

The Way To Restore Confidence In Courts Is To Clear The Backlog

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Eugene is a retired judge of the Santa Clara County Superior Court, where for 20 years he presided over cases in the criminal, civil, probate, family and delinquency divisions of the court. He has presided over an adult domestic violence court and in 1999 presided over the first juvenile domestic violence and family violence court in the United States.

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Judge Rosenberg's Perspective piece, "The Role of the Robed," Nov. 3, speaks several truths about the current state of the public's confidence in judiciaries state and federal. While I agree that recent Supreme Court decisions and other legal matters of national intrigue shouldn't undermine that confidence, I think it's necessary to acknowledge that it has.

And rightfully so, in many regards. Even though we're all eager to put it behind us, we're still wrangling with a global pandemic that's made the average court's already significant backlog all that much worse. The Daily Journal provided great forecasts at the outset of the pandemic about the debilitating impact on backlogs that would inevitably result, and while most courts moved swiftly and effectively to remote services, much of the damage was already done.

Most people who end up interfacing with the judicial system do so through its more "mundane" services - traffic court, small claims and the like. Putting myself in the shoes of one of these average joe litigants, I can easily understand how adding two or three years of frustration to the process could put their faith in question.

Civil litigation, including landlord-tenant, family, personal injury and other matters, have also been swamped in delays. While most cases will settle, having a hearing date is critical to aid in that process.

Even before the pandemic, personal injury cases in certain counties were drifting dangerously close to running afoul of California's five-year-limit for bringing a case to trial. I've seen no evidence that courts have been able to effectively reverse this trend, and I can only assume it's a problem that's gotten worse post-COVID. Is it unreasonable for the family of a plaintiff who suffered debilitating injuries to lose faith in the system after they've languished in medical debt for years waiting for their day in court to come?

Chief Justice Tani Cantil-Sakauye suspended the state's guaranteed right to a speedy trial at the pandemic's outset, but that hasn't stopped more than 200 criminal defendants from citing the right in their efforts to have their cases dismissed. What will happen if and when hundreds of criminal defendants pull their speedy time waivers in our fifty-eight counties? How will the courts deal with that surge while at the same time addressing the serious issues of civil cases? If I was a victim in one of those crimes, my confidence certainly wouldn't be absolute.

And then there's family courts, divorce courts, and so on. Many, many avenues for a loss in judicial confidence. Many who count on us to adjudicate their cases are being severely harmed and don't see a brighter future. It is the court's duty to provide one.

That's not to say that judges should feel some personal responsibility to resolve a national crisis. Nor do I personally disagree with anything Judge Rosenberg has said - there's no question that local and state courts have been unfairly maligned based on preconceived notions entirely outside your average judge's control.

But it's just as easy for me to imagine a previously impartial person becoming radicalized against the system after their simple-on-its-surface legal dispute snowballs into a complex and confusing in-court quagmire.

These are the people the courts should be eager to prove wrong, not the ones who have their minds made up in the first place. The notion that the third branch of government is inherently immune to the issues that plague the legislative and executive is a nice idea, but it's not really a practical one. Judges are appointed and elected by partisans, and while many may take their neutrality seriously, they were put there for a reason.

Even putting that aside, there do exist judges that are simply bad at their jobs, and even decent judges who make the occasional mistake. These people are reasonably creating confidence problems.

If our courts want the respect owed to the third branch of government, the courts will need to deliver services in a manner that serves our citizens. COVID is just one cause of many to explain why they are having difficulty doing so, and there will undoubtedly be many challenges of similar scale on the horizon. While I understand that judges are as eager as everyone to get back to business as usual - and almost universally take their position as impartial adjudicators very seriously - someone needs to be sounding the alarms until this problem is resolved.

Judge Rosenberg and I agree: our courts have a confidence problem, and impartiality is important. But the world's most perfectly impartial judge would still have a confidence problem if his backlog was clearing at a glacial pace. We have an access problem - that's the most important issue, and the one judges are actually in a position to combat.

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