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Speedy Trial and the Congested Trial Calendar

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In *People v. Ganci*,[1] the defendant had been indicted for robbery, larceny, and assault[2] while serving a prison sentence for another conviction.[3] Five and one-half months after his indictment he moved, pursuant to section 668 of the New York Code of Criminal Procedure, to dismiss for failure to prosecute.[4] Eleven months later, sixteen months after the indictment, he was brought to trial,[5] convicted, and sentenced.[6] On appeal, the New York Supreme Court, Appellate Division, Second Judicial Department affirmed,[7] whereupon the defendant appealed by permission to the New York Court of Appeals. On this appeal he contended that the delay deprived him of his federal constitutional and New York statutory right to a speedy trial. The New York Court of Appeals concluded that the delay was attributable to the congestion of the criminal trial calendar brought about by a policy of processing indictments in the sequence of their presentment.[8] The majority held that such a delay constitutes "good cause" for not dismissing the indictment[9] under the New York statute.

I

The right to a speedy trial is an undisputed requirement of criminal justice.[10] It was originally articulated in the Magna Carta in 1215.[11] In 1679, the English Parliament passed the Habeas Corpus Act,[12] which provided for complete discharge for those not indicted and tried by the second term.[13] The right to a speedy trial was incorporated into the sixth amendment of the United States Constitution.

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[1] 27 N.Y.2d 418, 267 N.E.2d 263, 318 N.Y.S.2d 484 (1971).

[2] The indictment, dated June 1, 1967, related to an armed robbery of a Grand Union Super Market in Nassau County, New York.

[3] On April 28, 1967, the defendant was sentenced to five years in prison in Suffolk County, New York, for another felony. It was while on bail between conviction and sentence in Suffolk that this present crime was committed on March 18, 1967. He was promptly returned to Nassau County and arraigned on June 13, 1967.

[4] N.Y. CODE CRIM. PROC. § 668 (1970), states:

> If a defendant, indicted for a crime whose trial has not been postponed upon his application, be not brought to trial at the next term of the court in which the indictment is triable, after it is found that court may on application of the defendant, order the indictment to be dismissed unless good cause to the contrary be shown.

[5] The trial commenced September 25, 1968, in the Nassau County Court.

[6] He was sentenced on October 29, 1968.

[7] *People v. Ganci*, 27 N.Y.2d 459, 33 App. Div. 2d 797, 307 N.Y.S.2d 836 (1969).

[8] *People v. Ganci*, 27 N.Y.2d 418, 267 N.E.2d 263, 318 N.Y.S.2d 484 (1971).

[9] *Id.* at 487.

[10] U.S. CONST. amend. VI declares: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"; N.Y. CIV. RTS. LAW § 12 (McKinney 1948): "In all criminal prosecutions the accused has a right to a speedy trial"; N.Y. CODE CRIM. PROC. § 8 (McKinney 1970): "In a criminal action the defendant is entitled; (1) to a speedy and public trial. . . ."

[11] MAGNA CARTA, c. 40 (1215).

[12] 31 Car. 2, c. 2 (1679).

[13] Note, *The Lagging Right to a Speedy Trial*, 51 VA. L. REV. 1587, 1594 (1965).

Despite the fundamental nature of the right to a speedy trial,[14] the standard of protection it provides to the accused remains ambiguous. Through 1966, only four Supreme Court decisions had considered the definition of this right.[15] Each held against the defendant and made little analysis of the standard to be used in determining whether the right to a speedy trial had been violated. In fact, the dicta of these cases declared that the definition of "speedy" is necessarily relative — the question of whether a delay violates the right depends on the circumstances. Since 1966, the right to a speedy trial has been applied to the states via the fourteenth amendment[16] and has been held to apply just as forcefully to convicts already incarcerated on other charges.[17] In none of the decisions since 1966, however, has the Supreme Court extensively analyzed the right to a speedy trial. Thus, the Court has yet to develop a standard by which trial delay can be measured and applied to the speedy trial guaranty.[18]

The court has indicated that whether a trial is "speedy" must be a relative determination in order to allow for delay that may be deemed reasonable under the circumstances.[19] It is thus constitutionally permissible to have lengthy delays, if they are deemed to be "reasonable." Delays caused

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[14] Duncan v. Louisiana, 391 U.S. 145, 149 n.14 (1968). Justice White, representing the majority of the Court, wrote:

