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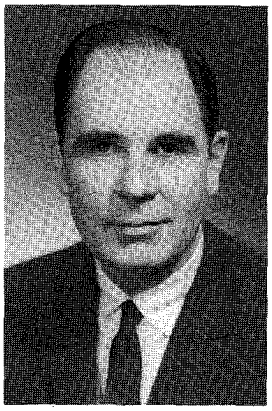

Achieving Prompt Criminal Trials in New York

W. DAVID CURTISS*, *Ithaca, New York*

During the past two years there have been several significant developments in New York related to achieving prompt trials in criminal prosecutions. These developments, which include judicial decisions, administrative rules and legislative enactments, come into special focus when delay in the trial of criminal cases is attributable to calendar congestion and the need for additional personnel and facilities. This article will examine these decisions, rules and statutes, with particular reference to their relationship to basic principles of judicial administration.

Prompt Trial Objectives

AT THE OUTSET, it is essential to identify the important objectives which prompt trials are designed to achieve. Although the Sixth Amendment to the federal Constitution guarantees the accused in a criminal prosecution the right to a speedy trial, it was not until as recently as June 22, 1972 that the United States Supreme Court fully examined the criteria which determine whether or not the speedy trial requirement has been met. In *Barker v. Wingo*[1], a unanimous court, in an opinion by Justice Powell, approved a balancing test which weighs the conduct of both the prosecutor and the defendant in the context of such factors as the length of the delay between arraignment and trial, the reasons for the delay, whether the defendant asserted his right to a speedy trial, and possible prejudice to the defendant.

Reference is made to *Barker v. Wingo* at this point especially because of Justice Powell's thorough consideration of the interests—of the general public as well as of the individual accused—which a prompt trial is aimed to protect.

First, as to the public interest in speedy trials:

> In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from and at times in opposition to the interests of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system. In addition, persons released on bond for lengthy periods awaiting trial have an opportunity to commit other crimes. . . . Moreover, the longer an accused is free awaiting trial, the more tempting becomes his opportunity to jump bail and escape. Finally, delay between arrest and punishment may have a detrimental effect on rehabilitation.
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> If an accused cannot make bail, he is generally confined . . . in a local jail. This contributes to the overcrowding and generally deplorable state of those institutions. . . . At times the result may even be violent rioting. Finally, lengthy pretrial detention is costly. The cost of maintaining a prisoner in jail varies from $3 to $9 per day, and this amounts to millions across the Nation.
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> In addition, society loses wages which might have been earned, and it must

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[1] Barker v. Wingo, 92 S.Ct. 2182 (1972). *See* Note, *Speedy Trial Schemes and Criminal Justice Delay*, 57 CORNELL L. REV. 794 (1972).

> often support families of incarcerated breadwinners.[2]

Concerning the interest of an individual defendant in a prompt adjudication of the charge against him, Justice Powell continued:

> This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown.
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> We have discussed previously the societal disadvantages of lengthy pretrial incarceration, but obviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent. Finally, even if an accused is not incarcerated prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion, and often hostility....[3]

People v. Ganci

People v. Ganci[4], decided by the Court of Appeals on January 20, 1971, is a leading case in New York on the subject of prompt trials, with particular reference to prosecutions in which delay is caused by congested calendar conditions, insufficient personnel and inadequate facilities.

In *Ganci,* some sixteen months elapsed between the time of the defendant's arraignment on a felony indictment and the beginning of his trial. Throughout this entire period, both the prosecutor and the defendant were ready for trial. Commenting on the reason for the delay, Judge Bergan, in his majority opinion, stated:

> This long delay, despite the readiness of counsel and the willingness of Judges to hear the case, is attributable to the congestion of the criminal trial calendar in Nassau County and the well-founded policy to process indictments in the sequence of their presentment. The total situation, in turn, may reasonably be charged to the rapid growth of the county in population, to the increase in crime, and to the State and community lag in providing additional facilities to process criminal cases—Judges, prosecutors, defense counsel, stenographers, probation officers, court officers and court rooms.
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> . . . If there are many dismissals of serious criminal charges because courts and prosecutors have too many cases to process in spite of full diligence, hopefully public opinion will spur State and local legislative bodies and administrators to provide money for additional services and facilities.
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> But the court can not look complacently at so Spartan a process leading to so dire a result.[5]

Therefore, since the sixteen-month delay was not attributable to the prosecutor and occurred for reasons beyond the trial court's control, the Court of Appeals affirmed the defendant's conviction on the ground that there was "good cause" under the then applicable statutory law[6] for not dismissing the indictment.

