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Feb. 16, 2021

Federal criminal defendants deserve their day in court

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A federal judge in Orange County recently dismissed charges against four criminal defendants, citing an unconstitutional delay in holding jury trials due to the COVID pandemic. Some of these cases involved serious offenses.

U.S. District Judge Cormac Carney (https://www.dailyjournal.com/judicial_profiles/8786) granted dismissal requests from defense attorneys in cases involving one robbery, two gun possessions against convicted felons and a 35-count indictment against a doctor accused of illegally supplying addicted patients with drugs. The delays, he said, violated the defendants' constitutional right to a speedy trial.

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Cormac J. Carney
Central District of California
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Judge Carney was right. "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." The Sixth Amendment may not have defined "speedy," but the Speedy Trial Act of 1974, sets clear time limits for completing the stages of a federal criminal prosecution. The information or indictment must be filed within 30 days from the date of arrest or service of the summons, with trial to commence within 70 days from the later of the date the information or indictment was filed or the date the defendant appears before an officer of the court in which the charge is pending.

It has now been almost a year since the Central District of California, which includes Orange County, held a trial. Jury and bench trials were tabled last March pursuant to restrictions approved by a majority of judges. General Order No. 20-09, filed Aug. 6, 2020, addressed the COVID-19 public health emergency with a blanket statement: "Until further notice, no jury trials will be conducted in criminal cases." The order established a three-phase "Plan for Phased Resumption of Operations" but provided that Phase 3 (resumption of jury trials), "will be implemented at a date to be determined."

Before the current pandemic, federal courts invoked the "judicial emergency" provision of the STA only three times since 1974. Now courts are justifying tolling time periods by stating that the "ends of justice" outweigh the interests of defendants in a speedy trial. The Central District's order is typical: "The Court concludes that conducting jury trials would also likely place prospective jurors, defendant, attorneys, and court personnel at unnecessary risk. Therefore, the Court finds that suspending criminal jury trials in the Central District of California because of the increase in reported COVID-19 infections, hospitalizations, and deaths serves the ends of justice and outweigh the interests of the public and the defendants in a speedy trial."

Few courts have explained how these ends are actually served by denying defendants their day in court, and even fewer have applied a balancing test of defendants' individual records. To treat all defendants the same way is anathema to any notion of justice. Each case is different, and justice demands speedy trials for cases that warrant them. More importantly, emergency declarations cannot, under the law, apply to *time limits* for trying detained persons "who are being detained solely because they are awaiting trial."

Beyond the constitutional problems with detaining criminal defendants -- presumably innocent until proven guilty -- for an indefinite period, their detention doesn't truly serve the interests of public safety. In fact, restrictions on federal trials may actually be worsening the COVID-19 problem, as detainees are forced to spend more time in overcrowded jails, places that have seen some of the worst outbreaks in the country.

So let's look at what's actually happening in the Central District. The "Order Concerning Phased Reopening of the Court" was a sound response to a dire situation. State courts, also confronting a once-in-a-lifetime public health emergency, put similar holds on criminal cases. However, the state courts recognized the importance of speedy trials for criminal defendants, and those in Los Angeles moved to reopen with well-thought-out safety measures. Yes, things look considerably different -- with masks, plexiglass barriers and social distancing -- and the challenges for defendants and their attorneys are considerable, but criminal trials are proceeding.

If state courts, whose facilities are considerably less spacious than federal courts, can hold jury trials, nothing -- save budgetary concerns -- should prevent federal courts from doing the same. This far into the pandemic, businesses large and small have already figured out how to safely reopen; federal courts can certainly do so as well. They can consider alternative configurations that allow social distancing and other safety measures.

In other ways, prosecutors can help alleviate court congestion by moving criminal defendants through the system. They can evaluate cases and offer plea deals to those they consider less severe, moving large numbers of defendants into diversion programs or dismissing their cases. The remaining cases should be scheduled for speedy jury trial.

The COVID pandemic is serious. But the rights established under our Constitution are no less serious. No criminal defendant deserves to be deprived of liberty for months or years without trial and due process. Hats off to Judge Carney and other federal judges who are calling for a resumption of criminal trials in a safe manner.

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