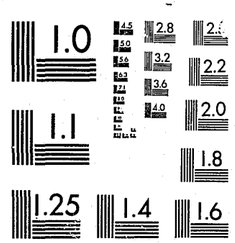

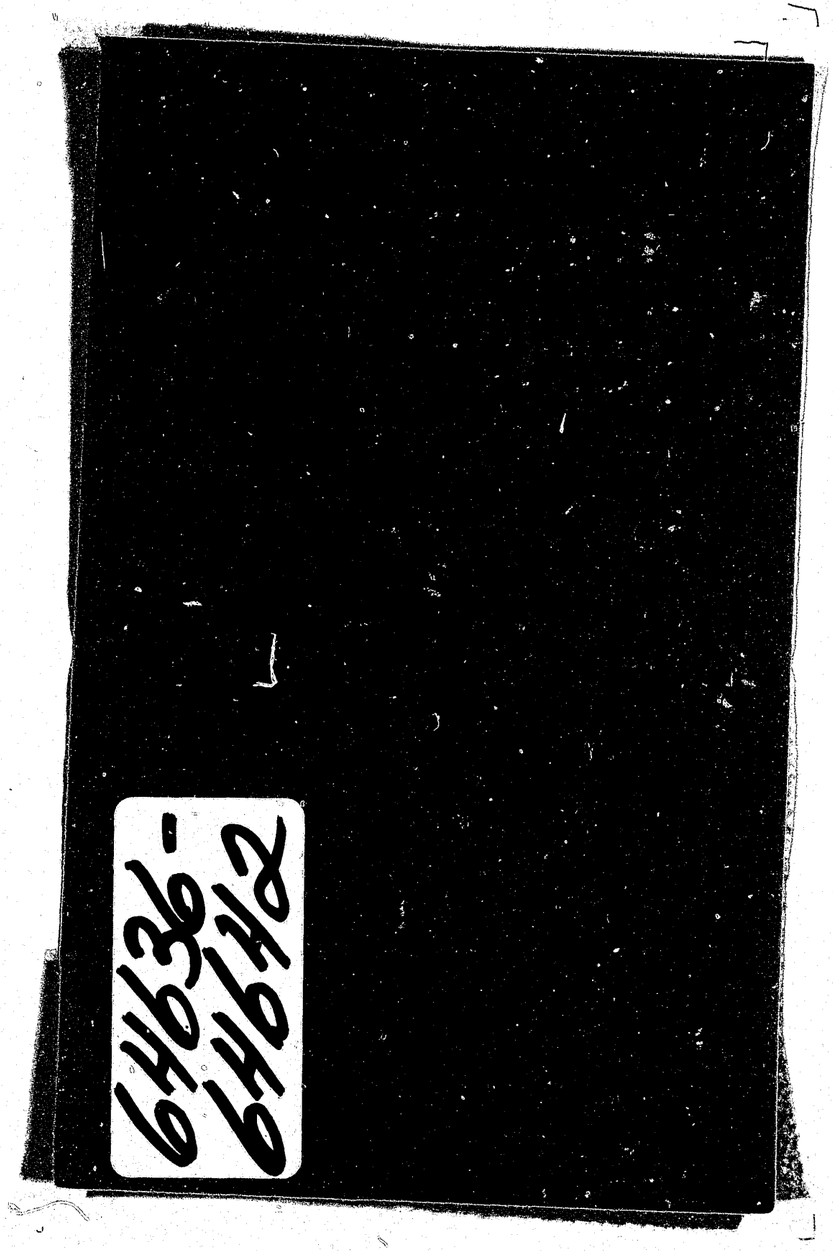

THE SPEEDY TRIAL ACT AMENDMENTS OF 1979

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 961 and S. 1028

TO AMEND THE SPEEDY TRIAL ACT OF 1974

MAY 2 AND 10, 1979

Printed for the use of the Committee on the Judiciary

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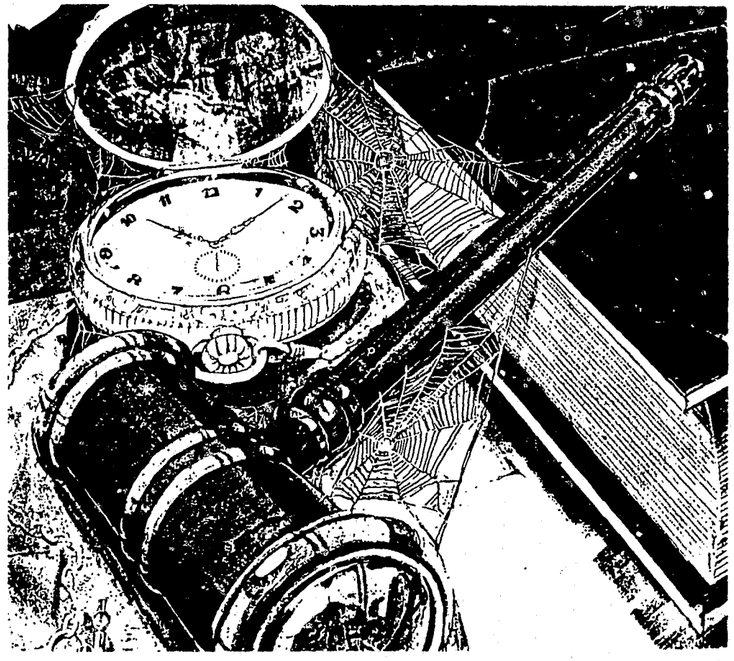
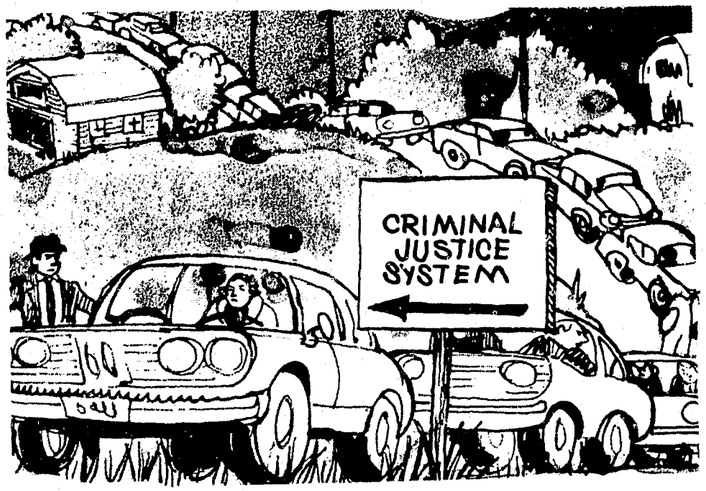
THE RIGHT TO A SPEEDY TRIAL:

A Manual For Lawyers, Judges And Legislators

By Noal S. Solomon





PREFACE

The purpose of this manual is to help inform attorneys about the necessity to protect their clients' rights to a speedy trial. Since many readers will also be judges, it is hoped that they too can gain a better understanding of this important constitutional right and incorporate it into their courtrooms. A final purpose is that the legislators who read this will afterwards encourage their state legislatures to study the speedy trial problem in their states. Remedial legislation may be necessary since very few states meet the standards of the federal speedy trial law.

Special thanks to the Playboy Foundation for printing this manual. Playboy has supported similar civil liberties issues and without their generosity and concern for the speedy trial right this project would not have been possible.

