Why does a person plead guilty when innocent?
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“The end of our lives begins the day we become silent about the things that matter!” Martin Luther King I.

WHAT WE SEE. We are used to thinking that television programs, whether on the cable system, open television or streaming platforms, are the real model of American justice. In these programs or series, the laboratories that analyze the "evidence" are incorruptible and almost perfect. Police officers, too. Prosecutors, don't even say. The legal drama is already one of the most popular television genres and its main actors are lawyers. Prosecutors are bold, relentless, defending victims and catching defendants. They always have something up their sleeve and do everything with DUE PROCESS. American television has filled the world with images, telling stories of women and men who work for a quasi-perfect justice system, but these stories have one purpose: to entertain audiences. Its nature is completely different from the reality of the judicial system. From television production for audiences to reality, there is an abyss in between. When one begins to read hundreds of true cases and stories in which police officers manipulated evidence, fabricated it, withheld it knowing that it could be grounds for exonerating a defendant, reality hits us and wakes us up, warns us of how the judicial system It is used to imprison innocent people, especially when there is a media case involved. If we were to do a basic poll asking who believes that the US justice system is incorruptible and fair, 99.9% would answer either that they do or that it is fair. Then I would ask that same group if they've read the 1963 Brady vs. Maryland case, and I'm sure 100% would say no. Additionally, I would do an exercise in which I exposed who had seen the Law and Order series. Special Victims Unit of the incorruptible Olivia Benso1 and all would answer that all have seen it. And then I would ask if they have seen the Innocence Project documentary and a high percentage would answer no. By this I mean that our idea of American justice is an idea based on entertainment programs and that the reality is another. Perhaps because reality is different, the book Why the Innocent Plead Guilty and the Guilty Go Free: And Other Paradoxes of Our Broken Legal System, by Jed S. Rakoff1, leads us to the following reflection in its introduction: ... How can we have confidence in a system that too often convicts innocent people, often on the basis of dubious forensic science2 and shaky eyewitness testimony, and sometimes even forces them to plead guilty to crimes they never committed? ? That is exactly what I argue here as the basis of my defense: how can we believe that a system that does all of the above is reliable? II. How can we accept a system that imposes the death penalty when we know full well that a significant number of those sentenced to death will later be found not guilty? How can we pretend to adhere to the Constitution when we have created a criminal justice system that has virtually eliminated trial by jury? How can we claim that justice is equitable when we imprison thousands of poor black men for relatively modest crimes, but almost never prosecute the rich, white ones?3 INTRODUCTION. In this, my second essay, I will go through various concepts that, for those of us who live in Mexico or outside the United States, may seem difficult to understand. My ethical and intellectual commitment is to describe these concepts and procedures correctly. Thus, I will explain concepts such as: "due process"; "bad practice"; “constitutional amendments”; “evidence”, among others, in order to understand 1 Jed S. Rakoff was a Judge of the United States District Court for the Southern District of New York (1996-2010). He has held the position of Senior Judge of the Southern District Court of New York since 2010. 2 In the documentary called Project Innocence, some of the cases that have been resolved in favor of the innocent who have been imprisoned, have been won by questioning the dubious forensic science that was used as evidence for the convictions. 3 Rakoff S. Jed. Why the Innocent Plea Guilty and the Guilty Go Free: And Other Paradoxes of Our Broken Legal System. Farrar, Straus and Giroux, United States, 2021, p. 5 2how the concept of a “plea agreement” is introduced into legal practice in the American system. I will also focus on understanding the pressure exerted by prosecutors and how that negotiation has led thousands of

