



The guilty plea: ultimate protection for the innocent

The searching dialogue between judge and defendant — intended to get it right — is as magnificent as it is mundane.

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The National Law Journal
December 20, 2010

By the time most children finish high school civics, they can tell you that the three bedrock principles on which our system of justice rests are equal justice under law, the presumption of innocence and the right to remain silent and not be compelled to testify against oneself. While these certainly deserve their position as core tenets of our system of justice, venture into any courtroom on any day and you will be more likely to encounter a much more overlooked, but for my money, no less awe-inspiring or bedrock display of our judicial values at work — the guilty plea.

When an individual is accused of a crime, he or she has two choices. He can plead not guilty, proceed to trial and make the government prove its case against him with all of the constitutional protections afforded to a defendant who claims innocence. The other option is to plead guilty, admit liability for the offense, accept the lawful punishment meted out and move on. When a defendant decides to plead not guilty, no questions are, or can be, asked by the court as to the legitimacy of that plea. It is simply an unquestioned right.

But when a defendant chooses to admit her guilt to a crime as charged by the government, something much different happens — something most people don't stop to consider. When a defendant asserts her guilt, the entire judicial process comes to a halt. In our system, no one has a right to plead guilty, to unilaterally declare oneself guilty of a crime. A defendant can express her desire to plead guilty to a criminal charge, but only a judge can accept a guilty plea, and that can happen only after a searching dialogue between the judge and the defendant probing the basis, background, reasoning and rationale for the defendant's decision to make the plea.

The court must assure itself that the defendant understands her rights, including her right to plead not guilty and go to trial. Her right to remain silent. Her right to confront witnesses. Her right to call witnesses in her own behalf. Her right to appeal. She must affirmatively assert her understanding of the specific elements of the charges to which she is pleading guilty and the facts as to which she says she is guilty. She must tell the court, and the court must be convinced, that she has not been coerced by the government in any way and that her guilty plea is knowing and voluntary in all respects. If the court is not satisfied with any of this, then the guilty plea must be rejected — despite the defendant's apparent wish — and an involuntary plea of not guilty must be entered. This dialogue between court and defendant occurs in every court, every day, and it is as magnificent as it is mundane.

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Why should we and our justice system be so concerned with people who want to come forward and declare themselves guilty? Why do we insist that our judges spend so much time with them and probe so deeply? And why do we reserve only to the judicial system itself the right to determine whether individuals will be permitted to do what they have seemingly stepped forward to do — plead guilty to a crime? It is because our system is based on a fanatical obsession — not with the guilty — but with the innocent.

Our system has its roots in the principle espoused by the 18th century English jurist William Blackstone (and, before him, by the 12th century Jewish philosopher and legal theorist Maimonides) that it is better that 10 guilty men go free than one innocent man be condemned. Perhaps many of us do not believe that anymore because it is costly and inconvenient and because, occasionally, undoubtedly, guilty people do go free (as innocent ones sometimes are unjustly convicted). But the belief remains at the deepest core of our judicial system. We take the time, not to help the guilty, but because we are obsessed with getting it right, or as right as we can as often as we can, for the not guilty.

If you reflect for just a moment, you can be seized with how wonderfully different this motivating idea is from what has operated in judicial systems throughout history and in many places to our own day. Those who plead not guilty are offered virtually no rights, and those who plead guilty, by free will or coercion — no one usually inquires — are not bothered with at all. By contrast, standing at the very essence of our judicial process is a ceaseless demand to be as certain as we can that our courtrooms are not used, intentionally or unwittingly, to confer guilty status on the not guilty. Thus, not just the defendant, but the entire system, has a stake in the accuracy of each guilty plea.

Some might argue that the process is just a formality. Pro forma questions and answers, too rapidly run through, seemingly by rote, as part of a busy judicial calendar supervised by overworked judges and a steady stream of "obviously guilty" defendants. But watch enough of these guilty pleas and what remains is the unmistakable impression that judges care and are in fact listening. The process, however droning it may appear, does trigger the appropriate judicial reaction if the responses are not as they should be. In the guilty plea, there is a sense of the grandeur of our system at work at the most routine moments and sometimes for the most unlikable individuals. These are moments that often do deal with the guilty, but are, like everything else in our judicial system — when it runs correctly — focused unswervingly on noticing and protecting the innocent.

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