful motion to vacate.608 Thus, the Illinois Supreme Court, pur-
suant to Rules 604 and 605, has enacted a procedural scheme whereby the criminal defendant's right to appeal a judgment entered upon a guilty plea is preconditioned upon that criminal defendant's filing a timely motion with the trial court to withdraw the guilty plea and vacate the judgment.609 The appeal will be considered only after the trial court's rejection of the defendant's timely motion to withdraw the plea and vacate the judgment.610

1. Admonishment Regarding Motion to Withdraw the Guilty Plea: Consequences of Failure to Admonish Pursuant to Rule 605(b)

Rule 604(d) explicitly preconditions a criminal defendant's right to appeal from a judgment entered upon a guilty plea upon his filing with the trial court, within thirty days of the date on which sentence is imposed, a motion to withdraw the plea and vacate the judgment.611 Rule 605(b) orders the trial court to admonish the defendant of this precondition to the right to appeal.612

People v. Ryant613 addressed whether the criminal defendant is excused from complying with this precondition in light of the fact that the trial court failed to properly admonish the defendant pursuant to 605(b). The defendant in Ryant pleaded guilty to several crimes and was sentenced to various terms of incarceration.614 The defendant was not advised, consistent with Rule 605(b), that he was required to first move to withdraw his plea and vacate the judgment within thirty days of sentencing in order to appeal.615 Thereafter, the defendant sought an appeal on other grounds with-

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[I]n all cases in which a judgment is entered upon a plea of guilty, at the time of imposing sentence, the trial court shall advise the defendant substantially as follows:

(1) That he has a right to appeal;
(2) That prior to taking an appeal he must file in the trial court, within 30 days of the date on which sentence is imposed, a written motion asking to have the judgment vacated and for leave to withdraw his plea of guilty, setting forth the grounds for the motion;
(3) That if the motion is allowed, the plea of guilty, sentence and judgment will be vacated and a trial date will be set on the charges to which the plea of guilty was made . . .

ILL. S. CT. R. 605(b), ILL. REV. STAT. ch. 110A, para. 605(b) (1985).
609. ILL. S. CT. R. 604(d) & 605(b)(2), ILL. REV. STAT. ch. 110A, paras. 604(d) & 605(b)(2).
610. Id.
611. ILL. S. CT. R. 604(d), ILL. REV. STAT. ch. 110A, para. 604(d).
612. ILL. S. CT. R. 605(b), ILL. REV. STAT. ch. 110A, para. 605(b).
613. 41 Ill. App. 3d 273, 354 N.E.2d 395 (5th Dist. 1976).
614. Id. at 274, 354 N.E.2d at 396.
615. Id.
out first moving to withdraw the plea and vacate the judgment.\textsuperscript{616}

The appellate court held that, because the court failed to properly admonish the defendant consistent with Rule 605(b), the defendant had no way of knowing of the requirement regarding the motion to withdraw the plea and vacate the judgment.\textsuperscript{617} Thus, the failure to admonish excused the defendant from making his motion to vacate in a timely fashion in order to perfect his appeal of certain pre-plea irregularities.\textsuperscript{618} Accordingly, the court reviewed the grounds raised on appeal and determined that they required withdrawal of the plea.\textsuperscript{619}

Similarly, in \textit{People v. Saldana},\textsuperscript{620} the trial court failed to admonish the defendant of the necessity to move to withdraw the guilty plea and vacate the judgment within thirty days of the date of sentencing as a precondition to any appeal.\textsuperscript{621} The defendant did not so move.\textsuperscript{622} The appellate court held that the defendant had not relinquished his right to appeal because the trial judge omitted the necessary admonishment. Accordingly, the court remanded the case to allow the defendant to file a motion that his guilty plea be withdrawn.\textsuperscript{623} The court added, however, that in the interest of judicial economy, a defendant, who has not been admonished properly about the motion to vacate his plea, could combine grounds supporting a motion to vacate with other grounds for appeal.\textsuperscript{624} This would allow the reviewing court to determine whether the motion to vacate is warranted, thereby avoiding a remand to the trial court.\textsuperscript{625} Thereafter, if the appellate court determined the motion to vacate should be granted, it could reach the merits of the defendant's appeal claims.\textsuperscript{626}

The forementioned decisions allude to the significant remedies available to the reviewing court when a trial court fails to properly admonish the defendant pursuant to Rule 605(b). Noncompliance with Rule 605(b) provides the appellate court with three alterna-
tive remedies. First, the appellate court may remand the case to the trial court with orders to allow the defendant the opportunity to file a motion to withdraw the plea, which motion will be considered by the trial court. Second, it may excuse the defendant’s failure to move to vacate the plea and consider the merits of the appeal without a remand requiring trial court consideration of the motion to vacate. Third, it could consider the merits of the motion to vacate included in the appeal, vacate the plea if the plea is invalid and, thereafter, review the merits of the appeal.