innocent people to be sentenced. Along these lines, I will return to cases of people who were convicted and who years later, after revealing how due process was violated, were declared innocent and released. I will also refer to cases where pressure from prosecutors forced innocent people to accept that "plea deal." And here the so-called “media trials” play a fundamental role. In a particular way, I will also refer to the case of the apostle of Jesus Christ, brother Naasón Joaquín García, and how the system that violated due process did so to place him in a blind alley. In the following section I take a very brief historical tour to understand what the amendments to the Constitution are, why and in what context they were established and what was established in those documents. It is important to know this brief, very brief account of the history of the United States to understand the importance of the case at hand. III. HISTORICAL OUTLINE: FROM THE BILL OF RIGHTS TO DUE PROCESS. In the United States, it is known as the "Bill of Rights", to the first ten amendments made to the Constitution of that country -dating from 1787-, which came into force as of 1791. These documents impose on the federal government the duty to guarantee a series of rights to the defendant in criminal proceedings before the federal courts. This same principle of obligation was established in 1865, in the Fourteenth Amendment, where the concept of "due process" was introduced in the context of the difficult discussion of the abolition of slavery. “The Constitution, as approved on September 17, 1787, contained provisions regarding certain important liberties. There was a prohibition against the suspension of the habeas corpus trial. There was also the prohibition to apply retroactive laws and the rights of proscription and confiscation. There was also the guarantee of trial by jury.in the case of criminal offences. And a prohibition against the verification of religious beliefs as a requirement to hold public office.”4 After the promulgation of the Constitution, there was still a pending in some of the delegates of the colonies. The central issue of concern was that the Constitution was not sufficient to guarantee certain fundamental rights. Jefferson5 and Madison6 were of this idea and in the correspondence between the two federalists the need for a document that made possible and with complete clarity, freedom of belief, of the press and trials by jury, habeas corpus7, among other matters, was pointed out. The influence of both politicians - and others - to initiate the procedure for the amendments focused on recognizing natural rights and transforming them into civil liberties. So the Federalists argued and supported the idea of a bill of rights to move from civil liberties to constitutional rights. After three months of discussion between the representatives of the colonies in the House of Representatives and the Senate, the first ten amendments were established in 1791. I stop here to analyze the Sixth and Eighth Amendments. AMENDMENT TEXT 4 Konvitz R. Milton, “The Bill of Rights: Amendments I-X” in Boorstin J. Daniel (ed.). Historical compendium of the United States. A tour of its founding documents. Fondo de Cultura Económica, Mexico, 1st edition in Spanish, 1997, p. 133 5 Thomas Jefferson was the third president of the United States, between 1801 and 1809. He is considered one of the founding fathers of the country. He is also considered the main author of the Declaration of Independence and the Constitution with its first ten amendments of that country. 6 James Madison was the fourth president of the United States. Together with Jefferson, he participated in the Declaration of Independence and in the elaboration of the Constitution of that country. 7 The habeas corpus is a civil action filed before the federal courts, whose objective is to review the criminal sentences handed down by local courts, when they have incurred in violations of the Constitution and the Bill of Rights. This issue was a demand of the first settlers of the United States and of the Federalists who did their best to include it in the first ten amendments and in the subsequent ones. The cited author, Jed S. Rakoff, disappointed in the judicial system, wonders: “How can we accept that Congress and the Supreme Court limit to the point of almost extinguishing the sacred constitutional right to writ of habeas corpus?” Sixth In all criminal proceedings, the defendant shall enjoy the right to be tried promptly and in public by an impartial jury from the district and state in which the crime was committed, a district that must have been previously determined by law; as well as that he be made aware of the nature and cause of the accusation, that he be confronted with theEighth witnesses to testify against him, to compel witnesses in his favor to

appear, and to have the help of a lawyer. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.8 The framers of the Sixth Amendment - including Jefferson and Madison - established it as a means for fair and legal procedure through the justice system. This amendment guarantees an essential freedom because it has a place in the Bill of Rights. What guarantees must be given to defendants under this amendment? • Right to a speedy and public trial; • Right to a jury; • Notice of indictment (notice of the indictment); • Cross-examine witnesses presented by both the defense and the prosecution; • Prohibits the admission of rumors in a case; • Defendant's right to examine or inspect physical evidence to determine its relevance to a case and its integrity in the investigation; • Right to a defense lawyer9. In other words, The Sixth Amendment guarantees the defendant the right "to be tried promptly and in public by an impartial jury from the district and state in which the crime was committed." This amendment also gives you the right to be confronted with witnesses testifying against you (as well as cross-examine) and to have the "advice of an attorney" defend you. Over the years this last protection has also been extended and in fact guarantees all defendants appropriate legal advice in criminal trials.10 I note here the importance of the constitutional guarantee of the Sixth Amendment: to be tried quickly and in public by an impartial jury, to confront witnesses, to question and cross-examine witnesses, among other rights. 