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The addition of Chapter 208 to Title 18 of the United States Code became law on January 3, 1975. 18 U.S.C. §§3161 et seq. Commonly known as the Speedy Trial Act of 1974,[1] its enactment by Congress has provoked extensive debate.

Basically, the Speedy Trial Act minimizes judicial discretion by legislating guidelines by which the court shall determine whether an accused's Sixth Amendment right to a speedy trial has been breached. The Act structures "time limits" within which the government must indict, arraign and try a defendant in order to protect this constitutional guarantee. The Sixth Amendment articulates this basic right, as follows:

> In all criminal posecutions, the accused shall enjoy the right to a speedy and public trial. . .

This provision has been held by the Supreme Court to be a "fundamental" right of a criminal defendant, i.e. a right that applies to the States through the edict of the Fourteenth Amendment. *Klopfer v. North Carolina,* 386 U.S. 213 (1972).

Justice Powell, writing for the Supreme Court, further demonstrated the balancing interests of the speedy trial right in *Barker v. Wingo,* 407 U.S. 514 (1972):

> The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the court.

Id. at 519.

The problem with the Sixth Amendment guarantee, which Congress sought to remedy by enacting the Speedy Trial Act, was the fact that there was no definitive point in time beyond which the right was considered breached. This determination was within the province of the judiciary. The Supreme Court had considered the sanction for violations of the Sixth Amendment speedy trial guarantee, holding that the "only possible remedy" was a dismissal of the criminal prosecution. *Wingo, supra* at 522; *see also, Strunk v. U.S.,* 412 U.S. 434 (1973).

Most states already have statutory or constitutional speedy trial guidelines. *See generally,* Frase, *The Speedy Trial Act of 1974,* 43 U.CHI.L.REV. 667 (1976); Poulos and Coleman, *Speedy Trial, Slow Implementation: The ABA Standards in Search of a Statehouse,* 28 HASTINGS L.J. 357 (1976). As the latter title suggests, the American Bar Association has itself dealt substantively with this issue. *See* ABA PROJECT ON STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SPEEDY TRIAL (Approved Draft, 1968).

Since its enactment, the strongest opposition to the federal speedy trial law has been directed at the stringent "time limits"[2] it imposes:

> . . .Congress may have set its sights somewhat higher than the realities of federal criminal justice will tolerate.

Frase, *supra* at 722-723.

> . . .critics support the Act's goal of guaranteeing criminal defendants speedy-trial rights more specific than the vague constitutional provisions. But they say the law is excessive. Chief Justice Warren E. Burger calls it 'rigid'."

Speedy Trials are Slowing the Courts, 64 A.B.A.J. 175.

In a recent opinion, Judge Joseph H. Young attacked the dictates of the Speedy Trial Act using a unique and strongly-worded approach. In *U.S. v. Howard,* 440 F.Supp. 1106 (D.Md. November 7, 1977),[3] he held the Act to be invalid as an "unconstitutional encroachment on the judiciary," violative of the Constitution's implied doctrine of separation of powers.

> The Court is cognizant of the defendants' right to a speedy trial, just as it is cognizant of all their rights under the Constitution, and it is satisfied that the even-handed scrutiny of the appellate courts will do it without legislative interference. The dictates of *Barker v. Wingo, supra,* and Rules 48(b) and 50(b) of the Federal Rules of Criminal Procedure adequately protect a defendant's right to a speedy trial, which must by its very being remain a "relative concept."

440 F. Supp. at 1113.

Judge Young's decision was pursuant to defendant Howard's, and a codefen-

[1] The bill creating this Act was S. 3936 which was introduced by Senator Sam Ervin because of his opposition to the preventive detention provisions in the District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 210 (July 29, 1970); D.C. Code §23-1321 et seq.; *see generally,* Frase, *infra* at 673-674; *see also,* Ervin, *Forward: Preventive Detention—a Step Backward for Criminal Justice,* 6 Harv. Civ. Rights-Civ. Lib. L. Rev. 291-303 (1971).

[2] The Act's basic "time limits" do not become effective until July 1, 1979. The mandates of the statute will then require that a criminal defendant be indicted within 30 days of arrest, arraigned within 10 days after indictment, and that trial begin within 60 days following arraignment.

[3] Defendant Howard and a codefendant were arrested on August 11, 1977 and charged with violating the proscriptions of the Controlled Substance Act, 21 U.S.C. §846. Howard was also charged conducting a continuing criminal enterprise violating the provisions of 21 U.S.C. §848. Because Howard posed a "substantial risk of flight," bail was set at $400,000, which he was unable to post. The codefendant's bail was set at $30,000, which he, also, was unable to meet. Motions for bail reduction were denied by the U.S. Magistrate. The codefendant, Hartzog, was arraigned on August 19, 1977, while Howard, due to his hospitalization and a defense counsel request, was not arraigned until August 26, 1977. Indictment followed, and trial was set for November 14, 1977. As stated in the text, defense counsel made motions on behalf of both defendants under the Speedy Trial Act's dictates for dismissal or, in the alternative, for release of the defendants pending trial. Judge Young denied the motions for the reasons following in the text.

dant's, motions to dismiss the indictment or, in the alternative, to be released from custody pending trial based on the government's delay and violations of the transitional provisions[4] of the Speedy Trial Act or the court rules of the U.S. District Court for Maryland.[5]

In addition to holding the Act to be unconstitutional, the court denied the relief sought in the defense motions, finding that neither of the defendants' rights under the federal speedy trial "transitional" mandates had been breached on the following bases:

> 1. The record showed that Howard's trial was scheduled within the 120-day period allowable after arraignment, 18 U.S.C. §3161(g);
> 2. Under one of the Act's exceptions, the time that the defendant spent in the hospital was excluded from the 90 days allowed before commencing trial as in the case of any defendant who, like Howard, is incarcerated pretrial, 18 U.S.C. §3161(h)(4), 3164;[6]
> 3. Release pending trial was not required where there was "fault" for the delay on the part of defendant and his counsel, 18 U.S.C. §3164(c);
> 4. The proper administration of justice necessitated an extension of the 90-day limitation for the codefendant under another of the Act's exceptions, 18 U.S.C. §3161(h)(7)(8).