2. Consequences of Proper Admonishment and a Timely Motion to Withdraw the Plea

Generally, when the trial court properly advises the defendant that filing a timely motion to withdraw the guilty plea and vacate the judgement is a condition precedent to the right to appeal the judgment, no right to appeal will be recognized if the defendant fails to comply with this requirement. Illustrative of this point is People v. Newbold, wherein the defendant pleaded guilty to burglary and theft. The defendant in Newbold filed his notice of appeal pro se but failed to precede this motion with a motion to withdraw the guilty plea as required by Rule 604(d). The record revealed that the trial court clearly admonished the defendant of his procedural obligations.

The appellate court dismissed the appeal. The court enumer-
ated the following two exceptions to the requirement that a defendant precede his appeal with a motion to withdraw his guilty plea: (1) when the trial court failed to admonish properly the defendant pursuant to Rule 605(b), and (2) when the failure to file such a motion constituted ineffective assistance of counsel. In Newbold, the defendant was admonished properly. Furthermore, he could not claim ineffective counsel because he had proceeded pro se. Due to the defendant's failure to perfect his appellate rights, the court held that it lacked jurisdiction to rule on the appeal.

Similarly, in People v. Green, the appellate court ruled that a thirty day lapse from imposition of sentence without the filing of a motion to withdraw the plea deprives the trial court of jurisdiction to entertain a defendant's subsequent motion to withdraw the plea and vacate the judgment. The court in Green cited the exceptions enunciated in Newbold and added a third; this third exception applied when a bona fide doubt existed regarding the defendant's fitness to plead in the first instance. After due consideration of the defendant's claim in this regard, the appellate court determined that the trial court did not err because the trial record revealed that the defendant was fit to enter his plea.

In conclusion, Rule 605(b)(2) requires a defendant to file a timely motion to vacate prior to appeal. When the defendant fails to comply with this rule or files a late motion to vacate, neither the trial court nor the appellate court has jurisdiction to entertain the defendant's claims.

636. Id. at 1019, 425 N.E.2d at 10.
637. Id. at 1019-21, 425 N.E.2d at 10-11. Compare People v. Scott, 143 Ill. App. 3d 540, 493 N.E.2d 27 (1st Dist. 1986) (failure of appointed appellate counsel to file timely notice of appeal precluding defendant's appeal as of right amounted to ineffective assistance of counsel cognizable under the Post-Conviction Hearing Act and required that filing of late notice of appeal is permitted); People v. Pulley, 75 Ill. App. 3d 193, 394 N.E.2d 47 (5th Dist. 1979) (counsel's failure to file written motion to vacate plea was ineffective counsel which excused defendant's failure to file such motion and required defendant to file late motion to withdraw plea). But see People v. Creek, 112 Ill. App. 3d 1081, 446 N.E.2d 555 (4th Dist. 1983) (failure of trial court to notify public defender that defendant wished to file a timely motion to withdraw the plea and vacate the judgment was harmless error and defendant was not deprived of his effective assistance of counsel).
640. Id. at 817, 452 N.E.2d at 769.
641. Id. at 817-18, 452 N.E.2d at 769.
642. Id. at 818-19, 452 N.E.2d at 769-70.
643. Id. at 819-20, 452 N.E.2d at 770. The court also determined he had no valid claim of ineffective counsel. Id. at 820, 452 N.E.2d at 770-71.
3. Failure to Admonish in Juvenile Proceedings

Illinois Supreme Court Rule 660 provides that appeals from final judgment in delinquent minor matters are governed by the appeal rules applicable to adult criminal cases. Consequently, juvenile delinquency proceedings are subject to Illinois Supreme Court Rules 604 and 605. In re Walker addressed the issue of whether a juvenile defendant is excused from complying with Rules 604 and 605 when the trial court fails to admonish properly the defendant. In Walker, a juvenile entered an admission to a murder charge in a juvenile delinquency proceeding and was committed to the Department of Corrections. Although he was admonished about his right to appeal, the court failed to admonish him regarding his obligation to withdraw his admission within thirty days of the imposition of sentence as a precondition to appeal. The appellate court permitted the defendant to file a motion to withdraw the admission. The court posited that when the record is silent regarding the condition precedent, courts should not speculate regarding admonishments which might have been given by private counsel.

