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Constitutional Law: Sixth Amendment Guarantee of the Right to a Speedy Trial Extended to Convicts with a Detainer Request Pending from Another Jurisdiction: *Smith v. Hooey*, 393 U.S. 374 (1969)

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CONSTITUTIONAL LAW: SIXTH AMENDMENT GUARANTEE OF THE RIGHT TO A SPEEDY TRIAL EXTENDED TO CONVICTS WITH A DETAINER REQUEST PENDING FROM ANOTHER JURISDICTION. *Smith v. Hooey*, 393 U.S. 374 (1969).

INTRODUCTION

In *Smith v. Hooey*,[1] the United States Supreme Court took another step in guaranteeing a prisoner his constitutional right to a fair and speedy trial.[2] The Court held that a jurisdiction which has caused a detainer request to be filed with a second incarcerating jurisdiction, whether it be state or federal, must upon request by the prisoner make a good faith attempt to have the prisoner surrendered for trial upon the complaint from which the detainer arose. In *Smith*, the petitioner was incarcerated in a federal penitentiary at Leavenworth, Kansas. In 1960, Harris County, Texas, indicted him upon a charge of theft. On May 5, 1960, the sheriff of Harris County notified the warden at Leavenworth of the charge and requested information as to the minimum release date.[3] Shortly after learning of the pending charge the prisoner mailed a letter to the Harris County authorities requesting a speedy trial. He was notified by return mail that he would be afforded a trial within two weeks of any date he could be present in Harris County.[4] Thereafter, and for the next six years, the petitioner periodically and by various means attempted to secure a speedy trial on these charges.

In 1967, Smith filed a verified motion in the Harris County trial court for dismissal of the charge. The motion was not acted upon and the petitioner filed a mandamus proceeding with the Texas Supreme Court requesting a show cause order why the charge against him should not be dismissed. The mandamus was refused, and the United States Supreme Court granted certiorari. In an opinion delivered by Mr. Justice Stewart, the Court held that upon the petitioner's request that he be brought to trial on a state charge, Texas had a constitutional duty to make a diligent good faith effort to bring him before the state court for trial. The Court cited *Klopfer v. North Carolina*[5] as authority for enforcement of

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1 393 U.S. 374 (1969).

2 U.S. CONST. amend. VI.

3 Apparently, petitioner's release date is January 6, 1970.

4 The notification stated that he would be afforded a trial within two weeks of a request *after* his original sentence had expired.

5 386 U.S. 213 (1967).

this sixth amendment right against states. In *Klopfer*, the Court held that by virtue of the fourteenth amendment, the sixth amendment right to a speedy trial is enforceable against the states as one of the most basic rights preserved by our Constitution.

CASE LAW

The law prior to *Smith* can be divided roughly into two categories.[6] The majority of states held that when one jurisdiction has brought charges against a person serving a sentence in another jurisdiction, the first jurisdiction need make no attempt to try the prisoner promptly.[7] These states either expressly or impliedly found that the imprisoning state has no duty to release the prisoner and that the accusing state has no duty to demand his presence. Various reasons were offered in support of this majority rule of refusing to grant an incarcerated individual the right to a speedy trial on pending charges in another jurisdiction. These holdings were based on the jurisdictional sovereignty principle: that one jurisdiction has no authority to compel another to release a prisoner for trial in the custody of the demanding jurisdiction,[8] and since this authority is lacking, it would be a useless and trivial act to require the state to make such a demand for release and subject themselves to "insult and refusal."[9] A second alternative ground for refusing this right to convicts is that interstate fugitives, by fleeing the state after commission of the crime have waived their right to a speedy trial.[10] Finally, one court justified the delay by reasoning

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[6] For an excellent survey of prior law *see* Note, 77 YALE L.J. 767 (1968).

