

An Urgent Address to Criminal Defense Lawyers from CACJ President Eric Schweitzer

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COVID-19 is inflicting irreparable harm upon the fair administration of justice in our state. It is more than a week since the Governor declared a state of emergency, yet the Chief Justice has not taken the steps to authorize a state-wide response. (See Gov't Code §68511.) Absent Orders from the Chief Justice, courthouses are being closed and the right to timely processes delayed county by county on an *ad hoc* basis. Pre-trial defendants are being forced not only to endure prolonged and meaningless incarceration, but also to suffer in the worst imaginable environments with medical indifference to humane treatment a virtual certainty. In this milieu, entrusting the safety and welfare of ourselves and our clients to the tender mercies of jail administrators is unwise and irresponsible. We must act.

We criminal defense attorneys have a mission-critical duty. Now, and with singular purpose it is we who must demand an end to judicial wavering on what is to be done. To spur intelligent action from the judiciary we demand release of nearly all pre-trial detainees, citations rather than arrest in all eligible cases, and clear standards for managing jury trials and general criminal cases during the pandemic.

In any battle, timing is key. It is our prerogative, and our solemn duty now to spur decision makers into action without regard for worn out canards that blame the accused for their condition. This is our duty. Our destiny. We must carry it out now with vigor. Failure is not an option.

As President of California Attorneys for Criminal Justice, and in the absence of any clear and decisive state policy regarding court closures and criminal cases during this pandemic, I ask you each to advance these demands in every courtroom:

1. Release all pre-trial detainees not facing serious or violent felony charges. The dangers posed by keeping people in custody go up greatly in cases of a pandemic. Very few if any misdemeanor defendants should be kept in custody. Courts should be more willing to release defendants. The dangers affect broad categories of people, including both defendants and jail staff.
2. Encourage courts to continue cases with out of custody defendants for six months.

Lengthen the minimum time to hold a trial for in custody defendant from 30 days to 60 days for misdemeanors and from 60 to 120 days for felonies. Lengthen the time to hold a trial for out of custody felony defendants to 180 days.

3. Permit out of custody defendants and attorneys to appear by telephone or by other electronic means.
4. Permit courts to allow felony defendants to appear 977 with an order signed by the judge permitting the defendant to do so or an email from the Judge's clerk or the judge. No written document signed by the defendant would be necessary; the defendant would not have to appear in court prior to the 977 motion being granted.
5. Insist that all jails and prisons have ready access to testing.

Resistance to these demands is inevitable. Please remember that in pursuit of the fair administration of justice, you are not alone. Already, criminal defense offices and organizations across the land, including CACJ, are standing with you. Be stalwart. Be forceful. Be as one.

MARCH 14, 2020

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