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[2] 92 S.Ct. at 2186-87 (footnotes omitted).

[3] *Id.* at 2193 (footnotes omitted).

[4] 27 N.Y.2d 418, 318 N.Y.S.2d 484, *cert. denied,* 402 U.S. 924 (1971).

[5] *Id.* at 422, 424, 318 N.Y.S.2d at 486, 488.

[6] N. Y. CODE CRIM. PROC. §668 (McKinney 1958). *Compare* N. Y. CRIM. PRO. LAW §30.20 (McKinney 1971).

Chief Judge Fuld, joined by Judge Burke, dissented:

> A delay of 16 months between the defendant's arraignment and trial—for which he was not at all responsible—is, in my view, a denial of his due process rights under the Fourteenth Amendment of the Constitution of the United States . . . and of his right to a speedy trial under the statutes of this State. . . . This being so, the fact that such delay was attributable to congested calendar conditions in Nassau County and that the district attorney was "ready" and judges "willing" to hear the case seems to me beside the point. . . .
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> . . . [I]t is the responsibility of the State, or of its subdivisions, to do what is necessary—by furnishing funds, facilities and personnel—to assure the effective operation of the judicial system, and that burden may not be shifted to the defendant.[7]

In *People v. Minicone*[8], decided on April 15, 1971 or less than three months after *People v. Ganci,* Judge Bergan, again writing for the court, referred to the Fuld-Burke dissent in *Ganci* in these terms: "But even there two of the Judges of the court were of opinion that the lack of public trial facilities was not good enough a ground to excuse the 16-month delay . . . and the period there considered seems to have approached the excusable limit of delay attributable to the absence of public trial facilities."[9]

The Administrative Board's Prompt Trial Rules v. The Legislature's Ready Rule

On October 16, 1970, following the jail riots in New York City, Chief Judge Fuld, as Chairman of the Administrative Board of the Judicial Conference, issued a public statement on the subject of prompt trials. In this statement he declared that "The Administrative Board will undertake a consideration and study of the need for legislation or, alternatively, for an administrative directive, to require that criminal cases be brought to trial within a certain prescribed period of time after the defendant's indictment or arraignment."[10]

Both the New York Court of Appeals in *People v. Ganci*[11] and the United States Court of Appeals for the Second Circuit in *United States ex rel. Frizer v. McMann*[12] took special note of this statement. In the latter case, the federal Court of Appeals expressly relied on Chief Judge Fuld's declaration as a basis for the conclusion that "there is no need at this time for us to set specific standards to govern the consideration of claims of denial of speedy trial by state prisoners in the federal courts of this circuit."[13] Simultaneously, the Circuit Council of the Second Circuit promulgated rules requiring the federal government to be ready to prosecute criminal cases within specified time limits.[14]

On April 30, 1971, Chief Judge Fuld announced that the Administrative Board had adopted rules designed to achieve the prompt disposition of criminal cases throughout the state.[15] In general, the rules provided that, except in the case of homicide, (1) a defendant in custody must be released on bail or on his own recognizance if he was not tried within ninety days following his arrest, and (2) the court must dismiss the charges against a defendant if he was not brought to trial within six months after his arrest. The rules further provided that in computing time limitations certain extensions for "good cause" were authorized. The effective date of the rules was postponed

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[7] 27 N.Y.2d at 430-31, 318 N.Y.S.2d at 493-94.

[8] 28 N.Y.2d 279, 321 N.Y.S.2d 570, *cert. denied,* 404 U.S. 853 (1971).

[9] *Id.* at 281, 321 N.Y.S.2d at 572.

[10] The Judicial Conference of the State of New York, Press Release (Oct. 16, 1970) (statement of Chief Judge Stanley H. Fuld, Chairman of the Administrative Board).

[11] 27 N.Y.2d 418, 423, 318 N.Y.S.2d 484, 487 (1971).

[12] 437 F.2d 1312, 1317 (2d Cir. 1971).

[13] *Id.* at 1317.

[14] *See* SECOND CIRCUIT RULES REGARDING PROMPT DISPOSITION OF CRIMINAL CASES (1971).

