I. Speedy Trial in the United States of America

General Observations

In United States of America, procedural law is the postponement of a hearing, trial, or other scheduled court proceeding at the request of either or both parties in the dispute, or by the judge suo sponte. In response to delays in bringing cases to trial, some states have adopted “fast track” rules that sharply limit the ability of judges to grant continuances. However, a motion for continuance may be granted when necessitated by the movant (the person seeking the continuance), especially when the court deems it necessary and prudent in the “interest of justice.” United States criminal procedure derives from several sources of law.

The right to a speedy trial finds expression in the U.S. Constitution, State Constitutions, State and Federal Statutory Laws, and the State and Federal Case Laws. The Sixth Amendment to the U.S. Constitution, and the case law surrounding this amendment, provide the best place to start analysis of the basic questions of primary concern: What interests does this right protect? When and why are these interests triggered? And how should these interests be protected, both to prevent their violation whenever possible and to remedy the effects of violations when violations nonetheless occur?¹ Sixth Amendment of the United States Constitution inter alia guarantee that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury....."²

¹ See Sixth Amendment to the Constitution of United States; B.K. Arora, Law of Speedy Trial in India, 256 (2005).
² Ibid.
This Bill of Rights, originally applied only against the Federal Government (*Barron v. Baltimore*). It has since been "incorporated" via the Fourteenth Amendment to apply to the States as well. To be brief, the framers designed the right to protect a person from prolonged de facto punishment—extended accusations that limit his liberty and besmirch his good name before he had full and fair chance to defend himself. If government accuses someone, it must give him the right speedily so that he can clear himself at the trial and regain his good name and full liberty. And if government holds the accused in extended pre-trial detention, Courts must ensure that the accuracy of the trial itself will not thereby be undermined as might occur if a defendant's prolonged detention itself causes the loss of key exculpatory evidence.

(i) **Sixth Amendment to the United States Constitution**

In 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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

The Sixth Amendment to the United States Constitution is the part of the United States Bill of Rights which sets forth rights related to criminal prosecutions in federal Courts. The Supreme Court has applied the protections of this amendment to the states through the Due Process Clause of the Fourteenth Amendment.

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5 Supra n. 1.
7 Information available at [http://en.wikipedia.org/wiki/Sixth_Amendment_to_the_United_States_Constitution](http://en.wikipedia.org/wiki/Sixth_Amendment_to_the_United_States_Constitution) [accessed on 10.02.2013].
The Speedy Trial Clause of the Sixth Amendment to the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial." The Clause protects the defendant from delay between the presentation of the indictment or similar charging instrument and the beginning of trial.

Much the same language was incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the Constitution of United States of America. Unlike other provisions of the Amendment, this guarantee can be attributable to reasons which have to do with the rights of and infliction of harms to both defendants and society. The provision is "an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying the accusation and to limit the possibility that long delay will impairing the ability of an accused to defend himself." The passage of time alone may lead to the loss of witnesses through death or other reasons and the blurring of memories of available witnesses. But on the other hand, "there is a societal interest in providing a speedy trial which exists separate from and at times in opposition to the interests of the accused." Persons in jail must be supported at considerable public expense and often families must be assisted as well. Persons free in the community may commit other crimes, may be tempted over a lengthening period of time to "jump" bail, and may be able to use the backlog of cases to engage in plea bargaining for charges or sentences which do not give society justice. And delay often retards the deterrent and rehabilitative effects of the criminal law.

(ii) Types of Trials

There are many kinds of trials that take place in United States courtrooms every day. All trial types, however, can be categorized into four different case types: civil, criminal, juvenile and traffic.

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9 Ibid.
10 Ibid.
• Civil Case – A trial that consists of a disagreement between two or more people or businesses. Examples: disputes between a landlord and tenant, divorce actions, small claims cases and a case where one person is suing another for damages.

• Criminal Case – A trial involving a person who has been accused of committing either a misdemeanor or a felony offense.

• Juvenile Case – A trial that usually involves a minor who is under the age of seventeen. Juvenile cases are heard by the family division of the Circuit Court. There are three types of juvenile cases: juvenile delinquency, child protective hearings and traffic cases.

• Traffic Case – This is the most common type of trial, related to a traffic violation. A traffic violation can be considered either a civil infraction or a misdemeanor.

(iii) Basic Trial Procedure

1. Selection of a Jury – Jurors are selected for a trial from a pool of available jurors. The judge and attorneys question prospective jurors to find out if a juror has a personal interest in the trial, or a prejudice or bias that may influence them during the course of the trial. The attorneys may challenge undesirable jurors and ask that they be excused from the trial.

2. Opening Statements – Each side begins the trial by outlining the proof that they will present to the jury during the course of the trial. Opening statements are not to be considered evidence, only the expectations of what each side hopes to prove throughout the trial.

3. Presentation of Evidence and Testimony of Witnesses – The plaintiff or prosecution begins the trial by presenting their case first. When a witness is called to testify in a trial, the side that called the witness first asks questions in direct examination. The opposing side then has their opportunity to ask questions in a cross-examination of the witness. Any physical evidence:
documents, weapons or photographs, for example, are admitted numbered for identification to be presented in the trial.

During the trial, if an attorney finds objection to a question that is being asked to a witness, they present their objection to the judge. Questions that are objected to are of legal technicality, and may be argued out of the trial. The judge will then let the jury know of any pertinent information needed to make their decision, or instruct them to disregard anything that is not relevant to the trial. The judge's ruling to either sustain or overrule an objection is decided by applying the law that either permits or does not permit the question to be asked or answered during a trial.

When each side has presented all their evidence pertaining to the trial, they "rest" their case.

4. Closing Arguments – The attorneys summarize the evidence that was presented throughout the trial and try to persuade the jury to find in favor of the client they are representing. Since plaintiff has the burden of proof, their side has the first opportunity to open and close the trial.

5. Presentation of Jury Instructions (Charging the Jury) – The judge reads the instructions of law to the jury, defines all issues the jurors must decide on and informs them of the law that governs their specific trial. Jurors are not allowed to decide the outcome of trials based on how they would like the laws to be, but rather on as the laws are. This is the sworn duty of the jury, taken before every trial.

6. Deliberation – The jury retires to a deliberation room to consider the trial and reach a verdict. First, the jury elects a foreperson who ensures discussions regarding the trial are conducted in a sensible and orderly fashion, all issues presented during the trial are fully and fairly discussed, and that every juror is given a fair chance to participate. If the jurors have a question about any part of
the trial during their deliberation, they may write it down and have the bailiff deliver it to the judge.

Most states require that a 12-person jury find the trial in favor unanimously for either the plaintiff or defendant. Some states, however, allow for a trial’s decision to be based on a majority as low as 7. If the jury fails to reach a unanimous (or, if applicable, a sufficient majority) verdict and finds itself at a standstill (what is known as a hung jury), then the judge can declare a mistrial. If a mistrial should is declared, the trial may be simply dismissed, or the trial may have to start over again from the jury selection stage.

When a verdict for the trial has been reached, the jurors that agree with the verdict sign the form and notify the bailiff. The clerk then reads the verdict aloud, and the judge dismisses the jurors from the trial.

The researcher find that the United States of America is the only country which has enacted a legislation to implement the constitutional guarantee of speedy trial to all accused persons and the law on this point is the Speedy Trial Act, 1974 as amended on August 2, 1979. The Act establishes time limits for completing various stages of a Federal criminal prosecution. The Magistrate judges shall insist upon compliance with the time limits of the federal Magistrates Act and conduct preliminary hearings within ten days, if the defendant remains in the custody in lieu of bond, and within 20 days if released on bail, except for good cause shown upon motion to a United States Magistrate Judge. Where scheduling permits, hearings shall be set as soon as practicable, with the time limits in the Federal Magistrates Act being the outside limits.

This Act explicitly prescribes a set of time limit for carrying out major events in criminal proceedings. This Act requires the trial of a defendant should commence within 70 days from the date of filing of the indictment or from the date on which the defendant appears before a judicial officer of the Court, whichever is later. The indictment must be filed within 30 days from the date of arrest or service.
of summons. If there is a violation of the provisions of the Speedy Trial Act the indictment against the defendant must be dismissed. The District Court, however, retains the discretion to dismiss the indictment either with or without prejudice. In the case of *United States v. Taylor*\(^{11}\) the question was of determining whether a dismissal of an indictment for noncompliance with the Speedy Trial Act should be with or without prejudice. The Court observed that the District Court must at least consider the seriousness of the offence, the facts and circumstances of the cases, which can lead to the dismissal and the impact of a re-prosecution on the administration of the Speedy Trial Act as well as on the administration of justice.

Hence, in determining whether to dismiss with or without prejudice, a District Court “shall consider, among others, each of the following factors: \(^{12}\)

- The seriousness of the offense;
- The facts and circumstances of the case which led to the dismissal;
- And the impact of a re-prosecution on the administration of justice.”

