COVID-19 and Speedy Trial

San Francisco, Portsmouth Square, October 1918

6th Amendment

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Barker v. Wingo (1972): No bright-line rule for what constitutes a speedy trial right violation. Instead, look to various factors:

1. Length of delay
2. Reason for delay
3. Defendant's demands (or lack thereof)
4. Prejudice to the defendant
   a) Oppressive pretrial incarceration?
   b) Anxiety and concern?
   c) Impaired trial defense?

Federal Speedy Trial Act – 18 U.S.C. § 3161

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons…

(c)(1) …[T]he trial … shall commence within **seventy days** from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending…

"Ends of Justice" Order

(h) The following periods of delay shall be excluded in computing the time …:
(7) (A) … findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. …[and] the court sets forth … its reasons ….

FRCrimP 48. Dismissal.

(a) By the government. The government may, with leave of court, dismiss an indictment, information, or complaint…

(b) By the Court. The court may dismiss an indictment, information, or complaint if unnecessary delay occurs in:

(1) Presenting a charge to a grand jury;
(2) Filing an information against a defendant; or
(3) Bringing a defendant to trial.

Cal. Penal Code § 1382

(a) The court, unless good cause to the contrary is shown, shall order the action to be dismissed in the following cases:

(1) [no information filed within 15 days]

(2) [no trial within 60 days of felony arraignment]. However, an action shall not be dismissed under this paragraph if either of the following circumstances exists:

(A) ["general waiver" by defendant]

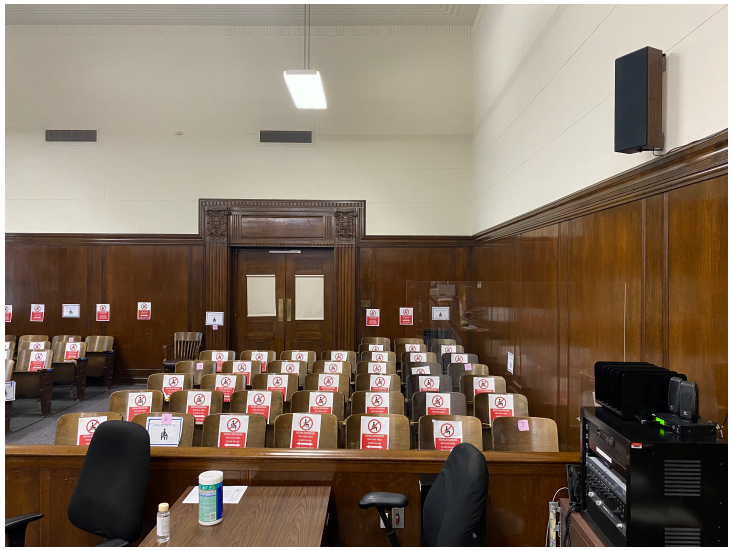
(B) Defendant requests a trial date after 60 days

Cal. Const. Art. I, § 15

"The defendant in a criminal cause has the right to a speedy public trial…"

* Has been construed in *Serna v. Superior Court* (Cal. 1985) as being triggered by the filing of a criminal ***complaint***, and requiring a showing of ***prejudice*** to the defendant.

Social Distancing in the Courtroom and COVID Precautions



COVID-19 may not be a temporary emergency - it is a global pandemic.

- **Public Health**
- **Public Safety**
- **Reducing the Spread**
- **Building public trust and confidence**
- **Safety of jurors and witnesses who are 'compelled' to attend a court proceeding**
- **Safety of the parties, court personnel and law enforcement**
- **Shelter in Place (SIP)**
- **14 Day Quarantines**
- **Right to Counsel**
- **Right to a Speedy Resolution**
- **Defendant's right to a speedy trial**
- **Physical Presence of witnesses**
- **Oath**
- **Cross Examination**
- **Observation of the demeanor by the trier of fact**
- **Reliable evidence**
- **Rigorous adversarial testing**
- **Parties' ability to observe the jurors**
- **Prevent extraneous and/or prejudicial information from entering deliberations**
- **Ensure the integrity of deliberations**

The Confrontation Clause guarantees a criminal defendant “a face-to-face meeting with witnesses appearing before the trier of fact.