4. Establishing Basis for Motion to Withdraw the Plea

Illinois Supreme Court Rule 604(d) provides that the motion to withdraw must state in writing the grounds supporting the withdrawal. If the facts supportive of the motion do not appear in the trial court record, Rule 604(d) requires that they appear in a supporting affidavit. The "grounds" or "facts" contemplated by Rule 604(d) relate to the voluntariness and intelligence of the guilty plea. The substance of the motion to withdraw the plea and to vacate filed two months too late. See also People v. Stacey, 68 Ill. 2d 261, 369 N.E.2d 1254 (1977) (defendant, sentenced after a guilty plea, who desires to appeal sentence only pursuant to Rule 604(d), must file motion to withdraw plea and vacate judgment in order to preserve appeal).

646. Rule 660(a) provides that "[a]ppeals from final judgments in delinquent minor proceedings, except as otherwise specifically provided, shall be governed by the rules applicable to criminal cases." ILL. S. CT. R. 660(a), ILL. REV. STAT. ch. 110A, para. 660(a) (1985)
648. Id. at 792, 430 N.E.2d at 367.
649. Id. at 794, 430 N.E.2d at 369.
650. Id. at 794-96, 430 N.E.2d at 369-70.
651. Id. at 795, 430 N.E.2d at 370.
652. ILL. S. CT. R. 604(d), ILL. REV. STAT. ch. 110A, para. 604(d).
653. Id.
654. See McMann v. Richardson, 397 U.S. 759 (1970) (guilty plea will be set aside only if not voluntary and intelligent).
vacate the judgment must allege either that the plea was not voluntary, because of pre-plea influences, or was not intelligent, because of incomplete admonishments or incompetent counsel.

A basic rule that must be kept in mind is that a voluntary and intelligent plea waives all pre-plea non-jurisdictional questions; only those claims that undermine the trial court’s jurisdiction survive. For example, when a defendant contended his guilty plea was tainted by an earlier coerced confession and his counsel’s misjudgment of the admissibility of the confession, the plea nevertheless was deemed voluntarily and intelligent. Similarly, when a defendant pleaded guilty after an unsuccessful motion to suppress evidence because his attorney erroneously instructed him that he could appeal the outcome of the suppression hearing after entering the plea of guilty, the defendant’s plea was upheld as voluntary and intelligent. In both of these cases, the plea of guilty constituted a waiver of the claim that the state had illeg ally procured evidence that was incriminating. In neither of these cases was the defense counsel’s erroneous advise deemed incompetent counsel. These cases illustrate that a defendant cannot successfully vacate a plea by pointing to pre-plea irregularities which do not relate to lack of voluntariness and intelligence surrounding the plea itself. If the defendant does not support his motion to vacate his plea with facts that undermine the voluntary and intelligent nature of his plea, the plea will be upheld.

656. See People v. Riebe, 40 Ill. 2d 565, 568, 241 N.E.2d 313, 314 (1968) (stating that “The least surprise or influence causing a defendant to plead guilty when he has any defense at all should be sufficient cause to permit a change of the plea from guilty to not guilty”).
660. See, e.g., Menna v. New York, 423 U.S. 61 (1975) (double jeopardy claim survives plea of guilty); People v. Walker, 83 Ill. 2d 306, 415 N.E.2d 1021 (1980) (claim of defective charging instrument is jurisdictional and survives guilty plea but, here, was harmless error).
663. See supra notes 661-62 and accompanying text.
664. Id.
665. Id.
666. People v. Paul, 93 Ill. App. 3d 302, 417 N.E.2d 251 (2d Dist. 1981) (when defendant entered guilty plea on erroneous advice of counsel that defendant would be imprisoned in a minimum security facility did not render plea involuntary; defendant’s
5. Admonishments Regarding Right to Appeal

Supreme Court Rule 605(b) provides that in cases where a judgment of conviction is based on a guilty plea, the trial court must advise the defendant about his right to appeal during sentencing. The Illinois Supreme Court has held that the pronouncement of sentence is the judicial act which comprises the final appealable order; entry of the judgment order is merely a ministerial act and is only evidence of the sentence. Thus, the defendant's right to appeal arises at the time of sentencing.