> Recent cases applying provisions of the first eight amendments to the states represent a new approach to the "incorporation" debate, and have reevaluated the term "fundamental right." Earlier, the Court can be seen as having asked when inquiring into whether some particular procedural safeguard was required of a state, if a civilized system could be imagined that would not afford the particular protection.... The recent cases, on the other hand, have proceeded upon the valid assumption that the state criminal processes are not imaginary and theoretical schemes, but actual systems bearing virtually every characteristic of the common law system.... The question thus is whether given this kind of system, a particular procedure is fundamental or necessary to an Anglo-American system of ordered liberty. Of immediate relevance are the court's holdings that the states must comply with certain provisions of the sixth amendment, specifically that the states may not refuse a speedy trial....

In Klopfer v. North Carolina, 386 U.S. 213, 223 (1967), C. J. Warren declared:

> We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the sixth amendment. That right has its roots at the very foundation of our English law heritage.... That this right was considered fundamental at this early period in our history is evidenced by its guarantee in the constitutions of several states of the new nation as well as by prominant position in the sixth amendment.... The history of the right to a speedy trial and its reception in this country clearly establishes that it is one of the most basic rights of our Constitution.

[15] United States v. Ewell, 383 U.S. 116 (1966); Smith v. United States, 360 U.S. 1 (1959); Pollard v. United States, 352 U.S. 254 (1957); Beavers v. Haubert, 198 U.S. 77 (1905).

[16] Klopfer v. Norh Carolina, 386 U.S. 213 (1967).

[17] Smith v. Hooey, 393 U.S. 374 (1969).

[18] *Cf.* Dickey v. Florida, 398 U.S. 30, 37 (1970), in which Mr. Justice Brennan, in a concurring opinion, attempted to analyze the scope of the right to a speedy trial by outlining the questions that the courts must deal with. He suggests that delay due to congested calendars may deny the accused's right to a speedy trial.

[19] In United States v. Ewell, 383 U.S. 116 (1966), the Court held that the delay must be purposeful and oppressive to allow dismissal; in Beavers v. Haubert, 198 U.S. 77, 87 (1905), the Court declared in dictum that the right to a speedy trial is "consistent with delays and depends upon the circumstances."

by a defendant[20] or by the disappearance of a material witness have been held reasonable and therefore inadequate for dismissal.[21] There is some doubt, however, about how long and for what reasons the prosecution can delay the trial. Consequently, the right of the accused in all criminal prosecutions to a speedy trial remains substantially abstract and theoretical.

Thirty-eight state legislatures have attempted to clarify this right by defining the term "speedy" by statute.[22] These statutes, which delimit the time in which an accused must be brought to trial, are not attempts to curtail the accused's right, but are legislative interpretations of the constitutional right to a speedy trial. Thus, the constitutional and statutory rights to a speedy trial are essentially the same, except that the statute provides a more specific frame of reference. The statute merely assists in the determination of whether the accused's constitutional right to a speedy trial has been violated based upon the statutory definition of "speedy." All of the state statutes follow this pattern.[23] The New York statute, for example, requires trial within the next term of the court in which the indictment was triable, unless there is "good cause" for delay.[24]

The purposes and policies underlying both the constitutional and statutory right to a speedy trial are the same. These purposes are: (1) to protect the accused from prolonged imprisonment for an untried accusation;[25] (2) to secure him from prolonged anxiety and public suspicion caused by

[20] United States v. Kabot, 295 F.2d 848, 852 (2d Cir. 1961), *cert. denied*, 369 U.S. 803 (1962).

[21] United States *ex rel.* Von Cseh v. Fay, 313 F.2d 620 (2d Cir. 1963) (star witness in India); United States v. Palermo, 27 F.R.D. 393 (S.N.D.Y. 1961) (grand jury witness missing).

[22] Forty-one states have speedy trial statutes. Three of these simply proscribe "unnecessary" or "unreasonable" delay (Alaska, Delaware, Oregon). Thirty-eight define the period of permissible delay by court terms, months, or by days, thus giving the courts a quantitative measure of the term "speedy." The following table categorizes the units the various states have used.