8 Konvitz R. Milton “The Bill of Rights... op. cit., p.136 A broader vision of these rights can be found in the text https://archivos.juridicas.unam.mx/www/bjv/libros/4/1655/10.pdf 10 Jacobs B. James. “Evolution of Criminal Law in the United States” in Issues of Democracy, Vol. 6, Number 1, 2001, p. 7. Electronic Newspaper of the United States Department of State. 9 5Then came a difficult period for the United States in the Civil War11. The racism and slavery that continues throughout the judicial system and in virtually all areas of daily life in the United States was the origin of this war. At the end of it, the Fourteenth Amendment, which had been proposed in 1866, was ratified in 1868 and contains two fundamental clauses that would completely change life in the United States: due process and equal protection. Due to this war and the entrenched racism in the United States, it was necessary to put a floor to all the local states and their legislations. That even floor of constitutional guarantee is called due process established in the Fourteenth Amendment. IV. DUE PROCESS. The bases and foundations of judicial procedure in the United States are sustained in the Constitution of that country and in the Amendments, the first ten and the subsequent ones. The most important of these rights grants the defendant the presumption of innocence. The defendant does not have to prove his innocence. It is up to the government to prove the latter's guilt, beyond a reasonable doubt. Along with this right, there is the "due process" that guarantees a wide range of protection to the accused so that the presumption of innocence can, in turn, be guaranteed. Due process in procedural terms refers to the procedure used to prosecute and sentence those who are accused of a crime. It is the guarantee of a fair, impartial and speedy trial. If there is a problem with the methods used to collect evidence or a problem with the methods used to convict, any defendant can claim due process violations, even in some cases even having the conviction vacated. Does the American judicial system really violate due process? Are these violations isolated? Have innocent people been affected by the violation of due process? How important is due process in the American judicial system? 11 Also known as the Civil War, it is a war conflict whose cause was the issue of slavery. The period covers from 1861 to 1865, between the forces of the Confederate States of America and the States of the Union. 6Systematic violations of due process, of that constitutional guarantee, are constant and unfortunately have become the rule. Its effect is destructive: thousands of innocent people have been sentenced. Guaranteeing due process is equivalent to complying with and enforcing the Constitution; not to do so is to violate the Bill of Rights that Americans are so proud of. They do not believe me? Let's look at the following cases that are true stories of due process violations. A. JAILED FOR 36 YEARS FOR A MURDER THEY DID NOT COMMIT If the police and the prosecutor who handled the DeWitt Duckett case had respected due process, Alfred Chestnut, Andrew Stewart and Ransom Watkins would never

have spent 36 years in jail wrongfully. This is the story12. On November 18, 1983, DeWitt Duckett and his friend Ron Bishop were in science class at Harlem Park Junior High School in East Baltimore. Both boys were only 14 years old. The bell at school announcing the end of class moved the young people who left class with another friend to go to the cafeteria for lunch. The three boys took a shortcut down a corridor that was empty of a soul. Bishop joked with DeWitt about what they did in first grade and laughed at his every expression. Not hearing his friend's laugh, he turned and immediately froze because someone had a gun in his face and, microseconds later, the gun was in DeWitt's never. The attacker, an older teenager wearing a gray hooded sweatshirt, yelled at DeWitt to give him the “Georgetown” jacket he was wearing. That sweatshirt was wildly popular with the kids at school who bought it for $75 and DeWitt had bought it with his job savings in the summer of 1983. At that time, DeWitt's two friends ran as fast as they could to the end of the aisle. Behind his footsteps, the sound of the gunshot echoed until nearly four decades later, but his need to 12 The story is based on the text https://www.newyorker.com/magazine/2021/11/01/when-a-witness- recants and fueled by the notes published after the exoneration of the three defendants. 