FLYNN, C. J., dissenting. Taken together, Practice Book §§ 39-26[1] and 39-27[2] require that a defendant shall be permitted to withdraw a plea of guilty or nolo contendere before sentencing on the basis of the court's failure to comply with Practice Book § 39-19.[3] The provisions of § 39-19 are "mandatory when challenged on direct appeal." (Internal quotation marks omitted.) *State* v. *Garigali*, 20 Conn. App. 810, 811, 567 A.2d 851 (1987); *State* v. *Loyd*, 8 Conn. App. 491, 494B, 540 A.2d 1058 (1986), cert. denied, 203 Conn. 801, 522 A.2d 293 (1987); see also *State* v. *Velez*, 30 Conn. App. 9, 21–22, 618 A.2d 1362, cert. denied, 225 Conn. 907, 621 A.2d 289 (1993); *State* v. *Patterson*, 14 Conn. App. 159, 161, 540 A.2d 703, cert. denied, 208 Conn. 813, 546 A.2d 281 (1988); cf. *D'Amico* v. *Manson*, 193 Conn. 144, 156–57, 476 A.2d 543 (1984) (error that requires relief on appeal does not necessarily require relief in habeas corpus proceeding). "After a guilty plea is accepted but before the imposition of sentence the court is obligated to permit withdrawal upon proof of one of the grounds in [Practice Book § 39-27]." (Internal quotation marks omitted.) *State* v. *Johnson*, 253 Conn. 1, 49, 751 A.2d 298 (2000).

I agree with the defendant that in this case, the court failed to comply with § 39-19 in that it never told the defendant the maximum possible sentence on each charge to which he was pleading guilty, and that this failure, which clearly was brought to the trial court's attention in the defendant's motions to withdraw his pleas and for reconsideration filed before sentencing, rendered the court's plea canvass defective.[4] It is my opinion that the court was required to grant the defendant's motion to withdraw his pleas. Accordingly, I respectfully dissent.

Although the majority also concludes that the court must ensure that the defendant fully understands the maximum possible penalty on each individual charge before accepting a plea of guilty or nolo contendere, I think that it is imperative to provide additional analysis on this issue. Section 39-19 of the Practice Book provides: "The judicial authority shall not accept *the plea* without first addressing the defendant personally and determining that he or she fully understands:

"(1) The nature of *the charge* to which the plea is offered;

"(2) The mandatory minimum sentence, if any;

"(3) The fact that the statute *for the particular offense* does not permit the sentence to be suspended;

"(4) *The maximum possible sentence on the charge*, including, if there are several charges, the maximum sentence possible from consecutive sentences and including, when applicable, the fact that a different or

additional punishment may be authorized by reason of a previous conviction; and

"(5) The fact that he or she has the right to plead not guilty or to persist in that plea if it has already been made, and the fact that he or she has the right to be tried by a jury or a judge and that at that trial the defendant has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him or her, and the right not to be compelled to incriminate himself or herself." (Emphasis added.)

"The *Boykin* [v. *Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969)] constitutional essentials for the acceptance of a plea of guilty are included in our rules and are reflected in Practice Book §§ [39-19 and 39-20]. . . . Those rules provide that the trial court must not accept a guilty plea without first addressing the defendant personally in open court and determining that the defendant fully understands the items enumerated in § 39-19, and that the plea is made voluntarily pursuant to § 39-20. There is no requirement, however, that the defendant be advised of every possible consequence of such a plea. . . . Although a defendant must be aware of the direct consequences of a plea, the scope of direct consequences is very narrow. . . . In Connecticut, *the direct consequences of a defendant's plea include only* [1] the mandatory minimum and maximum possible sentences; Practice Book § [39-19 (2) and (4)]; [2] the maximum possible consecutive sentence; Practice Book § [39-19 (4)]; [3] the possibility of additional punishment imposed because of previous conviction(s); Practice Book § [39-19 (4)]; and [4] the fact that the particular offense does not permit a sentence to be suspended. Practice Book § [39-19 (3)] . . . ." (Emphasis added; internal quotation marks omitted.) *State* v. *Faraday*, 268 Conn. 174, 201–202, 842 A.2d 567 (2004), quoting *State* v. *Andrews*, 253 Conn. 497, 504–505, 752 A.2d 49 (2000).