[4] 18 U.S.C. §3163 of the Act provides for gradual "phase-in" of the "time limits" which will be fully implemented on July 1, 1979. Under §3161 the requirements for the period July 1, 1977 until June 30, 1978 were that the defendants must be indicted within 45 days of arrest, arraigned in the following 10 days after indictment, and brought to trial within 120 days following indictment.

[5] The defendants' motions were also directed at the provisions in Local Rule 30 of the United States District Court for the District of Maryland. Judge Young denied the motions, however, on the grounds that the Rule provided no sanction for the specification that "trial of a defendant shall commence within 60 days of the arraignment." Additionally, as to release pending trial, Judge Young noted that Local Rule 30 provided for release only when the Speedy Trial Act's provision, 18 U.S.C. §3164, was violated.

[6] The court indicated that there is a difference of opinion on this issue in the various circuits. The Ninth Circuit held that the excludable time periods under 18 U.S.C. §3164(h) do not apply to the 90-day provision under §3164 for those defendants detained pretrial. *U.S. v. Tirasco*, 532 F.2d 1298 (1976). The court also noted various courts that had held the opposite, *U.S. v. Corley*,179 U.S.App. D.C. 88, 548 F.2d 1043 (1976); *U.S. v. Masco*, 415 F.Supp. 1317 (W.D.Wisc. 1976); *U.S. v. Mejias*, 417 F.Supp. 579 (S.D.N.Y.), *aff'd on other grounds sub nom. U.S. v. Martinez*, 538 F.2d 921 (2d Cir. 1976). The court indicated that the best view, and the one he adopted, is that the excludable time periods under §3161(h) modify the time limits imposed by §3164. *See*, Frase, *supra*, at 712-715.

One of the key controversies surrounding the Speedy Trial Act, as Judge Young articulated, is whether the following language of Justice Powell in the unanimous Supreme Court holding in *Wingo, supra*, gave Congress the legislative license to proceed with this codification of the Sixth Amendment guarantee:

> But such a result 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. We find no constitutional basis for holding that the speedy trial right can be quantified into a specific number of days or months. The States, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach *must* be less precise. (emphasis added).

Wingo, supra at 523.

One commentator interprets the *Wingo* holding by stating:

> ***the Court has held that the constitutional limit depends on the facts of the particular case. Although fixed time periods would facilitate definition and enforcement of the right, the creation of such rules has been held to be a legislative function.

Frase, *supra* at 667; *See, e.g.*, statement of Congressman Cohen in Hearings on S. 754, H.R. 7873, H.R. 658, H.R. 773, and H.R. 4807 before the Subcommittee on Crime of the Committee on the Judiciary, House of Representatives, 93rd Cong., 2d Sess., at 214, 358 (1974) noted by Judge Young in *Howard, supra*, 440 F. Supp. at 1111-1112.

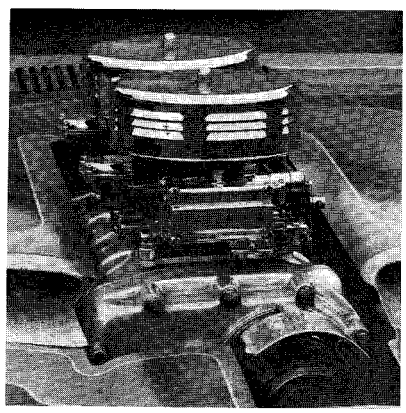

photo by George Martin Kripner

Judge Young in *Howard, supra*, contradicted this interpretation in his opinion:

> But a clear reading of this language fails to support such an inference. The Supreme Court's refusal to specify a set number of days within which a defendant must be tried was not an invitation to the Congress to enact speedy trial legislation, but a comment generally on the role of an adjudicating court and specifically on the nature of the right to a speedy trial.*** Moreover, it is significant that when the Court commented that the "states. . .are free to prescribe a reasonable period consistent with constitutional standards," no mention was made that Congress could so act. The language is not addressed to state legislatures but to the "states." The import of this suggestion is that the Supreme Court could not overturn state legislation on speedy trial limits which was consistent with the Sixth Amendment. Obviously, any separation of powers protection of the state judiciary would have to come from the state constitution as interpreted by the state courts. In sum, the *Wingo* language is not in the least inconsistent with the holding that the Federal Speedy Trial Act violates basic constitutional notions of the separation of powers.

Howard, supra at 1112; *See also, Wingo, supra* at 530-531.

Justice Powell in *Wingo* stated the Court's categorical rejection of the fixed-time period for federal jurisdictions "because it goes further than the Constitution requires," while upholding the right of individual states to have such standards.

In addition to Judge Young's opinion that the Act itself is unconstitutional, he also wrote that its practical limitations are in the form of "monumental administrative headaches" and the unwarranted disruptions and inefficiency caused by the Act's time limits on the criminal and civil dockets and the administration of justice.

While I agree with Judge Young in his opinion that Congress has over-stepped the bounds of the separation of powers doctrine in enacting speedy trial legislation and has usurped a previously judicial determination, it appears, even if the Act's *constitutionality* is not questioned further, that grave administrative problems will result, especially when the Act is fully implemented on July 1, 1979, unless the law is amended to give the judiciary more flexibility in this area.