Court Terms		Months	Days	Years
Arkansas	New York	Massachusetts	Arizona	Louisiana
Colorado	No. Carolina	(next term after	California	
Florida	No. Dakota	6 months)	Illinois	
Georgia	Ohio		Nevada	
Hawaii	Oklahoma	Michigan	Washington	
Idaho	Pennsylvania	(next term after		
Indiana	So. Carolina	6 months)		
Iowa	Tennessee			
Kansas	Utah	Montana		
Maine	Virginia	New Jersey		
Minnesota	West Virginia	Rhode Island		
Nebraska	Wisconsin			
New Mexico	Wyoming			

For a graphic illustration of constitutional and statutory right to a speedy trial see Note, *Convicts — The Right to a Speedy Trial and the New Detainer Statutes*, 18 RUTGERS L. REV. 828, app. 869 (1964).

[23] All of the statutes quantitatively defining the term "speedy" provide exceptions under which the statute will not operate. Some statutes spell out the exceptions in detail, others merely provide an exception if the state shows "good cause" for the delay. *Id.* at 839.

[24] N.Y. CODE CRIM. PROC. § 668 (McKinney 1970).

[25] People v. Prosser, 309 N.Y. 353, 355, 130 N.E.2d 891, 893 (1955); Note, *Convicts — The Right to a Speedy Trial and the New Detainer Statutes*, 18 RUTGERS L. REV. 828, 832 (1964).

a pending accusation;[26] (3) to preserve his ability to prove his innocence at trial;[27] (4) to protect him from deteriorization of his status in prison;[28] and (5) to protect society's interest in orderly and effective administration of the criminal law.[29] Before *People v. Ganci*, the issue of whether delay caused by congested trial calendars should qualify as "good cause" had not been squarely faced by the United States Supreme Court or the highest appellate court of any state, despite the issue's relevance to the purposes underlying the right to a speedy trial.[30]

II

In the instant case, the majority acknowledged the defendant's right to a speedy trial notwithstanding his incarceration on another conviction. It admitted that the delay was of such gravity that had it been caused by a failure or inadvertence attributable to the prosecutor, the indictment would have been dismissed. The court recognized that neither the defendant's right to a speedy trial, nor the community's right to have criminals promptly convicted is secured by the congested system of criminal process as presently constituted. The court blamed the congested trial calendar on the rapid growth of the Nassau County population, the increase in crime, and the "*state and community lag in providing additional facilities to process criminal cases.*"[31] The majority implicitly admitted the merits of the accused's cause of action by suggesting judicial methods of alleviating the

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[26] Note, *Convicts — The Right to a Speedy Trial and the New Detainer Statutes*, *supra* note 25.

[27] *Id.*

[28] Note, *Extending Smith v. Hooey*, 23 ME. L. REV. 201, 202 (1971). Some examples of prejudice suffered by a defendant even though he is in prison on another charge:

(1) He loses his trustee status.
(2) He often is confined to maximum security.
(3) He is treated as a security risk.
(4) Parole opportunities are jeopardized.
(5) He loses any chance to serve present and potential sentences concurrently.
(6) Emotional harm from the threat of further prosecutions once his present sentence is completed are common.
(7) It is difficult for him to learn the exact charges against him, his ability to preserve evidence and to follow the movement of his witnesses, thus making preparation of a defense very difficult.
(8) He may lose incentive to complete his rehabilitation.

[29] Note, *Convicts — The Right to a Speedy Trial and the New Detainer Statutes*, *supra* note 25.

[30] The following state courts have considered the issue. State v. Churchill, 313 P.2d 753 (Ariz. 1965) (absence of trial judges and consequent inability of the court to try certain cases because of the heavy work load and congestion constituted good cause for continuance); Castle v. State, 237 Ind. 83, 143 N.E.2d 570 (1957) (lack of access to a court room and a congested calendar constituted good cause for dismissal of the charge against the accused as it denied him his right to a speedy trial); People v. Lanigan, 133 P.2d 24, 22 Cal.2d 569 (Cal. App. 1943) (dealt with the speedy trial guarantee and the congested trial calendar but was decided before the congestion problem was so acute) (The Calif. Supreme Court has not decided the issue.); People v. Winters, 18 Misc.2d 205, 182 N.Y.S.2d 254 (1958), (In dicta the court declared that calendar congestion delay did not deny an accused his right to a speedy trial). *See also*, James v. Superior Court, 202 P.2d 24 (Wash. 1964).