- Coy v. Iowa (1988) 487 U.S. 1012, 1016 (Coy)
- Maryland v. Craig (1990) 497 U.S. 836 (Craig).
- Crawford v. Washington (2004) 541 U.S. 36
- People v. Lujan (2012) 211 Cal.App.4th 1499, 1505 (Lujan).
- People v. Arredondo (2019) 8 Cal.5th 694 (Arredondo).

Face Coverings: Masks and Face Shields - *Crawford v. Washington (2004) 541 U.S. 36*

- Think about analogous cases that involve disguises, scarfs, confidential informant cases, face coverings for medical reasons, etc.
- Will a transparent face covering satisfy the confrontation clause?
- What is the least restrictive option that will not infringe upon the defendant's right to confrontation?
  - Can you see the witness's eyes?
  - Can you see whether the witness appears comfortable or uncomfortable, hesitant or confident, indifferent or nervous?
  - Can you discern their facial expressions?
- What can you do to mitigate the concern that a witness would be more likely to lie about the defendant/facts from behind a concealing mask?

Public Trials - Social Distancing & The Right to A Jury Trial Must be Reconciled

- Stanley v. Super. Ct. (2020) 50 Cal.App.5th 164 (Stanley)
- Bullock v. Super. Ct. (2020) 51 Cal.App.5th 134 (Bullock)

Presence

- The County Health Officer order is authorized by Health and Safety Code sections 101475 and 120175. Section 101475 allows among other things the city health officer to take “any preventative measure that may be necessary to protect and preserve the public health from any public hazard” during any “‘state of emergency’” as that term is defined in Government Code section 8558.
- Other considerations: seating arrangements; personal protective equipment; ventilation; and compliance with health officer orders.
- The Press
- Jail Visits and Transportation of Inmates on Trial, See, County of Nevada v. Super. Ct. (2015) 236 Cal.App.4th 1001
- Conflicts of Interests, Professional Responsibility and Invited Strickland Error (Incompetence of Counsel) , See, Rule 1.7 and 1.16 of the Rules of Professional Conduct

There is a fundamental difference between the preliminary hearing and jury trial.

Bullock notes: "[A] greater need" to continue trials "which present a higher risk of spreading infection" due to the number of witnesses and potential jurors. Preliminary hearings, on the other hand, have relaxed rules for hearsay, require fewer witnesses, and have limits on cross-examination as well as defense witnesses. Delaying an in-custody defendant's right to a probable cause finding at a live hearing "risks detaining the defendant for a prolonged period on a groundless complaint. Delaying that same defendant's post-examination trial does not present that risk. [Citations.]" (Id., 264 Cal.Rptr.3d at pp. 715-16 [italics added].)

- In Stanley v. Super. Ct. of Contra Costa (2020) 50 Cal.App.5th 164, defendant challenged the 23 March 2020 and 29 April 2020 orders by the Chief Justice continuing all jury trials for a total of 90 days and extending by a total of 90 days the trial deadline under section 1382. Stanley said " 'the severity of the COVID-19 pandemic and the impact it has had within this state' constituted good cause for the 90-day continuances and extensions of time." In reaching that conclusion, Stanley explained " 'courts are clearly places of high risk during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries—well in excess of the numbers allowed for gathering under current executive and health orders.'" (Bullock, 264 Cal.Rptr.3d at p. 715, quoting Stanley, supra, 50 Cal.App.5th at p. 167.)

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In sum, while appellate courts have upheld extending the statutory deadline for jury trials based on the pandemic in light of emergency orders, the Chief Justice has also strongly encouraged courts to continue business to the greatest extent possible. And since grant or denial of a continuance is reviewed for abuse of discretion, whether the pandemic on its own constitutes good cause for a continuance depends on the circumstances.