Specifically, on Practice Book § 39-19 (4), formerly § 711 (4), our Supreme Court has explained that its stated requirements are "both *clearly crucial* . . . and an *essential factor* . . . to an accused's grave decision whether to plead guilty to *any* charged offense." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *James*, 197 Conn. 358, 364, 497 A.2d 402 (1985). "Our Supreme Court has stated that once entered, a guilty plea cannot be withdrawn except by leave of the court, within its sound discretion, and a denial thereof is reversible only if it appears that there has been an abuse of discretion . . . and that [t]he burden is always on the defendant to show a plausible reason for the withdrawal of a plea of guilty. . . . Those statements . . . apply [however] only to the withdrawal of pleas [that] are valid in the first instance. . . . Before the imposition of a sentence, the trial court *is required* to permit the withdrawal of a plea of guilty

upon proof of any of the grounds set forth in Practice Book § 721 [now § 39-27]. . . . One of [the grounds set forth in Practice Book § 39-27] is that [t]he plea was accepted without substantial compliance with [Practice Book] § 711 [now § 39-19]." (Citation omitted; emphasis added; internal quotation marks omitted.) *State* v. *Bowden*, 53 Conn. App. 243, 247–48, 729 A.2d 795 (1999); see *State* v. *James*, supra, 361–63.

In *State* v. *James*, supra, 197 Conn. 358, our Supreme Court explained: "The rules of statutory construction apply with equal force to Practice Book rules. . . . Where the meaning of a statute [or rule] is plain and unambiguous, the enactment speaks for itself and there is no occasion to construe it. . . . The requirements of the rule [§ 711, now § 39-19] are clear. We do not mandate that a trial court, in making the determinations required by § 711, speak in the very words of that rule because [m]atters of reality, and not mere ritual, should be controlling. . . . In discharging its obligations under § 711, the court's inquiries need not be so restricted that the [j]udge [must] mount the bench with a script in his hand . . . and although not a script, perhaps, but [with] some sort of checklist, as a prompter, so that whatever form the dialogue takes, all of the necessary lines will be delivered. . . . Unfortunately, all the necessary lines required by § 711 were not delivered so as to make for conformity with the rule. It matters not that § 711 incorporates nonconstitutional as well as constitutional rights; *the rule requires both be addressed*. There was not on this record, as the state suggests, substantial compliance with § 711 because of *the trial court's failure to address § 711 (4) at all*." (Citations omitted; emphasis added.) Id., 363–64. After so concluding, the Supreme Court in *James* then set aside the judgment of conviction and remanded the case with direction to the trial court to allow the defendant to withdraw his plea because the court had failed to inform the defendant of the maximum possible penalty on the charged crime.[5] See id., 364, 366.

The state in its brief relies on *State* v. *Lugo*, 61 Conn. App. 855, 863–64, 767 A.2d 1250, cert. denied, 255 Conn. 955, 772 A.2d 153 (2001), a case in which this court rejected a claim that the trial court was required to inform the defendant of the maximum penalty on each individual charge, concluding that there was no constitutional requirement that the court inform the defendant of the maximum possible penalty on each individual charge to which the defendant was pleading guilty. Unlike the present case, however, in *Lugo*, the defendant was seeking review of his unpreserved claim pursuant to *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989). We explained in *State* v. *Velez*, supra, 30 Conn. App. 21–22, however, that although "the trial court's . . . compliance with the provisions of Practice Book § 711 [now § 39-19] may be mandatory

when challenged on direct appeal, that may not be the case when claimed under the *Evans-Golding* bypass doctrine, where the claim of noncompliance must be of constitutional magnitude." Id. Practice Book § 39-19 embodies both constitutional and nonconstitutional elements. Both categories of elements of which are mandatory when challenged on direct appeal after properly raising the issue before the imposition of sentencing by the trial court. See *State* v. *James*, supra, 197 Conn. 358 (Practice Book § 39-19 "incorporates nonconstitutional as well as constitutional rights; the rule requires that both be addressed").