[15] 22 N.Y.C.R.R. §§29.1-.7.

until May 1, 1972.[16] In his public statement of April 30, 1971, Chief Judge Fuld underscored the reasons for this postponement:

> The Administrative Board is thoroughly aware of the fact that, if these rules are to prove effective, the wherewithal for additional facilities, personnel and services, so long denied to the courts and the other agencies involved will have to be made available by those having control of the purse strings. Because of this, the Administrative Board has provided that these rules are not to become effective until May 1, 1972.
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> . . . [I]t now remains for the other coordinate branches of government to carry out their responsibilities and provide the necessary funds for the construction of facilities, for the procurement of additional prosecutors, public defenders, probation and correction and court personnel and for other essential auxiliary services.[17]

Before considering the public response to Chief Judge Fuld's clear call for the financial support required to implement the prompt trial rules, the issue of the validity of the rules deserves attention. Specifically, the question is whether in promulgating these rules the Administrative Board acted within its constitutional and statutory powers.

Article 6, Section 28 of the New York Constitution vests in the Administrative Board the "authority and responsibility for the administrative supervision of the unified court system for the state" and provides that the Board, in consultation with the Judicial Conference, shall establish "standards and administrative policies for general application throughout the state."

This constitutional grant of power was implemented by Sections 212 and 213 of the Judiciary Law which define the functions and powers of the Administrative Board as including, but not limited to, such matters as personnel practices, fiscal and budgetary policies, administrative methods, assignment and transfer of judges, compilation of statistical data, management of court facilities, and investigation of complaints concerning the operation of the court system. In short, the Judiciary Law delegates power to the Administrative Board in broad and flexible terms.

By the same token, the Board, acting under its rule-making power, has adopted a wide range of regulations which affect the court system in many diverse ways. For example, there are presently Administrative Board rules relating to such divergent subjects as the appointment of judges' clerks, political activity of judges, television in courtrooms, gifts to court employees, uniform adoption procedures, examination of jurors, judicial visitations to correctional facilities, grievance procedures, and collective labor negotiations.[18]

Concededly, then, the Administrative Board enjoys comprehensive rule-making powers and has exercised them in a far ranging manner. Notwithstanding this fact, it is noteworthy that when it was desired to establish a plan for the compulsory arbitration of civil claims, the 1970 Legislature deemed it necessary specifically to empower the Board to institute such a plan by rule.[19]

To return now to the question raised earlier: whether the Administrative Board acted within its rule-making power in adopting the prompt trial rules. Assume a fact situation in which a defendant indicted for a felony is not brought to trial for sixteen months following his arrest due to calendar

[16] On October 29, 1971, the Administrative Board issued a clarification concerning the May 1, 1972 effective date of the rules which specifically made them applicable to cases involving arrests made *on or after* May 1, 1972.

[17] The Judicial Conference of the State of New York, Press Release (April 30, 1971) (statement of Chief Judge Stanley H. Fuld, Chairman of the Administrative Board).

[18] *See* Rules of the Administrative Board of the Judicial Conference, 22 N.Y.C.R.R. §§20.1-30.6.

[19] N.Y. JUDICIARY LAW §213(8) (McKinney Supp. 1972). *See also* McCoy v. Public Employment Relations Board, 28 N.Y.2d 790, 321 N.Y.S.2d 902 (1971), *aff'g*, 34 App.Div.2d 252, 311 N.Y.S.2d 60 (3d Dep't 1970).

congestion and lack of required personnel and facilities. Under these circumstances, would the defendant be entitled to dismissal of the charge against him because of violation of his right to a speedy trial?[20] The Court of Appeals decision in *People v. Ganci*[21] and the Administrative Board's prompt trial rules appear to require contradictory answers to this question, with *Ganci* calling for a "No" and the Board's rules for a "Yes". If this conclusion is correct, it suggests that in promulgating the prompt trial rules the Administrative Board stretched to the very limit, if indeed it did not exceed, its admittedly broad supervisory powers over the state's unified court system.

It is true that the Board's rules expressly provided for an extension of both the ninety days and the six months time limits to cover any period of delay attributable to "exceptional circumstances",[22] and it is arguable that delay due to overcrowded courts and inadequate trial facilities would meet this standard. Such an argument, however, would run counter to the general tenor of the various public statements made by Chief Judge Fuld on behalf of the Administrative Board in explanation and defense of the Board's position in adopting the prompt trial rules.