[7] *See, e.g.*, Nolan v. United States, 163 F.2d 768 (8th Cir. 1947); Sansbury v. Peppersack, 179 F. Supp. 649 (D. Md. 1959); *In re* Yager, 138 F. Supp. 717 (E.D. Ky. 1956); Accardo v. State, 39 Ala. App. 453, 102 So. 2d 913 (1958); Nolly v. State, 35 Ala. App. 79, 43 So. 2d 841 (1950); *In re* Douglas, 54 Ariz. 332, 95 P.2d 560 (1939); People v. South, 122 Cal. App. 505, 10 P.2d 109 (Dist. Ct. App. 1932); *In re* Schechtel, 103 Colo. 77, 82 P.2d 762 (1938); Ruip v. Commonwealth, 415 S.W.2d 372 (Ky. 1967); Baker v. Marbury, 216 Md. 572, 141 A.2d 523 (1958); State v. Larkin, 256 Minn. 314, 98 N.W.2d 70 (1959); People v. Miro, 151 Misc. 164, 271 N.Y.S. 341 (Ct. Gen. Sess. 1934); People v. Peters, 101 N.Y.S.2d 755 (1951); Dreadfulwater v. State, 415 P.2d 493 (Okla. 1966); Cooper v. State, 400 S.W.2d 890 (Tex. 1966).

[8] Abelman v. Booth, 62 U.S. 506 (1858), for a state demand on the federal government; *Ex parte* Dorr, 44 U.S. 103 (1845), for a federal demand on a state government; Kentucky v. Dennison, 65 U.S. 66 (1860), for a state demand on another state. *See also* Note, 77 YALE L.J. 767, 771 (1968).

[9] Cooper v. State, 400 S.W.2d 890, 892 (Tex. 1966).

[10] Dreadfulwater v. State, 415 P.2d 493 (Okla. 1966). *See also* Note, 77 YALE L.J. 767, 772 (1968).

that since the guarantee of a speedy trial is based on the right of an individual to be set at liberty, one who is confined on an unrelated conviction should be unable to qualify for the protection of the law, since the right to be set at liberty obviously could not be claimed by a convicted felon serving a term of imprisonment.[11] Although these courts postulated a conceptually sound legal basis for the denial, in all likelihood the practical considerations of punishment, convenience, and cost were the real reasons for the courts' decisions.[12]

A minority of jurisdictions proposed the much sounder principle that an incarcerated individual has the right to insist upon a speedy trial on a pending charge from another jurisdiction. Supporting policy for these decisions took various forms,[13] but was based primarily on the principle that an incarcerated individual suffered from the evils sought to be secured by the sixth amendment: protection against undue and oppressive incarceration prior to trial, minimizing the anxiety and concern accompanying public accusation, and limiting the possibilities that long delay will impair the ability of an accused to defend himself.[14]

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[11] People v. Kidd, 357 Ill. 133, 191 N.E. 244 (1934).

[12] *Punishment* in that some evidence exists that the individual prosecutor would deliberately fail to press charges with the intent of allowing the prisoner to serve his full measure of time in prison before being tried on the second charge, since in most cases a prisoner with a pending detainer writ is not eligible for parole. *Convenience* in that due to a present heavy case load it might be more convenient to prosecute the prisoner at some future date. *Cost*, involving the process of request and transportation to and from the prison and lack of knowledge as to who will pay for such cost, is quite a consideration.

[13] State v. Keefe, 17 Wyo. 227, 258, 98 P. 122, 131 (1908), where the court said: "[A convict] is not only amenable to the law, but is under its protection as well. No reason is perceived for depriving him of the right granted generally to accused persons; and thus, in effect, inflict upon him an additional punishment for the offense of which he has been convicted.... [T]he purpose of the provision against unreasonable delay in trial is not solely a release from imprisonment in the event of acquital, but it is also a release from the harassment of a criminal prosecution and the anxiety attending the same." In People v. Bryarly, 23 Ill. 2d 313, 319, 178 N.E.2d 326, 328 (1961), the court rejected the majority argument that since a foreign jurisdiction has no duty to give up the prisoner for trial in another state, the state has the duty to institute proceedings to attempt to achieve jurisdiction. "The constitutional guarantee of a speedy trial contemplates that the means that are available to meet its requirements shall be utilized. Under the circumstances of this case we think that the burden of taking the steps necessary rested upon the people."

[14] United States v. Ewell, 383 U.S. 116, 120 (1966).