Although our Supreme Court was very clear in both *State* v. *Andrews*, supra, 253 Conn. 504–505, and *State* v. *Faraday*, supra, 268 Conn. 201–202, that there were four direct consequences of a plea of guilty or nolo contendere, namely, (1) "the mandatory minimum and maximum possible sentences," (2) "the maximum possible consecutive sentence," (3) "the possibility of additional punishment imposed because of previous conviction(s)" and (4) "the fact that the particular offense does not permit a sentence to be suspended"; (internal quotation marks omitted) *State* v. *Andrews*, supra, 505; *State* v. *Faraday*, supra, 202; I am keenly aware that our caselaw indicates that some of these direct consequences may not be constitutional in nature. Nevertheless, even if these direct consequences are not necessarily constitutional in nature, they still are mandatory when properly raised before the trial court prior to sentencing, which also preserves the issue for direct appeal. See *State* v. *James*, supra, 197 Conn. 364 (Practice Book § 39-19 "incorporates nonconstitutional as well as constitutional rights; the rule requires both be addressed"); *State* v. *Bowden*, supra, 53 Conn. App. 252 ("review of the trial court's denial of [the defendant's] motion is not restricted by the limitations imposed by *Golding*" because defendant's claim properly was preserved in motion to withdraw plea and on direct appeal).

If the mandates of § 39-19 and *Boykin* are to be followed, the strength of the case against a defendant and the maximum possible penalty must be evaluated with respect to each charge to which a defendant is pleading. It is easy to imagine a defendant who has three charges pending against him—one class A felony that carries a maximum possible sentence of sixty years incarceration and two class D felonies that each carry a maximum possible sentence of five years incarceration. The defendant might believe that the state could prove the less serious charges but that it could not prove the more serious charge. If the defendant merely was told that the maximum possible consecutive sentence he faced on all charges was seventy years, the defendant certainly might opt for a plea agreement of twenty years rather than face a trial. If, however, the defendant was told of each maximum possible penalty, as is required

by the plain language of § 39-19 (4), he might opt to go to trial fully believing, perhaps because of his actual innocence on the more serious charge, that the state could not prove the class A felony and that if found guilty by the jury on the class D charges, he would face a maximum possible sentence of only ten years. If a defendant does not know the maximum penalty on each individual charge, how can he possibly fully evaluate his options and be fully informed of the direct consequences of his pleas?

When informing a defendant of the nature of the charge to which the plea is offered, as required by Practice Book § 39-19 (1), the court does not give a general description of all the charges at once, lumped together without distinguishing one charge from the other. This is because the defendant is entitled to have each charge explained before he enters a plea on that particular charge; the same holds true with respect to each maximum penalty. It appears to me that this is the rationale behind *Boykin*, *James* and the cases that followed them. To conclude otherwise would leave a defendant sadly in the dark as to the direct consequences of each plea of guilty or nolo contendere.

This rationale is buttressed by a review of federal decisions. "In *Blue* v. *Robinson*, 173 Conn. 360, 377 A.2d 1108 (1977), [our] Supreme Court concluded that the predecessor of Practice Book § 711 [now § 39-19] was drafted 'in response to the holding in the *Boykin* [v. *Alabama*, supra, 395 U.S. 238] case and to assure a sufficient record.' " L. Orland & D. Borden, 4 Connecticut Practice Series: Criminal Procedure (3d Ed. 1999) § 39-19, comments, p. 163. In *Anonymous* v. *Warden (1980-4)*, 36 Conn. Sup. 168, 176–78, 415 A.2d 764 (1980), Judge Bieluch embarked on an extensive discussion on the significance of § 711 (now § 39-19) and explained the origins of the rule: "The provisions of Practice Book, 1978, § 711 were modeled after the requirements previously established for the federal district courts by rule 11 (c) of the Federal Rules of Criminal Procedure, effective December 1, 1975."[6] *Anonymous* v. *Warden (1980-4)*, supra, 176.

"Rule 11 establishes guidelines to ensure that a guilty plea is made knowingly and voluntarily. To ensure that a plea is made knowingly, a judge must address the defendant in open court to establish that the defendant understands (1) the nature of *the charge*; (2) the mandatory minimum and maximum sentences for *the charge*, including any special parole, supervised release, and restitution terms; (3) the constitutional rights waived by a guilty plea; and (4) that answers to the court's questions, if under oath, on the record, and in the presence of defendant's counsel, may be used against him or her in a subsequent proceeding. The court need not, however, inform the defendant of any collateral consequences of pleading." (Emphasis added.) "Annual

Review of Criminal Procedure," 90 Geo. L.J. 1087, 1498–1504 (2002).