[31] People v. Ganci, 27 N.Y.2d 418, 267 N.E.2d 263, 318 N.Y.S.2d 484, 486 (1971) (emphasis added).

congestion problem.[32] Despite these findings, the court held that calendar congestion constitutes good cause for delay and that delay caused by calendar congestion does not violate the constitutional and statutory rights to a speedy trial. The court reasoned that the constitutional and statutory right to a speedy trial is designed to prevent laches on the part of the prosecution,[33] and that to mandate the legislature to meet its fiscal responsibility to the legal system by dismissing indictments would produce dire consequences.[34]

III

The court's holding that congested trial calendars are good cause for delay fails to consider the basic policies underlying the constitutional right. The two reasons presented by the majority for concluding that delays caused by congested calendars do not violate the right to a speedy trial are tenuous. Additional policy considerations also militate against calendar congestion as a good cause for delay.

A. Congested Trial Calendars do not Constitute Good Cause for Delay

In accommodating the legal system's problem, the *Ganci* court disregarded the purposes of the United States constitutional and the New York statutory right to a speedy trial. Calendar congestion, unlike causes for delay previously accepted as valid,[35] is neither attributable to the accused nor beyond the possibility of control by the system of criminal justice.[36] Delay caused by the accused's incompetency to stand trial or by the disappearance of a material witness is not comparable to delay caused by the inability of the criminal system to cope with the problems it has been established to regulate. Delay caused by calendar congestion is not beyond the

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[32] *Id.* at 487.

[33] The majority follows the line of cases holding that the speedy trial guarantee is only to prevent prosecutorial laches. Chinn v. United States, 228 F.2d 151 (4th Cir. 1955); State v. Huhnhausen, 201 Ore. 506, 272 P.2d 225 (1954); People *ex. rel.* Ianic v. Daley, 30 N.Y. Crim. 47, 142 N.Y.S. 297 (Sup. Ct. 1913).

[34] People v. Ganci, 27 N.Y.2d 418, 267 N.E.2d 263, 318 N.Y.S.2d 484, 488 (1971). The defense counsel suggested in his brief that the release of several defendants would encourage the legislature to provide the necessary funds. This is undoubtedly the "spartan process" that the court is afraid will produce "dire results." Although the court does not elaborate on dire results, one can imagine that they concern the release of a large number of criminals. Release for delay caused by congested calendars would create a situation encouraging offenders to commit crimes in order to congest calendars or complicate the problem. The answer to the problem, however, is not to do away with the speedy trial guarantee, but to develop the judicial system to the point that it can fulfill its function without allowing abuse by the accused or by the system. To allow the speedy trial guarantee to, in effect, be done away with because there are too many criminals would be excellent precedent for systematic elimination of the exclusionary rule by the police effectuating as many illegal searches and seizures as possible, thus loosing criminals on society.

[35] With an increased population and crime rate it is difficult to maintain an efficient judicial system. The physical difficulties in bringing an acused to trial, however, do not override the fundamental right to a speedy trial. *Cf.* People v. Sylvester, 50 Misc. 2d 677, 271 N.Y.S.2d 118 (1966).

[36] *See* notes 20–21 *supra* and accompanying text.

control of the system and several possible methods of coping with it have been suggested.[37]

B. The Right to a Speedy Trial Should Prevent All Causes of Delay not just Judicial or Prosecutorial Laches

To argue that the speedy trial guaranty is violated only when the delay is due to judicial or prosecutorial neglect exalts the *cause* of the delay to the exclusion of the nature and severity of the injury to the accused. The majority's opinion that there is good cause for delay if the delay is beyond the control of the prosecutor is fallacious on two grounds: (1) it fails to recognize that there are methods available to the prosecution to alleviate this problem of court congestion;[38] (2) and more importantly, it fails to recognize that when the system of criminal justice as a whole is at fault in causing the delay, it is the obligation of that system to eliminate it. In the American criminal system, the state not only has a duty to initiate the action against the accused and to see that he is arraigned, but also has a duty to see that he is speedily brought to trial.[39] The inability of one part of the system, the prosecutor, to stop delays should not excuse other parts of the system, the legislature and the governor, for failing to eliminate the cause of the delay. Trial calendar congestion in the New York metropolitan areas can be characterized as certain, notorious, and chronic.[40] The problem has been obvious and critical for several years, and has long been recognized by the legislature. When the state legislature fails to provide the funds necessary for the abatement of such an obviously chronic condition, it fails to meet its constitutional obligation to afford an accused his right to a speedy trial; the prosecution's good faith cannot excuse the legislature's failure to meet that obligation. The fourteenth amendment guaranty of due process of law, which now includes the sixth amendment right to a speedy trial, is not confined to the action of any particular individual or agency, but applies to prejudicial state action of any kind.[41] The purpose of the guaranty is not to protect the integrity of the different branches of state government or to accommodate judicial inefficiency but to protect the rights of the accused. To allow calendar congestion to constitute good cause for delay is to accomplish these ulterior results at the expense of the purpose of the guarantee.[42]

