



The demise of the jury trial

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Imagine you were on trial for your life, but your lawyer insisted on telling the jury you were guilty.

That's what happened to Robert McCoy after he was charged with a triple homicide in Bossier City, La. When the Supreme Court hears oral arguments in *McCoy v. Louisiana* on Wednesday, it will decide whether McCoy deserves a new trial. But it will also have a chance to vindicate the sanctity of the criminal jury trial itself.

Criminal defense is deeply personal. The assistance of counsel is invaluable, but it is defendants, not their lawyers, who get to make fundamental decisions about their cases. The Supreme Court summed this up in 1975 when it held that the Constitution "does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense."

With that in mind, the events of McCoy's case were shocking. Despite the circumstantial evidence against him, McCoy maintained innocence and demanded a jury trial, in which the state would have to prove guilt beyond a reasonable doubt. But McCoy's lawyer thought a better strategy would be to admit guilt to the jury and hope for leniency. McCoy adamantly opposed this idea, but his attorney pursued it anyway.

The plan didn't work, and McCoy was sentenced to death.

Louisiana's main argument for upholding McCoy's conviction is that his lawyer's admission strategy was a reasonable attempt to save his client's life. It's true that in some capital cases, it may be tactically advantageous to admit guilt to a jury, with the hope of avoiding the death penalty at sentencing — just as it may sometimes be prudent to take a guilty plea, instead of risking a harsher sentence at trial.

But the issue isn't whether admitting guilt can be reasonable, it's whether the defendant gets to make that decision for himself.

Respect for autonomy is especially important when a defendant must decide how to weigh the risk of a capital sentence. His decision may turn on beliefs about death and redemption, relationships with friends and family, concern for his own integrity, and inner knowledge of culpability. Some capital defendants will choose to admit guilt, while others may risk execution

to defend their reputation and preserve any chance of exoneration. Either way, a lawyer has no business overriding a client's informed decision on such momentous questions.

The denigration of McCoy's autonomy is all the more dire because the jury trial itself — that cornerstone of American criminal justice — is fast vanishing to the point of practical extinction. Our Constitution and legal heritage are premised on citizen participation in the criminal justice system. But today, more than 95 percent of criminal convictions are obtained through plea bargains, in which prosecutors can bring insurmountable pressure against defendants. Even innocent defendants are forced to plead guilty, simply because the threat of a much harsher sentence at trial is too great.

Coercive plea bargaining is exacerbated by the practical inability of appointed defense counsel to subject prosecutions to meaningful testing. Public defenders are saddled with impossible caseloads, with individual attorneys often required to manage hundreds of different felonies per year, and even more misdemeanors. The role of defense counsel, intended to serve as the defendant's trial advocate before a jury, has largely been reduced to that of plea negotiator.

There's no easy solution to the problem of coercive plea bargaining, but the least we can do is not discourage trials even more than we already have. Jury trials entail risk and uncertainty, but the defendant should at least be ensured that he will have a zealous advocate, committed to defending his innocence and putting the state to its burden.

By permitting defense counsel to concede guilt over a defendant's express objection, we further diminish a right that has already been greatly eroded by a prosecutor-driven conviction machine.

Robert McCoy, the defense bar, and the criminal justice system as a whole will all be best served by a clear decision reversing McCoy's conviction and granting him a new trial.

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