At the time of sentencing, the defendant sustains the burden of perfecting his right to appeal by filing a motion with the trial court to withdraw the plea and vacate the judgment. The motion must allege facts sufficient to bring into question the voluntary and intelligent nature of the plea. If and when the trial court denies the defendant’s motion, the defendant may appeal the denial to a higher court. Failure to file a motion to withdraw the plea, absent a mistake by the trial court judge respecting proper admonishments, renders the appellate court powerless to hear the defendant’s claims of error. As previously noted, the mistake generally encountered is the trial court’s failure to admonish sufficiently the defendant of the need to file a Rule 604(d) motion to withdraw the guilty plea. Just as it is error if the trial judge does not admonish the defendant about his right to move to vacate his

failure to raise issue of incompetent counsel constituted waiver of that issue). See also People v. Ahlstrand, 113 Ill. App. 3d 363, 447 N.E.2d 517 (2d Dist. 1983). The Ashland court stated:

[the] defendant should have accompanied his request for remandment [to Circuit Court for the opportunity to withdraw his guilty plea] with a showing of the facts upon which he relies to secure a withdrawal of his guilty pleas. If the claim of error is one which may be supported by the record, the reviewing court will then be in a position to review the case . . . . The bare statement that defendant may have claims of error based, in part, on matters outside the record is not enough.

Id. at 365, 447 N.E.2d at 518.

667. ILL. S. CT. R. 605(b), ILL. REV. STAT. ch. 110A, para. 605(b).
668. People v. Allen, 71 Ill. 2d 378, 381, 375 N.E.2d 1283, 1284 (1978). But see People v. Brown, 121 Ill. App. 3d 776, 459 N.E.2d 1175 (2d Dist. 1984), where the appellate court ruled conviction and sentence for one tried "in abstentia" is not final and appealable until defendant has returned and a ruling is made on any claim that the absence was willful. Presumably, then, no admonishments regarding appeal are required in such circumstances.

670. See supra notes 630-45 and accompanying text.
671. See supra notes 652-66 and accompanying text.
672. ILL. S. CT. R. 604(d), ILL. REV. STAT. ch. 110A, para. 604(d).
673. See supra notes 611-45 and accompanying text.
674. See supra notes 611-29 and accompanying text.
plea, so too it is error for the judge to fail to advise the defendant about his right to appeal.\textsuperscript{675} For example, in \textit{People v. Wilson},\textsuperscript{676} the defendants were convicted of certain misdemeanors and were sentenced to jail.\textsuperscript{677} The trial court failed to admonish the defendants of their right to appeal and the thirty day deadline for filing appeals.\textsuperscript{678} Consequently, none of the defendants filed a notice of appeal within the thirty day period.\textsuperscript{679} The Illinois Supreme Court reversed the appellate court's denial of the defendants' appeal.\textsuperscript{680} The court stated that the trial court's failure to admonish the defendants of the thirty day limitation made it impossible to conclude that the defendants knowingly waived their right to appeal.\textsuperscript{681}

The defendant will not prevail if he raises the trial judge's failure to admonish him about his right to appeal in a petition for collateral relief, rather than on direct appeal.\textsuperscript{682} In \textit{People v. Cox},\textsuperscript{683} the defendant entered pleas of guilty to two counts of indecent liberties with a child and was sentenced to imprisonment.\textsuperscript{684} On appeal from denial of relief filed under the Post-Conviction Hearing Act, the defendant contended that he was denied due process because the trial court failed to advise him that, under Rule 605, all defendants, once sentenced, must be advised of their right to appeal.\textsuperscript{685}

The Illinois Supreme Court denied the defendant relief on this issue.\textsuperscript{686} The court held that petitions arising under the Post-Conviction Hearing Act must reflect a constitutional claim.\textsuperscript{687} The court stated that Rule 605's right to appeal admonishment is not a constitutional right and that relief was not appropriate in a collateral post-conviction petition.\textsuperscript{688} \textit{Cox}, therefore, suggests that the appropriate avenue of relief with this type of claim is the direct

