

A Broken Clock: Fixing New York's Speedy Trial Statute

DANIEL HAMBURG*

New York City's criminal courts, and those in the Bronx especially, are in crisis. Following the institution of "Broken Windows" policing in the mid-nineties, New York City courts have been flooded with misdemeanor cases, preventing the timely administration of justice. The outsized delay that now regularly accompanies misdemeanor cases in the New York City criminal justice system creates grave consequences for defendants and for society as a whole. This Note argues that a major source of the delay in the adjudication of misdemeanors is New York's speedy trial statute, CPL 30.30, and the New York Court of Appeals' decisions interpreting it. In contrast to the statutory approach of the federal government and other states, New York calculates speedy trial time from the prosecution's declaration of trial readiness rather than from when the defendant's case is actually heard. As a result, the speedy trial clock is often stalled for months while the defendant awaits trial. This Note suggests that by adopting a true speedy trial rule and excluding routine court congestion as a permissible source of delay, while also reviving the constitutional right for misdemeanor cases, the promise of speedy trials can be restored to New York's criminal courts.

I. INTRODUCTION: THREE DEFENDANTS

Michailon Rue, a 40-year old Iraq War veteran and resident of the Bronx, was arrested for possession of marijuana in August of 2011.¹ He rejected a series of plea deals offered by the Bronx dis-

* Notes Editor, COLUM. J. L. & SOC. PROBS., 2014–15. J.D. Candidate 2015, Columbia Law School. The author would like to thank the editors and staff of the *Columbia Journal of Law and Social Problems* for helping this Note reach publication. The author would also like to give a special thanks to Professor Jeffrey Fagan, his mentors at the Bronx Defenders, and David Hymen for their contributions. Finally, the author gives his deepest thanks to his family and friends for their continuous love and support.

1. William Glaberson, *Justice Denied: In Misdemeanor Cases, Long Waits for Elusive Trials*, N.Y. TIMES (April 30, 2013), <http://www.nytimes.com/2013/05/01/nyregion/justice-denied-for-misdemeanor-cases-trials-are-elusive.html> [hereinafter Glaberson, *Long Waits*].

trict attorney's office and maintained his innocence.² Yet Rue was never granted a trial. Rather, after Rue waited fifteen months and made seven appearances in court, the prosecution acknowledged that the case had expired under New York's Speedy Trial Statute³ and the judge perfunctorily dismissed it.⁴

Diego Melendez works at a Bronx meat market and is a father of three.⁵ He was frisked by the police and arrested after they found the stub of a marijuana cigarette in his pocket,⁶ claiming it was in public view.⁷ Like Rue, Melendez was determined to fight his case but was forced to come to court eight times over the course of a year without standing trial.⁸ Finally, when the prosecutors stated they were unable to make their case because of the arresting officer's absence, the judge refused to allow any additional delay and the charges were quietly dropped.⁹

Finally, Angel Cardona, a seventeen-year old high school student from the Bronx Soundview neighborhood, was arrested for possession of marijuana while awaiting a bus in the summer of 2011.¹⁰ The arresting officer claimed he saw Cardona smoking on the sidewalk.¹¹ Cardona also set out to take his case to trial, but was forced to endure multiple court dates and more than a year of delay without the opportunity to be fully heard in trial.¹² At his fifth appearance in court, facing the prospect of another two-month delay, Cardona's patience finally ran out — 392 days after his initial arrest, he pleaded guilty to a violation for disorderly conduct.¹³

This situation — three defendants, three misdemeanor drug arrests, and no trials even after lengthy delay — is hardly unusual in the New York City criminal justice system.¹⁴ Although

2. *Id.*

3. N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2006).

4. Glaberson, *Long Waits*, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. THE BRONX DEFENDERS FUNDAMENTAL FAIRNESS PROJECT, NO DAY IN COURT: MARIJUANA POSSESSION CASES AND THE FAILURE OF THE BRONX CRIMINAL COURTS 1 (Scott D. Levy ed.) (May 2013) [hereinafter, BRONX DEFENDERS].

11. *Id.* at 1.

12. *Id.* at 1–2.

13. *Id.* at 2.

14. See CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK CITY CRIMINAL COURT ANNUAL REPORT 2012 52 (Justin Berry ed., 2012) [hereinafter 2012 ANNUAL

Rue and Melendez's cases were dismissed, either at the prosecution's own volition or at the insistence of the judge, and Cardona gave up the fight and took a plea, all three of these men were subject to the interminable delays which are now the norm for New York City defendants awaiting trial.¹⁵

This Note examines the inability of New York City courts to deliver on the Constitution's guarantee of a right to a speedy trial for misdemeanor defendants like Rue, Melendez, and Cardona.¹⁶ Part II provides an overview of the problem, discussing its scope and consequences for defendants, the public, and the criminal justice system. Part III describes sources of the speedy trial problem other than CPL 30.30, New York's speedy trial statute, which is explained in detail in the following section. Specifically, Part III covers the surge of misdemeanor arrests due to "Broken Windows" policing,¹⁷ the relative inattention paid to misdemeanor defendants by the criminal justice system, and the reticence of courts to vindicate the speedy trial right. Part IV gives an outline of the constitutional and statutory speedy trial right, with a particular emphasis on the history, structure, and shortcomings of CPL 30.30. Part V describes alternative statutory approaches to the speedy trial right at the federal and state level, including those in Indiana, Kansas, Arizona, and Florida. Finally, Part VI suggests several reforms to New York's speedy trial statute, including the adoption of strict timelines for defendants to be brought to trial and a provision excluding delay from court congestion except in "exceptional" circumstances. It also considers several angles from which a renewed constitutional argument might be brought to make the Sixth Amendment's guarantee of a speedy trial real for New York's misdemeanor defendants.

REPORT], available at <http://www.courts.state.ny.us/COURTS/nyc/criminal/AnnualReport2012.pdf> (charts titled, "Bench Trial Verdicts Mean Age at Disposition," and "Jury Trial Verdicts Mean Age at Disposition").

15. See *id.*

16. The Sixth Amendment of the United States Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . ." U.S. CONST. amend. VI.

17. "Broken Windows" policing refers to police strategies aimed at curbing low-level disorder in the community such as public drunkenness, aggressive panhandling, and vandalism, which are thought to contribute to a sense of lawlessness and induce more serious crime. The name for this style of policing derives from the seminal 1982 article, "Broken Windows: The Police and Neighborhood Safety" by social scientists James Q. Wilson and George L. Kelling. See Sarah E. Waldeck, *Cops, Community Policing, and the Social Norms Approach to Crime Control: Should One Make Us More Comfortable with the Others?*, 34 GA. L. REV. 1253, 1256–57 (2000).

II. MAPPING THE CONTOURS OF NEW YORK'S SPEEDY TRIAL PROBLEM

This Part examines the scope of New York City's speedy trial problem, focusing on where its impact is felt the most: the Bronx misdemeanor courts. Additionally, this Part describes the deleterious consequences which flow from denying the right to a speedy trial to large numbers of defendants, particularly those charged with misdemeanors.

A. THE STATISTICAL REALITY

While lengthy delay in the administration of justice afflicts New York City's criminal courts generally,¹⁸ the problem is not felt equally across all boroughs and types of defendants. In 2012, defendants facing trial in Manhattan had a relatively short wait,¹⁹ while their counterparts in Brooklyn and Queens experienced a far greater delay.²⁰ Yet, by all accounts, the courts in the Bronx are the most sluggish.²¹ In the last decade, "the Bronx slipped . . . into the bottom ranks of the most back-logged big city courts in the country,"²² with defendants waiting in jail as long as three, four, or even five years for their day in court.²³ In January

18. See William Glaberson, *Justice Denied: Faltering Courts, Mired in Delays*, N.Y. TIMES (April 13, 2013), <http://www.nytimes.com/2013/04/14/nyregion/justice-denied-bronx-court-system-mired-in-delays.html> [hereinafter Glaberson, *Faltering Courts*] ("Concerns about an overburdened, underfinanced court system have nagged with increasing urgency across New York City. The number of felony cases citywide that exceed the courts' own guidelines for excessive delay — 180 days in most felony cases — has more than doubled since 2000, even as the total number of felony cases has dropped by a quarter."); see also, 2012 ANNUAL REPORT, *supra* note 14, at 52 (showing average life of bench and jury trials across the city at 345.1 days and 436.2 days, respectively).

19. The average time from arraignment to a bench or jury trial in Manhattan was 239.3 days and 343.5 days, respectively. 2012 ANNUAL REPORT, *supra* note 14, at 52.

20. Defendants in Brooklyn waited on average 440.8 days for a bench trial and 480.3 days for a trial by jury. *Id.* The figures for Queens were 431 and 624.7 days for bench and jury trials, respectively. *Id.*

21. See William Glaberson, *Justice Denied: For the Defense, a Master of Delay*, N.Y. TIMES (April 14, 2013), <http://www.nytimes.com/2013/04/15/nyregion/justice-denied-courts-in-slow-motion-aided-by-defense.html> [hereinafter Glaberson, *Master of Delay*] ("Delays are a New York court epidemic. But the Bronx is a special case, with more criminal cases languishing longer than anywhere else in the city.").