7asking for help led them down the stairs to reach the school cafeteria. Minutes later, the young DeWitt appeared, nearly swooning, to fall into the director's arms as he pressed a hand against his neck. That was the last time Bishop saw his friend alive. The murder of the young man was the first in a public school in Baltimore and in a neighborhood where the majority of the inhabitants were African-American. The one who had seen better than anyone the aggressor and murderer of DeWitt was his friend Bishop of his; however, he was not sure that he could identify it and he was not sure that he could give any identifying names either. In that context, school personnel had reported a group of older teenagers who had been inside the school on the day of the murder. The group included three sixteen-year-olds: Alfred Chestnut, Ransom Watkins, and Andrew Stewart. The detective assigned to the case questioned the three teenagers and took pictures of them with the Polaroids camera. Days later, he went to Bishop's home and presented him with eleven photographs, including those of Chestnut, Watkins, and Stewart. The detective asked Bishop if he could identify the assailant in the photographs, who was unable to identify any of the three older teens. Another day, almost at midnight, the detective visited Bishop again, showed him photographs again, asked him to identify someone, and Bishop could not point to anyone. Days later, school security informed detectives that there was a new witness. She was a 9-year-old girl who was interviewed by the detectives who were handling the case. She was also shown the photographs of Chestnut, Watkins, and Stewart. When it was her turn to testify, both the girl and the detectives claimed that she pointed to the three defendants. The same detectives then took Bishop and his friend away, without his parents, and questioned them along with other teenagers from the school. There they threatened Bishop to accuse him of accessory to murder if he did not point to the three older teenagers that the police had already judged to be murderers. The three children who had been brought to police headquarters, after being pressured by the detective in the absence of their parents, singled out Chestnut, Watkins and Stewart. At that point in the case, the three 16-year-olds had been charged with first-degree murder and would be tried as adults. From then on, the American judicial system would completely destroy their lives,because a policeman forced underage witnesses and manipulated evidence for the conviction of the three boys, and because the prosecutor in the case forced the three boys and the girl who became the key witnesses to memorize the script of answers for the interrogation for conviction. The prosecutor even concealed exculpatory evidence from the defense of the three defendants. None of this was covered by the local media at the time and the result was the unjust conviction of three 16-year-olds who spent 36 years in prison, convicted of witness tampering by the prosecution and the police. After review of the case, a judge cleared them of all charges in November 2019. Anyone could say that this was an isolated case and that this does not happen in the American criminal system, but it is not. This violation of due process happens much more often and is more common than we imagine. B. MARK SODERSTEN CASE. A particularly clear example is the prosecution of Mark

Sodersten, a man who spent 22 years behind bars convicted of a murder he did not commit. The story is not published because Sodersten died in prison six months before it was learned that the prosecution had hidden exculpatory evidence in favor of the convicted person. Sodersten was charged with murder and rape for a crime that took place in 1984. Two years later, he was sentenced to life in prison. Two decades later, in 2004, the defense attorney discovered that the Tulare County prosecutor had failed to release four exculpatory audiotape recordings, including one from the prosecution's witness and dating from before Sodersten's trial. In his defense, Sodersten's lawyer claimed that the tapes were Brady evidence (very important not to lose sight of this reference) and that their non-disclosure deprived him of his right to due process and a fair trial. On December 17, 2004, the trial court denied Sodersten's petition after holding an evidentiary hearing during which he testified on the defendant. A year later, Sodersten filed a request for the appointment of counsel with the Court of Appeal, which was granted. soderstenhe died on June 25, 2006 while his case was pending in the Court of Appeals. His attorney filed a motion for summary judgment. The prosecution opposed the motion filed by Sordesten's lawyer, arguing that, with the death of the convicted person, his habeas petition was moot and inadmissible. The Court adjourned judgment on the motion until January 17, 2007, the date on which it granted the habeas petition and vacated Sordesten's convictions. The Court of Appeals stressed that the prosecution's conduct, in concealing exculpatory evidence, had also affected the integrity of the judicial system in California. This is how he expressed it: Our review of the record in this case raises fundamental questions about the process used to convict Mark Sodersten. The trier of fact was asked to make a determination of guilt based on evidence that was incomplete because the state failed to disclose exculpatory evidence. This is not a simple error in which the balance of evidence can be assessed and found to support no other reasonable conclusion than that reached by