In any event, the statewide response in providing the funds required to implement the rules was disappointing—so disappointing, in fact, that the Administrative Board held an unprecedented press conference on December 28, 1971 in order to stress the critical urgency of public support for the plan then scheduled to become operative only four months hence. The Board stated:

> Operation of the prompt trial rules . . . was postponed for a year, until May 1, 1972, so as to give the appropriate legislative bodies and fiscal authorities a full twelve months to allocate the funds necessary to effectively implement these rules. . . . In some areas of the State, public officials and private citizens have addressed their efforts to this end, and they continue to do so. However, the lack of overall, significant progress to date is a matter of genuine concern to the Administrative Board, as it should be to each and every citizen.
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> Some legislators and prosecutors have, in good conscience, suggested that the rules be modified or that their effective date be delayed until such time as monies are actually made available. The Administrative Board cannot accept or subscribe to these suggestions, the end result of which would further postpone correction of a problem which demands solution now.[23]

The Board's concern about possible legislative modification of the rules proved prophetic. Chapter 184 of the Laws of 1972[24], effective April 28, 1972 and applicable to prosecutions commenced on or after May 1, 1972, expressly superceded the prompt trial rules of the Administrative Board. This statute, recommended by Governor Rockefeller as well as by the New York State District Attorneys Association, establishes a so-called "ready" rule as New York's method of promoting speedy trials in criminal cases.

A detailed comparison of the respective provisions of the Administrative Board's

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[20] In Barker v. Wingo, Justice Powell noted the "unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it is the only possible remedy." 92 S.Ct. 2182, 2188 (1972) (footnotes omitted).

[21] 27 N.Y.2d 418, 318 N.Y.S.2d 484 (1971).

[22] 22 N.Y.C.R.R. §29.3(c)(6).

[23] The Judicial Conference of the State of New York, Press Release (Dec. 28, 1971) (statement of Administrative Board concerning prompt trial rules).

Although the public response to the Administrative Board's challenge was generally disappointing, it is a pleasure to record the splendid efforts of Robert P. Patterson, Jr., as chairman of the New York State Bar Association's Special Committee on Administration of Criminal Justice, in marshalling support for the Board's prompt trial plan.

[24] Ch. 184, [1972] N.Y. Laws 398.

prompt trial rules and the Legislature's "ready" rule will not be undertaken here; although there are variations, in general pattern the two plans are similar. But there is one fundamental difference of critical importance: Chapter 184 of the Laws of 1972 expressly provides for the defendant's release from custody as well as for the dismissal of the charges against him only when "the people are not ready for trial" within the applicable time limits. There is little doubt that this limitation was a persuasive factor in the minds of those legislators who viewed with alarm the less restrictive rules of the Administrative Board, fearing that in the absence of the funds required to implement them, these rules might lead to "legalized jailbreaks"[25] throughout the state. On approving the bill which established the new "ready" rule, Governor Rockefeller noted that it would promote more rapid criminal trials "in a manner consistent with available resources and the need to avoid creating additional danger to public safety".[26]

Methods of Funding Prompt Trial Plans

An important aspect of the relationship among the legislative, executive, and judicial branches of government involves a consideration of various methods by which the courts can obtain the resources required for the efficient administration of the judicial system.[27]

One such method is exemplified by the Administrative Board's prompt trial rules: to establish standards and then postpone their effective date in order to give the fiscal authorities an opportunity to provide the wherewithal required to implement them. The principal drawback to this approach is that it may lend itself to the charge of "judicial extortion" and generate a counterproductive confrontation with the legislative and executive branches of government. On the other hand, this method correctly recognizes that responsibility for the administration of justice rests not with the judiciary alone but squarely on the public generally. As the *American Bar Association Journal* recently noted in an editorial comment: "If improvements are to be made, the public must pay for them. Chief Judge Fuld is to be commended for taking his case for the prompt trial rules to the public."[28]

Fiscal considerations are relevant in deciding whether a rule as opposed to a statute constitutes a sounder basis for establishing prompt trial standards. A judicial rule has a measure of flexibility, permitting ready amendment and repeal, which can make it preferable to a statutory plan.[29] If, however, a particular speedy trial plan requires additional resources for its implementation, then the very fact that it was established by the legislature with the approval of the governor may well provide better assurance that it

[25] On December 30, 1971 the New York Times had editorialized:

> In a free society, if the state is unable to come to trial within a reasonable period, those charged with crimes ought to go free. The best answer for society is to make sure the state is ready. That is the only sound way to guard against the warning of the state's district attorneys that the mandate for speedy trials might degenerate into "legalized jailbreak."

[26] *See* Governor's Memorandum on approving L. 1972, cc. 184, 185 (April 28, 1972), [1972] N.Y. Laws A-157.