A District Court is not required to dismiss an indictment with prejudice for every violation of the Speedy Trial Act. The decision whether to dismiss a complaint under the Speedy Trial Act with or without prejudice is entrusted to the sound discretion of the District Judge and no preference is accorded to either kind of dismissal. Although not as harsh a sanction as dismissal with prejudice, dismissal without prejudice is meaningful because it, *inter alia*, forces the Government to obtain a new indictment if it decides to re-prosecute as well as exposes the prosecution to dismissal on the ground of law of limitation.\(^{13}\)

The right to a speedy trial is not only a vital safeguard to prevent undue and oppressive incarceration but it serves to minimize anxiety and concern that accompany the accusation. This right helps to limit the possibility of impairing the

\(^{12}\) *Id.* at 328.
\(^{13}\) *Id.* at 329.
ability of an accused person to defend himself. This right was actuated in the recent past and the courts have laid down a series of decisions opening up new horizons of fundamental rights. In fact, more cases are coming up before the Courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal indictment of charge.\textsuperscript{14}

It is a truism that the guarantee of a speedy trial is one of the most basic rights preserved by the Constitution of USA, the protection afforded by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been accused in the course of that prosecution. Invocation of the right need not await indictment, information or other formal charge but begins with the actual restraints imposed by arrest if those restraints precede the formal preferrung of charges.\textsuperscript{15}

Moreover, in order to ensure that accused persons are not rushed to trial without an adequate opportunity to prepare their cases, the Congress amended the Act in 1979 to provide a minimum time period during which trial must commence. The amended Act provides that trial may not begin less than 30 days from the date the defendant first appears in court, unless the defendant agrees in writing to an earlier date. In \textit{United States v. Rojas Contreras},\textsuperscript{16} the U.S. Supreme Court held that this 30-day trial preparation period is not restarted upon the filing of a substantially similar superseding indictment. If the indictment is dismissed at the defendant’s request, the provisions of the Act apply afresh upon reinstatement of the charge. If the indictment is dismissed at the request of the government, the 70-days time begins to run again upon the filing of the second indictment. If trial ends in a mistrial or the court grants a motion for a new trial, the second trial must begin within 70 days from the date the decision of retrial becomes final.

\textsuperscript{14} \textit{Moti Lal Saraf v. State Of Jammu & Kashmir & Another}, In the Hon’ble Supreme Court of India, Appeal (crl.) 774 of 2002, decided on: 29.09.2006.

\textsuperscript{15} Carl J. Franklin, \textit{Constitutional Law for the Criminal Justice Professional}, Published: March 16, 1999 by CRC Press.

\textsuperscript{16} 474 US 231 (1985).
Certain pretrial delays are automatically excluded from the Act’s time limits, such as delays caused by pre-trial motions. In *Henderson v. United States*\(^\text{17}\), the Supreme Court held that the Act excludes “all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is ‘reasonably necessary.’” Other delays excluded from the Act’s time limits include: delays caused by the unavailability of the defendant or an essential witness; delays attributable to a co-defendant; and delays attributable to the defendant’s involvement in other proceedings, including delay resulting from an interlocutory appeal. In *United States v. MacDonald*,\(^\text{18}\) the Court held that the speedy trial clause was not implicated by the action of the United States when, in May 1970, it proceeded with a charge of murder against defendant under military law but dismissed the charge in October of that year, and he was discharged in December. In June of 1972, the investigation was reopened but the grand jury was not convened until August of 1974, and MacDonald was not indicted until January of 1975. The period between dismissal of the first charge and the later indictment had none of the characteristics, which called for application of the speedy trial clause. The period between arrest and indictment must be considered in evaluating a speedy trial claim. *MacDonald Case* was applied in *United States v. Loud Hawk*,\(^\text{19}\) by holding that the speedy trial guarantee was inapplicable to the period during which the government appealed for dismissal of an indictment, since during that time the suspect had not been subject to bail or otherwise restrained. Further there was no denial of speedy trial since prosecution’s position on appeal was strong, and there was no showing of bad faith or dilatory purpose. If the interlocutory appeal is taken by the defendant, he must “bear the heavy burden of showing an unreasonable delay caused by the prosecution or wholly unjustifiable delay by the appellate court” in order to win dismissal on speedy trial grounds.

\(^{17}\) 476 US 321 (330) (1986).

\(^{18}\) 456 US 1 (1982).

\(^{19}\) 474 US 302 (1986).
The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures a right to a defendant. It does not preclude the rights of public justice. No length of time is *per se* too long to pass scrutiny under this guarantee, but on the other hand neither does the defendant have to show actual prejudice caused by delay. The Court rather has adopted an ad hoc balancing approach. "We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. This may be expressed in different ways, and one can identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.\(^{20}\) The fact of delay triggers an inquiry and is dependent on the circumstances of each case. Truly speaking, the reasons for the delay will vary. A deliberate delay for advantage will weigh heavily, whereas the absence of a witness would justify an appropriate delay, and such factors as crowded dockets and negligence will fall between these other factors. Delays caused by the prosecution's interlocutory appeal will be judged by these factors, of which the second one, that is, 'the reason for the appeal' is the most important.

A defendant may not expressly waive of his rights under the Speedy Trial Act. This was categorically decided in *United States v. Saltzman*\(^{21}\) However, if the trial judge determines that "ends of justice" served by a continuance of the trial outweigh the interest of the public and the defendant in a speedy trial, delay occasioned by such continuance is excluded from the Act's time limits. The judge must set forth, orally or in writing, his reasons for granting the continuance. The government should never rely on a defendant's unilateral waiver of his rights under the Act. It is the duty of the prosecution to bring a defendant to trial, and the failure of the defendant to demand the right is not to be construed as a waiver of the right; yet, the defendant's acquiescence in delay when it works to his advantage should be considered against his later assertion that he was denied the guarantee, and the

\(^{20}\) *Supra* n. 15.

\(^{21}\) 984 F.2d 1087.
defendant's responsibility for the delay would be conclusive. Finally a court should look to the possible prejudices and disadvantages suffered by a defendant during a delay. While the accused/defendant cannot unilaterally waive of his rights under the Speedy Trial Act, he can forfeit his right to obtain a dismissal of the case for a claimed violation of the Act by failing to move for dismissal prior to trial. The law provides that failure of the defendant to move for dismissal prior to trial shall constitute a waiver of the right to dismissal under this section.\textsuperscript{22}

There are catena of cases decided by the Supreme Court during the second half of the twentieth century wherein laid down \textbf{seven general propositions} concerning the constitutional right to a speedy trial:

(1) The Court has repeatedly identified three major and distinct interests protected by the Sixth Amendment in speedy trial clause namely an interest in avoiding prolonged pretrial detention, an interest in minimizing the anxiety and loss of reputation accompanying formal public accusation, and an interest in assuring the ultimate fairness of a delayed trial.

(2) The Court has made clear that the major evils of pre-trial restraints on liberty and loss of reputation occasioned by accusation exist quite apart from the third major evil of possible prejudice to an accused's defence at trial.

(3) The Court has held that the clause simply does not apply to the time between the commission of the crime and the time that the defendant is in some way "accused" (usually by arrest or indictment) by the government. In other words, the clause applies only to the formal "accusation period"—the period between governmental accusation and trial.

(4) Relatedly, the Court has held that the clause does not apply to any period during which the government drops its initial charges while retaining the right to re-indict later. In such a case the defendant is not "accused" during this time, and

\textsuperscript{22} Ibid.
so the speedy trial clock stops ticking against the government during this period.

(5) The Court has held that if pre-accusation delay compromises the defendant's ability to defend himself or herself, the main safeguard against injustice comes from the applicable statute of limitations. In cases of substantial prejudice to a fair trial caused by a prosecutor's purely strategic delay in bringing the initial accusation, defendants may also seek relief by appealing to general due process principles.

(6) The Court has said that the judicial remedy for speedy trial violations of dismissing the case with prejudice that is, dismissing with no possibility of refilling charges later is unsatisfactorily severe because it means that a defendant who may be guilty of a serious crime will go free, without ever having been tried. Such a remedy, the Court has noted, is more severe than the Fourth Amendment exclusionary rule, which limits the introduction of certain evidence, but typically does not altogether bar a trial.

(7) Nonetheless, the Court has repeatedly held that dismissal with prejudice is the only possible remedy for speedy trial clause violations. Given the first six propositions, the analytic soundness of proposition seven seems questionable to some scholars, although the law appears quite clear on this point.23

The American Bar Association in Criminal Justice Section has laid down standard 12-1.1 in which the purposes of the standards of Speedy Trial and Timely Resolution of Criminal cases are enshrined. These are as under:

(a) The Standards on Speedy Trial and Timely Resolution of Criminal Cases have three main purposes: (1) to effectuate the right of accused to a speedy trial; (2) to further the interests of the public, including victims and witnesses, in the fair,

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23 B.K. Arora, op.cit. at 265.
accurate, and timely resolution of criminal cases; and (3) to ensure the effective utilization of resources.

(b) These standards should be read in conjunction with other American Bar Association (ABA) Standards of Criminal Justice, and with recognition that fairness and accuracy are essential components of the criminal justice process. The standards are not intended to emphasize speedy disposition of cases to the detriment of the interests of the parties and the public, including victims and witnesses, in the fair, accurate and timely resolution of cases. In implementing these standards in individual cases and in developing policies for overall management of caseloads, jurisdictions should seek to ensure that both prosecutors and defense counsel have adequate opportunity to investigate their cases, consult with witnesses, review documents, make appropriate motions, and conduct other essential aspects of case preparation.