In *Smith,* the Court rejected the reasoning of the earlier majority decisions:

> Although at first blush it might appear that a man already in prison under a lawful sentence is hardly in a position to suffer from "undue and oppressive" incarceration prior to trial, the fact is that delay in bringing such a person to trial on a pending charge may ultimately result in as much oppression as is suffered by one who is jailed without bail upon an untried charge.[15]
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> And while it might be argued that a person already in prison would be less likely than others to be affected by 'anxiety and concern accompanying public accusation,' there is reason to believe that an outstanding 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.[16]
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> [I]t is self-evident that "the possibilities that long delay will impair the ability of an accused to defend himself" are markedly increased when the accused is incarcerated in another jurisdiction.[17]

STATUTORY

The legislatures of fifteen states have recognized the need for securing for prisoners the right to speedy trial and to this end have enacted into law the Agreement on Detainers, promulgated in 1957.[18] The Agreement on Detainers makes the clearing of detainers possible at the insistence of a prisoner. It provides the prisoner with a means to test the substantiality of detainers placed against him and to secure final judgment on any indictments, informations, or complaints outstanding against him in other jurisdictions. The

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[15] 393 U.S. at 378. Under procedures now widely practiced, 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 against him.

[16] *Id.* at 379. In the opinion of the former director of the Federal Bureau of Prisons: "[I]t is their effect upon the prisoner and our attempts to rehabilitate him that detainers are most corrosive. The strain of having to serve a sentence with the uncertain prospect of being taken into the custody of another state at the conclusion interferes with the prisoner's ability to take maximum advantage of his institutional opportunities. His anxiety and depression may leave him with little inclination towards self-improvement." Bennett, *The Last Full Ounce,* 23 FEDERAL PROBATION, No. 2 at 21 (1959).

[17] 393 U.S. at 379.

[18] The fifteen states are: California, Connecticut, Hawaii, Iowa, Maryland, Massachusetts, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, and South Carolina. For the Nebraska position *see* NEB. REV. STAT. §§ 29-729 to -758 (Reissue 1962). *See also, Handbook on Interstate Crime Control,* Council of State Governors (1966).

result is swifter justice in the determination of the charge and it allows the prison a better opportunity to plan the rehabilitation program of the prisoner.

Under the agreement, the warden of the prison is given the duty of informing the prisoner that a detainer request has been lodged against him by another jurisdiction. The prisoner may then request trial on the charge. The request is forwarded by the warden to the requesting jurisdiction, which has 180 days from that time to bring the prisoner to trial. The prosecutor is allowed to take the prisoner to the accusing jurisdiction for trial, and upon its completion, the prisoner is returned to the institution in which he was originally incarcerated. If convicted on the new charge, the sentence is served after the prisoner has served his term in the incarcerating state. If the prisoner is not brought to trial within the time limit, the complaint is dismissed with prejudice.[19]

CONSTITUTIONAL ISSUES

Certain procedural questions remain unanswered in the wake of the *Smith* decision. First, at what point does the right to a speedy trial vest? The answer is important in determining the effect of the prosecutor's delay in filing a detainer request for the prisoner, and the effect of the prisoner's failure to demand a speedy trial. Apparently the right to a speedy trial vests as soon as the prisoner has been formally charged with a crime, either by indictment or information.[20] The question then becomes whether the prosecutor's deliberate failure to file the charge or make the detainer request of the incarcerating jurisdiction is a denial of that sixth amendment right. Statutes of limitation provide no prophylaxis from this tactic since it is generally held that persons apprehended in foreign jurisdictions are fugitives from the accusing jurisdiction, thus tolling the statute from the time the prisoner flees the jurisdiction.[21] The District Court of Appeals of the Third District of California has held that:

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[19] For an amplification on the procedures and forms under the agreement, *see Handbook on Interstate Crime Control*, Council of State Governors (1966).

[20] Lucas v. United States, 363 F.2d 500, 502 (9th Cir. 1966); Reece v. United States, 337 F.2d 825 (5th Cir. 1964).

[21] Taylor v. United States, 238 F.2d 259 (D.C. Cir. 1956); Green v. United States, 188 F.2d 48 (D.C. Cir. 1951); Grayer v. State, 234 Ark. 548, 353 S.W.2d 148 (1962); People v. Snowden, 149 Cal. App. 2d 552, 308 P.2d 815 (1957).

> Although state authorities knew the accused, charged with escape from state prison, was serving sentence in an out-of-state federal prison for another offense and was available for extradition, the statute extending time for commencement of the action when the accused is not within the state, was applicable.[22]

Decisions holding that the statute of limitations is tolled when the suspect is imprisoned in a foreign jurisdiction are not based upon sound reasoning. Such statutes are designed to extend the time allowable for bringing an action in order to prevent one who commits a crime, and then flees and hides, from returning to the original jurisdiction in which the crime was committed and claiming immunity from prosecution. Clearly that rationale is inapplicable when a prisoner is incarcerated in a foreign jurisdiction. He is obviously not "hiding," and, in most instances, is available for trial upon request.