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\textsuperscript{675} \textit{People v. Wilson}, 50 Ill. 2d 323, 278 N.E.2d 775 (1972).
\textsuperscript{676} \textit{Id.}
\textsuperscript{677} \textit{Id.} at 324-25, 278 N.E.2d at 776.
\textsuperscript{678} \textit{Id.} at 325, 278 N.E.2d at 776.
\textsuperscript{679} \textit{Id.}
\textsuperscript{680} \textit{Id.} at 326, 278 N.E.2d at 777.
\textsuperscript{681} \textit{Id.} at 325-26, 278 N.E.2d at 776-77.
\textsuperscript{682} \textit{People v. Cox}, 53 Ill. 2d 101, 291 N.E.2d 1 (1972).
\textsuperscript{683} \textit{Id.}
\textsuperscript{684} \textit{Id.} at 102-03, 291 N.E.2d at 2.
\textsuperscript{685} \textit{Id.} at 106, 291 N.E.2d at 4.
\textsuperscript{686} \textit{Id.}
\textsuperscript{687} \textit{Id.}
\textsuperscript{688} \textit{Id.} at 101, 291 N.E.2d 1 (1972).
\end{flushleft}
appeal. 689 Assuming the defendant was not admonished properly about his appeal rights in timely fashion, this may also be true when the time for appeal has lapsed. 690 As Wilson demonstrates, the lack of a timely appeal will be attributed to the trial court’s omission. 691

Both Wilson and Cox involved a trial court’s failure to admonish the defendant of his right to appeal and the consequences of such failure when the defendant does not appeal in timely fashion or declines to appeal. In People v. Tiess, 692 the appellate court addressed the consequences of the trial court’s failure to admonish the defendant of his right to appeal when the defendant did appeal in a timely fashion despite the trial court’s omission. 693 The appellate court in Tiess stated that the failure to admonish the defendant of his right to appeal is moot when the defendant appeals within the requisite period. 694 The court likened the defendant’s objection about not being admonished to the complaint of a bus passenger who boards a bus and, thereafter, complains that he didn’t know what time the bus was leaving or if it was leaving at all. 695

In conclusion, when the trial court fails to admonish the defendant of this right to appeal, and the defendant does not file a timely notice of appeal, the appellate court will exercise jurisdiction over the defendant’s appeal. 696 In adult criminal cases 697 and juvenile delinquency matters, 698 it is incumbent that the trial judge scrupu-

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689. See supra notes 683-88 and accompanying text.
690. See supra notes 675-81 and accompanying text.
691. Id.
693. Id. at 52-53, 421 N.E.2d at 1064-65.
694. Id.
695. Id. at 52, 421 N.E.2d at 1064-65. Accord People v. Danis, 70 Ill. App. 3d 454, 388 N.E.2d 887 (1st Dist. 1979) (failure to admonish as required by Rule 605 is moot issue where defendant in fact appeals in timely fashion); People v. Leon, 66 Ill. App. 3d 778, 383 N.E.2d 1378 (1st Dist. 1978).
696. See, e.g., People v. Gramlich, 69 Ill. App. 3d 23, 386 N.E.2d 1171 (5th Dist. 1979) (appellate court considered the issues by defendant on appeal because the trial court failed to admonish the defendant of his 605(b) right to appeal, despite the fact the trial court informed the defendant at sentencing of the Rule 604(d) requirement of filing a timely motion to withdraw the plea and vacate the judgment).
697. See, e.g., People v. Miller, 107 Ill. App. 3d 1078, 438 N.E.2d 643 (1st Dist. 1982) (failure to admonish defendant regarding right to appeal and that a written motion to withdraw guilty plea is required to perfect the appeal prompted court to consider the appeal, albeit imperfect, of defendant).
698. See, e.g., In the Interest of F.D., A Minor, 89 Ill. App. 3d 223, 411 N.E.2d 1200 (2d Dist. 1980) (juvenile defendants’ failure to perfect their right to appeal pursuant to Rule 604(d), that is, to move to vacate their guilty pleas before an appeal can be taken
lously honor Rule 605(b) and fully advise the defendant about appeal procedures following a guilty plea.699

6. Timely Notice of Appeal

Rule 604(d) provides that a criminal defendant has thirty days from the imposition of sentence to file a motion to withdraw the guilty plea and vacate the judgment.700 Upon denial of such a motion, Rule 604(d) provides a defendant with the right to appeal.701 In order to perfect the appeal of the trial court's failure to grant a motion to vacate, the defendant must file notice of appeal within thirty days702 from the date of entry of the order denying the motion.703 This section examines the degree to which Illinois courts adhere to the time constraint regarding notice of appeal. Assuming the defendant is admonished properly about his appeal rights, the appellate courts ordinarily refuse to entertain an appeal when the defendant does not file timely notice of appeal.704 It should be noted, however, that in some instances, the court has exhibited a surprisingly high tolerance for late notices of appeal. For instance, in People v. Brown,705 the defendant pleaded guilty to robbery and was sentenced to a term of three to five years imprisonment.706 The defendant subsequently filed a late notice of appeal, which was dismissed because it was sixteen days overdue. The defendant never filed a petition for leave to file a late notice of appeal.707 The defendant subsequently appealed to the Illinois Supreme Court.708