It is, therefore, crystal clear that the first of these seven principles set out above suggests that each of the three interests protected by the clause may have a different time limit. For instance, a case in which the liberty interest would be violated by anything more than a month of pretrial detention: by hypothesis, any detention longer than this would be an unacceptable deprivation of liberty for a man who has yet to receive all the safeguards of a full-blown trial—a man who has not yet been, and may never be, convicted of anything. Similarly, a second defendant, charged with the identical crime but released on her own recognizance pending trial. In this second case, no pre-trial detention interest exists, and her distinct anxiety and reputation interest would not necessarily be violated by a similar one-month gap between indictment and trial. For example, a full year might elapse before this distinct constitutional interest, which demands that at some point an accused person must be allowed to answer the government's accusation and thereby clear her good name, would be violated. The fair trial interest may have a different time period depending on the particular ways in which the government's accusation threatens to impede a defendant's ability to fully defend himself or herself at trial. For example,
some pre-trial detentions might severely obstruct the defendant's ability to assemble evidence and witnesses for his trial defence; other detentions might not, depending on the particular conditions of confinement and state of evidence; and still other indictments will not involve any pre-trial detention.\textsuperscript{24}

Moreover, it is clear that the clause is violated by long detention regardless of what happens later on but an impermissibly lengthy detention violates the clause whether it ends in a trial or in the charges being dropped. So far as the pre-trial liberty interest is concerned, it is the detention, and not the trial, that violates the speedy trial clause. This is suggested by the second proposition: the pre-trial liberty and reputation interests are independent of the conditions of the trial, as the Court made clear in 1971\textsuperscript{25} in the case of \textit{United States v. Marion},\textsuperscript{26} Marion case also illustrated the third proposition in upholding an indictment handed down three years after prosecutors supposedly knew about the crime and defendants' involvement in it. The Court said that the defendants were simply not "accused" during those three years. In accordance with the fifth proposition, the Court ruled that the statute of limitations was the defendants' primary safeguard, and further noted that if defendants could show substantial prejudice to their defence created by a bad-faith prosecutor seeking delay simply to gain tactical advantage, a due process challenge would be appropriate.

Although the Constitution speaks of a speedy trial as the right of the 'accused,' the Court has recognized that society at large also has its own legitimate interests in the prompt resolution of criminal accusations. Many defendants, especially guilty defendants, might prefer to delay their trials, perhaps in the hope that prosecutorial evidence will become stale, making it more difficult for the government to carry its ultimate burden of proof beyond reasonable doubt.\textsuperscript{27} But the Constitution does not give the defendant a general right to an 'unspeedy' trial

\textsuperscript{24} Law Library - American Law and Legal Information, Information available at http://law.jrank.org/pages/2137/Speedy-Trial.html? [accessed on 05.03.2013].
\textsuperscript{25} \textit{Ibid.}
\textsuperscript{26} 404 U.S. 307327.
\textsuperscript{27} \textit{Supra} n. 24.
unlike, for example, the Sixth Amendment right of counsel, which is accompanied
by a general right not to have counsel. Nevertheless, at some extreme point, an
accusation period could be so short as to violate general due process principles, so a
defendant must be given sufficient time to arrange his defense, as the Supreme
Court recognized in its famous ruling in *Powell v. Alabama.*

In the light of analysis of the nature and timing of speedy trial clause rights,
it remains to ponder how these rights should be legally protected and remedied.
Although the Court has said that dismissal with prejudice is the only possible
remedy, there are reasons to doubt the analytical soundness of this assertion.
Consider the first interest protected by this clause, the bodily liberty interest
offended by overlong pretrial detention. Judges can simply refuse to allow this
violation to happen by issuing writs of habeas corpus directing the release of
prisoners who have served as much pre-trial time in jail as the clause will tolerate.
Historically, the speedy trial right in England tightly intertwined with the famous
English Habeas Corpus Act of 1679. However, habeas is less of a remedy than a
means of prevention. What should the remedy be when the judge fails to issue a
writ? One controversial possibility would be to allow for compensatory and punitive
damages directly against the government. Extending its landmark ruling in *Bivens
v. Six Unknown Agents of the Federal Bureau of Narcotics* which held that
government officials who conducted unreasonable searches could be sued directly
under the Fourth Amendment, the Court could find a direct cause of action against
the government itself under the Sixth Amendment’s speedy trial clause. Indeed,
unconstitutionally long detentions would seem to be a subset of unreasonable
seizures of persons, and so the Fourth Amendment might seem directly applicable as
well. The prospects for such a doctrinal development, however, seem bleak. The
most natural damage remedy would lie against the government itself. (Judges who
ordered the detention would enjoy judicial immunity; prosecutors who allowed the

29 287 U.S. 45 (1932).
30 *Supra* n. 24.
defendant to languish in jail before the trial begins would likewise claim that a court had authorized the detention; and the jailor would insist that he was acting in good faith relying upon a judicial order of confinement.) But principles of sovereign immunity would most likely make it difficult to prevail in a damage suit brought directly against the government, even though its executive and judicial agents combined to deprive a defendant of his constitutional rights to bodily liberty.

Similarly, for the second speedy trial interest i.e. reputation, the judge can prevent violations by simply quashing indictments that linger too long, with permission to re-indict whenever the prosecutor is ready to proceed immediately to trial. Again, if the judge fails to prevent a violation, civil damages would be a remedial possibility, just as they are in other cases of damaged reputation (e.g., slander and libel) where the accused may be charged by the government of having committed an infamous act, but has been denied his right to speedily clear his name in a fair trial. Here, too, the problem of sovereign immunity has blocked the development of this analytically attractive remedy.\(^\text{32}\)

One of the main virtues of damage remedies is that they seek to vindicate the rights of innocent men and women wrongly detained and accused; dismissal with prejudice is not a true or tailored remedy for someone who is clearly innocent, and would have obviously prevailed at the trial. In other words, although dismissal with prejudice might well vindicate whatever fair trial interest might exist, it does nothing to redress the analytically distinct wrongs of pre-trial loss of bodily liberty and reputation that can occur when a defendant is held too long in pretrial detention, or accused too long without a chance to speedily clear his name at trial. The framers of the Constitution cared a great deal about innocent persons, and designed many provisions in the Fourth, Fifth, and Sixth Amendments to protect these innocent persons from erroneous punishments and impositions. The speedy trial clause is clearly, at its core, designed to give an innocent man, who is wrongly accused, a right to a speedy trial so that he can clear his good name. These two major interests

\(^{32}\) Supra n. 24.
i.e. interest in reputation and liberty is ill-served by the current absence of good remedies to make innocent men and women suffer when these interests have been violated by government.\footnote{\textit{Ibid.}}

Consider finally the fair trial interest, designed to ensure that an overlong accusation itself (which of course may trigger pre-trial detention and which may cause an immediate loss of reputation that worsens with every day the indictment lingers) does not compromise the ability of a defendant to put on a full and unimpaired defence at the trial. Here too, the Amendment is centrally designed to protect an innocent defendant from being erroneously imposed upon. A judge could again prevent violations of this interest by ordering the pre-trial release of the defendant or ordering the conditions of confinement softened so that the confinement does not cause the loss of key exculpatory evidence. If this fails, however, there are several possible judicial remedies. One is dismissal with prejudice. The idea here is simple: if, because of the government's unconstitutionally long accusation period, a fair trial is simply no longer possible, then the trial itself should be permanently aborted, and the defendant set free. This is a precisely tailored remedy but only for that subset of cases in which the fair trial interest has been incurably compromised.\footnote{\textit{Ibid.}} Another possible option, in cases where it is less than clear that a trial would itself be unfair, is to rely on the due process rule of \textit{inre Winship},\footnote{\textit{397 U.S. 358 (1970).}} requiring the government to prove guilt beyond a reasonable doubt in criminal cases. A defence argument to the jury that an unreasonable delay by the prosecutor's office caused key evidence to be lost could certainly be a ground for reasonable doubt.

\textbf{(iv) Defendants Right To Speedy Trial}

Defendants in criminal cases, under the Sixth Amendment, have the right to a speedy trial. In the case of \textit{Barker v. Wingo},\footnote{\textit{33 L Ed 2d 101.}} the U.S. Supreme Court laid down a
four-part ad hoc balancing test for determining whether the defendant's speedy trial right has been violated:

1. Length of Delay: A delay of a year or more from the date on which the speedy trial right "attaches" (the date of arrest or indictment, whichever occurs first) was termed "presumptively prejudicial," but the Court has never explicitly ruled that any absolute time limit applies.

2. Reason for the delay: The prosecution may not excessively delay the trial for its own advantage, but a trial may be delayed to secure the presence of an absent witness or other practical considerations.

3. Time and manner in which the defendant has asserted his right: If a defendant acquiesces to the delay when it works to his own benefit, he cannot later claim that he has been unduly delayed.