Since statutes of limitation may not run in favor of the prisoner, the issue focuses upon the responsibility of the prosecutor to make a detainer request, and the means which a court has to guard against a deliberate delay. Although the issue has not been litigated, the responsibility of making a good faith effort to discover the whereabouts of the prisoner and to file the information as soon as possible must be impressed upon prosecutors if the rights set forth in *Smith v. Hooey* are to be of any value. The only criterion upon which to judge the prosecutor's good faith are the facts and circumstances of each particular case, and whether the prosecutor has acted with all deliberate speed to file and duly inform the incarcerated individual of the charge against him.

A second issue raised, but not discussed, in *Smith v. Hooey* is whether a prisoner can demand trial in a second jurisdiction when he has not been tried in a first. State statutes give the governor the right to refuse extradition of a prisoner before he has been tried in the arresting jurisdiction.[23] In this era of long court dockets this delay could mean years before the prisoner was finally adjudicated in the incarcerating jurisdiction. In light of *Smith,* the constitutionality of these statutes is questionable.

A hypothetical will perhaps be illustrative. Assume that a prisoner is arrested in one state for a particular crime and is in jail awaiting trial. Also, for a valid reason, the arresting jurisdiction

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[22] People v. Sowers, 204 Cal. App. 2d 640, 22 Cal. Rptr. 401, 402 (headnote 2) (1962). *See* Note, *The Statute of Limitations in Criminal Law: A Penetrable Barrier to Prosecution,* 102 U. PA. L. REV. 630 (1954).

[23] MD. ANN. CODE art. 41, § 33 (1957).

will be unable to try the accused for some time.[24] Before the trial, another jurisdiction learns of the prisoner's whereabouts and files an information against him. Based on the statute giving the governor the perogative of denying extradition until the case has been disposed of in the arresting jurisdiction, the prisoner's request for a speedy trial on the foreign charge is denied, although the reason for delay in the arresting jurisdiction may not exist in the requesting jurisdiction. Under operation of this statute, the prisoner is forced to sit idle while his evidence and witnesses in the foreign jurisdiction dissipate. It was this type of procedure that the Court sought to alleviate in *Smith,* and would, therefore, be unconstitutional, regardless of the reason for the delay suffered by the prisoner who is not allowed to leave the state.[25]

A third important issue raised by the decision in *Smith v. Hooey* concerns the actions of the prisoner. Is the prisoner required now to assert a demand for a speedy trial, or is the responsibility for providing a speedy trial placed upon the accusing jurisdiction? The language of the Court on this issue is confusing: "Upon the petitioner's demand, Texas had a constitutional duty to make a diligent good faith effort to bring him before the Harris County court for trial."[26] This language seemingly dictates that the right to speedy trial vests only upon the demand of the prisoner, and if not asserted is deemed waived.[27] Under the demand doctrine of *United States v. Lustman,*[28] it appears that nothing less than an action or demand in open court will suffice.

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[24] A speedy trial does not mean an immediate one. "[T]he essential ingredient is orderly expedition and not mere speed." Smith v. United States, 360 U.S. 1, 10 (1959). The right to a speedy trial prevents only those delays which are unreasonable.

[25] Note 13 *supra.*

[26] Smith v. Hooey, 393 U.S. 374, 383 (1969).

[27] This view of the right has been expounded in United States v. Santos, 372 F.2d 177 (2d Cir. 1967); United States v. Lustman, 258 F.2d 475, 478 (2d Cir. 1958), *cert. denied,* 358 U.S. 880 (1958); Bruce v. United States, 351 F.2d 318, 320 (5th Cir. 1966), *cert. denied,* 384 U.S. 921 (1966); United States v. Gladding, 265 F. Supp. 850, 854 (S.D.N.Y. 1966) stating: "[an] accused who takes no affirmative action to secure an early trial, does not object to continuances or delays, and who acquiesces through silence in Government's failure to speedily try him in hope that prosecution will be dropped waives his Sixth Amendment right to a speedy trial."

[28] United States v. Lustman, 258 F.2d 475, 478 (2d Cir. 1958), *cert. denied,* 358 U.S. 880 (1958). Where defendant has made no request for a prompt trial except to the prosecutor, *Held:* he had not made a demand sufficient to avoid waiver of his constitutional right.