22. Glaberson, *Faltering Courts*, *supra* note 18.

23. Glaberson, *Master of Delay*, *supra* note 21. See also William Glaberson, *Justice Denied: For 3 Years After Killing, Evidence Fades as a Suspect Sits in Jail*, N.Y. TIMES (April 15, 2013), http://www.nytimes.com/2013/04/16/nyregion/justice-denied-after-a-murder-in-the-bronx-a-sentence-to-wait.html?pagewanted=all&_r=0 [hereinafter, Glaberson, *Suspect Sits*].

2013, seventy-three percent of all felony cases in the Bronx exceeded New York's 180-day speedy trial limit, including more than 800 felonies still open at two years or more.²⁴ No other borough had more than 200 still open at that point.²⁵

As bad as the felony numbers are, the larger and oft-overlooked problem is the glacial pace of the Bronx's misdemeanor docket.²⁶ In theory, it should be much easier for a court system to deliver on the promise of speedy trial for misdemeanors than for felonies, "because misdemeanor cases are less complicated and place less of a strain on the participants."²⁷ However, in New York City, fewer than one in five-hundred misdemeanor defendants go to trial.²⁸ Oftentimes, a defendant's guilty plea is "not driven by evidence but by institutional and individual factors unrelated to whether the defendant is actually guilty," including the time lost to fighting the case.²⁹

In an effort to test the system, the Bronx Defenders, a public defender organization in the Bronx, in collaboration with the New York-based law firm Cleary Gottlieb Steen & Hamilton LLP, conducted the Marijuana Arrest Project (hereinafter "MAP").³⁰ They found that a typical defendant charged with misdemeanor drug possession wishing to fight his case could expect to wait 240 days and make five court appearances before disposition was reached.³¹ Yet, even enduring this long delay did not result in the defendants getting their day in court. When the Bronx Defenders and Cleary Gottlieb brought MAP to a close in the spring of 2012, not a single one of the fifty-four defendants had actually gone to trial or completed a suppression hearing.³² Rather, in

24. Glaberson, *Faltering Courts*, *supra* note 18.

25. *Id.*

26. Robin Steinberg, *Robin Steinberg Responds to New York Times Article, "Bronx Courts Trim Big Backlog, with Outside Judge at the Helm,"* THE BRONX DEFENDERS (Aug. 6, 2013), <http://www.bronxdefenders.org/robin-steinberg-responds-to-new-york-times-article-bronx-courts-trim-backlog-with-outside-judge-at-the-helm/>.

27. Joseph P. Fried, *Some City Trials Will Be At Night For Experiment*, N.Y. TIMES (March 30, 1981), <http://www.nytimes.com/1981/03/30/nyregion/some-city-trials-will-be-at-night-for-experiment.html>.

28. Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1093 (2013) (citing LISA LINDSAY, CRIMINAL COURT OF THE CITY OF N.Y. ANNUAL REPORT 2011 16 (Justin Barry ed., 2011), available at <http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2011.pdf>).

29. Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1344 (2012).

30. BRONX DEFENDERS, *supra* note 10.

31. *Id.* at 6; see also Glaberson, *Long Waits*, *supra* note 1.

32. BRONX DEFENDERS, *supra* note 10, at 6.

each closed case, the defendant eventually accepted a negotiated disposition³³ or the charges were ultimately dismissed.³⁴ While MAP focused exclusively on Bronx misdemeanor drug defendants, the evidence suggests that trials are similarly elusive for the rest of borough's tens of thousands³⁵ of defendants charged with minor offenses.³⁶

B. THE WORST OF ALL WORLDS: THE CONSEQUENCES OF RAMPANT DELAY

The inability of New York's criminal courts, and those of the Bronx especially, to deliver on the basic promise of a speedy trial has significant costs for the actors in the criminal justice system and society generally. In backlogged felony cases, some innocent defendants may spend years awaiting their day in court.³⁷ Other defendants, released on low-level felony charges, are able to commit more serious crimes while they await trial for their previous case.³⁸ This creates what New York's Chief Judge Jonathan Lippman calls the "worst of all worlds: You have people who are dangerous who are out on the street and people who are no threat to the public who have jobs and families who are sitting in jail."³⁹ Moreover, as time goes on and witnesses disappear, change their stories, or lose their memories, the ability of the justice system to

33. A negotiated disposition might take the form of a non-criminal violation or an adjournment in contemplation of dismissal ("ACD"), which results in the automatic dismissal of all charges six months or a year after the arraignment unless the prosecution moves to restore the charges before that date. N.Y. CRIM. PROC. LAW § 170.55(1)–(2) (McKinney 2008).

34. BRONX DEFENDERS, *supra* note 10, at 10.

35. The Bronx criminal courts see 50,000 misdemeanor filings a year. Glaberson, *Long Waits*, *supra* note 1.

36. *See id.* (The Bronx courts conducted 300 misdemeanor trials in 2012 with over 11,000 misdemeanor cases pending); *see also* N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS. BRONX COUNTY ADULT ARRESTS DISPOSED 5 (2013), *available at* <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/bronx.pdf> (showing that only .2 percent, or 85 of the 53,224 misdemeanor dispositions in 2013 resulted in acquittal).

37. Glaberson, *Faltering Courts*, *supra* note 18 (recounting the stories of Miguel Citron and Michael Ikoli, Bronx felony defendants acquitted of their alleged crimes after spending nearly four and five years in prison respectively); *see also* Glaberson, *Suspect Sits*, *supra* note 23 (Chad Hooks was acquitted of murder after waiting for nearly four years in prison at Rikers Island for his trial).

38. Ray Rivera, *Freed by Bronx Legal Logjam, and Adding to List of Victims*, N.Y. TIMES (June 21, 2013), <http://www.nytimes.com/2013/06/22/nyregion/freed-by-bronx-legal-logjam-and-adding-to-list-of-victims.html>.

39. *Id.*

arrive at the truth is badly compromised.⁴⁰ For Bronx prosecutors, their conviction rate falls sharply as delay grows.⁴¹ Victims and their families also suffer as the search for justice drags on.⁴²

The interminable delays for misdemeanor cases, meanwhile, come with their own set of negative consequences. In a system where even the judges warn the defendants that fighting their case will involve two years of coming to court,⁴³ most defendants inevitably conclude that taking a plea is in their own best interests.⁴⁴ At the very least, every court date without a trial represents a hassle and inconvenience for the defendant. For each brief appearance, defendants will usually wait “between one and five hours in the courtroom,” even though “[t]he vast majority of the appearances involve no substantive action by the court or the parties.”⁴⁵ Appearing in court often means missing work or school, lost pay, or finding childcare.⁴⁶ For some defendants, taking off work may mean the loss of a job.⁴⁷ Those seeking work may be turned away by potential employers when a background check reveals an open case.⁴⁸ These and other hurdles a defendant faces in fighting a misdemeanor charge induce most defend-

40. Glaberson, *Faltering Courts*, *supra* note 18; *see also*, Glaberson, *Suspect Sits*, *supra* note 23.

41. Glaberson, *Faltering Courts*, *supra* note 18 (In 2011, Bronx prosecutors got a guilty plea or convicted 80% of three-year-old felonies, 67% of four-year-old cases, and only 56% of five-year-old cases.).

42. *See* Mary Beth Rickle, *Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection*, 41 WASH. U. J.L. & POL'Y 181, 182–84, 192–95 (2013); *see also* Glaberson, *Suspect Sits*, *supra* note 23 (quoting the Bronx mother of one slain man saying, “each court date, each postponement . . . [made] the shock of the killing fresh again”).

43. Glaberson, *Long Waits*, *supra* note 1 (“Last year, a judge told a 17-year-old defendant in a marijuana case in the Bronx Defenders project that if he did not take a plea deal, which involved no jail time, he would be ‘coming back and forth to court over the next 18 to 24 months.’”).

44. In 2011, fewer than 1 in 500 individuals charged with misdemeanors went to trial. Roberts, *supra* note 28, at 1093 (citing LISA LINDSAY, CRIMINAL COURT OF THE CITY OF N.Y. ANNUAL REPORT 2011 16 (Justin Barry ed., 2011), *available at* <http://www.courts.state.ny.us/courts/nyc/criminal/AnnualReport2011.pdf>).

45. Ian Weinstein, *The Adjudication of Minor Offenses in New York City*, 31 FORDHAM URB. L.J. 1157, 1172 (2004).

46. BRONX DEFENDERS, *supra* note 10, at 12. *See also* K. Babe Howell, *Broken Lives From Broken Windows: The Hidden Cost of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 296 (2009).