4. Degree of Prejudice: Degree of prejudice to the defendant which the delay has caused.

If the reviewing court finds that a defendant's right to a speedy trial was violated, then the indictment must be dismissed and/or the conviction overturned. The Supreme Court has held that, since the delayed trial itself is the state action which violates the defendant's rights, no other remedy would be appropriate. Thus, a reversal or dismissal of a criminal case on speedy trial grounds means that no further prosecution for the alleged offence can take place.

The American Bar Association in its Criminal Justice Section has laid down Standard 12-12.1 in which defendant's right to a Speedy Trial has been enlisted. The Standard 12-2.1 lays down the speedy trial time limits:

(a) A defendant's right to a speedy trial should be formally recognized and protected by rule or by statute that establishes outside limits on the amount of time that may elapse from the date of a specific event until the commencement
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of the trial or other disposition of the case. The time limits should be expressed in days or months.

(b) The presumptive speedy trial time limit for persons held in pretrial detention should be 90 days from the date of the defendant's first appearance in court after the filing of a charging instrument. The presumptive limit for persons who are on pretrial release should be 180 days from the date of the defendant’s first appearance in court after either the filing of any charging instrument or the issuance of a citation or summons. Shorter presumptive speedy trial time limits should be set for persons charged with minor offenses.

(c) Certain periods of time should be excluded from the computation of time allowed under the rule or statute, as set forth below in Standard 12-2.3.

(d) Provision should be made for the court to determine, on motion of the prosecution or the defense or on its own motion, that a case is of such complexity that the presumptive speedy trial time limit should be extended in order to enable the parties to make adequate preparations for pretrial proceedings or for the trial itself. The court should give substantial weight to a motion for extension of the speedy trial limit on these grounds that is made, with good cause shown, by either the prosecution or the defense. In the event of determination of complexity is made, the judge should establish a revised time limit and should state on the record the reasons for extending the time. A motion to extend the speedy trial time limit because of the complexity of the case should be made as soon as practicable.

The speedy trial time limit should commence, without demand by the defendant. Special procedures should applicable to persons serving terms of imprisonment.

Effects of exceeding the speedy trial time limit period: Mechanism to check the cause of delay should come in picture and victim or defendant can approach the court and allege violation of Fundamental right. Thereafter Court would see the other factors to decide on whether the right has been violated or not. If court comes
to the conclusion that accused right has been violated it should ordinarily dismiss the charges with prejudice, provided that: after affording the parties an opportunity to be heard, the court may in the interests of justice extend the time limit. In determining whether and for what period to order such an extension, the court should consider the totality of the circumstances, including:

i. The gravity of the offense;

ii. The reasons for the failure to bring the defendant to trial within the previously established time limit;

iii. The extent to which the prosecution or the defense is responsible for the delay; and

iv. The extent of the prejudice to the interests of the defense, the prosecution, or the public that may result from the extension of time or the dismissal of the charges.

If the court finds that victim's right is violated, it should make an order of compensation with expeditious disposal of case.

**Monitoring and accountability:** Statue should establish procedures to monitor the performance of the system (and of each of the organizational entities that have responsibility for particular aspects of case) in relation to the goals for timely case resolution. Feedback should be provided to the courts, the prosecutor's office, the defense bar, law enforcement agencies, other criminal justice agencies. Also Information about the performance of the system in relation to the goals for timely case resolution should be made available to the public on a regular basis.

Specialization contributes to better quality of decisions, consistency and certainty. Speedy and quality justice being the need of the hour it is wanted to assign criminal cases to Judges who are specialized in that branch. Judges who never did any criminal work before their elevation to the Supreme Court are often assigned criminal work. This contribute to inefficient management of the work. If the Judges
are assigned work in a branch of law in which they have enough experience they will be able to decide those case more efficiently and speedily. Besides the possibilities of errors would be very low hence efforts should be made in this direction also.

(v) Right to Public Trial

The Court in United States of America has categorically ruled that the right to a public trial as guaranteed by the Sixth Amendment is not absolute. In cases where excess publicity would serve to undermine the defendant's right to due process, limitations can be put on public access to the proceedings. Trials are often closed at the behest of the government with claims that there is “an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.”

(vi) Right to a Jury

In addition to guaranteeing the right to an attorney, the Sixth Amendment to U.S. Constitution guarantees a criminal defendant a speedy trial by an “impartial jury.” This means that a criminal defendant must be brought to trial for his or her alleged crimes within a reasonable short time after arrest, and that before being convicted of most crimes, the defendant has a constitutional right to trial by a jury, which must find the defendant guilty “beyond a reasonable doubt.”

The right to a jury has always depended on the nature of the offence with which the defendant is charged. Petty offences, that is, those punishable by imprisonment for not more than six months are not covered by the jury requirement. Even where multiple petty offences are concerned, where the total

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time of imprisonment possibly exceeding six months, the right to a jury trial does not exist.\textsuperscript{39}

Originally, the Supreme Court held that the Sixth Amendment’s right to a jury trial indicated a right to “a trial by jury as understood and applied at Common Law, and includes all the essential elements as they were recognized in this country and England when the Constitution was adopted.”\textsuperscript{40} Therefore, it was held that juries had to be composed of twelve persons and that verdicts had to be unanimous, as was customary in England. When, under the Fourteenth Amendment, the Supreme Court extended the right to a trial by jury to defendants in state courts, it re-examined some of the standards. It has been held that the twelve came to be the number of jurors by "historical accident," and that a jury of six would be sufficient\textsuperscript{41} but anything less would deprive the defendant of a right to trial by jury.\textsuperscript{42} Although on the basis of history and precedent the Sixth Amendment mandates unanimity in a federal jury trial, the Supreme Court has ruled that the ‘Due Process Clause’ of the Fourteenth Amendment, while requiring States to provide jury trials for serious crimes, does not incorporate all the elements of a jury trial within the meaning of the Sixth Amendment and does not require jury unanimity.\textsuperscript{43}

Another factor in determining the impartiality of the jury is the nature of the panel from which the jurors are selected. Panel must represent a fair cross-section of the community; the defendant may establish that the requirement was violated by showing that the allegedly excluded group is a "distinctive" one in the community or that the representation of such a group in the panel is unreasonable and unfair in regard to the number of persons belonging to such a group and that the under-representation is caused by a systematic exclusion in the selection process.\textsuperscript{44} The Sixth Amendment guarantees a criminal defendant the right to be tried before an

\textsuperscript{40} Patton v. United States, 281 U.S. 276 (1930).
\textsuperscript{43} Apodaca v. Oregon, 406 U.S. 404 (1972).
\textsuperscript{44} Information available at http://en.wikipedia.org/wiki/Sixth_Amendment_to_the_United_States_Constitution [accessed on 09.04.2013].
“impartial jury,” representative of a cross section of the community, who will consider the evidence against the defendant and decide whether to find him or her guilty of the Crime(s) charged. The latest position is that in almost all states, six jurors must agree in order to find a defendant “guilty” or “not guilty.” In such states, if the jury fails to reach a unanimous verdict and finds itself at a stand still (a hung jury), the judge may declare a “mistrial,” after which the case may be dismissed or the trial may start all over again.

Thus, in *Taylor v. Louisiana*, the Supreme Court invalidated a State law that exempted women who had not made a declaration of willingness to serve in the jury, while not doing the same for men.

The Constitution originally required that defendants be tried by juries selected from the State in which the crime was committed. The Sixth Amendment extends the rule by requiring trials to occur in districts ascertained by statute. As the Supreme Court found in *Beavers v. Henkel* the place where the offence is charged to have occurred determines the trial’s location. Where multiple districts are alleged to have been locations of the crime, any of them may be chosen for the trial. In cases of offences not committed in any State (for example, offences committed at sea), the place of trial may be determined by Congress.

*(vii) Right to Notice of accusation*

A defendant has, under the Sixth Amendment to the United States Constitution, the right to be informed of the nature and cause of the accusation against him. Therefore, an indictment must allege all the ingredients of the crime to such a degree of precision that it would allow the accused to assert double jeopardy if the same charges are brought up in subsequent prosecution. The Supreme Court held in *United States v. Carlin* that “in an indictment it is not sufficient to set forth the offence in the words of the statute, unless those words of themselves fully, directly.

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46 194 US 73 (1904).
47 105 US 611 (1881).
and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished." Vague wording, even if taken directly from a statute, does not suffice. However, the government is not required to hand over written copies of the indictment free of charge.

(viii) **Right to Confrontation**

The defence, under the Sixth Amendment, must have an opportunity to "confront" and cross-examine the witnesses. The confrontation clause relates to the Common Law rule preventing the admission of hearsay, that is to say, testimony by one witness as to the statements and observations of a person for the purpose of proving that the statement or observation was accurate. Certain exceptions to the hearsay rule have been permitted; for example, admissions by the defendant are admissible, as are dying declarations. Nevertheless, the Supreme Court has held that the hearsay rule is not exactly the same as the confrontation clause: Hearsay may, in some circumstances, be admitted though it is not covered by one of the long-recognized exceptions; for example, prior testimony may sometimes be admitted if the witness is unavailable. However, in *Crawford v. Washington* the Supreme Court increased the scope of the confrontation clause in the trials. Justice Scalia's observations made any "testimonial" out-of-court statements inadmissible if the accused did not have the opportunity to cross-examine that accuser. "Testimonial" becomes a term of art here, meaning any statements that an objectively reasonable person in the declarant's situation would have deemed likely to be used in Court. The most common application of this would come after a declarant made a statement to a police officer, and then that officer testifies about that statement at the trial.