"Rule 11 directs the district court to inform the defendant of, and determine that the defendant understands, '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 . . . .' Fed. R. Crim. P. 11 (c). Rule 11 (c) by its terms does not contemplate overlap of the counts, but rather speaks in terms of individual 'charge[s] to which plea[s] [are] offered.' Thus, a plain reading of Rule 11 requires the district court to inform the defendant of the nature of the charge to which the defendant is pleading, any mandatory minimum penalty, and the maximum possible penalty applicable to *each count* to which the defendant is pleading guilty." (Emphasis added.) *United States* v. *Still*, 102 F.3d 118, 123 (5th Cir. 1996), cert. denied, 522 U.S. 806, 118 S. Ct. 43, 139 L. Ed. 2d 10 (1997); but see *United States* v. *Ammirato*, 670 F.2d 552, 555 (5th Cir. 1982) (finding no merit to *unpreserved claim* that plea was involuntary because court failed to give defendant count by count breakdown of maximum possible penalties).

In *United States* v. *Wetterlin*, 583 F.2d 346, 353 (7th Cir. 1978), cert. denied, 439 U.S. 1127, 99 S. Ct. 1044, 59 L. Ed. 2d 88 (1979), the United States Court of Appeals for the Seventh Circuit explained: "It should be obvious that when a defendant pleads guilty to more than one charge at a plea hearing Rule 11 does not require the district judge to repeat all the advice specified in Rule 11 (c) before taking the plea *on each charge*. However, in order for the rule to accomplish its intended purpose it is essential for the district judge to inform the defendant of and determine that he understands *the nature of each particular charge and the maximum possible penalty as to that charge*, i.e., he should comply with Rule 11 (c) (1) *as to each individual charge* for which a plea of guilty is offered." (Emphasis added.)

Additionally, a review of other states with rules of practice similar to § 39-19 reveals that they also require the court, when accepting pleas of guilty or nolo contendere, to ensure that the defendant understands the nature of each charge and the maximum penalty associated therewith, in addition to the maximum possible consecutive sentence when there are multiple charges. These states also consider this information to be mandatory, and, when the failure to inform on each of these direct consequences is raised via a motion to withdraw a plea before the trial court imposes sentencing, the withdrawal must be permitted. See, e.g., *Wells* v. *State*, 396 A.2d 161, 162 (Del. 1978) (holding that "[t]he maximum possible sentence provided by law for conviction of the offense charged is the most important consequence of the plea" [internal quotation marks omitted]);

*People* v. *Flannigan*, 131 Ill. App. 2d 1059, 1064–65, 267 N.E.2d 739 (1971) ("[w]here a defendant is charged with more than one crime, the manner in which he may have to serve the sentences imposed for those crimes, whether consecutively or concurrently, is obviously a consequence of his plea, and must be considered *as crucial to his decision as the admonition on the maximum penalty for each of the charges*" [emphasis added]); *Commonwealth* v. *Stark*, 698 A.2d 1327 (Pa. Super. 1997), citing *Commonwealth* v. *Persinger*, 532 Pa. 317, 320–22, 615 A.2d 1305 (1992) (defendant "must be advised of the maximum sentence for *each individual offense* for which he is pleading guilty, [and] also must be advised that those sentences may be imposed *consecutively*" [emphasis in original]).

In *State* v. *Weyrich*, 80061-8 (Wash. 5-8-2008), a recent en banc panel of the Washington Supreme Court, after granting certification to appeal from the decision of its Appellate Court, reversed the judgment of that court, holding that "[a] defendant must be informed of the statutory maximum for a charged crime, as this is a direct consequence of his guilty plea." In *Weyrich*, the defendant had been misinformed as to the maximum penalty for one of charged crimes. The state had argued that because the court sentenced the defendant within the correct range as contemplated by the plea agreement, the misstatement as to the maximum sentence on one of the counts "had no actual bearing on the plea." The Supreme Court explained that because the defendant "did not waive the error but timely moved to withdraw his pleas before sentencing," the error could not be harmless.

