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## Criminal Law: What is a Speedy Trial

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## CRIMINAL LAW: WHAT IS A SPEEDY TRIAL?

In a recent California case,<sup>1</sup> two persons were indicted for conspiracy but were not brought to trial within sixty days after the filing of the indictment, as required by Penal Code Section 1382. As a result of this delay, the defendants filed petitions with the District Court of Appeals for a writ of mandate to be directed to the Superior Court requiring dismissal of the criminal complaint against them. The district court issued the writ on the grounds that the prosecution had not complied with the mandatory provisions of paragraph two, section 1382 of the Penal Code, which in part reads as follows:

" . . . The court, *unless good cause to the contrary is shown*, must order the action to be dismissed in the following cases: If a defendant whose trial has not been postponed upon his application, is not brought to trial in a superior court within sixty days after the finding of the indictment, or filing of the information, or in case of a new trial is to be had following an appeal from the superior court within sixty days after the filing of the remittur in the trial court . . ." (Emphasis added.)

In answer to the defendant's motion for dismissal, the prosecution attempted to prove that good cause was shown for the delay. The delay was occasioned by the crowded condition of the court calendar; the prosecution relied on this situation to show "good cause to the contrary." But the court held that the fact that a large number of civil cases were pending on the court calendar would not excuse the failure of the prosecution to proceed to trial within sixty days after the indictment was filed. To substantiate this holding the court cited the case of *Dearth v. Superior Court* and quoted from the decision in that case, to wit:

" . . . To comply with the provision contained in section 1050 of the Penal Code that criminal matters should be given precedence over civil cases and to enable defendants in criminal actions to have the speedy trials which are guaranteed by the Constitution a greater number of judges should have been assigned to departments handling criminal matters. There are twenty-two judges in the Superior Court of the City and County of San Francisco, and the showing that a large number of civil cases were pending does not excuse the failure to assign a sufficient number of judges to handle criminal matters. Nor was there any showing made that the chairman of the judicial council was notified that a sufficient number of judges was not available to try criminal cases. In rule 35, adopted by the judicial council for the guidance of the superior court, it is provided that the departments handling criminal cases shall be sufficient in number to hear all criminal cases within the time required by law."<sup>2</sup>

Likewise in the principal case the defendants cited paragraph two of section 1382 and asked for a dismissal; the prosecution replied by citing the same section but relied upon the "good cause to the contrary" clause. The court decided that the prosecution had not shown good cause because it had failed to comply with section 1050 of the Penal Code, giving criminal matters precedence over civil cases.

The California Constitution provides in Article I section 13 that the "party accused shall have the right to a speedy and public trial."<sup>3</sup> The language used in section 13 leaves open to question the problem of ascertaining the meaning of "speedy trial." In order to determine whether or not the defendant has had a speedy trial one must examine all the circumstances surrounding the pending trial.<sup>4</sup> The basic policy of Article I section 13 is to prevent the pending of criminal

<sup>1</sup> *Sigle v. Superior Court*, 125 A.C.A. 889, 271 P.2d 526 (1954).

<sup>2</sup> 40 Cal.App.2d 56, 104 P.2d 376 (1940).

<sup>3</sup> *Ferenz v. Superior Court*, 53 Cal.App.2d 639, 128 P.2d 48 (1942).

<sup>4</sup> *People v. Brock*, 87 Cal.App. 601, 262 Pac. 369 (1927).

charges against the defendant for an undue length of time.<sup>5</sup> But it seems that time alone cannot be taken as the sole criterion for determining what is a speedy trial. A reasonable time to secure a jury, provide a court, and procure important witnesses are other circumstances which need to be considered.<sup>6</sup> Nevertheless, at least one court has been of the opinion that the term "speedy trial" is capable of exact definition:

"Section 1050 of Penal Code, defines in no uncertain terms what is meant by the term 'speedy trial' 'Criminal cases shall be given precedence over all civil matters and proceedings.'"<sup>7</sup>

It is noteworthy that *Sigle v. Superior Court* and *Dearth v. Superior Court* utilized this same excerpt from section 1050 to settle what was a "speedy trial." However, this criterion for determining a speedy trial is applicable only to cases in which the trial was delayed because of pending civil matters. Hence, much of the problem must be settled in some other way

Section 1382 of the Penal Code was enacted as a supplement to Article I section 13 of the California Constitution. The provisions of section 1382 are mandatory<sup>8</sup> and failure to comply with this section will provide the basis for a dismissal. Section 1050 of the Penal Code, on the other hand, does not provide for a dismissal in the event there is noncompliance with its provisions.<sup>9</sup> Therefore, it is section 1382 which provides the relief that the defendant seeks when his trial has been delayed beyond sixty days from the time of his indictment. But, as has been stated above, time is not the only factor to be considered in determining what is a "speedy trial." A trial may be delayed far beyond the sixty-day limit yet there may be "just cause" for the delay, and in this sense the defendant will still have had a "speedy trial." The question, hence, presents itself as to what circumstances will show "just cause" for the failure to provide the defendant with a trial within sixty days of the indictment.

It has been held a mere statement by the trial judge that the court had been engaged in other matters did not show good cause.<sup>10</sup> Nor may the judge pretend that he has other urgent matters in his chambers and attempt to avoid the provisions of section 1050 by coercing the defendant's attorney to consent to a continuance.<sup>11</sup> The absence of a witness for the prosecution, where no reasonable efforts are shown to procure his attendance, will not amount to "just cause."<sup>12</sup> Neither does it constitute "just cause" where a witness for the prosecution is absent from the trial, when the prosecution has not subpoenaed the witness.<sup>13</sup> However, a delay resulting from the illness of the trial judge should not warrant the defendant a dismissal of his pending trial.<sup>14</sup> So also, there is "just cause" when an epidemic has prevented the gathering of a jury.<sup>15</sup> Of course, where the defendant

<sup>5</sup> *People v. Godlewski*, 22 Cal.2d 677, 140 P.2d 544 (1943).

<sup>6</sup> *People v. Buckley*, 116 Cal. 146, 47 Pac. 1009 (1897).

<sup>7</sup> *People v. Echols*, 125 A.C.A. 960, 271 P.2d 595 (1954).

<sup>8</sup> *People v. Perea*, 96 Cal.App. 183, 273 Pac. 836 (1929).

<sup>9</sup> *People v. Tenedor*, 107 Cal.App.2d 581, 237 P.2d 679 (1951).

<sup>10</sup> *Supra* note 6.

<sup>11</sup> *People v. Fegelman*, 66 Cal.App.2d 950, 153 P.2d 436 (1944).

<sup>12</sup> *Supra* note 6.

<sup>13</sup> *Cordts v. Superior Court*, 53 Cal.App. 589, 200 Pac. 726 (1921).

<sup>14</sup> *People v. Camilo*, 69 Cal. 540, 11 Pac. 128 (1886).

<sup>15</sup> *In re Venable*, 86 Cal.App. 585, 261 Pac. 731 (1927).