The defendant must also be permitted to call witnesses in his favor. If such witnesses refuse to attend, they may be compelled to do so by the Court at the request of the defendant. In some cases, however, the Court may refuse to permit a defence witness to testify. If, for instance, a defence lawyer fails to notify the

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prosecution of the identity of its witnesses in order to gain a tactical advantage, the witnesses whose identities were undisclosed may be precluded from testifying.

The right to confront and cross-examine witnesses also applies to physical evidence; the prosecution must present physical evidence to the jury, providing the defence ample opportunity to cross-examine its validity and meaning. Prosecution generally may not refer to evidence without first presenting it.49

(ix) Right to Counsel

The Sixth Amendment guarantees a defendant the Right to assistance of counsel during trial. The defendant has the right not only to be heard through such attorneys as he pleases but furthermore, the defendant may represent himself. The Court may, however, deny the defendant such a right when it is deemed that the defendant is incompetent to waive the right to counsel. If a defendant cannot afford an attorney, the government is required to provide the defendant an attorney. Such defendants receive legal representation from Public Defender’s Office. The Federal Rules of Criminal Procedure provide that an accused shall have access to counsel at every stage of the proceedings, beginning with the defendant’s initial appearance. If a defendant demands the presence of counsel during police interrogation, police must stop the interrogation until the defendant’s counsel is present. However, if a defendant voluntarily and intelligently chooses to waive assistance of counsel and self-represent, the defendant may do so. This is called “pro se” representation.

The legal counseling received must also constitute “effective counseling.” Ineffective assistance of counsel may serve as grounds for a new trial. Establishing ineffective assistance of counsel requires establishing that the prevailing professional norms at the time of trial render the actual assistance received inadequate and that the ineffective assistance caused a fundamentally unfair result.

49 Supra n. 44.
Originally, the clause was not interpreted as requiring the state to appoint counsel where the defendant could not afford to do so. The Supreme Court began to expand the interpretation of the clause in *Powel v. Alabama*\(^{50}\) in which it held, "in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defence because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the Court, whether requested or not, to assign counsel for him." In *Johnson v. Zerbst*,\(^{51}\) the Supreme Court ruled that in all federal cases, counsel would have to be appointed for defendants who were too poor to hire their own. When deciding *Betts v. Baddy*,\(^{52}\) the Court declined to extend this requirement to the State Courts under the Fourteenth Amendment unless the defendant demonstrated "special circumstances" requiring the assistance of counsel.

In 1960, the Court extended the rule that applied in Federal Courts to State Courts. It held in *Hamilton v. Alabama*\(^{53}\) that counsel had to be provided at no expense to defendants in capital cases when they so requested, even if there was no "ignorance, feeble mindedness, illiteracy, or the like as stated in *Brewer v. Williams*\(^{54}\) the rights granted by Sixth and Fourteenth Amendments “mean at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him, whether by formal charge, preliminary hearing, indictment, information, or arraignment.” Once adversaries proceeding have begun against a defendant, he has a right to legal representation when the government interrogates him.

**Right to Self-representation**

In *Faretta v. California*,\(^{55}\) the Supreme Court has expounded the right to represent yourself by holding that the power to choose or waive counsel lies with the

\(^{50}\) 287 U.S. 45 (1932).
\(^{51}\) 287 US 45 (1932).
\(^{52}\) 316 US 455 (1942).
\(^{53}\) 422 U.S. 806 (1975).
\(^{55}\) 368 US 52 (1961).
accused, and the State can not intrude, though it later held in *Godinez v. Moran*,\(^{56}\) that the State could deny the waiver if it believed the accused less than fully competent to adequately proceed without counsel. The Supreme Court also held in *Bounds v. Smith*,\(^{57}\) that the constitutional right of "meaningful access to the courts" can be satisfied by counsel or access to legal materials.

**(xi) Innocent Until Proven Guilty**

The basis for these rights is the supposition that all individuals are innocent until proven guilty. The following rights stem from this supposition and are guaranteed to all those accused of a crime:

- For a defendant to be found guilty, the prosecution must prove beyond a reasonable doubt that the accused did in fact commit the crimes that he/she has been charged with.
- The accused are protected from self-incrimination. This protection preempts torture and other forms of coercion by rendering the confessions or incriminating testimony inadmissible in Court.
- The accused have a right to remain silent until he/she has had the opportunity to confer with legal counsel.
- The accused has the right to adequate legal representation. In the event that he/she cannot afford to hire an attorney, the Court must provide legal counsel at no charge.
- The accused has the right to know what the charges are and to confront witness testifying against him/her. The defendant also has the right to gather his/her own evidence and witnesses.
- Those charged with serious crimes must be indicted by a grand jury.
- An individual cannot be tried for the same crime twice.

• The defendant has the right to a public and speedy trial by jury if desired.
• The accused has the right to be free of unreasonable search and seizure. There are many circumstances where law enforcement must obtain a search warrant before searching private property for people or evidence. To ensure that this right is upheld, a judge must not allow any evidence gathered unlawfully to be admitted in Court.

(xii) Sentencing

Sentencing usually occurs immediately for infractions and misdemeanors. For such minor infractions, penalties may include probation; fines; short-term incarceration; long-term incarceration; suspended sentence, which only takes effect if the convict fails to meet certain conditions; payment of restitution to the victim; community service; or drug and alcohol rehabilitation.\(^{58}\)

More serious crimes result in the trier of fact hearing evidence and arguments from both the prosecution and the defense regarding the appropriate sentence. Some jurisdictions allow the judge, alone, to determine the sentence; others will have a separate sentencing phase trial, complete with a new jury, to determine the sentence for certain crimes.\(^{59}\)

During a sentencing trial, the prosecution presents evidence of aggravating factors, and the defense presents evidence of mitigating factors. The U.S. Supreme Court has interpreted the U.S. Constitution to protect the right to a jury sentencing trial for all defendants facing the death penalty.\(^{60}\)

Before the judge announces the sentence, a defendant is entitled to allocution. Allocution is the right of the defendant to directly address the judge without the help of counsel. During this direct address, the defendant may offer a personal explanation of any unknown facts, may ask for mercy, or may offer an


\(^{59}\) Ibid.

\(^{60}\) Ibid.
apology for the criminal behavior. This opportunity for defendants to show remorse or to offer the motivations behind their criminal acts may influence whether the judge grants some leniency. 61

Prior to the 1980s, the Federal Courts used an indeterminate sentencing system, which allowed trial judges to impose sentences entirely at their discretion. Research, however, revealed that this system created sentencing disparities in which different criminals received very different sentences for the same crime. In a bipartisan reform effort, Congress passed the Comprehensive Crime Control Act of 1984, which included provisions that make up the Sentencing Reform Act.

Endeavoring to transition to a determinate sentencing system, the Sentencing Reform Act (SRA) created the United States Sentencing Commission (USSC) as an independent agency of the Judicial Branch. Congress charged the USSC with writing and promulgating the new determinate sentencing Code. The system devised by the USSC required Federal judges to ensure that the sentence reflects the gravity of the crime, that the punishment furthers the goal of deterrence, that the sentence protects the public from further crimes by the criminal, and that the criminal receives any necessary treatment, medical care or education to further the goal of rehabilitation. While judges still had flexibility, the SRA imposed mandatory minimum and maximum sentence within which the judge's sentence had to fall.

The U.S. Supreme Court upheld the constitutionality of the USSC and its system in Mistretta v. United States, 62 despite a challenge that Congress's delegation to the USSC of such broad power unconstitutionally violated the Separation of Powers doctrine.

In Barker v. Wingo, 63 a defendant's constitutional right to a speedy trial cannot be established by any inflexible rule, but can be determined only on an ad hoc balancing basis in which the conduct of the prosecution and that of the

61 Ibid.
defendant are weighed. The Court should assess such factors as the length of and reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. In the instant case, the lack of any serious prejudice to petitioner and the fact, as disclosed by the record, that he did not want a speedy trial outweigh opposing considerations, and compel the conclusion that petitioner was not deprived of his due process right to a speedy trial.

_In Klopfer v. North Carolina,_ US Supreme Court held that by indefinitely postponing prosecution on the indictment over petitioner's objection and without stated justification, the State denied petitioner the right to a speedy trial guaranteed to him by the Sixth and Fourteenth Amendments of the Federal Constitution.

_In Smith v. Hooey,_ a defendant in Federal prison charged with a Texas State crime was denied the right to a speedy trial when Texas still had not prosecuted him for the crime after seven years. The Court held that the case must be thrown out.

_In Barker v. Wingo,_ the Court held that violation of the speedy trial clause must be decided on a case-by-case basis, taking into account four factors: (i) length of delay (lower court, generally 6-8 months); (ii) reason for delay; (iii) whether and when the defendant asserted his right to a speedy trial; (iv) degree of harm to the defendant caused by delay.