Reviewing this case law, I cannot agree with the majority's opinion that although the trial court "accepted the defendant's pleas without first determining whether he was aware of and understood the maximum possible sentence to which he was exposed for each charge," there was substantial compliance with § 39-19 (4) because of some statements made by the defendant's plea attorney during the hearing on the defendant's ineffective assistance of counsel claim.

The transcripts clearly reveal that the court failed to inform the defendant of the maximum possible penalty on any of the crimes to which the defendant was pleading guilty. The transcript does reveal, however, that the court twice discussed the maximum possible penalty for charges of sexual assault in the first degree, charges to which the defendant was not pleading guilty. Also, there is no indication in the plea canvass that the defendant's counsel ever discussed the maximum possible penalty on each charge with the defendant, nor does the majority cite anything in the record that would convince me otherwise.[7] The defendant in this case was left ill-advised and uninformed as to one of the direct consequences of each plea of guilty that he entered.

This deficiency was further compounded by the court repeatedly informing the defendant of the maximum possible penalty for crimes to which he was not pleading guilty, namely sexual assault in the first degree. The defendant, having fully preserved this issue by filing a motion to withdraw before the court imposed his sentence, should have been permitted to withdraw his pleas. Accordingly, I respectfully dissent.

[1] Practice Book § 39-26 provides: "A defendant may withdraw his or her plea of guilty or nolo contendere as a matter of right until the plea has been accepted. After acceptance, the judicial authority shall allow the defendant to withdraw his or her plea upon proof of one of the grounds in Section 39-27. A defendant may not withdraw his or her plea after the conclusion of the proceeding at which the sentence was imposed."

[2] Practice Book § 39-27 provides in relevant part: "The grounds for allowing the defendant to withdraw his . . . plea of guilty after acceptance are as follows: (1) The plea was accepted without substantial compliance with Section 39-19 . . . ."

[3] On March 27, 2006, pursuant to a plea agreement, the defendant pleaded guilty under the *Alford* doctrine to one count of risk of injury to a child and one count of sexual assault in the third degree on each of two informations, which pleas the court accepted after finding that they were made in a knowing, voluntary and intelligent manner. On May 26, 2006, the defendant made an oral motion to remove his plea counsel and to withdraw his guilty pleas. The court granted the defendant's motion for new counsel and continued the matter to allow new counsel to pursue the defendant's motion to withdraw his pleas. By motion, dated August 11, 2006, the defendant again sought to withdraw his guilty pleas on the basis of an improper and confusing plea canvass and ineffective assistance of plea counsel. The defendant alleged that the court, inter alia, violated Practice Book §§ 39-19, 39-20, 39-26 and 39-27. After a September 8, 2006 hearing, the court denied the defendant's motion to withdraw his pleas. At sentencing, on September 22, 2006, the defendant requested that the court reconsider its ruling denying his motion to withdraw his guilty pleas. The court granted reconsideration but, again, denied the motion and sentenced the defendant to a total effective term of fifteen years incarceration, execution suspended after seven years, with fifteen years probation. Accordingly, there is no question that this claim was preserved properly.

[4] The court also failed to ask the defendant at the plea canvass if his attorney had gone over these items with him. Rather, the court merely asked the defendant if he had talked to his attorney about the case, to which the defendant replied, "Today." Additionally, to further complicate matters, the court on more than one occasion told the defendant that he faced a maximum sentence of twenty to twenty-five years, with a ten year mandatory minimum sentence, and a fine of $10,000 on each charge of sexual assault in the first degree, crimes to which the defendant was not offering guilty pleas.