47. Howell, *supra* note 46, at 296.

48. Roberts, *supra* note 28, at 1098 (“Perhaps most significantly, in an era in which employers can, and easily do, access electronic criminal records, the person taking the “harmless” disorderly conduct plea will have difficulty finding work.”).

ants to take a plea.⁴⁹ Even, as in most cases, where pleading guilty to a non-violent misdemeanor does not come with any jail time,⁵⁰ it entails significant costs. There is growing body of literature on the various “collateral consequences”⁵¹ which even a low misdemeanor conviction carries for an individual.⁵² Although cataloguing them all is beyond the scope of this Note, they are myriad and often severe:

A misdemeanor conviction bars eligibility for numerous professional licenses. It can affect child custody, food stamp eligibility, or lead to deportation. It can affect the right to vote. A misdemeanor drug conviction renders students ineligible for federal student loans. By pleading guilty to disorderly conduct, a noncriminal violation, a person is “presumptively ineligible for New York City public housing for two years.”⁵³

Beyond the tangible harm which may befall the individuals and their families, a system which is unable to deliver a speedy trial to misdemeanor defendants and instead produces guilty pleas or negotiated dispositions en masse produces other harmful externalities.⁵⁴ The criminal justice system loses an important check on the police because the quality of their work is rarely tested in open court.⁵⁵ The perception of the inherent fairness of the criminal justice system and the rule of law suffers too,⁵⁶ as

49. See Albert W. Alshuler, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining System*, 50 U. CHI. L. REV. 931, 955 (1983) (“In essence, the process itself is the punishment. The time effort, money, and opportunities lost as a direct result of being caught up in the system can quickly come to outweigh the penalty that issues from adjudication and sentence.”) (quoting MALCOLM FEELEY, *THE PROCESS IS THE PUNISHMENT*, 30–31 (1979)).

50. N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., N.Y. STATE ADULT ARRESTS DISPOSED 5 (2013), available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/dispos/nys.pdf> (showing that in 2013, only 9.5% of defendants convicted of a misdemeanor were sentenced to prison or jail, with another 9% sentenced to time already served).

51. “Collateral consequences are the consequences of a plea that do not derive from the punishment handed down from the court.” Paisly Bender, *Exposing the Hidden Penalties of Pleading Guilty: A Revision of the Collateral Consequences Rule*, 19 GEO. MASON L. REV. 291, 292 (2011).

52. See, e.g., Howell, *supra* note 46, at 296–97; Weinstein, *supra* note 45; Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277 (2011); Natapoff, *supra* note 29, at 1314.

53. Natapoff, *supra* note 29, at 1325–26.

54. Howell, *supra* note 46, at 306–15.

55. Weinstein, *supra* note 45, at 1168.

56. Howell, *supra* note 46, at 308–13.

misdemeanor defendants like Rue, Melendez, and Cardona are made cynical, regardless of the result in their case, by the system's slow grind.⁵⁷

III. THE SOURCES OF DELAY

Sluggish criminal courts are nothing new for New York.⁵⁸ However, the back-breaking delay which is now ingrained for misdemeanor cases in New York City generally, and in the Bronx specifically, has a number of distinct and identifiable causes. One major cause is New York's ineffective speedy trial statute, CPL 30.30. Its deficiencies are discussed at length in Part IV of this Note. In this section, three additional reasons for the out-sized delay found in New York City courts are explored. First, and most importantly, the rise of "Broken Windows" policing,⁵⁹ which emphasizes the strict enforcement of small quality-of-life crimes, has produced such a massive surge in misdemeanor arrests that the courts simply cannot keep up.⁶⁰ Second, lengthy delays in felony cases typically garner more attention and concern than those in misdemeanors. As such, felonies constitute the bulk of constitutional speedy trial cases, leaving few analogous cases for misdemeanor defendants to rely upon in asserting their claims. Third, the prevailing view among legislators and

57. Glaberson, *Long Waits*, *supra* note 1 ("Mr. Rue had won, but not in the way he hoped . . . Mr. Melendez geared up to take the stand each time, with growing frustration at each court postponement."); *see also* BRONX DEFENDERS, *supra* note 10, at 2 ("[Cardona] promptly paid the \$120 mandatory court surcharge and moved on with his life, but not before confessing a newfound disillusionment with the criminal justice system.").

58. *See* Note, *The All-Purpose Parts in the Queens Criminal Courts: An Experiment in Trial Docket Administration*, 80 YALE L.J. 1637, 1644 (1971) ("By the end of 1968, the backlog of pending cases [in New York City Criminal Court] had increased to a total of 520,000 criminal charges. A 1969 study of the New York City Criminal Court revealed that, in courtrooms devoted to trials, only 2¼ to 2½ hours of a judge's time each day were spent hearing and trying cases.").

59. There is a vast and diverse literature across a variety of disciplines concerning "Broken Windows" policing and its efficacy, which the author will not attempt to encapsulate here. *See generally* Howell, *supra* note 46; Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271 (2006); Jeffrey Fagan & Garth Davies, *Street Stops and Broken Windows: Terry, Race and Disorder in New York City*, 28 FORDHAM URB. L.J. 457 (2000); Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551 (1997).

60. Barry Paddock & Sarah Ryley, *Exclusive: Arrests for Transit Fare Evasion Surge in Recent Years, Putting it Among City's Top Offenses Leading to Jail: Daily News Analysis*, THE DAILY NEWS (Aug. 18, 2014, 2:09 AM), <http://www.nydailynews.com/new-york/nyc-crime/fare-evasion-arrests-surge-years-article-1.1906667>.

judges that delay is the defendant's friend has undermined the vigorous vindication of the speedy trial right.

Perhaps the biggest culprit in bogging down New York City misdemeanor courts is the institution of "Broken Windows"-influenced policing, which began in the mid-1990s under then-Mayor Rudolph Giuliani and his Police Commissioner, William J. Bratton.⁶¹ While the "Broken Windows" policing described by Wilson and Kelling emphasized the use of informal or extralegal measures to remedy neighborhood disorder,⁶² the New York Police Department adopted a variety of "Broken Windows" based on "aggressive interdiction of disorderly persons."⁶³ Since its inception, "Broken Windows" policing in New York City has been marked by a high volume of misdemeanor arrests.⁶⁴ Between 1989 and 1998, midway through Giuliani's tenure, annual non-felony arrests had jumped by 90,000.⁶⁵ Once Michael Bloomberg took the mayor's office in 2002, the numbers truly began to soar: misdemeanor arrests of adults in New York City increased every year between 2003 and 2010, when they reached a peak of 251,279.⁶⁶ Overburdened as they are, misdemeanor courts are unable to work through their dockets in a timely manner.⁶⁷ Even

61. See Clifford Krauss, *Giuliani and Bratton Begin Push to Shift Police Aims and Leaders*, N.Y. TIMES (Jan. 26, 1994), <http://www.nytimes.com/1994/01/26/nyregion/giuliani-and-bratton-begin-push-to-shift-police-aims-and-leaders.html> ("Mayor Rudolph W. Giuliani and his new Police Commissioner began a top-to-bottom reorganization of the New York City Police Department yesterday, intended to give borough and precinct commanders more authority and staff to concentrate on quality-of-life offenses ranging from open-air drug markets to panhandling squeegee men.")

62. George L. Kelling and James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, THE ATLANTIC (Mar. 1, 1982), <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>. See also Fagan & Davies, *supra* note 59, at 470; Waldeck, *supra* note 17, at 1270-1.

63. Fagan & Davies, *supra* note 59, at 469.

64. A 1994 New York Police Department document lays out Commissioner Bratton's plan to crack down on minor misdemeanor offenses in part by "significantly" limiting the number of Desk Appearance Tickets (DATs) for "low-level quality of life offenses," and refusing to issue DATs or summonses for "individuals who have a history of misdemeanor arrests, warrants, and low-level imprisonment." N.Y. CITY POLICE DEP'T, POLICE STRATEGY NO. 5: RECLAIMING THE PUBLIC SPACES OF NEW YORK 9 (1994), available at <https://www.ncjrs.gov/pdffiles1/Photocopy/167807NCJRS.pdf>. Although not explicit in this document, a policy which stresses aggressive enforcement of "quality-of-life crimes" and simultaneously limits the issuance of DATs and summonses (which merely require the alleged offender to appear in court on a later date) dictates that police make more arrests.

65. Howell, *supra* note 46, at 281.

66. N.Y. STATE DIV. OF CRIMINAL JUSTICE SERVS., ADULT ARRESTS: 2004-2012 (2013), available at <http://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/NewYorkCity.pdf>.