_In Strunk v. United States,_ the Court held that a defendant in custody on different charges maintains the Sixth Amendment right to a speedy trial on new charges. The Court dismissed the case after a 279 day wait.

_In Estes v. Texas,_ attracted national media attention, the Supreme Court ruled media presence in the courtroom could negatively affect the defendant's ability
to receive a fair trial, and allowed the courts to put reasonable restrictions on media in the courtroom.

In *Waller v. Georgia*, the Court held that the public trial clause may be waived, but only in circumstances where an open hearing would be prejudicial. Four criteria apply in making a decision: (i) party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; (ii) the closure must be no broader than necessary to protect that interest; (iii) the trial Court must consider reasonable alternatives to closing the hearing; (iv) the Court must make findings adequate to support the closure.

In *Press-Enterprise v. Superior Court*, the Court held that trials may be closed if a public trial damages the defendant's ability to receive a fair hearing, but transcripts must be made available after the trial is completed.

In *United States v. Cruikshank*, the Court categorically held that the details of the indictment must specify the manner in which the defendant violated the law or another person's constitutional rights so he (or she) could devise an appropriate defense against the allegations. Also held that the Bill of Rights did not apply to the States.

(A) **Rule 4. Arrest Warrant or Summons on a Complaint**

(a) **Issuance:** If the complaint or one or more affidavits filed with the complaint establish probable cause to believe that an offense has been committed and that the defendant committed it, the judge must issue an arrest warrant to an officer authorized to execute it. At the request of an attorney for the government, the judge must issue a summons, instead of a warrant, to a person authorized to

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70 478 US 1 (1986).
71 92 US 542 (1876).
serve it. A judge may issue more than one warrant or summons on the same complaint. If a defendant fails to appear in response to a summons, a judge may, and upon request of an attorney for the government must, issue a warrant.

(b) **Form**

(1) *Warrant.* A warrant must:

(A) contain the defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty;

(B) describe the offense charged in the complaint;

(C) command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer; and

(D) be signed by a judge.

(2) *Summons.* A summons must be in the same form as a warrant except that it must require the defendant to appear before a magistrate judge at a stated time and place.

(c) **Execution or Service, and Return**

(1) *By Whom:* Only a marshal or other authorized officer may execute a warrant. Any person authorized to serve a summons in a federal civil action may serve a summons.

(2) *Location:* A warrant may be executed, or a summons served, within the jurisdiction of the United States or anywhere else a Federal statute authorizes an arrest.

(3) *Manner:*
(A) A warrant is executed by arresting the defendant. Upon arrest, an officer possessing the original or a duplicate original warrant must show it to the defendant. If the officer does not possess the warrant, the officer must inform the defendant of the warrant's existence and of the offense charged and, at the defendant's request, must show the original or a duplicate original warrant to the defendant as soon as possible.

(B) A summons is served on an individual defendant:

(i) by delivering a copy to the defendant personally; or

(ii) by leaving a copy at the defendant's residence or usual place of a bode with a person of suitable age and discretion residing at that location and by mailing a copy to the defendant's last known address.

(C) A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address within the district or to its principal place of business elsewhere in the United States.

(4) Return:

(A) After executing a warrant, the officer must return it to the judge before whom the defendant is brought in accordance with Rule 5. The officer may do so by reliable electronic means. At the request of an attorney for the government, an unexecuted warrant must be brought back to and canceled by a magistrate judge or, if none is reasonably available, by a state or local judicial officer.

(B) The person to whom a summons was delivered for service must return it on or before the return day.
(C) At the request of an attorney for the government, a judge may deliver an unexecuted warrant, an unserved summons, or a copy of the warrant or summons to the marshal or other authorized person for execution or service.

(d) **Warrant by Telephone or Other Reliable Electronic Means:** In accordance with Rule 4.1, a magistrate judge may issue a warrant or summons based on information communicated by telephone or other reliable electronic means.

(B) **Rule 5. Initial Appearance**

(a) **In General**

1. **Appearance Upon an Arrest**

   (A) A person making an arrest within the United States must take the defendant without unnecessary delay before a magistrate judge, or before a state or local judicial officer as Rule 5(c) provides, unless a statute provides otherwise.

   (B) A person making an arrest outside the United States must take the defendant without unnecessary delay before a magistrate judge, unless a statute provides otherwise.

2. **Exceptions**

   (A) An officer making an arrest under a warrant issued upon a complaint charging solely a violation of 18 U.S.C. §1073 need not comply with this rule if:

   (i) The person arrested is transferred without unnecessary delay to the custody of appropriate state or local authorities in the district of arrest; and

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73 *Id.* at 487-490.
(ii) An attorney for the government moves promptly, in the district
where the warrant was issued, to dismiss the complaint.

(B) If a defendant is arrested for violating probation or supervised release,
Rule 32.1 applies.

(C) If a defendant is arrested for failing to appear in another district, Rule 40
applies.

(3) Appearance Upon a Summons: When a defendant appears in response to a
summons under Rule 4, a magistrate judge must proceed under Rule 5(d) or
(e), as applicable.

(b) Arrest Without a Warrant: If a defendant is arrested without a warrant, a
complaint meeting Rule 4(a)'s requirement of probable cause must be promptly
filed in the district where the offense was allegedly committed.

(c) Place of Initial Appearance; Transfer to another District

(1) Arrest in the District Where the Offense Was Allegedly Committed: If the
defendant is arrested in the district where the offense was allegedly
committed:

(A) The initial appearance must be in that district; and

(B) If a magistrate judge is not reasonably available, the initial appearance
may be before a state or local judicial officer.

(2) Arrest in a District Other Than Where the Offense Was Allegedly Committed:
If the defendant was arrested in a district other than where the offense was
allegedly committed, the initial appearance must be:

(A) In the district of arrest; or

(B) In an adjacent district if:

   (i) The appearance can occur more promptly there; or
(ii) The offense was allegedly committed there and the initial appearance will occur on the day of arrest.

(3) Procedures in a District Other Than Where the Offense Was Allegedly Committed: If the initial appearance occurs in a district other than where the offense was allegedly committed, the following procedures apply:

(A) The magistrate judge must inform the defendant about the provisions of Rule 20;

(B) if the defendant was arrested without a warrant, the District Court where the offense was allegedly committed must first issue a warrant before the magistrate judge transfers the defendant to that district;

(C) The magistrate judge must conduct a preliminary hearing if required by Rule 5.1;

(D) The magistrate judge must transfer the defendant to the district where the offense was allegedly committed if:

(i) The government produces the warrant, a certified copy of the warrant, or a reliable electronic form of either; and

(ii) The judge finds that the defendant is the same person named in the indictment, information, or warrant; and

(E) When a defendant is transferred and discharged, the clerk must promptly transmit the papers and any bail to the clerk in the district where the offense was allegedly committed.

(d) Procedure in a Felony Case

(1) Advice: If the defendant is charged with a felony, the judge must inform the defendant of the following:

(A) The complaint against the defendant, and any affidavit filed with it;
(B) The defendant's right to retain counsel or to request that counsel be appointed if the defendant cannot obtain counsel;

(C) The circumstances, if any, under which the defendant may secure pretrial release;

(D) Any right to a preliminary hearing; and

(E) The defendant's right not to make a statement, and that any statement made may be used against the defendant.

(2) **Consulting with Counsel:** The judge must allow the defendant reasonable opportunity to consult with counsel.

(3) **Detention or Release:** The judge must detain or release the defendant as provided by statute or these rules.

(4) **Plea:** A defendant may be asked to plead only under Rule 10.

(e) Procedure in a Misdemeanor Case. If the defendant is charged with a misdemeanor only, the judge must inform the defendant in accordance with Rule 58(b)(2).

(f) Video Teleconferencing. Video teleconferencing may be used to conduct an appearance under this rule if the defendant consents.

(C) **Rule 5.1 Preliminary Hearing**

(a) **In General:** If a defendant is charged with an offense other than a petty offense, a magistrate judge must conduct a preliminary hearing unless:

(1) The defendant waives the hearing;

(2) The defendant is indicted;

(3) The government files an information under Rule 7(b) charging the defendant with a felony;
(4) The government files an information charging the defendant with a misdemeanor; or

(5) the defendant is charged with a misdemeanor and consents to trial before a magistrate judge.

(b) Selecting a District: A defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where the prosecution is pending.

(c) Scheduling: The magistrate judge must hold the preliminary hearing within a reasonable time, but not later than 14 days after the initial appearance if the defendant is in custody and not later than 21 days if not in custody.

(d) Extending the Time: With the defendant’s consent and upon a showing of good cause—taking into account the public interest in the prompt disposition of criminal cases—a magistrate judge may extend the time limits in Rule 5.1(c) one or more times. If the defendant does not consent, the magistrate judge may extend the time limits only on a showing that extraordinary circumstances exist and justice requires the delay.

(e) Hearing and Finding: At the preliminary hearing, the defendant may cross-examine adverse witnesses and may introduce evidence but may not object to evidence on the ground that it was unlawfully acquired. If the magistrate judge finds probable cause to believe an offense has been committed and the defendant committed it, the magistrate judge must promptly require the defendant to appear for further proceedings.