In addition, thanks to the Honorable Sam J. Ervin, Jr., a former United States Senator and justice of the North Carolina Supreme Court. Senator Ervin's efforts as Chairman of the Senate Judiciary Committee were responsible for the passage of the Federal Speedy Trial Act of 1974. This legislation now helps protect the rights of thousands, and it is a model that should be followed by all states.

I hope you enjoy reading this manual.

NOAL S. SOLOMON

FOREWORD

The cost of crime to our country and its people in terms of economic losses and physical and psychological suffering in beyond calculation. Except for its obligation to defend our land against a foreign foe, the most solemn and sacred responsibility resting on government is to administer criminal justice.

In doing so, government must seek to prevent crime and punish in an appropriate way those who commit it. The objectives of punishing perpetrators of crime are to punish and reform them, deter others from like offending, and thereby protect society.

Justice prevails when every man gets his due. Our system of criminal justice is based on the proposition that justice is due to society and the victims of crime as well as to the accused. As Daniel Webster so well said in prosecuting the accessories to the murder of Captain Joseph White, "every unpunished murder takes away something from the security of every man's life."

The great and wise men who added the Bill of Rights to the Constitution knew, however, that tyranny perverts the forms of criminal law to crush good men who oppose its will. While they wished the sword of justice to be sharp, they were determined that it should not be used to slay the innocent.

To this end, they decreed that every person charged with a crime has an absolute right to a fair trial. By this they meant that he is entitled to a trial in an open court before an impartial judge and an unprejudiced jury in an atmosphere of judicial calm. They necessarily imposed the responsibility for enforcing this right on the trial judge. They made the right to a fair trial effective by inserting the Fourth, Fifth, Sixth and Eighth Amendments in the Bill of Rights.

The right to a speedy trial is precious. It does not contemplate that the accused is to be tried with the speed of Jedwood justice, which Sir Walter Scott said hangs in haste and tries at leisure. But it does contemplate that trial shall be had with reasonable dispatch after the prosecution and the defense have had adequate opportunity to prepare for it.

The right to a speedy trial has this three-fold purpose. It protects the accused, if he is detained in jail while awaiting trial, against extended imprisonment before trial; it relieves him of anxiety and public suspicion arising out of an untried accusation of crime; and it insures that he is to be tried while his witnesses are available and their memories are undimmed.

Speedy trials are indispensable to the sound administration of justice. They make it as certain as it is humanly possible that the innocent will be speedily

acquitted, and the guilty swiftly convicted and punished.

For ages, society has complained that justice travels on leaden feet. The Sixth Amendment pledge that the accused in all criminal prosecutions shall enjoy the right to a speedy and public trial was designed to end this complaint and convert into a reality the Magna Carta's ancient promise: "To no one will we deny justice, to no one will we delay it."

For a combination of reasons, the Sixth Amendment pledge did not accomplish this purpose. Legislators were unwilling to provide sufficient judges, prosecuting attorneys, and supporting personnel to make the right to a speedy trial effective. Like other men, some judges, prosecuting attorneys, and defense lawyers are inclined to be indolent and dilatory.

The constitutional right to a speedy trial was interpreted by appellate courts to be a personal right which the accused had to invoke, and the accused was reluctant to invoke it because he had the heavy burden of showing the delay in bringing him to trial was the inexcusable fault of the prosecution. The accused was also reluctant to demand a speedy trial because he knew that adverse witnesses might become forgetful, or die, or disappear, and in consequence he would go unwhipped of justice.

As a result of the law's delays, court dockets became conjested, and jails became overcrowded with accused awaiting trial. At the time Congress enacted the Speedy Trial Act of 1974, available records indicated that there were more people in jails awaiting trial than there were in prisons serving sentences. Because of these things, plea-bargaining became the order of the day in courts past numbering, and judges were forced to accept pleas of guilty to lesser offenses merely to cope with intolerable case loads.

In lamenting the denigration of our criminal courts, Professor Lewis Katz, of Case Western Law School, said: "Felony trials are reduced to auctions where successive bids are made until one is finally accepted. The auction process invariably compromises and often totally disregards both the defendant whose freedom is at stake and the community whose security is in jeopardy."

My experience as a trial lawyer and judge had engendered in my mind abiding convictions respecting the administration of criminal justice. Those relevant to the speedy trial problem are stated below.

If justice is to be done to the accused and the victims of crime and society are to be rpotected, criminal cases must be tried while witnesses are readily available and their recollections are fresh. Hence, trials must be speedy.

The Sixth Amendment speedy trial guarantee failed to achieve its purpose for the reasons indicated. To be effective, the guarantee must be reinforced by congressional action. Like most other provisions of the Bill of Rights, the

constitutional speedy trial guarantee is procedural. Procedural requirements are all important in law. They require the exercise of judicial power to conform to the rule of law rather than to succumb to the caprice of man.

With the exception of the limited number of criminal cases where the accused is not available for trial, judges, prosecuting attorneys and defense lawyers possess the power to determine whether criminal justice will proceed with dispatch or move on leaden feet. In the ultimate analysis, laws are feckless unless they are based on reality.

If Congress is to make the Sixth Amendment guarantee of a speedy trial effective at the federal level, it must enact and retain in force two congressional acts. The first must provide sufficient judges, prosecuting attorneys, defense lawyers, and supporting personnel to enable federal courts to try criminal cases with dispatch; and the second must impose on judges, prosecuting attorneys, and defense lawyers under appropriate sanctions the positive responsibility for trying within prescribed periods of time all criminal cases in which the accused is available.

These abiding convictions prompted me to introduce and fight for the enactment of the legislative proposal which became the Speedy Trial Act of 1974.

Some federal judges are antagonistic to the Act. Their attitude is understandable. After all, federal judges are human beings, and human beings are inclined to dislike laws which constrain them to do their duty.

SAM J. ERVIN, JR.
Former United States Senator

THE RIGHT TO A SPEEDY TRIAL

Introduction*

"The history of the right to a speedy trial and its reception in this country clearly establish that it is one of the most basic rights preserved by our Constitution," according to Chief Justice Earl Warren writing for the Supreme Court in Klopfer v. North Carolina, 386 U.S. 213 (1967). It was included in the Bill of Rights without debate.

"Although the Constitution provides that 'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial,' this mandate has for the most part gone unenforced," so stated the chairman of the Subcommittee on Crime of the Committee on the Judiciary of the U.S. House of Representatives when on September 12, 1974, the subcommittee opened its first in a series of hearings on legislation which would "breathe life into the Sixth Amendment's promise to the criminally accused of a speedy trial." (Speedy Trial Act of 1974, U.S. House of Representatives Report No. 42, 1974, p. 1).

The Federal Speedy Trial Act (18 U.S.C. 3161 et seq.), which was passed by Congress in 1974, applies directly only to federal criminal defendants. It says, in effect, that any defendant in a criminal proceeding in the federal courts who is not brought to trial within ninety days after arrest, the charges are to be dismissed.

It is my opinion that the Federal Speedy Trial Act establishes a standard that should be followed by the states. All of the states provide for a speedy trial in their constitutions, but what is considered "speedy" varies from state to state. Therefore, since everyone is entitled to a speedy trial, it is unfortunate when a large number of defendants are brought to trial much longer than ninety days after arrest.

