



# Justice Without Judges: Most Felony Cases End in Plea Deal

By: Austin Baird- July 22, 2013

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Anytime there is a series of change of plea hearings scheduled by the Anchorage Superior Court, a crowd lingers outside, with a steady flow of defendants waiting their turn to admit guilt of some crime or another.

The routine unfolds a couple times most weeks, and while it may look something like criminals getting a so-called "day in court," in reality, lawyers have already judged what crime was committed and what sentence is fitting by the time a defendant enters a guilty plea.

"It has changed from the kind of sentencing where a judge hears both sides and makes a decision," says Niesje Steinkruger, a retired Fairbanks judge who spent 19 years on the bench. It's become "the kind of sentencing where, in most cases, the sentencing is being made by the attorney and then confirmed by the judge."

The year preceding a July 2012 report, 4,919 felony cases in Alaska ended with a verdict. 4,430 ended with a plea bargain, 221 with a trial, the rest by other means.

Everyone involved comes out ahead, at least in a sense.

Even when evidence is convincing, a trial is risky because all jurors must agree there is no reasonable doubt; a plea bargain lets prosecutors and victims rest easy knowing there will be at least some punishment. Jury trials are expensive and time-consuming, so the state court system can use personnel and resources in other ways. Defendants typically get an easier sentence than if they were found guilty at trial.

But there are drawbacks.

Victims and the public may be unsatisfied when a sentence is perceived as too light for a crime committed, the role of the judge is diminished, and some cases are routinely given the mandatory minimum sentence without much consideration.

Even within the past month, there have been high-profile examples of frustration at a sentence that resulted from a plea bargain.

According to The Associated Press, there was an outpouring of upset victims when Jenae Collins pleaded guilty to attempted arson on July 19.

Collins lit a corset on fire while fighting with her boyfriend, and the resulting fire spread and destroyed the surrounding 24-unit apartment complex.

"It hurt me to the bottom of my heart," said Gretchen Johnson, a former resident, according to AP. "Down to the socks, I lost everything."

Even with the destruction of a \$1.4 million building, the death of several pets and the hospitalization of a couple tenants, Collins was sentenced to one year in prison.

On July 15, Derrick Torian admitted involvement in the 2000 killing of Genevieve Tetpon. Tetpon, an Anchorage woman, was stabbed more than 30 times. Torian was linked to the crime by DNA evidence, but he was the only living witness. The victim and an alleged accomplice to the crime are both dead, according to court filings, thus complicating the trial further. The deal Torian struck with prosecutors was a 15-year sentence, but he could be released on parole in as few as 8 years.

Speaking for the family, the prosecutor in the case said the family was pleased because the verdict provides closure, but Tetpon's aunt told the court they never knew the brutal details until the change of plea hearing.

"I thought I dealt with it, I thought I was OK until I heard today, until I heard the facts," Flora Olrund said through tears.

Clint Campion, a state prosecutor, said evidence is one of a few common reasons prosecutors pursue plea bargains. He said what victims and their families want is another factor, and the values of the community are also considered when agreeing on a sentence.

A change of any substantial size would require a massive investment, Campion said.

"In order to see that number decrease dramatically, you're talking about doing another 150 or 200 trials a year," he said of plea deals. "We're really constrained by the number of judges we have available and the number of trial days we have available."

Rex Butler, a defense lawyer, said judges are too busy to know the ins and outs of every case that comes across their desk. He believes prosecutors and defense lawyers are perfectly qualified to reach a deal most of the time.

"Litigators know about the weaknesses in the case from both sides," Butler said. "They talk about it, they consider it in the plea bargaining process. And then they bring a resolution to the court. Without these plea bargains and resolutions, the court system would collapse."

Steinkruger believes there are many cases where plea bargains are fitting, even most of them, but she said there is a critical problem with the process: a lack of information before judges in a majority of cases.

"When a plea is taken, usually all the judge has in front of her is a pretty thin file that only has the charging document, the complaint or the indictment," Steinkruger said. "Judges do not have police reports. Judges do not have information from the victim, unless the victim has written a letter or is in the courtroom and provides information to the judge."

While judges may reject a plea deal outright, or request more information related to a specific case, Steinkruger, Butler and Campion all agree that rarely happens.

## **NOT JUST ALASKA**

The increasing prevalence of plea bargains is a point of controversy nationally. In federal cases, 95 percent end with a guilty plea, according to Justice Department data.

Some raise constitutional and civil liberties arguments; a right to remain silent to avoid self-incrimination is guaranteed by the Fifth Amendment, an trial by an impartial jury is guaranteed by the Sixth Amendment.

Said Timothy Lynch of the libertarian Cato Institute:

"Plea bargaining unquestionably alleviates the workload of judges, prosecutors, and defense lawyers. But is it proper for a government that is constitutionally required to respect the right to trial by jury to use its charging and sentencing powers to pressure an individual to waive that right? There is no doubt that government officials deliberately use their power to pressure people who have been accused of crime, and who are presumed innocent, to confess their guilt and waive their right to a formal trial. We know this to be true because prosecutors freely admit that this is what they do."

In 2005, a study by Melissa Russano found that most people, guilty or innocent, will accept a plea bargain.

For the study, 330 undergraduate students were accused by a research assistant of cheating on an exam consisting of logic games. The students' activity during the test was closely monitored, and they were threatened with academic probation.

90 percent of those who were guilty took the deal, but 43 percent of students who did nothing wrong falsely confessed.

The study's conclusion: When someone is accused of a crime and at risk of being punished, if pushed with common interrogation techniques, they will often take a deal to minimize severe penalties.

"Minimization, a common and legal interrogation technique, provided an effective means of obtaining true confessions," the study says. "However, this technique also put innocent participants at risk for false confessions."