A minority of courts have held that the accused need not request trial before claiming the right to have prosecution within a reasonable time.[29] These decisions place the burden of securing a speedy trial squarely upon the state's shoulders, reasoning that the "burden is on the state, not the accused, to see that he is arraigned and speedily brought to trial."[30] The courts which adhere to the demand doctrine generally recognize exceptions to it.[31] For example, where the defendant was powerless to assert his right to a speedy trial because of imprisonment, ignorance, or lack of legal advice he need not make a demand. The reasoning is based upon a realization that prison environment is not conducive to the gaining of knowledge or strenuous advocation of one's constitutional rights.[32]

If use of the words "upon demand" by the majority meant only to refer to Smith's demand, this leaves open the question of whether the recognized exception to the demand doctrine for incarcerated individuals is part of the constitutional protection. It would appear from the language that the demand referred to was the demand made by Smith himself; and that the court was merely dealing with the present factual situation, and that since in this particular case the defendant had made a demand, Texas had a constitutional duty to grant that demand.

A broad interpretation of this language would indicate that the Court is now unwilling to recognize the difficulties inherent in a prisoner's gaining knowledge of his rights and the assertion of these rights. If this interpretation is correct, then under the demand doctrine the accused is charged with the responsibility of securing

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29 State v. Carrillo, 41 Ariz. 170, 16 P.2d 965 (1932); Zehrlaut v. State, 230 Ind. 175, 102 N.E.2d 203 (1951); Nicolay v. Kill, 161 Kan. 667, 170 P.2d 823 (1946); People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955); State v. Chadwick, 150 Ore. 645, 47 P.2d 232 (1935).

30 People v. Prosser, 309 N.Y. 353, 130 N.E.2d 891 (1955).

31 Some of the recognized exceptions are: (1) Where the defendant did not know of the pending charge, United States v. Lustman, 258 F.2d 475, 478 (2d Cir. 1958), *cert. denied*, 358 U.S. 880 (1958) (recognizing the exception); United States v. Sherwood, 38 F.R.D. 14, 19 (D. Conn. 1964); (2) Where he was powerless to assert his right to a speedy trial because of imprisonment, ignorance, or lack of legal advice, United States v. Lustman, 258 F.2d 475, 478 (2d Cir. 1958), *cert. denied*, 358 U.S. 880 (1958); United States v. Gladding, 265 F. Supp. 850, 855 (S.D.N.Y. 1966); United States v. Chase, 135 F. Supp. 230 (N.D. Ill. 1955); Gross v. State, 390 P.2d 220, 222 (Alas. 1964), *cert. denied*, 379 U.S. 859 (1964); (3) Where the delay resulted from a trial in a district of doubtful venue, United States v. Gladding, 265 F. Supp. 850 (S.D.N.Y. 1966); (4) By delay caused by defendant's consent; Mattoon v. Rhay, 313 F.2d 683 (9th Cir. 1963). *See generally* Note, 20 STAN. L. REV. 476, 478 (1968).

32 *See* Doerflein v. Bennett, 259 Ia. 785, 145 N.W.2d 15 (1966).

his right to speedy trial from the accusing jurisdiction, when he has been formally charged,[33] or sustaining the burden of showing that he has no knowledge of that charge.[34] If the demand has been made, or the exceptions met, the accusing state then has the responsibility of providing the procedure and of securing a speedy trial for the defendant.

Smith also raises a jurisdictional problem with respect to the question of who shall have jurisdiction over the prisoner as he travels from one jurisdiction to another for trial, and who shall bear the cost of that travel. The legal framework now exists from which valid answers may be drawn.

The most obvious procedural framework is, of course, the Agreement on Detainers, adopted by fifteen states.[35] This agreement prescribes a definite jurisdictional guide, and cost assessment between member states under all foreseeable circumstances.[36]

A second statutory remedy, the Uniform Criminal Extradition Act, may also provide an adequate framework for the process of criminal transfer under a detainer request.[37] Initially, however, difficulty may be encountered as not all states have adopted either of these procedural agreements, and therefore non-members cannot take advantage of, nor are they bound by, the respective provisions. Secondly, both agreements have some limitations which may curtail their effectiveness and draw a constitutional attack as a result of the decision in *Smith*. For example, the Agreement on Detainers has a provision which states that if the agreement conflicts with any constitutional provision or state statute it will not apply to that particular crime or type of prisoner.[38] Some states have statutes which could be interpreted to deny the right of extradition to a prisoner who is serving a life sentence in the incarcerating jurisdiction, thus effectively denying him the right to a speedy trial.[39] Clearly, this type of statute conflicts with the mandate of *Smith v. Hooey*, since no exception was made to the right to a speedy trial.