The United States Supreme Court has held that the Sixth Amendment right to a speedy trial is enforceable against the states since it is one of the most basic rights preserved by our constitution. An Assistant U.S. Attorney General said in 1974 prior to the passage of the current federal speedy trial law: "Since the right to speedy trial is applicable to the States by reason of the Fourteenth Amendment, Klopfer v. North Carolina, 386 U.S. 213 (1967), a congressional definition of this right is likely to affect proceedings in State courts as well." (Speedy Trial Act of 1974, U.S. House of Representatives Report No. 42, 1974, p. 197).

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* It should be noted that since this manual is being distributed nationwide, most of the cases cited are federal cases. This is because, for the most part, most states follow the federal cases mentioned and it would be repetitious to cite cases from all jurisdictions.

Federal courts have sometimes taken the initiative to improve things which are primarily of state concern when the states have not done what is expected of them. In this case, the issue of the right to a speedy trial is of nationwide, if not global, concern. For a long time, but especially in recent years, the states have tried to rationalize poor conditions in jails and schools because of the lack of funds. However, this argument, which is discussed more fully later in this manual, has not been acceptable by the federal courts in some instances. But, surely the time has come for the states to take the initiative in solving their problems and stop sending their dirty linen to the federal courts for cleaning.

While it is important to keep a constitutional balance between the states and the federal government, it is necessary for the federal government and/or the federal courts to take appropriate action when the states neglect to do what is best for their citizens. An example is the federally mandated 55 miles per hour speed limit on roads. Another time when the federal government took action when the states failed to do so was with gas rationing about six years ago. Sometimes only a push in the right direction is needed. Other times more guidance is necessary. The federal courts try not to take advantage of their powers and prefer the states to handle their own local matters. As the Second Circuit U.S. Court of Appeals said in Stone v. Philbrook, 528 F.2d 1084 (2d Cir. 1975), "the Vermont courts, with their day-to-day familiarity with the workings of the State's welfare system are in a better position than a federal judge to decide the delicate question of state law."

Of course, I believe that rules for speedy trials in the state courts should be drafted by each state. However, if the state laws do not meet certain criteria then it would be proper for the federal courts to take over where the state left off. It is desirable to protect the interests of the people. After all, even though the residents of a particular state may be citizens of that state, they are also citizens of the United States.

It is wrong to have laws that have no meaning. While the statutes may be verbose unless the laws are enforced they are just empty words. In more instances than I would like to think of, we have laws on the statute books which are not enforced. And even if they are enforced, many laws are not enforced properly because of their vagueness. As long as there is a law it should be enforced -- and not selectively and intermittently. Everyone is entitled to equal protection of the laws. If a law is not enforced it should be repealed. It is possible that many of these "unenforced" laws are out of date. Conditions and circumstances change and this is to be expected. But a law that is ambiguous and uncertain is almost as if there is no law at all.

The speedy trial rules were designed to require the government to be ready

to try cases promptly, subject to certain types of delay generally recognized as arising from legitimate or unavoidable causes. In the past several years a growing number of appeals have been based, in full or part, alleging a denial of a speedy trial. The right to a speedy trial goes back long before there was a United States of America, and the discussion of this well founded right in recent years brings to the public's attention a closer cognition of the problem surrounding congestion and delays in our courts.

Federal Law Supersedes State Law
In Conflicts

There is a well known conflicts of law principle that, generally, whenever there is a conflict between federal and state law it is the federal law that governs. This applies to the speedy trial laws also. The "Supremacy Clause" of the United States Constitution (Article VI) provides that "This Constitution and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land; and the judges in every State shall be bound thereby."

In Brown v. Western Railroad, 338 U.S. 294 (1948), the Supreme Court said "The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local procedure." In Byrd v. Blue Ridge Electric Cooperative, Inc. 356 U.S. 525 (1958)m the Supreme Court suggested that some constitutional doctrines are so important as to be controlling over state law. In Byrd the right to a jury was in question.

The Supreme Court has held that although federal claims may be adjudicated by state courts, state laws are never controlling on the question of what the incidents of any federal right may be. The reasoning expressed by the court was that federal rights could be defeated if states were permitted to have the final say. Dice v. Akron, Canton & Youngstown Railroad Co., 342 U.S. 359 (1952).

Where federally protected rights have been invaded, the federal courts are able to adjust their remedies so as to grant the necessary relief. The Supreme Court has held that violation of federally protected rights by agents of the federal government is such a serious istuation that a person should not have to rely on the states to protect his rights. In this case the plaintiff's Fourth Amendment rights were violated. Bivens v. Six Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971).

There would be no problem in determining that the federal speedy trial law would apply if the state law was in conflict if the issue was that clear. Unfortunately, such is not the case. However,the United States Constitution -- the Sixth Amendment -- provides for a "speedy" trial and while the constitution

is not precise in what is considered speedy, the fact that this is included in the United States Constitution makes it a federal question. A speedy trial is also provided for in state constitutions but even if it were not it would not matter. The United States Constitution is not as precise as might be desirable at times. But its vagueness was deliberate because our founding fathers knew that conditions would change and the constitution was meant for all generations.

In determining whether a law is constitutional, it must be decided if the law is reasonable, clear, not discriminatory, and not arbitrary. Webster's New Collegiate Dictionary defines "speedy" as being "marked by swiftness of motion or action." The word "fast" is given as a synonym and the word "dilatory" ("tending or intended to cause delay") as an antonym. "Speedy" may be construed as being without unnecessary delay. Of course, as with all determinations for what is considered reasonable, a court has that responsibility, unless the legislature makes a provision. Naturally this would depend upon the circumstances.

By passing the Speedy Trial Act of 1974, Congress has, therefore, decided that any time within ninety days is speedy. Other states have similar laws which say that a trial must be held within, for example, 90 days or 120 days. If federal law calls for trials within ninety days, any longer period would seem to be contrary to a speedy trial. I think it is reasonable to expect all states to be able to have all criminal trials within ninety days also unless, of course, it was waived by the defendant. Of course, a difference of about thirty days would not be a great difference, but when the delay is much longer a question arises. The speedy trial laws of many states are vague and do not set forth a time limit in days or months. Consequently it is not unusual for trials to start considerably after ninety days. Sometimes it may be a few days later, sometimes a few weeks or a number of months or years, and justice delayed is often times justice denied.

In one case, for example, in New York State, a man's trial for assault and criminally negligent homicide was not begun until 44 months after his arrest. His conviction was reversed because he was denied a speedy trial. In that case, it was obvious that his right to a speedy trial was violated. In The People of the State of New York v. George Hankins, ___ A.D.2d___ (1976), the Appellate Division of the New York State Supreme Court said while no particular time of delay will require a dismissal, a delay of 44 months from arrest "is upon its face a patent frustration of the right to a speedy trial and in the absence of a showing of facts which establish the delay was compatible with the sound administration of justice, the right of a defendant must be vindicated by a reversal of the judgment and a dismissal of the indictment."

Criminal courts in this country have a dual problem. First, is the

conviction of the guilty followed by such disposition of the case by way of sentence or otherwise. Second, is the protection of the innocent against unjust accusations and unfair convictions, and safeguarding even the guilty against oppression and abuse. As the Georgia Supreme Court pointed out in Denny v. State, 6 Ga. 491 (1842), that "Our Penal Code protects defendants from vexations and oppressive delays, whilst, at the same time, the rights of the prosecution are guarded."