67. A further problem that afflicts the Bronx courts is the culture of delay that has set in along with the consistently overcrowded dockets. This culture of delay is captured

with the recent decline in “stop-and-frisk” activity,⁶⁸ one driver of the bloated arrest numbers,⁶⁹ “the police continue to arrest more people than the Bronx courts can process, especially on the misdemeanor level.”⁷⁰

A second factor in the long delays found in New York City misdemeanor courts is the general lack of attention paid by the criminal justice system to misdemeanor defendants.⁷¹ “Broken Windows” policing brings them into the system en masse, but once they’re there, the progress of misdemeanor cases does not receive the same concern as felony cases.⁷² This relative indifference is in spite of the fact that misdemeanors make up the bulk of criminal cases in New York and nationwide.⁷³ The media and academia pay less attention to delay in misdemeanor cases than in felonies,⁷⁴ as do legislatures.⁷⁵ The judiciary, too, is less con-

superbly by William Glaberson in his four-part series “Justice Delayed” appearing in the *New York Times* during April of 2013. See Glaberson *supra* notes 1, 18, 21, and 23. For more on “local legal culture” generally, and its impact on docket backlog and the pace of litigation, see David C. Steelman, *What Have We Learned About Court Delay, ‘Local Legal Culture,’ and Caseload Management Since the Late 1970s?*, 19 JUST. SYS. J. 145, 152–55; Thomas W. Church Jr., *Who Sets the Pace of Litigation in Urban Trial Courts*, 65 JUDICATURE 76 (1981).

68. In 2013, the NYPD stopped New Yorkers on 191,588 occasions, which is down significantly from the astronomical 685,724 stops conducted by the NYPD in 2011. *Stop-and-Frisk Data*, N.Y. CIV. LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Mar. 7, 2014).

69. Although the “hit rate” (percentage of stops in which an officer makes an arrest or issues a summons) is actually quite small (only 6% from 2009–2012), stop-and-frisk still has generated over 150,000 arrests during the same period. ERIC T. SCHNEIDERMAN, N.Y.S OFFICE OF THE ATTORNEY GEN., CIVIL RIGHTS BUREAU, A REPORT ON ARRESTS ARISING FROM THE NEW YORK CITY POLICE DEPT.’S STOP-AND-FRISK PRACTICES 1 (2013). These “stop-and-frisk” arrests have contributed to the glut of misdemeanor cases in the court system.

70. James C. McKinley, *Bronx Courts Make Gains in Reducing Big Backlog*, N.Y. TIMES (Dec. 11, 2013), <http://www.nytimes.com/2013/12/12/nyregion/bronx-courts-make-gains-in-reducing-case-backlog.html> (paraphrasing Steven Banks, Attorney-in-Chief at the Legal Aid Society).

71. See Natapoff, *supra* note 29, at 1317 (describing the “opaque and unprincipled” fashion which characterizes the functioning of misdemeanor courts).

72. See Ray Rivera & Al Baker, *Data Elusive on Low-Level Crime in New York City*, N.Y. TIMES (Nov. 1, 2010), http://www.nytimes.com/2010/11/02/nyregion/02secrecy.html?pagewanted=all&_r=0 (explaining that the NYPD keeps sparse statistics on misdemeanor crime); Natapoff, *supra* note 29, at 1320 (“Unlike felony cases and convictions, about which federal and state governments keep relatively good records, the world of misdemeanor cases is radically undocumented. Until recently, there was no national data on misdemeanor caseloads.”).

73. Roberts, *supra* note 52, at 277, 280–81 n.10.

74. See e.g., James Pinkerton & Brian Rogers, *Right to a Speedy Trial? Ask these Defendants*, HOUS. CHRON. (April 24, 2013), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Right-to-a-speedy-trial-Ask-these-defendants-4759086.php>; Anthony Colarossi, *‘Speedy Trial’ Rule Could Free Man Charged with Murder*, ORLANDO

cerned about the slow pace of the misdemeanor courts. Judges who oversee crowded misdemeanor dockets, “spend their days moving cases along, making relatively few legal decisions.”⁷⁶ Most appearances before these judges consist of scheduling another court date.⁷⁷ This is not to suggest that judges are lazy, but rather that their role prioritizes moving through each day’s “docket of one to two hundred cases without major delay,” rather than seeing that cases go to trial.⁷⁸ Felonies take precedent at the higher levels of the judicial branch too. Angst over the logjam in felony court mobilized Judge Jonathan Lippman, chief judge of the New York Court of Appeals, to send more judges to the Bronx and create a special “blockbuster part” to clear the backlog by compelling cases to go to trial or reach a plea bargain.⁷⁹ While Lippmann announced plans in 2013 to start a similar initiative in the Bronx misdemeanor court, it has not yet come to fruition.⁸⁰

It is perhaps unsurprising, given the general attitude towards misdemeanor defendants that there is a dearth of constitutional speedy trial cases with a misdemeanor defendant as part of its factual predicate. This is true at the state and federal level, with the major Supreme Court and New York Court of Appeals prece-

SENTINEL (May 11, 2005), http://articles.orlandosentinel.com/2005-05-11/news/0505110350_1_speedy-trial-lebron-puerto-rico; Geri L. Dreiling, *Waiting for Justice*, ILL. TIMES (Aug. 19, 2004), <http://illinoistimes.com/article-1315-waiting-for-justice.html>. The above articles involve long delays before trial for defendants charged with murder or violent felonies. See also Howell, *supra* note 46, at 272–73 (describing the disparity between the scholarly attention paid to mass incarceration for felonies versus misdemeanors).

75. The speedy trial statutes of Arizona, Kansas, Virginia, and Washington all declare that priority in trials must be given to incarcerated defendants (who are likely to be held in felony charges). ARIZ. R. CRIM. P. 8.2 (2010); KAN. STAT. ANN. § 22-3402 (West 2014); VA. CODE ANN. § 19.2-243 (West 2009); WASH. SUPER. CT. CRIM. R. (West 2003).

76. Weinstein, *supra* note 45, at 1181.

77. *Id.*

78. See *id.*

79. Ray Rivera, *Bronx Courts Trim Big Backlog, With Outside Judge at Helm*, N.Y. TIMES (July 29, 2013), <http://www.nytimes.com/2013/07/30/nyregion/bronx-courts-trim-big-backlog-with-outside-judge-at-the-helm.html>.

80. Press Release, Hon. A. Gail Prudenti, Chief Admin. J., N.Y. State Unified Court Sys., State Court System Reports Dramatic Cut in Bronx Felony Case Inventory, Announces Plan to Slash the Borough’s Misdemeanor Backlog and Names New Bronx Appointment (Dec. 13, 2011), available at http://www.nycourts.gov/press/PDFs/PR13_14a.pdf. Also, Chief Judge Lippmann’s predecessor, Judith S. Kaye, merged the Bronx criminal courts and supreme courts in 2004 in an effort to address surging misdemeanor dockets, a move which was later deemed to exceed her judicial authority. Sam Dolnick, *Bronx Courts Thrown into Chaos by Ruling on Merger*, N.Y. TIMES (Feb. 24, 2010), <http://www.nytimes.com/2010/02/25/nyregion/25bronx.html>.

dents involving felonies.⁸¹ For the most part,⁸² denials of speedy trial on constitutional grounds have been found in cases where the defendant was accused of a serious crime, and often incarcerated awaiting trial.⁸³ As a result, there are fewer relevant precedents for a misdemeanor defendant to cite in support of a constitutional claim that his speedy trial right has been violated. This leaves misdemeanor defendants in New York with only the inadequate CPL 30.30, the subject of the following section, to challenge the denial of their speedy trial right.

Yet another factor working against New York City defendants seeking a speedy trial is the prevailing sentiment among legislators and courts that delay is typically in the defendant's best interest. The dominant view is that delay aids the defense as "memories fade, evidence dries up, and witnesses disappear."⁸⁴ To some extent, this is undoubtedly true. Some defense lawyers are "true masters of delay" whose key to getting clients off is the passage of time.⁸⁵ This concern is clearly reflected in the adoption of statutes by nine states creating a speedy trial right for "crime victims generally or of certain victims or witnesses who are especially vulnerable."⁸⁶ But while some defendants may wish their cases to drag on, hoping the prosecution's case will deteriorate, there is another class of defendant who "presses for an early confrontation with his accusers and with the State."⁸⁷

81. See, e.g., *Barker v. Wingo*, 407 U.S. 514 (1972) (defendant charged with murder); *Doggett v. United States*, 505 U.S. 647 (1992) (felony drug conspiracy); *United States v. Lovasco*, 431 U.S. 783 (1977) (felony firearms possession); *Strunk v. United States*, 412 U.S. 434 (1973) (grand theft auto); *Dickey v. Florida*, 398 U.S. 30 (1970) (armed robbery); *People v. Rodriguez*, 50 N.Y.2d 553 (1980) (robbery and assault); *People v. Tarnovich*, 37 N.Y.2d 442 (1975) (attempted murder); *People v. Johnson*, 38 N.Y.2d 271 (1975) (murder and weapons possession).

82. *Klopfer v. State of North Carolina*, 386 U.S. 213 (1967) is a notable exception to this trend. This Supreme Court case, to be covered in greater detail in the following section, involved a defendant charged with misdemeanor trespass.

83. See e.g., *Dickey*, 398 U.S. at 30; *Strunk*, 412 U.S. 434; *Moore v. Arizona*, 414 U.S. 25 (1973); *Smith v. Hooey*, 393 U.S. 374, 375 (1969).