The Illinois Supreme Court reversed the appellate court's dismissal of the appeal which had been based on defendant's failure to file timely notice of appeal.709 The court noted that the case had been briefed and orally argued before the appellate court. Accordingly, the court held that dismissal at this point would unduly em-

699. ILL. S. CT. R. 605(b), ILL. REV. STAT. ch. 110A, para. 605(b).
700. ILL. S. CT. R. 604(d), ILL. REV. STAT. ch. 110A, para. 604(d).
701. Id.
703. ILL. S. CT. R. 604(d), ILL. REV. STAT. ch. 110A, para. 604(d).
706. Id. at 25, 294 N.E.2d at 267.
707. Id. at 26, 294 N.E.2d at 268.
708. Id.
709. Id. at 26-27, 294 N.E.2d at 268.
phasize formality at the expense of substance.\footnote{Id.}

In summary, the failure to file a timely notice of appeal may be overlooked by the appellate courts, particularly where the appeal has already been argued and has possible merit. This decision, however, generally is left to the appellate court's discretion.\footnote{Id. at 27, 294 N.E.2d at 268.} The only way to ensure appellate review is to follow the timely notice of appeal requirements or to reveal aspects of the trial record which demonstrate the trial judge's failure to properly admonish the accused regarding such right.

IV. CONCLUSION

When a defendant pleads guilty to a charge, he waives his right to challenge the charge at trial and to appeal the judgment of conviction. Because of the significant loss of constitutional and appeal rights that he normally enjoys and to assure the defendant actually understands the charge and potential sanction, the trial judge is obligated by Boykin and its progeny, as well as various Illinois Supreme Court Rules, to admonish the defendant about the charge, possible sentences, waiver of trial rights and appeal rights, and determine if he understands these concerns. In addition, the trial judge must scrutinize the plea to determine whether it is voluntary and whether a factual basis actually supports the plea.

Although many Illinois opinions require relatively strict adherence to the principles of Boykin and the Supreme Court Rules, other opinions, including several from the Illinois Supreme Court, express a tolerance of a trial judge's failure to (1) fully admonish the defendant about the charge, sentence possibilities, and constitutional rights waived and (2) ascertain whether the defendant actually understands the consequences of his plea. So too, some of these decisions excuse the trial judge's failure to inquire into the voluntariness of the plea. These cases appear to shift the focus of the inquiry from whether the judge did admonish and inquire, which assures the defendant actually made an intelligent and voluntary plea, to whether the defendant apparently understood the dimensions of his plea and entered it freely, which is measured by whether the defendant expressed some question about the process. The fact that an accused has not raised some question about the charge or sentence, his constitutional rights or the voluntariness of his plea, however, cannot be equated with a clear understanding of the process. This is particularly true when the trial judge himself
fails to mention a matter, such as the privilege against self-incrimination, about which the defendant may be wholly ignorant. Further, it must be realized that certain individuals, with little or no experience in the criminal justice system, may be sufficiently intimidated by the aura of the courtroom to express any question about the procedures.

Not only can some of the Illinois opinions be criticized, but one of the Supreme Court Rules raises serious questions. Rule 402 requires only "substantial compliance" with its requirement that trial judges determine if the defendant (1) understands the charge, sentence possibilities, right to a jury trial, right to confront his accusers, and privilege against self-incrimination and (2) is entering his plea voluntarily. Similarly, the Illinois Supreme Court has ruled that a trial judge must only substantially comply with Rule 401, which requires trial judges to assure that a defendant’s waiver of counsel is actually intelligent. Strict compliance is not required. However, the admonishments regarding the defendant’s appeal rights, circumscribed by Rules 604 and 605, are not governed by the "substantial compliance" standard. This differential treatment of these matters seems curious. Is for instance, the defendant’s right to a jury trial less important than his right to appeal? Further, Boykin and its progeny does not support the "substantial compliance" test of Rule 402.

It is submitted that the Illinois reviewing courts should question the integrity of (1) some of the decisions, such as Stewart, which were criticized in this Article, and (2) the "substantial compliance" test. Further, trial judges should fully admonish defendants about the consequences of their pleas and establish on the record that they actually understand what is involved. Time-consuming as such inquiries might be, they clearly bring finality and, more importantly, fairness to the process. Accordingly, they are no less than what may be expected of our judiciary.