the jury. The evidence excluded in this case directly attacks the question of guilt or innocence. [...] This case raises the problem that is the most feared aspect of our system: that an innocent man can be convicted."14 I know about Sodersten's case from the study carried out by the University of Santa Clara. What is this study about? C. STUDY ON MALPRACTICE IN THE CALIFORNIA PROSECUTOR'S OFFICE. The interest in avoiding the unjust sentencing of innocent people by various actors in the judicial system (judges, prosecutors, police), led the University of Santa Clara to develop a project of the School of Law called "Veritas Project Innocence Initiative" (IVPI). This initiative together with the report titled: Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009, reveal that reality that the American series and programs do not tell us. The research spans 13 years of study and was updated in 2010 and 2011. It reviewed 4,000 state and federal appeals decisions, as well as dozens of media reports and trial court decisions in the 13 The summary judgment is an abbreviated judicial procedure that is requested to speed up the times because speed in the resolution is required. 14 http://forejustice.org/db/Sodersten--Mark-Colin-.html (accessed March 10, 2023) 10period from 1997 to 2009. This study is the largest review of misconduct ever conducted in California. The report includes an analysis of how the California justice system identifies and addresses procedural failure in this state, the cost and consequences, including the wrongful sentencing of innocent people in all those years. The study revealed that those mandated to address the problem—the State and federal and state courts, as well as the California Bar Association—repeatedly refrained from evidencing it.15 In 707 of the 4,000 cases studied in the first 13 years of investigation, the seriousness of the misconduct of the prosecution was evidenced. In 3,000 of the 4,000 cases, the courts rejected the allegations of prosecutorial misconduct, and in another 282 cases, the courts also failed to decide whether the prosecutors' actions were wrongful, nonetheless, there was a fair trial. If those 707 cases reveal a constant malpractice, when joining the annual reports of 2010 and 2011, the seriousness of this malpractice is scandalous. In the 15 years studied, courts have found that prosecutors made mistakes in more than 900 cases. In 210 cases, the courts vacate convictions and sentences, declare and prohibit evidence. In 691 cases, the prosecution's failure was considered a harmless error16. The 2011

report also reviews how prosecutors repeatedly persist in malpractice. The report says: After identifying the prosecutors in the 92 misconduct cases for 2011, what investigators at the Veritas Initiative discovered were: 19 prosecutors who engaged in misconduct in 2011 had also committed misconduct in the previous year; An additional 8 prosecutors who engaged in malpractice in 2011 had done so again two or more times in previous years; 125 prosecutors engaged in malpractice in 294 cases between 1997 and 2011. Thus, one third of all cases of prosecutorial misconduct in California were committed by repeat prosecutors17. Misconduct is considered a felony for a prosecutor since the 2016 reform in California. Some of these misconduct found in the more than 900 cases reported by the Veritas Initiative are: 1) Not revealing exculpatory evidence; 2) Fabrication of false evidence; 3) False sworn testimony; 4) Improper argument; 5) Inappropriate use of the media; between 15 Preventable Error: 2011 Annual Report on Prosecutorial Misconduct in California, p. 2 (https://digitalcommons.law.scu.edu/ncippubs/1/) accessed October 2019 16 Ibid., p. 3 17 Ibid., p. 9 elevenmuch others. Write down these violations of due process, or these bad practices that prosecutors have incurred in California, because later they will serve as evidence for my argument. Something very important that has not been thoroughly analyzed is the assertion that those who must correct the misconduct of prosecutors and, therefore, guarantee due process, usually end up doing nothing about it. I will quote in English the document: The Misconduct Study shows that those empowered to address the problem -California state and federal courts, prosecutors and the California State Bar-repeatedly fail to take meaningful action. Courts fail to report prosecutorial misconduct (despite having a statutory obligation to do so), prosecutors deny that it occurred, and the California State Bar almost never disciplines it18. From this investigation there is much information about improper practices and violations of due process in California, the consequences of which range from wrongful convictions to innocent incarcerations. We will not review them all but if anyone is interested in knowing the documents, you can read them by following this link: https://law.scu.edu/veritas-initiative/ Hundreds and hundreds of cases exist in which a false witness, fabricated evidence, pressure on a witness, hiding evidence favorable to the defense, have had to be reviewed and, when this has happened, thousands of accused persons have been released. and wrongfully convicted. One of the practices that violate due process is hiding exculpatory evidence from the defendant's defense. Leo Brady's story teaches us that prosecutors, by hiding this evidence, continue to convict the innocent. Do you know what the Brady material is? V. WHAT IS THE BRADY MATERIAL? 