84. Editorial, *Broken Justice in the Bronx*, N.Y. TIMES (April 21, 2013), <http://www.nytimes.com/2013/04/22/opinion/broken-justice-in-the-bronx.html>. See also, Brian Rogers, *More Cases Crowd Dockets, Slowing Criminal Courts*, HOUS. CHRON. (June 23, 2013), <http://www.houstonchronicle.com/news/houston-texas/houston/article/More-cases-crowd-dockets-slowng-criminal-courts-4617759.php> ("Prosecutors know that the slower the case goes through the system, the higher the chance that important witnesses move or die or other problems crop up that affect the case.").

85. Glaberson, *Master of Delay*, *supra* note 21.

86. Wayne R. LaFave, et. al., *Statutes and Court Rules on Speedy Trial*, 5 CRIM. PROC. § 18.3(c) (3d ed.), nn.123–24 and accompanying text (Dec. 2013).

87. *Dickey*, 398 U.S. at 38.

In fact, there are a host of reasons why many defendants wish to bring their cases to court quickly. A defendant who is innocent, or believes he is, “may fear that his defense will become stale, and wish to get on with the hearing that he hopes will lead to an acquittal and the minimization of the impediments to normal life which attend public accusation.”⁸⁸ Defendants often wish to challenge the legal sufficiency of the police action that led to their arrest.⁸⁹ When bail is set, even in small amounts for low misdemeanors, many defendants are unable to post it and must remain in jail until their case is heard.⁹⁰ The prospect of lengthy pretrial detention creates a huge incentive for defendants to plead guilty at arraignment, even when they have a strong case.⁹¹ Similarly, the onerous prospect of having to come back to court repeatedly may encourage defendants to plead guilty regardless of the facts of their cases.

The view that delay is the defendant’s friend permeates the Supreme Court’s accumulated speedy trial jurisprudence. From the beginning, the Court has spoken of the speedy trial right as a qualified one.⁹² The Court has stated that delay is “not an uncommon defense tactic,”⁹³ and has characterized it as a “two-edged sword.”⁹⁴ The Court’s landmark speedy trial case variously describes the right as “slippery,” “amorphous,” and “vague.”⁹⁵ In light of the belief that “delay may ‘work to the accused’s ad-

88. John C. Godbold, *Speedy Trial-Major Surgery for a National Ill*, 24 ALA. L. REV. 265 (1972).

89. In fact, the Bronx Defenders’ Marijuana Arrest Project found that the police did not have legal cause for the initial stop or the subsequent search in over 40% of the marijuana possession cases evaluated. BRONX DEFENDERS, *supra* note 10, at 5.

90. Julie Turkewitz, *Helping Poor Defendants Post Bail in Backlogged Bronx*, N.Y. TIMES (Jan. 22, 2014), <http://www.nytimes.com/2014/01/23/nyregion/helping-poor-defendants-post-bail-in-backlogged-bronx.html> (“In 2012, a total of 4,378 people arrested in the Bronx had bail set from \$50 to \$2,000. . . . Of those, 89 percent did not post bail at their arraignment. Of those who stayed in jail, 43 percent were incarcerated until their case’s disposition. The median time in jail was 11 days; the average stay was 40 days.”).

91. Michael S. Woodruff, *The Excessive Bail Clause: Achieving Pretrial Justice Reform Through Incorporation*, 66 RUTGERS L. REV. 241, 259 (2013) (“[T]he current system of pretrial detention forces many defendants faced with relatively minor offenses to make a difficult choice. The data suggests, and researchers agree, that many defendants held on bail plead guilty to simply regain their freedom.”).

92. In *Beavers v. Haubert*, 198 U.S. 77, 86–87 (1905), the Supreme Court’s first speedy trial case, Justice McKenna called the right to a speedy trial “necessarily relative,” adding, “It is consistent with delays and depends on circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.” *Id.* at 87.

93. *Barker v. Wingo*, 407 U.S. 514, 521 (1972).

94. *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986).

95. *Barker*, 407 U.S. at 521–22.

vantage,”⁹⁶ the Court has been hesitant to find violations of the speedy trial right or provide broad protection for criminal defendants.⁹⁷

The result of the Court’s ambivalence has been to create something short of the other robust protections found in the Sixth Amendment.⁹⁸ Instead, it has made “the right of a few defendants, most egregiously denied a speedy trial, to have the criminal charges against them dismissed on that account.”⁹⁹ The right to a speedy trial, as expounded by the Supreme Court, provides little protection to run-of-the-mill misdemeanor defendants denied their opportunity to be heard due to chronically overcrowded courts. Taking cues from the highest court in the land, other jurisdictions, including New York, have often held the speedy trial right in less esteem than other constitutional protections of the accused,¹⁰⁰ recognizing that delay may redound to the defendant’s benefit.¹⁰¹

IV. THE SPEEDY TRIAL RIGHT

This Part explores the legal foundations of the right to a speedy trial, as well as the current legal landscape. Building off the previous section, this Part begins by tracing the Supreme Court’s speedy trial jurisprudence in order to grasp the constitutional standards. Then, after a brief look at state constitutions, it turns its focus towards New York, dissecting the history, structure, and shortcomings of CPL 30.30, the primary situs of the speedy trial right for New York defendants.

96. *Vermont v. Brillion*, 556 U.S. 81, 90 (2009) (quoting *Barker*, 407 U.S. at 521).

97. See Alfredo Garcia, *Speedy Trial Swift Justice: Full-Fledged Right or “Second-Class Citizen?”*, 21 SW. U. L. REV. 31, 60 (1992) (arguing that the Court has been sparing in its recognition and development of the constitutional speedy trial right due to its “philosophy that delay most often favors the defendant and prejudices the prosecution”).

98. See *id.* at 35.

99. Anthony G. Amsterdam, *Speedy Criminal Trial: Rights and Remedies*, 27 STAN. L. REV. 525 (1975).

100. See *People v. Rodriguez*, 50 N.Y.2d 553, 557 (1980) (“Turning now to the constitutional claim, unlike claims ‘so fundamentally basic’ to our system of jurisprudence as to be exempt from the general doctrine of waiver, we hold that the constitutional right to a speedy trial is one that may be surrendered.”).

101. See *People v. Vernace*, 96 N.Y.2d 886, 888 (2001) (“Far from giving the People an unfair tactical advantage, the delay here has made the case against defendant more difficult to prove beyond a reasonable doubt.”).

A. THE CONSTITUTIONAL GUARANTEE

The right to a speedy trial is deeply-rooted in the English and American legal traditions.¹⁰² It first appeared in the Assize of Clarendon¹⁰³ in 1166 and was later enshrined in the Magna Carta along with other procedural safeguards.¹⁰⁴ In America, the right to a speedy trial was found in several colonial codes, and adopted by a number of state constitutions following independence.¹⁰⁵ At the Federal Constitutional Convention, the Founders adopted the right to a speedy trial as part of the Sixth Amendment with hardly a word of debate and in almost the exact language initially proposed by James Madison.¹⁰⁶

Yet despite its long history, the right to a speedy trial has rarely enjoyed the same attention and reverence accorded to other Constitutional protections.¹⁰⁷ The Supreme Court did not consider the right at all until 1905,¹⁰⁸ and did not apply it against the states through the Due Process Clause of the Fourteenth Amendment¹⁰⁹ until 1967 in *Klopper v. State of North Carolina*.¹¹⁰ This decision marked a major doctrinal shift. The Court deemed the speedy trial right “fundamental,”¹¹¹ placing it on par with the other Sixth Amendment rights, such as the right to counsel¹¹² and the right of confrontation.¹¹³

Klopper is notable for another reason; it is the rare Supreme Court speedy trial case involving a misdemeanor defendant. *Klopper*, a zoology professor at Duke, stood accused of misdemeanor trespass.¹¹⁴ Noting that it had been eighteen months

102. See generally SUSAN N. HERMAN, THE RIGHT TO A SPEEDY AND PUBLIC TRIAL: A REFERENCE GUIDE TO THE UNITED STATES CONSTITUTION 161–67 (2006).

103. See, e.g., Abigail S. Maurer, *Searching for Sense in Serna: The Sixth Amendment Right to a Speedy Trial in California Misdemeanor Cases*, 43 MCGEORGE L. REV. 1093, 1096 (2010); Brian P. Brooks, *A New Speedy Trial Standard for Barker v. Wingo: Reviving a Constitutional Remedy in an Age of Statutes*, 61. U. CHI. L. REV. 587 (1994); Garcia, *supra* note 97, at 34.

104. See, e.g., Brooks, *supra* note 103, at 587; Garcia, *supra* note 97, at 34–36.

105. HERMAN, *supra* note 102, at 165–66.

106. *Id.* at 166–67.

107. See *supra* Part III. See also Brooks, *supra* note 103, at 587; Garcia, *supra* note 97, at 34–36.

108. *Beavers v. Haubert*, 198 U.S. 77 (1905).

109. U.S. CONST. amend. XIV, § 1.

110. 386 U.S. 213, 226 (1967) (Harlan, J., concurring).

111. *Id.* at 223.

