if he penalizes the assertion of a right or privilege by the defendant by charging more severely or recommending a longer sentence.[1161]

In accepting a guilty plea, the court must inquire whether the defendant is pleading voluntarily, knowingly, and understandingly,[1162] and "the adjudicative element inherent in accepting a plea of guilty must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that, when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." [1163]

States v. Goodwin, 457 U.S. 368 (1982) (after defendant was charged with a misdemeanor, refused to plead guilty and sought a jury trial in district court, the government obtained a four-count felony indictment and conviction).

[1161] Blackledge v. Perry, 417 U.S. 21 (1974). Defendant was convicted in an inferior court of a misdemeanor. He had a right to a *de novo* trial in superior court, but when he exercised the right the prosecutor obtained a felony indictment based upon the same conduct. The distinction the Court draws between this case and *Bordenkircher* and *Goodwin* is that of pretrial conduct, in which vindictiveness is not likely, and post-trial conduct, in which vindictiveness is more likely and is not permitted. *Accord*, Thigpen v. Roberts, 468 U.S. 27 (1984). The distinction appears to represent very fine line-drawing, but it appears to be one the Court is committed to.

[1162] Boykin v. Alabama, 395 U.S. 238 (1969). In Henderson v. Morgan, 426 U.S. 637 (1976), the Court held that a defendant charged with first degree murder who elected to plead guilty to second degree murder had not voluntarily, in the constitutional sense, entered the plea because neither his counsel nor the trial judge had informed him that an intent to cause the death of the victim was an essential element of guilt in the second degree; consequently no showing was made that he knowingly was admitting such intent. "A plea may be involuntary either because the accused does not understand the nature of the constitutional protections that he is waiving . . . or because he has such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt." Id. at 645 n.13. However, this does not mean that a court accepting a guilty plea must explain all the elements of a crime, as it may rely on counsel's representations to the defendant. Bradshaw v. Stumpf, 545 U.S. 175 (2005) (where defendant maintained that shooting was done by someone else, guilty plea to aggravated manslaughter was still valid, as such charge did not require defendant to be the shooter). *See also* Blackledge v. Allison, 431 U.S. 63 (1977) (defendant may collaterally challenge guilty plea where defendant had been told not to allude to existence of a plea bargain in court, and such plea bargain was not honored).

[1163] Santobello v. New York, 404 U.S. 257, 262 (1971). Defendant and a prosecutor reached agreement on a guilty plea in return for no sentence recommendation by the prosecution. At the sentencing hearing months later, a different prosecutor recommended the maximum sentence, and that sentence was imposed. The Court vacated the judgment, holding that the prosecutor's entire staff was bound by the promise. Prior to the plea, however, the prosecutor may withdraw his first offer, and a defendant who later pled guilty after accepting a second, less attractive offer has no right to enforcement of the first agreement. Mabry v. Johnson, 467 U.S. 504 (1984).