CHAPTER 1

The Right to a Speedy Trial

I. Historical Basis

The right to a speedy trial developed from English law. The colonies adopted the speedy trial right in their charters and other fundamental documents. In *Klopfer v. North Carolina*, Chief Justice Warren succinctly traced the maturity of the right from the Assize of Clarendon (1166) through the Magna Carta (1215). Using Sir Edward Coke’s analysis of the English speedy trial right, he equated the delay of a trial to a denial of justice. “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.”

By the time the Supreme Court decided *Klopfer* in 1967, all fifty states provided speedy trial protection for their citizens. Thus, the *Klopfer* Court held that the Sixth Amendment right to a speedy trial was incorporated through the Fourteenth Amendment, and applied in full force to the states. Since the vast majority of criminal cases are

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2. *Id.* at 226.
3. “We will sell to no man, we will not deny or defer to any man either justice or right.” *Id.* at 223 (quoting the Magna Carta).
4. *Id.* at 224.
5. *Id.* at 226.
6. *Id.*
7. “[N]or shall any state deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV, § 1.
8. *Klopfer*, 386 U.S. at 222–23. In earlier cases, the Court held that the other provisions of the Sixth Amendment—the right to counsel and the right of confrontation—were incorporated through the Fourteenth Amendment. Seeing the right to a speedy trial just
prosecuted in the state systems, speedy trial violations will most likely occur in state, not federal, court.  

II. Constitutional Speedy Trial Issues

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed.” The Supreme Court has applied the constitutional requirement of a “speedy trial” differently depending on the stage of the proceedings when the delay occurred.

A. Delay in Charging or Arresting the Defendant

1. Process Applies

In 1971, shortly after the speedy trial right was incorporated to apply to the states, in United States v. Marion the Court determined that the Sixth Amendment right to a speedy trial did not apply before a defendant was charged or arrested. The defendants in Marion filed motions to dismiss the indictment because a delay of three years between the government’s discovery of the crime and the indictment violated their Sixth Amendment speedy trial right and Fifth Amendment due process rights. The district court dismissed the indictment based on the government’s failure to speedily prosecute.

The Court focused on the speedy trial language of the Sixth Amendment and determined that, on its face, the clause protects only a defendant who is “accused” and exists only when a prosecution has as “fundamental” as the other two rights, Chief Justice Warren concluded that the right to a speedy trial should likewise be incorporated. See Susan N. Herman, The Right to a Speedy and Public Trial: A Reference Guide to the United States Constitution 175 (2006).
begun. The Court found no support in the English common law for Marion’s argument that the Sixth Amendment right applied prior to the arrest of a defendant. The Court also examined Federal Rule of Criminal Procedure 48(b) and determined that the criminal rules permitted dismissal only after a defendant was arrested.

Marion affirmed that the statutes of limitation, and not the defendant’s right to a speedy trial, protect against the prosecution of overly stale criminal charges. The justices noted that the statutes of limitation provide a fixed period of time after the criminal act in which a criminal case may be prosecuted. This limitation protects individuals from defending themselves against, and being punished for, charges based on acts committed long ago. The Court suggested that the statutes of limitation may also encourage law enforcement to promptly investigate criminal activity.

Marion also claimed that potential prejudice and the passage of time violated his due process rights. The government conceded that if preindictment delay caused substantial prejudice to the defendant and the delay was intended by the government to gain a tactical advantage over the defendant, the Due Process Clause of the Fifth Amendment required dismissal of the indictment. The Court found that Marion did not prove this type of violation because he had not offered evidence of actual prejudice caused by the preindictment delay or an intentional delay by the government designed to gain an unfair advantage.

Four years later, in Dillingham v. United States, the Supreme Court, in a per curiam opinion, clarified that speedy trial rights attach before

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17. Id. at 313 (“[T]he Sixth Amendment speedy trial provision has no application until the putative defendant in some way becomes an ‘accused.’”).
18. Id. at 314–15 & n.6. The Court stated that cases cited by Marion “fail[ed] to establish a definite rule that the Founders sought to constitutionalize,” and found the Government’s argument regarding the history of the Sixth Amendment to be “more persuasive.” Id. at 314 n.6.
19. Id. at 319. Current Rule 48(b) provides that “[t]he court may dismiss an indictment, information, or complaint if unnecessary delay occurs in: (1) presenting a charge to a grand jury; (2) filing an information against a defendant; or (3) bringing a defendant to trial.” Fed. R. Crim. P. 48(b).
20. Marion, 404 U.S. at 322.
22. Id.
23. Id.
24. Id. at 324.
25. Id.; see also HERMAN, supra note 9, at 187–88.