112. See *Gideon v. Wainwright*, 372 U.S. 335 (1963).

113. See *Pointer v. Texas*, 380 U.S. 400 (1965).

114. *Klopper*, 386 U.S. at 217–18.

since his indictment, the defendant petitioned the court to have his case resolved promptly.¹¹⁵ Instead, the trial judge granted the prosecution a *nolle prosequi* with leave, allowing it to reinstate the charges against the defendant in the future.¹¹⁶ The Court found that an unjustified, indefinite postponement was a violation of the defendant's constitutional right, even though he was free from incarceration.¹¹⁷ Tracing the right to speedy trial back to its English and early American roots, Chief Justice Earl Warren declared that the right's history and reception "clearly establish that it is one of the most basic rights preserved by our Constitution."¹¹⁸

This moment of exaltation for the speedy trial right proved to be short lived, however, when the Court decided *Barker v. Wingo*¹¹⁹ several years later. Harkening back to the characterization of the speedy trial right as "relative,"¹²⁰ the Court announced a four-part balancing test that still serves as the basis for determining a violation of the right to speedy trial.¹²¹ In *Barker*, the Court denied the habeas petition of a defendant who was tried and convicted of murder more than five years after his initial arrest.¹²² The *Barker* Court explicitly rejected approaches that would make a delay of a certain length a per se violation of the speedy trial requirement¹²³ or that would require a defendant to assert his right to speedy trial to avoid waiving it,¹²⁴ but placed significant weight on these factors in the balancing test. At the outset, the length of the delay serves as a "triggering" mechanism.¹²⁵ Courts are first instructed to determine whether the length of delay was "presumptively prejudicial" to the defendant. If the delay is not "presumptively prejudicial," then the court does not need to consider the other factors in the balance.¹²⁶ If the defendant meets this burden, the court then examines the

115. *See id.* at 218.

116. *See id.*

117. *See id.* at 221–22.

118. *Id.* at 226.

119. 407 U.S. 514 (1972).

120. *Id.* at 522.

121. *See id.* at 530.

122. *See id.* at 516–19.

123. *See id.* at 527.

124. *See id.* at 528.

125. *Id.* at 530.

126. *Id.*

reason for delay.¹²⁷ Deliberate prosecutorial delay, and to a lesser extent, negligence or overcrowded courts, weigh against the government, since it bears “ultimate responsibility for such circumstances.”¹²⁸ Next, the court considers whether and how a defendant asserted his speedy trial right.¹²⁹ Finally, the court determines whether the defendant has suffered actual prejudice “in light of the interests . . . the speedy trial right was designed to protect”¹³⁰: limiting (i) the defendant’s pretrial incarceration, (ii) his fear and anxiety, and (iii) impairment to his defense.¹³¹ No single factor, according to the *Barker* Court, is determinative.¹³² Rather, they all must be considered together along with other relevant circumstances “in a difficult and sensitive balancing process.”¹³³

The following year, the Court added another piece to the constitutional speedy trial right when it declared that the only appropriate remedy for its violation is dismissal.¹³⁴ In *Strunk v. United States*, the defendant appealed his trial court conviction on grounds that the ten-month delay in his prosecution constituted a speedy trial violation.¹³⁵ The Court of Appeals agreed, but rather than grant the “extreme remedy” of dismissal, it decided instead to reduce the defendant’s sentence by 259 days, the length of unnecessary delay he had suffered.¹³⁶ In a brief, unanimous opinion written by Chief Justice Burger, the Court reversed. It reasoned that unlike the denial of other Sixth Amendment rights which could be remedied by a new trial,¹³⁷ nothing short of outright dismissal could compensate a defendant for the “emotional stress that can be presumed to result in the ordinary person from uncertainties in the prospect of facing public trial.”¹³⁸ While noting that such a severe remedy might be un-

127. *See id.* at 531.

128. *Id.*

129. *See id.* The Court stressed that “that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.” *Id.* at 532.

130. *Id.*

131. *Id.*

132. *See id.* at 533.

133. *Id.*

134. *Strunk v. United States*, 412 U.S. 434, 440 (1973).

135. *See id.* at 435.

136. *Id.*

137. *See id.* at 439. These rights include “the failure to afford a public trial, an impartial jury, notice of charges, or compulsory service.” *Id.*

138. *Id.* (citing *Smith v. Hoey*, 393 U.S. 374, 379 (1969); *United States v. Ewell*, 383 U.S. 116, 120 (1966)).

appetizing if a “defendant who may be guilty of a serious crime”¹³⁹ escapes punishment, the Court counseled that this result is nevertheless compelled by the policy goals of the speedy trial right.¹⁴⁰

This Note returns to the Supreme Court’s exposition of the speedy trial right in Part VI, but there are a few points which bear mentioning now. First, despite the Court’s frequently reserved tone, it has declared the right to a speedy trial as “fundamental as any of the rights secured by the Sixth Amendment.”¹⁴¹ It should, and does, apply to those accused of misdemeanors as well as felony defendants.¹⁴² This should give one pause in thinking about how difficult it is for many misdemeanor defendants in New York City courts to exercise that right. Second, the Court has recognized a public interest in speedy justice apart from the defendant’s interest.¹⁴³ That being the case, the current state of affairs in New York City courts demonstrates abominable neglect of that public interest and should be remedied. Finally, in its most important speedy trial precedent, the Court stated that court congestion is the “ultimate responsibility” of the government, and can weigh against the government in evaluating speedy trial claims.¹⁴⁴ The failure of the courts to manage their caseloads efficiently and state policies like “Broken Windows” which predictably overwhelm the courts by sweeping so many people into the criminal justice system should put a thumb on the scale for a defendant advancing a constitutional speedy trial claim.

B. OTHER SOURCES OF THE SPEEDY TRIAL RIGHT

In addition to the federal constitutional guarantee, the right to a speedy trial is protected separately by every state. Nearly every state constitution contains an express speedy trial guarantee, often mirroring the exact language of the Sixth Amendment.¹⁴⁵

139. *Id.* at 439 (quoting *Barker v. Wingo*, 407 U.S. 514, 522 (1972)).

140. *See id.* at 439–40.

141. *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967).

142. While *Klopfer* did not state this explicitly, the defendant denied his speedy trial right was accused of a misdemeanor. *See supra* note 114 and accompanying text.

143. *Barker*, 407 U.S. at 519.

144. *Id.* at 531.

145. HERMAN, *supra* note 102, at 166. Curiously, New York is one of a few exceptions. However, article 1, section 6 of the New York constitution sets forth applicable guarantees of due process. Section 6 provides in pertinent part: “No person shall be deprived of life,

The “constitutional floor” doctrine requires the states to afford at least as much protection to fundamental rights as guaranteed by the federal courts.¹⁴⁶ Thus, states can interpret, and occasionally have interpreted,¹⁴⁷ their constitutional speedy trial right as granting *more* protection to defendants than mandated by the Supreme Court. However, most state courts simply employ the same analysis for claims arising under the state and federal constitutions.¹⁴⁸

Beyond the federal and state constitutional speedy trial rights, Congress and forty-four states have enacted some version of a speedy trial statute or court rule.¹⁴⁹ These statutes and rules vary widely in their particulars, but share many common features.¹⁵⁰ While some merely confirm the existence of a speedy trial right,¹⁵¹ or call for the dismissal of charges given “unnecessary delay,”¹⁵² the vast majority prescribe defined periods of time for bringing a defendant to trial, or other regular stages in criminal adjudication.¹⁵³ These speedy trial statutes and rules also

liberty, or the due process of law.” N.Y. CONST. art. 1, § 6. *See also Right to a Speedy Trial*, 12 *TOURO L. REV.* 1031, 1040 n.4 (1996).

146. “As long as states buttress their decisions on ‘adequate and independent state grounds,’ they may provide criminal defendants greater protection than the federal courts. They may not, however, use those same independent grounds to deprive their citizens of the minimum federal guarantee.” Darren Allen, *The Constitutional Floor Doctrine and the Right to Speedy Trial*, 26 *CAMPBELL L. REV.* 101, 106 (2004) (internal citations omitted). For a classic example of the constitutional floor doctrine, *see Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 88 (1980).

147. *See* Anthony L. Ciuca, *The Right to a Speedy Trial — The Montana Supreme Court Realigns Itself with the United States Supreme Court’s Balancing Test*. *State v. Ariegwe*, 167 *P.3d* 815 (*Mont.* 2007), 39 *RUTGERS L.J.* 903, 907 (2008) (explaining how Montana’s Supreme Court had previously adopted “objective, bright-line criteria” into three of the *Barker* factors and “modified the function and importance that each factor plays in the overall balancing”).

148. HERMAN, *supra* note 102, at 207. *See also* Gregory P.N. Joseph, *Speedy Trial Rights in Application*, 48 *FORDHAM L. REV.* 611, 613 n.18 and accompanying text (1979–1980).

149. Joseph, *supra* note 148, at 614.

150. *See infra* Part V.