(f) Discharging the Defendant: If the magistrate judge finds no probable cause to believe an offense has been committed or the defendant committed it, the magistrate judge must dismiss the complaint and discharge the defendant. A discharge does not preclude the government from later prosecuting the defendant for the same offense.
(g) **Recording the Proceedings:** The preliminary hearing must be recorded by a Court Reporter or by a suitable recording device. A recording of the proceeding may be made available to any party upon request. A copy of the recording and a transcript may be provided to any party upon request and upon any payment required by applicable Judicial Conference regulations.

(h) **Producing a Statement**

(1) *In General.* Rule 26.2(a)–(d) and (f) applies at any hearing under this rule, unless the magistrate judge for good cause rules otherwise in a particular case.

(2) *Sanctions for Not Producing a Statement.* If a party disobeys a Rule 26.2 order to deliver a statement to the moving party, the magistrate judge must not consider the testimony of a witness whose statement is withheld.

II. **Speedy Trial in England**

In England, the right of the accused to expeditious trial found its first expression in the Habeas Corpus Act 1679. Section 6 of the Act provided for release on bail or discharge of persons detained on accusation of high treason or felony in the Courts of Assizes or Sessions, if indictment could not take place in the second term after committal. Assizes Act, 1889 and Magistrate’s Court’s Act, 1952 limit pre-conviction custody of the accused. Some steps to regulate and limit the actual duration of the prosecution process was made in the Crown Court Rules, 1982 and Indictment Rules, 1983 which are statutory regulations. Under these rules, the bill of indictment is to be prepared within 28 days of committal and the trial is to commence within 8 weeks of committal. Both these limits may be extended by the court.

Section 22 of the Prosecution of Offenders Act, 1985 enables the Secretary of State to prescribe custodial and overall time limit, in respect of preliminary stages of trial. “Preliminary Stage” means proceedings prior to indictment, and in summary trials, proceeding prior to taking of evidence for the prosecution. The actual time
limit has to be prescribed by the Secretary of State through delegated legislation. The consequence of non-adherence to overall time limits is acquittal. According to the provisions now in force, the maximum period of custody between the accused’s first appearance and the commencement of the summary trial is 56 days. While in case of offences triable on indictment exclusively, the maximum period of custody between the accused’s first appearance and the time when the court decides whether or not to commit the accused to the Crown Court for trial is 70 days.

The Privy Council, while dealing with the question of delay in trial expressly affirmed the principles laid down by the Supreme Court of the America in Barker v. Wingo. In Bell v. Director of prosecution, Jamica, the Privy Council expressed the desirability of applying the same criteria as laid down in Barker v. Wingo to any constitution, written or unwritten, which protects an accused from oppression by delay in criminal proceedings.

III. Speedy Trial in Japan

In Japan, both the defendant and the government have a right to a speedy trial. The researcher will make an endeavour to examine the exercise of the right from both perspective. Article 37-1 of the Constitution of Japan guarantees the right to speedy trial. Further, Article 253-2 of the Public Officers Election Law required completion of the trial within 100 days from the date of the institution of a case in respect of the election fraud and other election related offences. But in the light of the significant workload of the courts, some trials continue for years. The RC 21 report has addressed this problem in several ways. The growth in the size of legal profession will result in more judges, prosecutors, defence lawyers. This alone should aid in resolving the problem over time.

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74 33 L. Ed 2d 101.
75 (1985) 2 All ER 585.
76 In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.
While Japan doesn’t yet have a Speedy Trial Act. Article 37(1)\textsuperscript{77} of the Constitution guarantees that the accused shall enjoy a right to a speedy trial. However, the Constitution doesn’t specify what is meant by the term “speedy”, and leaves unclear what remedy should be imposed if a violation occurs. The issues relating to speedy trials were dealt with in a 1972 landmark decision issued by the Grand Bench of the Supreme Court. The instant case began in May of 1952, when the defendants were taking part in a riot. There was much public disturbance at the time and they raided a police box and were indicated for breaking and entering, arson, and battery. The trial began shortly after the indictments were issued and proceeded until March 4, 1954. After that date no action was taken by either of the parties or the Court until June 10, 1969, some fifteen years later. The District Court held that such a delay violated the defendants right to a speedy trial and dismissed the case. The Court considered the type of case, the degree of complexity, the length of the delay, the kind and amount of evidence, and the difficulty in investigating the facts, as important factors which must be weighed in reaching their decision. Thereafter, the prosecution filed an appeal to the High Court which reversed the trial court’s decision. It held that since there was no provision in the Code of Criminal Procedure with authorized the Courts to dismiss a case when a violation of speedy trial guarantee occurred, the trial court had improperly resorted to judicial legislation. The defendant appealed to the Supreme Court which overturned the High Court decision. The Court has categorically held that the right to a speedy trial is a fundamental right which must be recognized by the Courts. The Court further stated that it was not simply a “program right”, and that the dismissal of the prosecution was a proper remedy even though there wasn’t any statutory authority for such in the Code of Criminal Procedure. It held that not only the length of delay, but both the reason and the cause of the delay must be examined. If the delay is caused by the defendant’s own fault, that is, by fleeing or by refusing to

\textsuperscript{77} The Constitution of Japan: Article 37. In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.
appear in court, there is no reason to hold that a violation has occurred. However, when the delay is caused by government the case should be dismissed.

When we think of the right to a speedy trial we usually have the defendant in mind. It is he who is subject to the uncertainty and anxiety caused by having a criminal charge hanging over his head. He usually wants to have his named cleared as quickly as possible so that he can lead a normal life. The prosecution has an interest in seeing the efficient execution and enforcement of the criminal law. Therefore, the Courts have recognized a right to a speedy trial for the government. An example of this will be shown in a 1962 Grand Bench decision. The facts of the case were that a defendant was indicted for various offenses related to acts of civil disobedience including trespass. He was indicted with ten other people as co-principals. The trial began in February of 1960, but in August 1961, the defendant petition the court to postpone the continuation of the trial for five years so he could attend school in East Germany. Attached to the petition was the defendant’s application for a passport, and a statement that the trial of the other defendants would not be impeded. Over the objection of the prosecution, the trial court granted the defendant’s request. The prosecution appealed to the Supreme Court which reversed the trial court’s decision. The Court had to reconcile two conflicting provisions of the Code of Criminal Procedure. The first provision gives the presiding judge the authority to set the date for public trial. The other provision declares that the purpose of the Code is to properly and speedily enforce the penal law. The Court held that a speedy trial is not only for the defendant’s benefit, but also serves the government’s interest as well. To interrupt the flow of a criminal trial for five years in order to accommodate the defendant’s plan to study abroad, a matter completely unrelated to the trial, was an abuse of discretion by the presiding judge. This case is important because it makes clear that the right to a speedy trial is a right shared by both the prosecution and the defense.

78 Supreme Court Judgment (Grand Bench), February 14, 1962, 16 Keishu 85, 290 Hanrei Jiho 8.
IV Speedy Trial in Philippines

Philippines has Speedy Trial Act of 1998 which ensures a speedy trial of all criminal cases before the Sandiganbayan Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court and Municipal Circuit Trial Court, appropriating funds therefore, and for other purpose.

Section 6 of the Act lays down time limit for trial. In criminal cases involving persons charged of a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of one thousand pesos (P 1,000.00) or both, irrespective of other imposable penalties, the Justice or Judge shall, after consultation with the Public Prosecutor and the Counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Section 3, Rule 22 of the Rules of Court.

In the case of John Joseph Lumanlaw Bulina v. Hon. Eduardo B. Peralta on February 13, 2006, the Philippine Supreme Court upheld the universal doctrine of speedy trial by asserting that vexatious, oppressive, unjustified and capricious delay in the arraignment violates the constitutional right to speedy trial and speedy case disposition. The right to a speedy disposition of case is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried. Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such factors as length of the delay.
reason for the delay, the defendant’s assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered.

V. Speedy Trial in Nepal

The Common Code (“Muluki Ain”) of Nepal (Part II, Section 14) prescribes that time frame for the completion of a trial by the Court. If the case pertains to an area located adjacent the Court; the time limit is 6 months. This may be extended to 1 year for cases wherein the cause of action lies in remote and distant areas.

VI. Speedy Trial in Republic of Korea

Article 27 of the Constitution of Korea provides that:

(1) All citizens shall have the right to trial in conformity with the Act by judges qualified under the Constitutional and the Act.

(2) Omitted

(3) All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the country.

The Republic of Korea has a law, the Special Act for Speedy Proceedings, 1981, which prescribes a time frame of 6 months for the completion of a trial and the Appellate Courts have 4 months within which to complete the proceedings should be completed.79

VII. Speedy Trial in Arizona

Arizona’s constitutional amendment has a victim’s right to speed trial Under Article 2 and 2.1A preserve and protect victim’s right to justice and due process, a victim of

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79 The White Paper on Crime, 1993, Government of Korea, Article 22 of said Act reads, “A judgment must be pronounced within six months in the court of the first instance calculated from the day when the public action was instituted, and within four months in the court of other levels calculated from the day when the record of proceedings was sent.
crime has a right. Further, Article 10 lays down that to a speedy trial or disposition and prompt and final conclusion of the case after the conviction and sentence.