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[33] Lucas v. United States, 363 F.2d 500, 502 (9th Cir. 1966); Reece v. United States, 337 F.2d 852 (5th Cir. 1964); Arrowsmith v. State, 131 Tenn. 480, 488, 175 S.W. 545, 547 (1915); State v. Keefe, 17 Wyo. 227, 244, 98 P. 122, 126 (1908).

[34] Taylor v. United States, 238 F.2d 259 (D.C. Cir. 1956). Defendant did not waive his right to a speedy trial by failure to make demand therefore, in absence of showing that defendant knew he was indicted.

[35] *See* note 18 *supra*.

[36] *See, e.g.*, NEB. REV. STAT. §§ 29-729 to -758 (Reissue 1962).

[37] This agreement has been adopted by 44 states as of this writing.

[38] Note 36 *supra*.

[39] *See* N.J. STAT. ANN. § 2A:160-10.

Perhaps the most important issue raised by the decision in *Smith* is whether an incarcerating jurisdiction's refusal to deliver the prisoner is in violation of the prisoner's right to a speedy trial. In the past the Court has given no indication that such an action could be compelled by one state against another, and the language of *Smith* cannot be said to indicate that the Court will alter its view.[40]

Even though it is unlikely that one state could compel another to surrender the prisoner, there exists the possibility that the prisoner himself might be able to compel the incarcerating jurisdiction to deliver him to the requesting jurisdiction. The approach to this action would be for the prisoner to instigate an action against the state official charged with the responsibility of securing him on the theory that the official is engaged in an unconstitutional act[41] and thus stripped of his state immunity.[42] The cause of action in such a case would be based upon the Civil Rights Act of 1964.[43] This method may provide the necessary procedure to secure to the prisoner the right which the United States Supreme Court has described as "one of the most basic rights preserved by our constitution."[44]

CONCLUSION

The decision in *Smith v. Hooey* has taken another step toward securing to an incarcerated individual his sixth amendment right to a speedy trial on a charge filed in another jurisdiction. The decision, however, leaves several important questions unanswered: whether it is a violation of the prisoner's sixth amendment rights for a prosecutor to delay filing charges against an individual that he knows is incarcerated in another jurisdiction until just prior to his release; whether the prisoner may demand a trial in a second jurisdiction when he has not been tried in the incarcerating jurisdiction; whether the prisoner must make a demand for speedy trial, or whether the responsibility lies with the state; who has

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[40] Note 6 *supra.*

[41] He is depriving the prisoner of his sixth amendment rights. 42 U.S.C.A. § 1983.

[42] *Ex parte* Young, 209 U.S. 123 (1908).

[43] 42 U.S.C.A. § 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

[44] Klopfer v. North Carolina, 386 U.S. 213 (1967); Smith v. Hooey, 393 U.S. 374 (1969).

jurisdiction over prisoners enroute to trial on a charge in another jurisdiction; and whether the incarcerating jurisdiction has a duty to deliver up the prisoner to the requesting jurisdiction.

The Court did not address itself to these issues, and any answers are indeed speculative. It would appear, however, that if the right to speedy trial is to be fully secured, a prosecutor who knows, or should know, that the one sought is incarcerated in a foreign jurisdiction should be required to file his charges immediately or else lose his cause of action through the running of the statute of limitations. Additionally, one who is awaiting trial, but cannot leave the state should be allowed to demand trial on charges filed in a foreign jurisdiction if the circumstances are such that to deny this right would prejudice his defense.

Responsibility for initiating the procedural machinery to provide the prisoner with an immediate notice of charges, and trial on these foreign charges as quickly as possible should rest with the charging jurisdiction. The defendant who is incarcerated should not be required to go through the onerous task of initiating this machinery from the restrictive confines of his prison cell. Finally, the demanding state should be able to require the incarcerating jurisdiction to surrender the prisoner for trial and until this comes to pass, the prisoner's right under the sixth amendment will remain merely a favor to be granted.

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