Prior to 1940 there were very few United States Supreme Court decisions reviewing state criminal cases. By comparison, today such cases are a large part of the Court's business. The application of federal standards to state criminal procedure has been a perplexing issue.

Mr. Justice Black in Adamson v. California, 332 U.S. 46 (1947), wrote that his "study of the historical events that culminated in the Fourteenth Amendment... persuades me that one of the chief objects that the provisions of the Amendments' first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights applicable to the states." The Justice said he believed "the original purpose of the Fourteenth Amendment" was "to extend to all the people of the nation the complete protection of the Bill of Rights. To hold that this Court can determine what, if any, provisions of the Bill of Rights will be enforced, and if so to what degree, is to frustrate the great design of a written Constitution."

Up until 1952 the Bill of Rights of the United States Constitution was construed as being binding only on the federal government -- not on the states. But in that year in Rochin v. California, 342 U.S. 165 (1952), the Supreme Court changed its viewpoint and allowed a broader interpretation of the ten amendments. The Court noted that the Due Process Clause of the Fourteenth Amendment "empowers this Court to nullify any state law if its application 'shocks the conscience', offends a 'sense of justice' or runs counter to the 'decencies of civilized conduct.'" The Court emphasized that these criteria "do not refer to their own consciences or to their senses of justice and decency...but by 'the community's sense of fair play and decency' and by the 'traditions and conscience of our people.'"

In Rochin, the evidence (drugs) was obtained as the result of "pumping" of the appellant's stomach against his will and he was convicted of possessing morphine. The Supreme Court said while reversing Rochin's conviction that there is a "general requirement that States in their prosecutions respect certain decencies of civilized conduct." Mr. Justice Black, in his concurring opinion,

noted that he was afraid that erratic judicial decisions might "imperil all the individual liberty safeguards specifically enumerated in the Bill of Rights."

Powell v. Alabama, 287 U.S. 45 (1932), gave one test for determining whether a right extended by the Fifth and Sixth Amendments with respect to federal criminal proceedings is also protected against state action by the Fourteenth Amendment. Powell held that the question is whether a right is among those "fundamental principles of liberty and justice which lie at the base of all our civil and political institutions." In re Oliver, 333 U.S. 257 (1948), imposed another test, which is whether it is "basic to our system of jurisprudence." Another test was given in Gideon v. Wainwright, 372 U.S. 335 (1963), which is whether it is"a fundamental right essential to a fair trial."

Duncan v. Louisiana, 391 U.S. 145 (1968), placed great emphasis on the Fourteenth Amendment in its application to the states of the right to a jury trial in criminal cases. The Court said "A right to a jury trial is granted to criminal defendants in order to prevent oppression by the Government. Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority." The right to a jury trial was given to protect against arbitrary action by a judge. While the Court noted that a jury trial has its weaknesses and the potential for misuse, the benefits of the right to a trial by jury far exceed possible weaknesses. The Court noted also the "deep commitment of the Nation to the right of jury trial."

In the landmark case of Younger v. Harris, 401 U.S. 37 (1971), the Supreme Court held that it would be permissible for the federal courts to intervene in a state criminal proceeding where there is a showing of "bad faith" or "harassment" by state officials responsible for the prosecution, where the state law to be applied in the criminal proceeding is "flagrantly and patently violative of express constitutional prohibitions," and where there exist other "extraordinary circumstances in which the necessary irreparable injury can be shown even in the absence of the usual prerequisites of bad faith and harassment."

It would appear that equal protection of the laws would be sufficient to allow the federal courts to make sure that state criminal standards are no less than federal standards. The Supreme Court said in Robb v. Connolly, 111 U.S. 624 (1884), that state courts have the solemn responsibility equally with the federal courts "to guard, enforce, and protect every right granted or secured by the Constitution of the United States." Justice Marshall observed when writing the majority opinion in Benton v. Maryland, 395 U.S. 784 (1969), that "Our recent cases have throughly rejected the Palko v. Connecticut, 302 U.S. 319 (1937), notion that

basic constitutional rights can be denied by the States as long as the totality of the circumstances does not disclose a denial of 'fundamental fairness'. Once it is decided that a particular Bill of Rights guarantee is 'fundamental to the American scheme of justice', the same constitutional standards apply against both the State and Federal Government."

The Right To A Speedy Trial Is A Fundamental Right

A speedy trial is guaranteed the accused by the Sixth Amendment of the Constitution. The Supreme Court in Klopfer v. North Carolina, 386 U.S. 213 (1967), established that the right to a speedy trial is "fundamental" and is imposed on the States by the Due Process Clause of the Fourteenth Amendment. The Court noted in Klopfer that this right "had its roots at the very foundation of our English law heritage," its first articulation appearing in the Magna Carta (1215). Today, each of the fifty states guarantees the right to a speedy trial to its citizens.

Klopfer also held that even if a defendant was released from custody, an unjustified postponement of trial would not be tolerated. The Court said that "The pendency of the indictment may subject him to public scorn and deprive him pf employment, and almost certainly will force curtailment of his speech, associations and participation in popular causes. By indefinitely prolonging this oppression, as well as the'anxiety and concern accompanying public accusation', the criminal procedure condoned in this case by the Supreme Court of North Carolina clearly denies the petitioner the right to a speedy trial."

In Klopfer the question involved was whether a state may indefinitely postpone prosecution of an indictment without stated justification over the objection of an accused who has been discharged from custody. Of course, the United States Supreme Court said they could not procrastinate. The Court said that a defendant has the right to a speedy trial if there is to be a trial. Klopfer was indicted for criminal trespass for refusing to leave a restaurant in February 1964. Prosecution began in March, but after the jury failed to reach a verdict, his case was continued to the next term. That delayed everything until August 1965.

In United States v. Marion, 404 U.S. 307 (1971), the Supreme Court held that the Sixth Amendment's speedy trial provision has "no application until the putative defendant in some way becomes an 'accused.'" The Court noted that the statute of limitations protects against pre-accusation delays. In this case there was a three-year delay from the date of the crime until indictment. Of course, if the Government intentionally delayed the indictment to gain some tactical advantage over the defendant or to harass him, this might have prejudiced him enough to deny him a fair trial, but this was not alleged. The Court noted that the Sixth Amendment

"would appear to guarantee to a criminal defendant that the Government will move with the dispatch that is appropriate to assure him an early and proper disposition of the charges against him."

An important goal of our courts is to mete out justice. In Barker v. Wingo, 407 U.S. 514 (1972), the appellant may very well have been denied a speedy trial because the length of delay between arrest and completion of his trial was over five years. But because there was sufficient evidence to show that the defendant brutally murdered an elderly couple his conviction was affirmed. On July 20, 1958, in Christian County, Kentucky, an elderly couple was beaten to death by intruders wielding an iron tire tool. Two suspects, Silar Manning and Willie Barker, were arrested shortly thereafter. The grand jury indicted them on September 15, 1958, and Barker's trial was set for October 21, 1958. The two defendants were tried separately. On October 23, 1958, the day Manning's trial began, the prosecution obtained the first of what was to be a series of 16 continuances of Barker's trial. The Christian County Court, like many other rural counties in several states, held three terms each year so a continuance meant a long delay.

