

US Supreme Court attacks right to a speedy trial

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On April 29, the US Supreme Court, ruling in the case *Boyer v. Louisiana*, denied an appeal by Jonathan Edward Boyer, who asserted that Louisiana's seven-year failure to provide funds for his court-appointed attorney violated his constitutional right to a speedy trial.

The State of Louisiana indicted Boyer for the murder of Bradlee Marsh in 2002 and announced that it would seek the death penalty. Boyer was provided a court-appointed attorney, but over the ensuing five years no funds were provided for his lawyer. During this five-year period, various branches of the state government indicated that they did not have the funds or they were not responsible for funding Boyer's defense.

In 2007, this impasse was resolved when the state announced it would no longer seek the death penalty. This reduced the complexity and costs of Boyer's defense and funds thereafter became available. Boyer was tried and convicted of murder in 2009.

Boyer appealed his conviction on the basis that the state's failure to fund his defense deprived him of his constitutional right to a speedy trial. He further asserted that as a consequence of the seven-year delay, he suffered mental deterioration (having been declared mentally incompetent for nine months) and was legally handicapped by a loss of witnesses, including one who had identified two other individuals as the killers. As a result, he asserted, his defense had been prejudiced.

The Supreme Court in its 5-4 decision dismissed the appeal as "improvidently granted," i.e., that the Supreme Court had been mistaken in its initial granting of review of the issue. To justify this rarely used finding, the right-wing majority, consisting of Chief Justice John Roberts and associate justices Antonin Scalia, Clarence Thomas, Samuel Alito and Anthony Kennedy, declared that after having reviewed the

record, it concluded that the state court had erred factually in concluding that the delay in Boyer's case was caused by lack of funding. The Supreme Court majority chose instead to make its own, independent factual determination and concluded that the delay had been caused by the defense, thus voiding the need to decide the speedy trial issue.

The dissent, written by Associate Justice Sonia Sotomayor and joined by justices Ruth Bader Ginsburg, Stephen G. Breyer and Elena Kagan, first noted that the Court as a rule defers in regard to factual conclusions to the lower courts, and on this basis had, in accord with precedent, accepted the Louisiana court's finding that the "majority of the seven year delay" was caused by "lack of funding."

Sotomayor then addressed the issue that the majority had maneuvered to evade. "The court's failure to resolve this case is especially regrettable," she wrote, "because it does not seem to be an isolated one. Rather, Boyer's case appears to be illustrative of larger, systemic problems in Louisiana. The Louisiana Supreme Court has suggested on multiple occasions that the state's failure to provide funding for indigent defense contributes to extended pretrial detentions."

The public defender system "seems to be significantly understaffed," Sotomayor added. She cited a report that found the caseload of New Orleans public defenders is about twice the number recommended by American Bar Association (ABA) standards. She also noted an estimate that in one parish, the public defender caseload is 528 percent of the ABA standard.

"Against this backdrop," Sotomayor wrote, "the court's silence in this case is particularly unfortunate. Conditions of this kind cannot persist without endangering constitutional rights."

The Sixth Amendment to the US Constitution guarantees all persons accused of criminal wrongdoing the right to a speedy trial. This fundamental democratic right is derived from a long and ancient legal legacy.

The right to a speedy trial was first recognized during the reign of Henry II (1154–1189), when the English crown promulgated the Assize of Clarendon, a legal code comprised of 22 articles, one of which promised speedy justice to all litigants. In 1215, the Magna Carta prohibited the king from delaying justice to any person in the realm. In colonial America, several of the colony's charters protected the right to a speedy trial, as did most of the constitutions of the original 13 states.

The Founding Fathers included the right to speedy trial in the Sixth Amendment for two purposes. First, they sought to prevent defendants from languishing in jail for an indefinite period before trial. Pre-trial incarceration is a deprivation of liberty no less serious than post-conviction imprisonment. In some cases, pretrial incarceration may be more serious because public scrutiny is often heightened, employment is interrupted, financial resources are diminished, family relations are strained, and innocent persons are forced to suffer prolonged injury to their reputation.

Second, they sought to ensure a defendant's right to a fair trial. The longer the commencement of trial is postponed, the more likely witnesses will disappear, memories will fade, and evidence will be lost or destroyed.

The issue of the state's duty to provide funding for lawyers representing indigent defendants arises from the landmark US Supreme Court case of *Gideon v. Wainwright*. In this 1963 case, the Supreme Court unanimously ruled that state courts are required under the Fourteenth Amendment to provide counsel in criminal cases for defendants who are unable to pay for their own attorneys, extending the identical requirement made on the federal government under the Sixth Amendment.

Funding for indigent defense services, which has never been adequate, has been significantly reduced throughout the country because of budget cuts. As a result, attorneys for impoverished criminal defendants often have overwhelming caseloads and grossly inadequate resources.

The Court's decision in *Boyer v. Louisiana* serves to subvert both the right to a speedy trial and the right to

counsel.



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