151. *See e.g.*, N.D. CENT. CODE ANN. § 29-19-02 (West 2013) (“In a criminal prosecution, the state and the defendant each shall have the right to a speedy trial.”); TENN. CODE ANN. § 40-14-101 (WEST 2014) (“In all criminal prosecutions, the accused is entitled to a speedy trial and to be heard in person by counsel.”).

152. *See e.g.*, WYO. STAT. ANN. 1977 § 7-11-203 (West 1987).

153. Amsterdam, *supra* note 99, at 531–32 (“Statutes in many jurisdictions establish time limitations for various stages of some or all criminal cases: they provide for example, that an information or indictment must be filed within a specified time after bind-over; that a defendant must be tried within a specified time after the filing of the information or indictment; or that (irrespective of the time of filing of the information or indictment) a defendant must be tried within a specified time (expressed in days or terms of court) after the date when he was ‘taken into custody,’ ‘imprisoned,’ or ‘committed.’”).

typically set out periods of delay which toll the speedy trial clock,¹⁵⁴ and the circumstances under which continuances may be granted.¹⁵⁵ The statutes and court rules may also stipulate the penalty or sanction to be imposed upon a speedy trial violation.¹⁵⁶ In all the aforementioned aspects, these state statutes and rules fall along a spectrum of complexity, with some being no longer than a few sentences,¹⁵⁷ and others containing highly elaborate statutory schemes.¹⁵⁸ The less detailed the statute or rule, the more state courts will be called upon to fill the gaps. By creating a precise point at which a speedy trial violation occurs, time-specific speedy trial statutes dispense with the need for multi-factor analysis, and provide greater protection for criminal defendants.¹⁵⁹ This Note now turns its attention to these statutory guarantees, focusing on New York's in particular.

C. SPEEDY TRIAL LAW IN NEW YORK

1. *History of New York's Speedy Trial Statute*

In the 1960s, urban criminal court dockets around the country experienced massive overcrowding.¹⁶⁰ New York City was no exception.¹⁶¹ In *United States ex rel. Frizer v. McMann*,¹⁶² the United States Court of Appeals for the Second Circuit decried the backlog in New York, finding that the chronic delay “had as-

154. LaFave, *supra* note 86, at nn. 81–89 and accompanying text.

155. *Id.* at nn. 90–105 and accompanying text.

156. The majority call for dismissal of the charges with prejudice. *Id.* at nn. 106–14 and accompanying text.

157. See e.g., ALA. RULES CRIM. P., RULE 8.1 (2014).

158. See e.g., COLO. REV. STAT. ANN. § 18-1-405 (West 1999); OHIO REV. CODE ANN. § 2945.71 (West 1999).

159. Joseph, *supra* note 148, at 617–18. *But cf. id.* at 618 (“Yet these statutes and rules — some of which are quite elaborate, replete with detailed exceptions and exclusions — can, in operation, provide more lax protection than is constitutionally permissible by tolling the prescribed period until an unconstitutionally long delay has transpired.”).

160. See Marc M. Arkin, *Speedy Criminal Appeal: A Right Without a Remedy*, 74 MINN. L. REV. 437, 439 (1990) (“The problem of trial delay forced itself upon the consciousness of the legal community in the late 1960s and early 1970s, as urban courts proved unable to keep up with their increasingly heavy caseloads.”).

161. “By the late 1960s, prisoners awaiting trial in New York state courts were bringing 1,000 habeas corpus petitions a year in federal court protesting the length of their pretrial incarceration.” Thomas M. O’Brien, *The Undoing of Speedy Trial in New York: The “Ready Rule,”* N. Y. L. J. (Jan. 14, 2014, 12:00 AM), <http://www.newyorklawjournal.com/id=1202638065307> [hereinafter O’Brien, *Undoing of Speedy Trial*].

162. 437 F.2d 1312 (2d Cir. 1971).

sumed alarming proportions” and “raises serious questions of the violation of constitutional rights.”¹⁶³ Ironically, the figure cited by the Second Circuit showed that 2,899 prisoners in New York (90 percent of them in New York City) had been in jail three months or more awaiting trial.¹⁶⁴ Today, it is not unusual for a felony defendant to wait up to three years in jail for his day in court.¹⁶⁵ Yet the Second Circuit declined to establish specific timeframes for a speedy trial violation, deferring instead to New York’s Administrative Board of the Judicial Conference (hereinafter the “Board”),¹⁶⁶ which the Court knew intended to study and act on the matter.¹⁶⁷

In May of 1971, the Board did adopt a set of rules to address New York’s speedy trial problem. Like other jurisdictions which had tackled the issue,¹⁶⁸ and in line with the American Bar Association Standards Relating to Speedy Trial,¹⁶⁹ the Board created rules which prescribed certain time periods for when a post-indictment defendant must be released from jail, and when he must be brought to trial.¹⁷⁰ The proposed standards also exempted certain periods of delay and created sanctions for violations.¹⁷¹ The rules were never enacted, however.¹⁷² The Board’s proposal provoked vociferous backlash from the District Attorneys Association of New York, who offered instead a “ready rule,” which merely required the prosecution to be “ready for trial” within the applicable time period.¹⁷³ Three days before the Board’s rules were to go into effect, the Legislature passed Governor Rockefeller’s “prompt trial” bill, fashioned after the prosecutors’ proposal

163. *Id.* at 1314, 1318 n.1.

164. *Id.* at 1314.

165. See Glaberson, *Faltering Courts*, *supra* note 18; Glaberson, *Suspect Sits*, *supra* note 23.

166. Per the 1977 amendment to the New York Constitution, the Administrative Board of the Judicial Conference, a judicial administrative body comprised of the chief judges of the Court of Appeals and the Appellate Division, is now called the administrative board. N.Y. CONST. art. VI, § 28 (amended 1977).

167. *McMann*, 437 F.2d at 1317.

168. Arkin, *supra* note 160, at 440.

169. *Id.*

170. See O’Brien, *Undoing of Speedy Trial*, *supra* note 161, at 1–2. “In essence, the rules would require dismissal of cases not brought to trial within six months, or release of a defendant if not tried within three months.”

171. *Id.* at 3.

172. *Id.* at 2.

173. *Id.*; see also Francis X. Clines, *Bill Requiring Prosecutors to Be Ready for Trial in Six Months is Passed by the Assembly*, N.Y. TIMES, April 14, 1972.

and expressly superseding the Board's rule.¹⁷⁴ At the time, opponents of the bill dubbed CPL 30.30¹⁷⁵ complained prophetically that it "would permit prosecutors to assert they were 'ready' but avoid actually going to trial by citing various impediments such as a lack of court-room space."¹⁷⁶

2. Structure of New York's Speedy Trial Statute

New York, more so than many other jurisdictions,¹⁷⁷ has a complex and confusing speedy trial law.¹⁷⁸ CPL 30.30 is the section under which most speedy trial claims in New York are litigated.¹⁷⁹ The core provision of CPL 30.30 is that a defendant's motion for dismissal¹⁸⁰ must be granted where the State fails to be ready for trial within: (i) six months when the top charge against the defendant is a felony,¹⁸¹ (ii) ninety days when the top

174. Clines, *supra* note 173. See also O'Brien, *Undoing of Speedy Trial*, *supra* note 161, at 2–3; Alfonso A. Narvaez, *Governor Offers Prompt-Trial Bill*, N.Y. TIMES, Feb. 29, 1972.

175. See N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2006), *commentary* by Peter Preiser.

176. Clines, *supra* note 173.

177. See Joseph, *supra* note 148, n.44 and accompanying text.

178. In its Criminal Procedure Law, New York has three sections which seemingly involve the right to a speedy trial: N.Y. CRIM. PROC. LAW § 30.10 (McKinney 2008), N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1992), and N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2006).

The first of these, CPL 30.10, is entitled "Timeliness of prosecutions; periods of limitations," and deals "with the time elapsed between commission of the offense and commencement of the action." N.Y. CRIM. PROC. LAW § 30.10 (McKinney 2008), *commentary* by Peter Preiser. It is a straightforward statute of limitations, and pertains only to the time when prosecution of a crime must begin, not when the defendant must be tried. *Id.*

The second of these sections, CPL 30.20, entitled "Speedy trial; in general," is New York's only "true" speedy trial statute, in that it reflects the constitutional guarantee, stipulating that "[a]fter a criminal action is commenced, the defendant is entitled to a speedy trial." N.Y. CRIM. PROC. LAW § 30.20 (McKinney 1992). Speedy trial challenges brought under CPL 30.20 are analyzed under a modified *Barker* test which considers of five factors instead rather than four. *People v. Tarnovich*, 37 N.Y.2d 442, 445 (1975).