In June, 1959, ten months after his arrest, Barker was released from jail on a $5,000 bond. Manning was tried before Barker, however it wasn't until December, 1962, after six trials, that Manning was convicted of murdering both victims. Neither Barker nor his lawyer objected to the first 11 continuances. On February 12, 1962, the prosecution was granted its twelfth continuance after Barker's counsel objected. Barker was later convicted and given a life sentence in October, 1963. After his conviction was affirmed by the Kentucky Court of Appeals, Barker went to the federal courts. However, the United States Supreme Court finally affirmed Barker's conviction in 1972 -- some fourteen years after his arrest.

The nation's highest court observed in Barker that the "inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system. In addition, persons released on bond for lengthy periods awaiting trial have an opportunity to commit other crimes." A National Bureau of Standards study in 1970 indicated that if a defendant was released prior to trial, the likelihood that he would commit a subsequent crime increases significantly if he is not brought to trial within sixty days of arrest. (Speedy Trial Act of 1974, U.S. House of Representatives Report No. 42, 1974, p. 3). It is also to society's benefit to see that defendants are given prompt trials. As the Court comiserated: "It must be of little comfort to the residents of Christian County, Kentucky, to know that Barker was at large on bail for over four years while accused of a vicious and

brutal murder."

Also, psychologists have said for a long time that punishment should be administered as soon as possible after the deviant behavior in order to have maximum effect on rehabilitation. This applies to children as well as criminals.

Ironically as it may seem to the layperson, the deprivation of the right to a speedy trial may work to the accused's advantage. The Court noted that "Delay is not an uncommon defense tactic. As the time between the commission of the crime and the trial lengthens, witnesses may become unavailable or their memories fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so. And it is the prosecution which carries the burden of proof....Deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself."

If Barker was charged with a non-violent crime, his chance of reversal would have likely increased. The Court wrote: "The amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it (dismissal) is the only possible remedy."

In Barker the Court mentioned that it was the duty of the Congress and the state legislatures to set a specified time period for speedy trials. If the United States Supreme Court were to set a specified time period it would "require this Court to engage in legislative or rulemaking activity, rather than in the adjudicative process to which we should confine our efforts. We do not establish procedural rules for the States, except when mandated by the Constitution....The States, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach much be less precise."

The Court considered the possibility that the defendant did not want a speedy trial since Barker did not object to the first eleven continuances and the demand-waiver doctrine, which is recognized, at least to some extend in most jurisdictions, that provides that a defendant waives any consideration of his right to a speedy trial for any period prior to which he has not demanded a trial. However, the Supreme Court said "such an approach, by presuming waiver of a fundamental right from inaction, is inconsistent with this Court's pronouncements on waiver of constitutional rights." Barker cited Johnson v. Zerbst, 304 U.S. 458 (1938), which defined waiver as "an intentional relinquishment or abandonment of a known right or privilege." But the Court pointed out in Barker that "it is not necessarily true that delay benefits the defendant. There are cases in which

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delay appreciably harms the defendant's ability to defend himself. Moreover, a defendant confined to jail prior to trial is obviously disadvantaged by delay as is a defendant released on bail but unable to lead a normal life because of community suspicion and his own anxiety."

"A defendant has no duty to bring himself to trial," according to the Court, "the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, for the reasons earlier expressed society has a particular interest in bringing swift prosecutions, and, society's representatives are the ones who should protect that interest."

It was observed by the Court that "a rigid view of the demand-waiver rule places defense counsel in an awkward position. Unless he demands a trial early and often, he is in danger of frustrating his client's right. If counsel is willing to tolerate some delay because he finds it reasonable and helpful in preparing his own case, he may be unable to obtain a speedy trial for his client at the end of that time. Since under the demand-waiver rule no time runs until the demand is made, the government will have whatever time is otherwise reasonable to bring the defendant to trial after a demand has been made. Thus, if the first demand is made three months after arrest in a jurisdiction which prescribes a six-month rule, the prosecution will have a total of nine months -- which may be wholly unreasonable under the circumstances....Such a result is not consistent with the interests of defendants, society, or the Constitution." The Court rejected the rule that a defendant who fails to demand a speedy trial forever waives his right. However, the Court indicated that since the defendant may prefer delay, whether the defendant asserted or failed to assert his right to a speedy trial should be one of four factors to be considered in an inquiry into the deprivation of the right. The other three factors to be used, according to the Court, are: length of delay, the reason for the delay, and prejudice to the defendant.

While unless there is some delay the defendant cannot complain of being denied a speedy trial, the mere length of delay is not enough to dismiss an indictment. The length depends upon the circumstances of the case. The Court said "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." The reason for the delay is also important. According to the Court, "a deliberate attempt to delay the trial in order to hamper the defense should be weighed heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighed less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay."

The Court identified three possible prejudices to the defendant. They are: "(i.) to prevent oppressive pretrial incarceration; (ii.) to minimize anxiety and concern of the accused; and (iii.) to limit the possibility that the defense will be impaired." An example of prejudice to the defense in preparing his case given by the Court was "if witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past." Prejudice is usually the most difficult factor to prove. However, the writer feels that the fact that a defendant has been in jail a long time and has suffered physical and mental anguish should, more often than not, be enough prejudice. In Barker, the Court noted that the "prejudice was minimal" although the delay was "extraordinary".

Although Barker affirmed the defendant's conviction, it is a landmark case. Even Barker's lawyer said "Your Honor, I would concede that Willie Mae Barker probably -- I don't know for a fact -- did not want to be tried. I don't think any man wants to be tried. And I don't consider this a liability on his behalf. I don't blame him."

Even someone who is imprisoned for another crime in another jurisdiction must not be denied a speedy trial, according to the Supreme Court in Smith v. Hooey, 393 U.S. 374 (1969). In 1960 Smith was indicted in Harris County, Texas, for theft. At the time of his indictment he was a prisoner in the federal penitentiary at Leaverworth, Kansas. On several times during the next six years, while still in jail, Smith requested in writing a speedy trial on the state charge. No action was taken. The Court said that the State of Texas was "required to make a diligent, good-faith effort" to bring the defendant to trial promptly, even though it had no legal right to demand the return of the defendant.

Although it might appear that a man already in prison cannot suffer any more, the Court indicated in Smith that this is not true. If a speedy trial is not given to such a person, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending case is postponed. Also, the Court noted, "the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pendency of another criminal charge outstanding against him." According to the Court, "there is reason to believe that an outstanding untried charge of which even a convict may, of course, be innocent can have fully as depressive an effect upon a prisoner as upon a person who is at large."

The Supreme Court stated in Dickey v. Florida, 398 U.S. 30 (1970), that the "right to a speedy trial is not a theoretical or abstract right but one rooted in

hard reality in the need to have charges promptly exposed....Stale claims have never been favored by the law, and far less so in criminal cases." As Justice Brennan observed in his concurrence in Dickey, "the guarantee protects our common interest that government prosecutes, not persecute, those whom it accuses of crime."