[27] *See* E. FRIESEN, E. GALLAS & N. GALLAS, MANAGING THE COURTS (1971) (particularly Chapters IV (The Inherent Powers of the Courts) and V (The Governmental Relations of the Courts)).

[28] 58 A.B.A.J. 271 (1972).

[29] In a statement made on February 4, 1972 to the Joint Legislative Committee on Crime, Its Causes, Control and Effect on Society, Thomas F. McCoy, State Administrator of the Courts, declared:

> [T]he "prompt trial" rules adopted by the Administrative Board are preferable in that form to a statute, even an identically worded statute. A rule is flexible and can be altered easily if the need arise. This could conceivably be necessary as a result of experience quickly gleaned during the early days after the rules take effect. It would be foolish, in my view, if we were to tie ourselves to a rigid statutory formula, in this area. In my opinion, a statute is unnecessary and is not as efficient as a judicial rule.

will be adequately financed than would be the case if it were instituted by the judiciary under its rule-making powers.

The 1971 Pennsylvania Supreme Court case of *Commonwealth ex rel. Carroll v. Tate*[30] exemplifies a second method by which the judiciary can obtain funds necessary to provide court personnel and facilities as well as to staff ancillary agencies. In this case, the court focused on two fundamental questions: "(1) whether the Judicial Branch of our Government has the inherent power to *determine* what funds are *reasonably necessary* for its efficient and effective operation; and (2) if the Judiciary has the power to determine what funds are reasonably necessary, does it then have the power to *compel* the Executive and Legislative Branches to provide such funds."[31] The Pennsylvania court answered both of these questions in the affirmative, reasoning that this result was essential if, within the constitutional framework of separation of powers, the judiciary was in fact to be a co-equal and independent branch of government.[32] While there was agreement that Philadelphia's Court of Common Pleas had the burden of proving that the funds it requested were "reasonable necessary" for the efficient administration of justice, there was a difference of opinion as to whether the financial plight of Philadelphia could properly be considered in deciding whether this standard had been met.[33] In any event, given the fact that it is typically the function of the executive to plan the budget and of the legislature to tax and appropriate, it is open to question whether the *Carroll v. Tate* method of obtaining funding for court purposes does not itself invade the responsibilities of these other branches of government and thereby run counter to the principle of separation of powers.[34]

The funding of prompt trial plans is but one aspect of financing the statewide court system. In this larger context, the matter of state financing of the entire court system through a unified judicial budget deserves thoughtful consideration. The Temporary Commission on the State Court System is expected to make recommendations on this subject in time for their evaluation by the 1973 Legislature.

[30] 442 Pa. 45, 274 A.2d 193, *cert. denied*, 402 U.S. 974 (1971).

[31] *Id.* at 47, 274 A.2d at 194 (emphasis in original).

[32] The very genius of our tripartite Government is based upon the proper exercise of their respective powers together with harmonious cooperation between the three independent Branches. . . . However, if this cooperation breaks down, the Judiciary must exercise its inherent power to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed. . . . *Id.* at 53, 274 A2d at 197.

[33] Compare Chief Justice Bell (for the majority): "[T]he deplorable financial conditions in Philadelphia must yield to the Constitutional mandate that the Judiciary shall be free and independent and able to provide an efficient and effective system of Justice," *Id.* at 56, 274 A.2d at 199, with Justice Jones (concurring): "Stated differently, the majority essentially holds that whatever amount is 'reasonably necessary' for judicial administration must be awarded *even though the City may have no available funds.* With this proposition I cannot agree; in my opinion, the computation of a 'reasonably necessary' amount must consider the financial resources available to the city." *Id.* at 58, 274 A.2d at 204 (emphasis in original).

[34] *See* Note, *Judicial Financial Autonomy and Inherent Power*, 57 CORNELL L. REV. 975 (1972).

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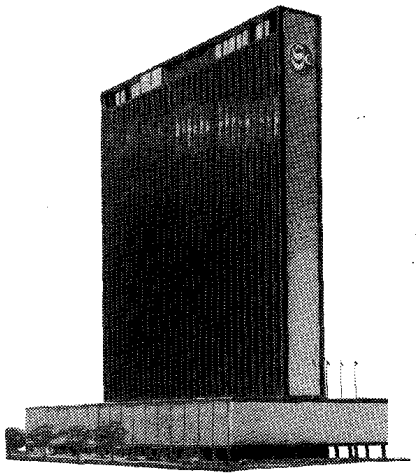

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