VIII. Sum Up

The U.S. Constitution, the Federal Rules and the federal court system's interpretations of both provide guidance and procedural canons that law enforcement must follow. Failure to follow such procedure may result in the suppression of evidence or the release of an arrested suspect.\(^\text{80}\)

Substantive due process requires police to make criminal defendants aware of their rights prior to the defendant making any statements if the government intends to use those statements as evidence against the defendant. For example, law enforcement must ensure that the defendant understands the right to remain silent and the right to have an attorney present, as the Fifth and Sixth Amendments respectively provide. The defendant must knowingly, intelligently, and voluntarily waive those rights in order for the government to use any statements as evidence against the defendant.\(^\text{81}\)

Law enforcement also must abide by the confines of the Fourth Amendment, which prohibits the government from performing unreasonable searches and seizures. Courts ordinarily suppress evidence obtained during an unreasonable search or seizure and offered against the accused\(^\text{82}\).

In order to avoid illegally searching or seizing the property of a suspect, law enforcement personnel typically obtain search warrants. To obtain a search warrant, law enforcement must show probable cause, must support the showing by oath or affirmation, and must describe in particularity the place they will search and the items they will seize. A judge can find probable cause only be examining the totality of the circumstances. Exceptions to the warrant requirement exist, however. These

\(^{80}\) Supra n. 58.


exceptions include searches made at or near the border; a search following a lawful arrest; a stop-and-frisk arrest; where the seized items are in plain view; where the articles are in an automobile; where the private individual makes the search; and under exigent circumstances, where the officer has probable cause for a search to find a crime or evidence relating to a crime.\textsuperscript{83}

The Fourteenth Amendment of the U.S. Constitution applies all substantive due process rights to state criminal defendants.

The Sixth Amendment to the U.S. Constitution guarantees criminal defendants the right to a speedy trial. Consequently, prosecutors cannot wait an inordinate amount of time before filing charges or proceeding with the prosecution after filing charges. To create more precise rules for ensuring a speedy trial, Congress passed the Federal Speedy Trial Act, which requires that a trial begin within 70 days of the prosecutor filing the indictment.\textsuperscript{84}

The Sixth Amendment also guarantees the right to a public trial by an impartial jury of one's peers. The Criminal Justice System provides for an impartial jury by permitting both sides to utilize peremptory challenges during jury selection. If a party exercises a peremptory challenge against a prospective juror, then the Court must excuse that particular juror from the panel. These challenges occur during jury voir dire to root out bias. Neither side must explain their reasons for a challenge; however, a party may not strike a jury purely because of the juror's race or gender\textsuperscript{85}; prohibiting gender-based challenges.\textsuperscript{86}

Due Process requires that criminal defendants receive a fair trial. In high-publicity trials, trial judges have the responsibility to minimize effects of publicity, perhaps by implementing a gag-order on the parties and to eliminate outside influences during the trial. An interesting question of outside influence went to the

\begin{footnotes}
\item[83] Supra n. 58.
\item[84] Supra n. 58.
\end{footnotes}
U.S. Supreme Court in 2006 in *Carey v. Musladin*. After the victim's family wore pictures of the victim on buttons during the trial, the jury convicted Musladin of murder. The Supreme Court overturned the Ninth Circuit's grant of post-conviction habeas relief for a lack of due process because no clear Federal Rule existed regarding spectator conduct.

Due Process further commands that defendants have the right to call their own witnesses, mount their own evidence, and present their own theory of the facts. In order to properly mount a defense, the prosecution must turn over all evidence that will be presented against the defendant and have pre-trial access to depose all of the prosecution's witnesses.

Pre-trial would also be the point at which the defense might raise a defense of double jeopardy, if such a defense existed in the particular case. The Fifth Amendment, through the Double Jeopardy Clause prohibits States from charging the same defendant with substantially the same crime on the same facts.

Once a trial begins, the U.S. Constitution affords further rights to criminal defendants. Trying to avoid convicting an innocent defendant at all costs, the law only permits the prosecution to overcome the defendant's presumption of innocence if they can show the defendant's guilt beyond a reasonable doubt. This very high burden differs drastically from a civil trial's much lower standard in which the plaintiff must only prove a claim by a preponderance of the evidence. One such right includes the right to cross-examine the prosecution's witnesses. Defendants derive this right from the Sixth Amendment's Right to Confront Clause. The U.S. Supreme Court took up the Right to Confront Clause in *Giles v. California* (07-6053) (2008). After domestic violence resulted in a woman's murder, the Supreme Court overturned a court's admission of a murder victim's statements under a theory of forfeiture by wrongdoing. The Court reached this holding because the Framers did not recognize the forfeiture exception to the Confrontation Clause at the time of the

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88 *Supra* n. 58.
Constitution's founding. The Sixth Amendment guarantees a defendant the right to assistance of counsel during trial. If a defendant cannot afford an attorney, the government is required to provide the defendant an attorney. Such defendants receive legal representation from the Public Defender's Office. The Federal Rules of Criminal Procedure provide that an accused shall have access to counsel at every stage of the proceedings, beginning with the defendant's initial appearance. If a defendant demands the presence of counsel during police interrogation, police must stop the interrogation until the defendant's counsel is present.\textsuperscript{89}

However, if a defendant voluntarily and intelligently chooses to waive assistance of counsel and self-represent, the defendant may do so. This is called "pro se" representation. The legal counseling received must also constitute "effective counseling." Ineffective assistance of counsel may serve as grounds for a new trial. Establishing ineffective assistance of counsel requires establishing that the prevailing professional norms at the time of trial render the actual assistance received inadequate and that the ineffective assistance caused a fundamentally unfair result. At all times during the trial, the defendant enjoys a right of not having to provide self-incriminating testimony. Thus, the defendant can choose not to take the stand, or the defendant can choose to take the stand but not answer certain questions that would self-incriminate. The Fifth Amendment of the U.S. Constitution provides this right.\textsuperscript{90}

After law enforcement arrests a suspect, a judge will set the suspect's initial bail, which is a specified amount of cash that allows the defendant to get out of jail after the initial arrest. If the defendant shows up for the proper court dates, the court refunds the bail, but if the defendant skips the date, then the court keeps the bail and issues a warrant for the individual's arrest. The arraignment comes next. During an arraignment, a judge calls the person charged and takes the following actions: reading the criminal charges against the accused, asking the accused whether the

\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid.
The accused has access to an attorney or needs the assistance of a court-appointed attorney, asking the accused to plead, deciding whether to amend the initial bail amount, and setting the dates of future proceedings. The preliminary hearing follows the arraignment. At the preliminary hearing, the judge determines whether enough evidence exists for the prosecution to meet its burden of persuasion. The burden of persuasion refers to whether the prosecution even has enough evidence to make the defendant stand trial. The defense has the right to cross examine the government witnesses during this proceeding. Under Federal Law, a grand jury rather than a judge, makes this determination when the defendant faces "capital or infamous crimes" pursuant to the U.S. Constitution's Fifth Amendment. Unlike the other rights afforded to criminal defendants, the U.S. Supreme Court has not found the Fifth Amendment grand jury right incorporated into State Law through the Fourteenth Amendment. A pre-trial hearing is the next step in the process. The prosecution and the defense team use the pre-trial to file motions before a judge. These motion usually concern whether the Court should suppress certain evidence, whether certain individuals can testify, or whether the judge should dismiss all charges for lack of evidence. After all these preliminary stages, the defendant stands trial. Both sides offer opening statements first, although the defense can reserve their opening statement until the prosecution rests. The prosecution presents its witnesses and evidence first. Then, the defense presents its witnesses and evidence. After the defense rests, the defense offers a closing argument, and then the Prosecution offers the final closing argument. After closing arguments, the trier of fact deliberates and returns a verdict.\footnote{Ibid.}

The study also reveals that in Japan, both the defendant and the government have a right to speedy trial. The court in Japan has categorically stated that a speedy trial is not only for the defendant's benefit, but also serves the government's interest as well. Further, the study discloses that in Philippines, the government have enacted a Speedy Trial Act of 1988 which ensures a speedy trial of all criminal
cases. Similarly, the provisions are made in the Common Code (*Muluki Ain*) of Nepal which prescribes the time frame for the completion of a trial by the Court. On the same lines, Article 27 of the Constitution of Republic of Korea provides that all citizens shall have the right to trial in conformity with the Act by judges qualified under the Constitution and the Act.

It may, therefore, be summed up that the Constitutional Guarantee of speedy trial is an important safeguard in different countries. It prevents undue and oppressive incarceration prior to trial and limits the possibilities that long delays will impair the ability of an accused to defend himself. So, speedy trial is very much necessary for all the persons to safeguard their basic and fundamental rights. It is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice. Fundamental rights are not teasing illusions but are meant to be enforced effectively. On a number of matters cases were adjourned or delayed but now the court has a right to quash the case or the proceedings to meet ends of justice. Speedy trial is one of the most important parts of fair and just trial. So, to secure justice speedy disposal of cases is very necessary.