Appellant's conviction of selling drugs to an undercover policeman was reversed by the Supreme Court in Ross v. United States, 349 F.2d 210 (D.C. Cir. 1965), because the complaint against appellant was not sworn out until seven months after the alleged offense. All that time the appellant was available for arrest. The policeman admitted that he would not have been able to testify without refreshing his recollection by looking at his records. The appellant, who was a man of limited education, had no notebook, as the officer did, and he could not recall the day in question. The Court concluded that the delay was not "necessitated by the requirements of effective law enforcement."

In Coleman v. United States, ___F.2d___ (D.C. Cir. 1971), the defendant was convicted in the federal district court of robbery, and there was a delay of approximately 21 months between arrest and the hearing on defendant's motion to dismiss for lack of a speedy trial. The government failed to offer any justification for the delay. The Court of Appeals held that the delay of 21 months raised a serious question and, at least, placed on the government a heavy burden of demonstrating that the defendant's Sixth Amendment right had not been abridged. The Court also noted that where a defendant did not act upon or with meaningful access to advice of counsel in failing to demand to be tried, defendant did not waive his Sixth Amendment right to a speedy trial by failing to demand to be tried by an earlier date. The Court, in reversing the conviction, did not accept the government's contention that since the defendant was "so clearly guilty of this robbery that irrespective of the length or causes of the delay, he could have suffered no prejudicial deprivation of his constitutional right" to a speedy trial.

Where the bulk of the one year delay between arrest and trial was the direct result of continuances requested by defendant's counsel or by co-defendant with defendant's consent, the right to a speedy trial was not denied. Hedgepeth v. United States, 364 F.2d 684 (D.C. Dir. 1966), which also noted that the passing of considerable time before trial, no matter who is at fault, should act as a spur to the government to seek prompt trial, and if the government is lax in this regard a delay of one year has prima facie merit. The length of the delay acts as a triggering mechanism.

The constitution provides that the president "shall take care that the laws be faithfully executed." Article II, Sec. 3. As a part of this duty, the Executive Branch has the sole responsibility for determining what charges should

be brought against a defendant. Newman v. United States, 382 F.2d 479 (D.C. Cir. 1967). This applies to the states also. People v. Henzey, 263 N.Y.S.2d 678 (1965).

Whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends on the circumstances, according to the Supreme Court in Pollard v. United States, 352 U.S. 354 (1957). For the purposes of the Sixth Amendment, the sentence is part of the trial. The Court also said that the delay must be "purposeful or oppressive."

In United States v. Parrott et al., 248 F. Supp. 196 (1965), there was a delay of at least 22 months between the date when the criminal reference report was referred to the United States Attorney and the date of indictment in this securities violation case. The Court observed that the delay was the result of inaction amounting the negligence in the prosecutor's office. The Court held that where the delay is substantial, prejudice may be presumed and the government bears the burden of showing that no prejudice has resulted. The hardship of the defendant should also be considered.

In United States v. Wahrer, 319 F.Supp. 585 (1970),the Court held that a 10 month delay from date of crime to arrest should have been explained by the government, and without an explanation the defendant was prejudiced. While some courts have held that an indictment can be returned at any time within the period prescribed by the statute of limitations, when the passage of time prejudices the defendant's defense to the extent that it would hinder his constitutional rights such would add a different light to the question.

A unanimous Supreme Court reversed defendant's conviction in federal court for transporting a stolen automobile across a state line in Strunk v. United States, 412 U.S. 434 (1973), because of a ten month delay between the return of the indictment and arraignment.

Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484 (1971), shows that a state prisoner who is frustrated by his trouble to get a speedy trial in the state courts can apply to the federal courts for relief through a writ of habeas corpus after exhausting the state courts. The exhaustion doctrine of Ex Parte Royall, 117 U.S. 241 (1885), does not bar a petition for federal habeas corpus alleging a constitutional claim of present denial of a speedy trial, even though the petitioner has not yet been brought to trial in the state court. The petitioner must, however, have exhausted available state court remedies. The jurisdiction of a federal district court considering a habeas corpus petition requires only that the court issuing the writ have jurisdiction over the custodian of the prisoner. For example, a U.S. District Court judge for the Northern District of Georgia can issue a writ only if the petitioner is physically present in that

district.

Moore v. Arizona, 414 U.S. 25 (1973), held that where petitioner was tried for murder in Arizona almost three years after he was charged and 28 months after he first demanded that Arizona either extradict him from California, where he was serving a prison term, or drop detainer against him, the Arizona Supreme Court in affirming denial of petitioner's pretrial habeas corpus application erred in ruling that showing of prejudice to defense at trial was essential to establish federal speedy trial claim. In addition to possible prejudice, the court must weigh reasons for delay in bringing the incarcerated defendant to trial.

"Contrived procrastination" by the government could cause prejudice to a defendant and deny him a speedy trial. United States v. Eucker, 532 F.2d 249 (2d Cir. 1976). It is "ironical," as the Court of Appeals noted "that a motion on speedy trial was granted by the district court almost eight months after the hearing on the motion." Wallace et al. v. Kern et al., 499 F.2d 1345 (2d Cir. 1974). In a New York case, People v. Ranelucci, 50 A.D.2d. 105 (1975), the court said any delay in determining speedy trial motions "compounds the inherent delay which preceded the motion and in itself could be prejudicial to the defendant."

The U.S. Court of Appeals for the Fourth Circuit found that the defendant was denied a speedy trial, but the U.S. Supreme Court in United States v. MacDonald, ___U.S.___(1978), held that since the appeal was before trial, dismissal should not occur. The Supreme Court said that if there are appeals before trial, this would usually be counter-productive to insuring prompt trials. Quite often, appeals on pre-trial decisions take up a long time, and should be discouraged, except in extraordinary, urgent situations.

Since defendant did not exhaust her state remedies, the Court of Appeals could not help her although there was a possibility that she was denied a speedy trial. The Court said. "Perhaps, if Solomon were here to hold the scales, he would say the judgment has been too long deferred. As one of the spiritual qualities of justice is mercy, the New York State authorities may some day be persuaded by the circumstances of this case that they can, without any loss of dignity, on their own motion have the indictment dismissed and call it a day." United States ex. rel. Scranton v. New York, ___F.2d___ (2d Cir. 1976).

On occassion the various appellate courts hesitate to dismiss a case; however, the Court of Appeals said in Hilbert v. Dooling, 476 F.2d 355 (2d. Cir. 1973), "We have shown in the past that where the overriding interest in prompt disposition of criminal cases is threatened, the Court will not hesitate to impose the sanction of dismissal with prejudice." In Hilbert there was a delay of sixteen months between arrest and trial.

A delay of eight months was not to be tolled when calculating because the Assistant U.S. Attorney made reasonable efforts and exercised due diligence to have defendant produced for trial during the period where the defendant was "unavailable" and "in detention" in another jurisdiction. United States v. Oliver, 523 F.2d 253 (2d. Cir. 1975).

In United States v. Roberts, 515 F.2d 642 (2d Cir. 1975), the Court of Appeals affirmed the dismissal of the indictment because of delay. The Court did not accept the government's argument that since Roberts agreed shortly after his indictment to plead guilty to reduced charges and he had no expectation of actually going to trial, the constitution's speedy trial guarantee afforded him no protection. The Court held that the speedy trial clause applies with full force at least until a guilty plea has been entered by the defendant and accepted by the court.