18 Ibid., p. 7. The following translation is mine: “The Misconduct Study shows that those with the power to address the problem—the state of California and federal courts, prosecutors, and the California State Bar Association—repeatedly fail to take significant action measures. Courts fail to report prosecutorial misconduct (despite being legally required to do so), prosecutors deny it occurred, and the California State Bar Association almost never sanctions it.” 12sanctions”. 12 On June 27, 1958, John Leo Brady, a 25-year-old Maryland man, and his partner Charles Donald Boblit, 24, murdered William Brooks, a 53-year-old acquaintance. Both were found guilty and sentenced to death. Leo Brady admitted to being involved but claimed that Boblit had been the one who pulled the trigger, the one who had also robbed a bank but nonetheless had not planned to kill Brooks either. The two men were tried separately and the prosecution had withheld and concealed a written statement from Boblit in which he confessed that he had murdered Brooks. Leo Brady had appealed his conviction and the lower court upheld the conviction and remanded the case solely to review the punishment. So Brady's attorney, Clinton Bamberger Jr., appealed the case to the Supreme Court, pending a new trial. At the time that the Supreme Court issued the resolution of the case, it was resolved that the withholding or concealment of exculpatory evidence violated due process "when the evidence is important for guilt or punishment." In the case of Leo Brady, and based on Maryland Law, the evidence could not have exonerated the defendant but it was important to the level of his punishment. When a lawyer files an application -a motion- before the court justifying said motion in Brady material, he means that there is exculpatory evidence that was hidden by the prosecution

and that said evidence can be "material", as long as there is a reasonable probability that the conviction or sentence would have been different if those materials had been disclosed. This is one of the most far-reaching sentences in the judicial system and in due process, because it supports the constitutional guarantee established in the Fourteenth Amendment. In Mexico we have a saying -a popular saying- that more or less says that a button serves as a sample to know what really happens. Here I have narrated more than one with the intention of understanding how the American justice system works and how that system, which is operated by human beings, continues to condemn innocent people for the systematic violation of constitutional guarantees.In fact, only in the period that covers 2019, 2020 and 2021, 2.2 million people have been sentenced in the United States. How many of the 2.2 million people incarcerated from 2019 to date are innocent? Who are the damned? In the next section I will answer these questions. SAW. WHO IS IN AMERICA'S JAILS? In other spaces where I have published some analysis, I have argued that the United States judicial system is designed to incarcerate people of color, Latinos and to convict many innocent people. The data that I return to below allows us to understand the magnitude of racism and the focused “justice” (so, in quotes) that prevails in the United States. Who are in jails? Young African Americans and Hispanics, mainly. 40% of the total prison population, that is, 840,000 people, are African-American men; that is, one in nine African-American men between the ages of twenty and thirty-four is in prison. Hispanics are also the favorite prisoners of the US judicial system, with about 440,000; that is, 20% of the incarcerated population between 2019, 2020 and 202119. In other words, of the 2.2 million people incarcerated between 2019 and 2021, 60% are Afro-Americans -mainly young- and Latinos. The other 40% remaining, brings together other Asian migrants and white people, according to Jed S Rakoff, but I'm not sure if the above is the most serious. According to Rakoff, at least 500,000 people out of the 2.2 million have not been convicted of any crime, “…but are simply there, because having been arrested, they could not post bail.”20 This I consider to be much more serious because it is another proof of how the judicial system violates the constitutional guarantees of the accused. All this information that Judge Rakoff provides is essential to understand and be able to respond to the central theme of my essay: why does an innocent person plead guilty? 19 Rakoff S. Jed, op. cit., p. 7 20 Ibid., p. 6 14I must clarify that when I titled my essay that way, in the month of January when I was planning these essays, I was unaware of Judge Rakoff's work. This book should be read by all those people who believe that when someone pleads guilty by accepting a plea agreement, it is because he really is guilty. And I hold just the opposite and here I am going to defend it. VII. WHY DOES A PERSON WHO IS INNOCENT AGREE TO PLED GUILTY? There are many reasons. There are those related to the judicial system itself, which I will call “reasons f