[5] In *State* v. *Ocasio*, 253 Conn. 375, 378–79, 751 A.2d 825 (2000), a per curiam opinion from our Supreme Court, the court explained that it repeatedly had held that "Practice Book § 39-19 requires only substantial compliance," citing four of its prior cases. A review of those cases demonstrates that in three of them, the direct consequence issues of Practice Book § 39-19 were not preserved properly before the imposition of sentencing. See *State* v. *Domian*, 235 Conn. 679, 685, 668 A.2d 1333 (1996) ("defendant did not move to withdraw his guilty plea prior to sentencing, electing instead to raise the issue of the defective plea canvass for the first time on appeal"); *State* v. *Badgett*, 200 Conn. 412, 416, 512 A.2d 160 ("neither the Practice Book violations nor the constitutional claims were raised by the defendant by a motion to withdraw his plea before sentence was imposed by the trial court"), cert. denied, 479 U.S. 940, 107 S. Ct. 423, 93 L. Ed. 2d 373 (1986); *State* v. *Godek*, 182 Conn. 353, 355, 438 A.2d 114 (1980) ("[t]he defendant raised neither of his [Practice Book] claims in the court below"), cert. denied, 450 U.S. 1031, 101 S. Ct. 1741, 68 L. Ed. 2d 226 (1981). In only one of the cases cited by the Supreme Court, *State* v. *Suggs*, 194 Conn. 223, 226, 478 A.2d 1008 (1984), did the defendant file a motion to withdraw the plea prior to sentencing. There is no indication in the opinion, however, as to whether the issues raised on appeal were the same grounds as those relied on in the motion to withdraw. After reviewing the plea canvass in that case, our Supreme Court held that the defendant was aware of the rights that he

was waiving, and it determined that the trial court had substantially complied with the mandates of the Practice Book § 711, now § 39-19, "such that none of the defendant's constitutionally protected rights [had] been infringed upon." Id., 227.

In *Ocasio*, the defendant had preserved his Practice Book § 39-20 claim by filing a motion to withdraw his plea before the imposition of sentencing on that ground. *State* v. *Ocasio*, supra, 253 Conn. 375, 377–78. A problematic aspect of the *Ocasio* case is its adoption of a substantial compliance test similar to the one set forth in *State* v. *Domian*, supra, 235 Conn. 688, a case in which the defendant's challenge to the trial court's noncompliance with Practice Book § 39-19 was not preserved properly before the trial court. See *State* v. *Ocasio*, supra, 253 Conn. 380–81. Citing to *Domian*, the court held that "the test for substantial compliance is whether, in light of all of the circumstances, the trial court's literal compliance with § 39-20 would have made any difference in the trial court's determination that the plea was voluntary." Id., 380. The reason I find this problematic is that the substantial compliance test enunciated in *Domian*, namely whether accurate information in accordance with § 39-19 would have made any difference in the defendant's decision to plead guilty or nolo contendere, was set forth in a case in which the issue of noncompliance had not been preserved before the trial court; it was raised for the first time on appeal. See *State* v. *Domian*, supra, 685. I consider this a crucial factor in light of the precedent cited throughout this dissent. Nevertheless, *Ocasio*, in substance, dealt with Practice Book § 39-20 and, while problematic in some aspects, is distinguishable from the present case because there was no issue concerning § 39-19 raised in the case.

[6] The 1975 amendments to the Federal Rules of Criminal Procedure were quite substantial. The 1975 version of rule 11 (c) provided in relevant part: "Advice 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 that he understands, the following: (1) the nature of the charge to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law . . . ." Fed. R. Crim. P. 11 (1975).