In United States v. McDonough, 504 F.2d 67 (2d Cir. 1974), the Court of Appeals pointed out "there is no de minimis time period under the six months' rule, the Government must be ready for trial within six months', not six months and three days, four days, five days or nine days." It added that the period is "fixed, clearly, sharply and without qualification."

In July 1976, U.S. District Court Judge Jack Weinstein dismissed the charges against a draft evader because he was not tried within six months of his indictment. United States v. Salzmann, 417 F.Supp. 1139 (E.D.N.Y. 1976); affirmed at 548 F.2d 395 (2d Cir. 1976). His case was dormant for over two years. As Judge Weinstein said, "This is but one of tens of thousands of cases carried in the limbo of federal courts' fugitive files....The prosecution does nothing to compel their presence." The government is required to use "due diligence" to obtain the return of fugitive and incarcerated defendants. The Court noted that the government cannot complain of the defendant's continued unavailability when the government chooses not to employ means readily at its disposal to procure his presence. Salzmann noted that the failure to demand a speedy trial cannot be construed as a waiver unless knowingly and voluntarily made. When a defendant is without counsel, it is unlikely that he was aware of his right to a speedy trial or of the consequences of his failure to demand a trial promptly. Although not stated in this case, it would probably be desirable for judges to advise all defendants of their right to a speedy trial at time of arraignment. The states should provide for this in their speedy trial laws.

"A defendant may not raise the issue of speedy trial on appeal unless such issue was first raised at trial," according to the Georgia Court of Appeals in Moore v. State, 141 Ga. App. 245 (1977). The right must be asserted.

A Comparison Of Various
Speedy Trial Laws*

It is my opinion that the federal speedy trial law is the best, considering both its provisions and how it is written. While all fifty states provide for a speedy trial, many of the acts are not as specific as they should be. When this happens it is up to the courts to fill in the gaps. When an act is ambiguous, there is a tendancy to have too broad an interpretation, and I do not believe that this is best.

While criminal cases generally have priority over civil cases, there is still a problem in disposing criminal cases. Also, the trial of jailed defendants usually occurs before defendants who are on bail. There is a common practice of docketing cases in the order in which the indictments or informations were filed and this is sometimes required by statute. In most jurisdictions the control of the calendar is given by statute to the court or clerk of the court. Some jurisdictions, however, give control of the calendar to the prosecution but when this happens it may result in the prosecution having an unfair advantage over the defendants.

Most speedy trial statutes express the time limitations as being so many terms of court (i.e. Georgia). The problem with this approach is that there is often a lack of uniformity, even in the same state. Under Georgia's speedy trial law it is possible to get a dismissal in one county after four months and only thirty or forty miles away, for example, have to wait nine to twelve months for the same protection. Even the Chief Justice of the Supreme Court of Georgia said that twelve months is entirely too long to wait for trial after demand. There is only one constitution in the state, and all citizens should be entitled to the same protection.

Equal protection basically requires that you cannot discriminate and that what you do for one person, you have to do for the other. When there is a disparity of procedural rights, which are substantial, it is wrong. Reynolds v. Sims, 377 U.S. 533 (1964), held that the concept of equal protection has been traditionally viewed as requiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged.

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* The article in the end of this manual gives some examples of speedy trial laws also.

It is more desirable for a statute to require trial within a certain number of days or months from a specified event such as arrest or arraignment (i.e. New York State, federal law). In 1967 the President's Commission on Law Enforcement and Administration of Justice proposed that the period from arrest to trial of felony cases be not more than four months. (The Challenge of Crime In A Free Society, p. 155).

Pretrial procedures such as indictment by the grand jury and arraignment are time consuming yet important. There should be more frequent sittings of the grand jury, and the time from arrest to arraignemnt should be minimal. Most jurisdictions provide for delay upon a showing of "good cause" by either party. However, it is up to the courts to see that continuances are given only for valid reasons. For example, stalling by an attorney because his client has not paid him should be discouraged. Also stalling by the prosecution to let the defendant suffer a little bit in jail should be discouraged. It is important for judges to grant continuances hesitantly if a speedy trial is to be insured. In computing the time for trial, necessary delays are generally excluded. On appeal, the question of how necessary a postponement was could affect the resultant decision.

It is also not appropriate for a defendant to demand his own trial because the defendant is not required to aid the prosecution. Forcing the defendant to demand trial, as is the law in many states, could enable the state to do nothing until the defendant acts. The expiration of the time limit could turn out to be a viable defense. It is also unfair to require a defendant to ask for his own trial, especially if he is without counsel. The American Bar Association says that trial should commence without demand by the defendant. (See The American Bar Association Standards Relating To Speedy Trial, 1967, p. 16).

In some instances where the defendant was indicted prior to arrest the time runs from the date of indictment. Where indictment is not required the time generally runs from the time the complaint or charge was filed even if the defendant was arrested afterwards. This is because even though not arrested, if the defendant is notified of the charge his period of anxiety over the pending prosecution has begun. In addition, if the public is notified of the charge the defendant is from that time foroward an object of public suspicion. However, most of the time a defendant is arrested before he is indicted and therefore the time runs from his arrest.

If a defendant was charged with one crime and later was charged with an additional crime, it is appropriate to begin counting the speedy trial time from the former event providing the offense later charged is "the same crime

or a crime based on the same conduct or arising from the same criminal episode." (See The American Bar Association Standards Relating To Speedy Trial, 1967, p. 20).

If the defendant is involved in other legal proceedings the time is generally excluded. If an examination and hearing on the competency was requested this period would be excluded. If the defendant's lawyer requested a continuance this time would be excluded also. However, if the defendant was not represented by counsel it is the duty of the court to advise the defendant of his right to a speedy trial and the right to object to a continuance, and the effect if he consents to the postponement. The period of delay resulting from a continuance granted at the request of the prosecuting attorney would generally be excluded if the continuance was granted to allow the state additional time to obtain material evidence or to prepare the state's case if excpetional circumstances warranted such additional time.

The period of delay resulting from the absence of the defendant is excluded where due diligence has been made to locate the defendant and he cannot be found. Congestion of the trial docket is a frequent excuse given but only when the congestion is attributable to exceptionable circumstances would it likely be accepted as a valid reason for delay providing this case was not singled out.

Other periods of delay for good cause are generally excluded. Some states, such as New York and Florida, detail the periods which may be excluded, but others, such as Georgia, neglect to do so, except in case made law.

If a prisoner is incarcerated in another state or in a federal institution this period would generally be excluded because the state cannot go to trial without the consent of the incarcerating jurisdiction and the defendant cannot complain of a situation for which he is responsible. However, a prisoner can often have a trial in another jurisdiction if he requests one although he would remain in custody. A detainer would be placed so that upon completion of one prison term he can be sent to another prison.

The only effective remedy for denial of a speedy trial is absolute and complete discharge. A later prosecution for the same offense is not permitted due to the principle of res judicata. The failure of the defendant or his counsel to move for discharge prior to trial or entry of a plea of guilty usually constitutes waiver of the right to a speedy trial. The right to a speedy trial must be properly asserted.

Many states require trial to be sooner for defendants in custody than for those free on bail. Failure to commence trial within the necessary statutory limits is viewed as absolutely barring trial. Most speedy trial legislation provides for unconditional release of a defendant in custody not brought to

trial within the statutory limits. An exception is that Georgia's speedy trial statute, as some other states, applies only for non-capital crimes.