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[37] In fact, the majority in the instant case outlines a judicial method of alleviating the congestion. *See* AMERICAN BAR ASS'N., STANDARDS RELATING TO SPEEDY TRIAL (approved draft, 1968). There are many self-perpetuating intra-system delays which a prompt trial would eliminate. For example, bail hearings, a tremendous cause for delay, are necessary only because trial delays are so lengthy. Thus, as serious causes of delay feed on their own delay, the problem is exacerbated. In the same fashion, however, strict requirement of a speedy trial would reduce these intrasystem causes.

[38] *See* AMERICAN BAR ASS'N., STANDARDS RELATING TO SPEEDY TRIAL (approved draft, 1968).

[39] *Id.*

[40] People v. Prosser, 309 N.Y. 353, 358 (1955). J. Fuld treats the fourteenth and sixth amendment rights as inclusive.

[41] *See* Shelley v. Kraemer, 334 U.S. 1, 14 (1948).

[42] *See* notes 25–29 *supra* and accompanying text.

C. The Balance of the Accused's Right to a Speedy Trial and Questionable Causes for Delay Should be Weighted in Favor of the Accused's Right

The majority's *ad horrendum* argument that to dismiss the defendant as a method of forcing the legislature to appropriate the needed funds would produce dire results is even less persuasive. It is a *non sequitur* to reason that if the injustices of the system may be used in a manner deleterious to the system, the injustices must be excused. It is inconsistent with our constitutional system to solve problems facing the system by eliminating the rights guaranteed by that system.[43] The majority's rationale tips the balance in the wrong direction — questionable causes for delay should be resolved in favor of the constitutional right, not the fault in the system. The majority's second argument cannot stand in the face of the fundamental nature of the right to speedy trial and the source of the cause of the delay.[44] Even if dire results were produced by dismissals for lack of speedy trial caused by congested calendars, the constitutional mandate is clear. Pointing to dire results only begs the question of whether there has been a denial of a speedy trial.

D. Policy Considerations Require that Calendar Congestion Not Constitute Good Cause for Delay

The major arguments justifying congested trial calendars as good cause for delay are refuted by the policy considerations underlying the right to a speedy trial. The New York statutory and the federal constitutional speedy trial guaranties were created to protect the accused, yet under *Ganci*, he must bear the burden of the state's failure to maintain an efficient judicial system. Such a holding makes little sense since the accused suffers equally whether the delay is intentional or accidental, whether caused by prosecutorial laches or by a congested trial calendar. The impact is the same; a fair trial is prevented.[46] The existence of any prejudice that stems from such delay is inconsistent with the presumption of innocence upon which our system of criminal law is based.[47]

IV

There has been an egregious failure on the part of many public officials to properly anticipate calendar congestion problems and to adopt measures necessary for their solution. To place the consequences of these failures on

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[43] The exclusionary rule has been the only workable means by which fourth amendment rights have been enforced. It is obvious that no one would think of doing away with the fourth amendment rights because criminals occasionally are released as a result of a violation of that right.

[44] This is especially true for the facts of the instant case. The accused would not be freed because he was already in prison on another charge.

[45] *See* United *ex. rel.* Frizer v. McMann, 437 F.2d 1312 (2d Cir. 1971) (Chronic calendar congestion cannot excuse the denial of the defendant's right to a speedy trial.)

[46] *See* notes 25–29 *supra* and accompanying text; Note, *Extending Smith v. Hooey*, *supra* note 28.

[47] Note, *Extending Smith v. Hooey*, *supra* note 25.

the accused makes little practical or moral sense. The social repercussions of dismissal could be minimized by prospective application of dismissal for denial of speedy trial due to calendar congestion delay. Solving the problem of congested calendars by restricting the right to a speedy trial is an unsatisfactory solution for a system that purports to hold up individual freedoms of its citizens as its hallmark.

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