"Prior to its amendment in 1975, Rule 11 required only that a judge determine that a defendant's plea was made with an understanding of its 'consequences.' . . . If Rule 11's requirements are not met, the defendant must be given the opportunity to plead anew. . . . [The pre-1975 version of Rule 11, did] not require explanation of the possibility of consecutive sentencing [because] the court's power to impose consecutive sentences is explained implicitly 'in the separate explanation of the possible sentences on each count.' . . . This reasoning is equally persuasive under the amended rule. Although at first glance the Notes of the Advisory Committee on 1975 Amendments to the Federal Rules of Criminal Procedure appear to suggest a contrary conclusion, they do not. They indicate that the objective of the 1975 amendments was to insure that a defendant knows the maximum sentence a judge may impose. Notes of the Advisory Committee on 1975 Amendments to Rules, Fed.R. Crim.P. 11, reprinted in 8 Moore's Federal Practice ¶ 11.01[4] at 11-7 to 11-18 (1977) (hereinafter 1975 Committee Notes). The 1975 Committee Notes, however, interpreted the rule as promulgated by the Supreme Court, prior to its alteration in Congress. The rule as originally proposed required disclosure of the 'maximum possible penalty provided by law for the offense to which the plea is offered.' . . . The proposed rule thus reaffirmed the proposition that a defendant need be specifically advised of possible sentences only with respect to each offense. The 1975 Committee Notes suggest that because the penalty for an offense appears on the face of the statute defining the crime, a judge can ascertain exactly what to tell a defendant: 'Giving this advice tells a defendant the shortest mandatory sentence and also the longest possible sentence for the offense to which he is pleading guilty.' . . . In Congress the proposed rule generated controversy for its failure to enumerate important rights that are waived by offering a plea of guilty. Those were enumerated by *Boykin* v. *Alabama*, [supra, 395 U.S. 238]. When the House Judiciary Committee reported the measure which became Rule 11, the rule had been modified to include a requirement that a defendant be advised of the rights waived by a plea and the phrase, 'for the offense to which the plea is offered,' was deleted from the section regarding advice about potential penalties. See H.R. Rep. No. 247, 94th Cong., 1st Sess. 21 (1975), reprinted in [1975] U.S. Code Cong. & Admin. News, p. 674, 693. It appears that clearer explanation of the rights discussed in *Boykin* v. *Alabama*, supra, was the purpose of the committee's revisions. We think that the accompanying deletion was

merely a technical amendment to the rule's text rather than an intentional enlargement of the judge's duty to inform. Although one could argue that Congress, in deleting the phrase, intended to require disclosure of the possibility of consecutive sentences, in the absence of an indication of such intent, we think amended Rule 11 was meant merely to simplify a judge's task by emphasizing that the crucial consequences of entering a plea which must be explained to a defendant are the sentencing consequences, rather than other, less direct, implications of entering a guilty plea." (Citations omitted.) *United States* v. *Hamilton*, 568 F.2d 1302, 1304–1305 (9th Cir.), cert. denied, 436 U.S. 944, 98 S. Ct. 2846, 56 L. Ed. 2d 785 (1978).

Although rule 11 (c) textually has changed since its major revisions in 1975, those changes substantially have been stylistic. The advisory committee to the 2002 amendments explained that rule 11 (c) remained substantially unchanged until the 2002 revision that "amended and reorganized [the rule] as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except [in a few instances where the changes are more substantive]." U.S.C.S, Court Rules, Fed. R. Crim. P. 11, Notes of the Advisory Committee on the 2002 Amendments (Lexis Cum. Sup. 2008) p.77.

[7] The majority cites to portions of the hearing on the defendant's claim of ineffective assistance of counsel to support its conclusion that the defendant was aware of the maximum penalty on each charge at the time he pleaded guilty. The court, however, made its ruling as to the defendant's claim of a defective canvass on the basis of the transcript of the plea canvass alone, before the hearing on the claim of ineffective assistance. At the beginning of the hearing, the court stated: "I recall the canvass as if it was five minutes ago. I recall [the defendant] saying he did not do it. I recall [the defendant] breaking down in tears. I recall my taking a recess to allow [the defendant] to compose himself. I recall bringing him back a second time and saying, 'are you sure that you want to do this?' So . . . based upon the motion to withdraw for defective canvass, that portion of the motion is denied; you have an exception to that. Now, you can pursue your ineffective assistance [claim]." Even if this were not the case, however, I find nothing in that hearing that demonstrates substantial compliance with § 39-19 during the plea canvass or that demonstrates that the defendant was aware of the maximum possible penalties for each charge to which he was pleading guilty. As the majority notes, the defendant's attorney informed him that he was "facing charges for sexual assault in the first degree" and told him what penalties were associated therewith. The attorney also told him "what the plea offer entailed . . . ." This information in no way explained the maximum possible penalty on each charge to which the defendant was pleading guilty, nor did it ensure his full understanding of those possibilities as is required under § 39-19 (4). Further, the defendant's statement that he remembered the judge telling him the maximum penalties he could receive if convicted also does not speak to the individual charges and the individual penalties associated therewith. We know from our review of the plea canvass that the court did not tell the defendant the maximum penalty on any charge to which he was pleading guilty.