The Federal Speedy Trial Act of 1974, enacted January 3, 1975, Public Law No. 93-619, allows a court to dismiss an indictment with or without prejudice as the circumstances indicate. In making the determination as to which sanction is appropriate, a court is required to consider "the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the Act and on the administration of justice." 18 U.S.C.A. 3162 (a)(1)(2). Dismissal with prejudice is generally for unexcused government delay. If a case is dismissed with prejudice it is not retriable. Conversely, if a case is dismissed without prejudice it is retriable. The chairman of the House of Representatives Committee on the Judiciary, Peter W. Rodino, Jr., said "if the Speedy Trial Act was really to accomplish its purpose, the dismissals of cases in meeting the time limits should be 'with prejudice'. The dismissal 'without prejudice' I fear may be abused too readily." (Speedy Trial Act of 1974, U.S. House of Representatives Report No. 42, 1974, p. 388).

The Act provides that an indictment must be filed within thirty days from arrest or service of summons. The arraignment must be within ten days following indictment, and trial must be within sixty days thereafter. To allow the courts to fully comply with this one hundred day time period, the Act does not become fully operative until five years after it was enacted, which will be in July, 1979. Until then, however, each federal district court has a transitional speedy trial plan with slightly longer limits.

Conclusion

In Barker v. Wingo, supra., the United States Supreme Court laid down a balancing test to determine whether a particular delay had violated the defendant's right to a speedy trial. The Court listed four factors that should be considered in striking the balance: the length of the delay, the reason for the delay, whether the defendant has demanded a speedy trial, and prejudice to the defendant. The Court further indicated that these factors were interrelated and that not any one factor was "either a necessary of sufficient condition to the finding of a deprivation of the right to a speedy trial."

Once it is determined that a right is a fundamental constitutional right, a state has no choice in deciding whether or not to allow citizens that right. There can be no legal or moral justification for a state's failure to do this.

While a state does have latitude in approving ordinary government functions, such as paving roads and maintaining buildings, constitutional obligations cannot be avoided, even because of funding or any other reason. See Wyatt v. Stickney, 344 F.Supp. 373 (M.D. Ala. 1972); Pugh v. Locke, 406 F. Supp. 318 (M.D. Ala. 1976); Newman v. Alabama, 349 F. Supp. 278 (M.D. Ala. 1972); Palmigiano v. Garrahy, ___F. Supp.___ (D. Rhode Island 1977); Holt v. Sarver, 309 F. Supp. 385 (E.D. Ark. 1970); Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974); Wyatt v. Aderholt, 503 F.2d 1305, 1315 (5th Cir. 1975); Jackson v. Bishop, 404 F.2d 571, 580 (8th Cir. 1968); Rozecki v. Gaughan, 459 F.2d 6,8 (1st Cir. 1972); and Hamilton v. Love, 328 F. Supp. 1182, 1194 (E.D. Ark. 1972). Although these cases involved conditions and treatment in state prisons and mental hospitals, the same would apply to speedy trials, since this is a fundamental right also. See Klopfer v. North Carolina, supra.

The cases cited in the preceeding paragraph clearly say that the lack of funds or inaction by the legislature cannot excuse constitutional violation. Chief Judge Pettine of the District of Rhode Island said in Palmigrano that "the Bill of Rights was designed expressly to protect the weak and powerless from the passions, or the reckless neglect, of the majority and its leaders." And the Supreme Court pointed out in Procunier v. Martinez, 416 U.S. 396 (1974), that when a state regulation or practice offends a fundamental constitutional guarantee, federal courts will discharge their duty to protect constitutional rights.

Chief Judge Johnson of the Middle District of Alabama said in Pugh, 406 F. Supp. at 330, that "a state is not at liberty to afford citizens only those constitutional rights which fit comfortably within its budget." The rationale of the courts is clearly that governments must allocate sufficient funds to protect constitutional rights. There is no excuse. The lack of staff or facilities cannot be justified. Accordingly, if a state has a high caseload in their courts and reasonably speedy trials are difficult to obtain then a state has an obligation to hire more judges and prosecutors and build more courtrooms. Also, quite often new laws are passed which affect the courts and no funds or insufficient funds are given to accomplish the purpose of the new laws. This is wrong, and our courts should express their feelings in cases brought before them.

It is clear that the right to a speedy trial is guaranteed by our constitutions, but everything must be done to see that trials are speedy. The three branches of

government share this responsibility. The legislative branch must pass good laws (and that includes keeping them current) and provide adequate funding. The executive branch must see that all prosecutions are prompt. And the judicial branch must interprete the laws and see that justice occurs.

While most judges today are keenly aware of the speedy trial problem generally, many judges are hesitant to be innovative because of the fear of reversal and of the feeling that it is the legislative branch's responsibility to initiate improvements in the law. It is time to stop passing the buck. Of course, we can well appreciate the value of separation of powers, but much more is at stake. When trials are delayed a long time it is a mockery of justice. Just imagine thousands of prisoners sitting in their jail cells while waiting several months for trial to begin -- each of them is reading a copy of the U.S. Constitution. Speedy trials must be a reality -- not something that only looks good on paper.

Our judicial system is capable of doing much better so that faith is restored. The courts have grown a great deal since Chief Justice John Marshall established the principle of judicial review in the landmark case of Marbury v. Madison, 5 U.S. 137 (1803). It is imperative that we continue this growth and show the world that we are a nation that only only has a constitution with democratic principles but that the scared rights and freedoms contained therein are truly inalienable.

When the appellate courts decide not to reverse a conviction when there has been a denial of a speedy trial, the trial courts and prosecutors will do little to insure speedy trials in the future. There may be a tendancy to procrastinate, but reversing cases is one way to teach them a lesson. It is easy to forget that even a guilty person is still entitled to have all his rights protected. When there is a substantial delay in bringing a defendant to trial, his rights to due process and a speedy trial as guaranteed by the Fifth and Sixth Amendments may be violated.

No one element of the criminal justice system is entirely at fault for the delays, and often the blame is shared; included are prosecutors, judges, and defense attorneys. Some of the reasons are overworked and understaffed prosecutors and judges, insufficient funding, outdated clerical procedures, higher crime rate, inefficient scheduling and lack of proper judicial supervision. There are no easy answers since the problem is complex. However, some progress has been made in recent years and with continued efforts we shall succeed in insuring speedy trials.

"Speedy Trial Act. First Line of Defense"

By Neal D. Solomon

Published by the Association of Trial Lawyers of America

ABOUT THE AUTHOR

Noal S. Solomon became interested in the right to a speedy trial while working for his father, United States Magistrate Bender Solomon of Albany, New York, shortly after the Federal Speedy Trial Act of 1974 was passed. He has since authored many articles about the topic, and has served as an advisor to attorneys and legislative committees. He received his Juris Doctor degree from the John Marshall Law School, where he was editor-in-chief of the law review. He is currently with the law firm of Judge Arthur M. Kaplan in Atlanta.

Mr. Solomon has established a Speedy Trial Law Project to help attorneys involved in cases in which speedy trial is an issue. The project will assist lawyers on trial strategy and research, and will consider filing amicus curiae briefs in important cases. For information, contact Solomon at Suite 670, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309.

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