While CPL 30.20 is a speedy trial statute in name and purpose, the following section, CPL 30.30, is New York's de facto speedy trial statute. Despite being titled "Speedy trial; time limitations," CPL 30.30 is actually a statute regarding prosecutorial readiness, and is distinct from the speedy trial right guaranteed by the constitution and reflected in CPL 30.20. See *e.g.*, *People v. Sinistaj*, 67 N.Y.2d 236, 239 (1986); *People v. Anderson*, 66 N.Y.2d 529, 535 (1985); *People v. Worley*, 66 N.Y.2d 523, 527 (1985). However, in reality, CPL 30.30 has supplanted CPL 30.20 as the primary source of statutory speedy trial law; the Court of Appeals has not issued a decision using a CPL 30.20 analysis in decades. N.Y. CRIM. PROC. LAW § 30.30 (McKinney 2006), *commentary* by Peter Preiser.

179. Compare 4,428 cases citing CPL § 30.30 on Westlaw with 559 cases citing CPL § 30.20.

180. See N.Y. CRIM. PROC. LAW § 170.30 (McKinney 1974).

181. CPL § 30.30(1)(a). The statute excludes homicide offenses from its general coverage of felonies. *Id.* § 30.30(3)(a).

charge is a high misdemeanor,¹⁸² (iii) sixty days where the top charge is a low misdemeanor,¹⁸³ and (iv) thirty days when the defendant is charged only with a violation.¹⁸⁴ The statute provides that the speedy trial clock runs from the “commencement of the action,”¹⁸⁵ which is the day when the first accusatory instrument is filed.¹⁸⁶ The next provision provides similar time limits for holding a defendant in jail before trial.¹⁸⁷

In addition to this temporal framework, CPL 30.30 also sets out periods of delay that must be excluded from the calculation of the speedy trial time.¹⁸⁸ Delays resulting from other proceedings concerning the defendant, as well as continuances granted at his request or consent, are not counted in the speedy trial time.¹⁸⁹ Similarly, time will not run against the prosecution if the defendant lacks counsel, cannot be located or brought to trial with “due diligence,” is detained in another jurisdiction, or is joined for trial with a codefendant whose own speedy trial time has not elapsed.¹⁹⁰ CPL 30.30 also makes an allowance for periods of delay “occasioned by exceptional circumstances,” including additional time for the prosecution to obtain temporarily unavailable evidence or to prepare the State’s case, if justified by the circumstances.¹⁹¹ These exclusions serve to illustrate the bizarre design of CPL 30.30. The “delay resulting from” these various occurrences,¹⁹² is not to be excluded from the calculation of speedy trial time “unless it actually causes the [prosecution’s] unreadiness for

182. CPL § 30.30(1)(b). An offense coming under this subsection is a Class A misdemeanor and is punishable by a sentence of more than three months. N.Y. PENAL LAW § 70.15(1) (McKinney 1993).

183. CPL § 30.30(1)(c). An offense coming under this subsection is a Class B misdemeanor and is punishable by a sentence of not more than three months. N.Y. PENAL LAW § 70.15(2) (McKinney 1993).

184. CPL § 30.30 (1)(d). The statute excludes traffic infractions from its general coverage of non-criminal offenses. *People v. Kreinen*, No. 2001-889 W CR, 2002 WL 1967926, at *1 (N.Y. App. Div., June 6, 2002).

185. CPL § 30.30(1)(a)–(d).

186. See N.Y. CRIM. PROC. LAW §1.20(16) (McKinney 2013).

187. CPL § 30.30(2)(a)–(d).

188. CPL § 30.30(4)(a)–(j).

189. These include competency determinations and any time when the defendant is incompetent to stand trial, or a defendant’s demand to produce, request for a bill of particulars, pre-trial motions, appeals, trial on other charges, and the time during which such matters are under consideration by the court. CPL § 30.30(4)(a).

190. CPL § 30.30(4)(c)–(f).

191. CPL § 30.30(4)(g).

192. CPL § 30.30(4)(a)–(g).

trial.”¹⁹³ Yet while the unavailability of a defendant would be an absolute bar to the beginning of a trial, it rarely prevents the prosecution from being ready.¹⁹⁴ In fact, “most of the excludable delays affect the commencement of trial, rather than the People’s readiness for trial,”¹⁹⁵ contributing to the confusion surrounding this statute.

3. *Problems with New York’s Speedy Trial Statute*

CPL 30.30 has been widely criticized,¹⁹⁶ and for good reason. The law’s clumsy drafting and accumulated, byzantine case law¹⁹⁷ have hampered the statute’s “laudable goal of ensuring prompt trials for criminal defendants.”¹⁹⁸ CPL 30.30’s problems are primarily structural. A “readiness rule” like CPL 30.30 is simply an inadequate substitute for a “speedy trial” rule. CPL 30.30 is highly susceptible to manipulation. A prosecutorial declaration of “readiness” is not easily verified, and the defendant is made to suffer for delays over which he has no control. Courts’ interpretations of CPL 30.30 have exacerbated the law’s structural deficiencies. Specifically, New York case law has failed to define clearly what constitutes trial readiness, and has allowed the prosecution to vacillate between “ready” and “not ready.”

The most glaring problem with CPL 30.30 is that the prosecution’s mere declaration of readiness stalls the speedy trial

193. Lorna M. Graham & Lawrence G. Schwarz, *The Intricacies of New York’s Criminal Trial Ready Rule*, 49 ALB. L. REV. 561, 585-86 (1985) (citing *People v. Sturgis*, 38 N.Y.2d 625, 628 (1976)); *People v. Colon*, 59 N.Y.2d 921 (1983).

194. While what constitutes “ready” under the law will be discussed further *infra*, one requirement is that the prosecution has a jurisdictionally sufficient accusatory instrument or information. The defendant’s absence in no way hinders the prosecution from fulfilling its obligation to file one. *People v. Colon*, 443 N.Y.S.2d 305, 307-08 (Crim. Ct. 1981).

195. Graham & Schwarz, *supra* note 193, at 613.

196. See *People v. Neal*, 607 N.Y.S.2d 866, 867 (Sup. Ct. 1994) (“Speedy trial motions have become a judge’s, if not a litigant’s, nightmare. The opaque language of CPL 30.30 resists clarification by judicial interpretation. What follows is yet another attempt to understand this misbegotten statute.”); Graham & Schwarz, *supra* note 193, at 561 (“[T]he New York State Legislature implemented a ‘ready for trial rule’ which has become a source of uncertainty and confusion for prosecutors, defense attorneys and courts.”); *Now Repair the “Speedy Trial” Law*, N.Y. TIMES, Jan. 6, 1986, <http://www.nytimes.com/1986/01/06/opinion/now-repair-the-speedy-trial-law.html> (“The case illuminates the inadequacy of the readiness rule.”).

197. Graham & Schwarz, *supra* note 193, at 613 (“The complexity which surrounds CPL 30.30 serves no readily apparent purpose. Several conceptual inconsistencies in the statute are compounded by divergent court opinions based upon common fact patterns.”).

198. *Id.* at 561 (citing Governor’s Memorandum on Approval of 1972 N.Y. Laws Ch. 184, reprinted in 1972 LEGIS. ANN. 344).

clock.¹⁹⁹ Once the People say they are “ready for trial” in an official court proceeding,²⁰⁰ the speedy trial clock is effectively disabled for the defendant, no matter when or if a trial actually takes place. Often, the district attorney will state, “not ready” during the first calendar call and request a short adjournment to prepare.²⁰¹ The prosecution will typically ask for a few days or a week, but the judge will schedule the “trial date” for several months later due to the court’s busy calendar.²⁰² Meanwhile, only the short period of time that the district attorney requested will be charged against the speedy trial clock.²⁰³ This constitutes a major windfall for the prosecution. The speedy trial clock is stalled, the prosecution gains additional time to prepare at a low cost, and the defendant is forced to make another court appearance. Where the defendant is charged with a misdemeanor and faces no realistic possibility of jail time, the result is often a plea bargain.²⁰⁴

The filing of an “off-calendar” statement of readiness is substantially the same maneuver.²⁰⁵ The prosecution states “not ready” in court. The court sets an adjournment date, typically two months in the future.²⁰⁶ The prosecution may serve a statement of readiness at any time before the future court date.²⁰⁷ If the prosecution serves the statement the next day, just one day of speedy trial will be charged to it, and the district attorney can enjoy the luxury of an additional two months to prepare.²⁰⁸ In *People v. Stirrup*,²⁰⁹ a case which is often cited for the validity of

199. *People v. Brothers*, 50 N.Y.2d 413, 417 (1980).

200. *People v. Kendzia*, 64 N.Y.2d 331, 337 (1985) (“This requires either a statement of readiness by the prosecutor in open court, transcribed by stenographer, or recorded by the clerk or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk, to be placed in the original court record.”).

201. See BRONX DEFENDERS, *supra* note 10, at 15.

202. *Id.* at 16. MAP’s data shows that the average length of the district attorney’s requested adjournment was eight days, but the actual average length of the adjournment was 57 days.

203. *Id.* at 15.

204. See Part II, *supra*.

205. See *id.*; Thomas O’Brien, *The D.A.: Not Ready When You Are*, N.Y.L.J. (March 25, 2009), <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/thedanotreadywhenyouare.aspx> [hereinafter O’Brien, *Not Ready*].

206. See BRONX DEFENDERS, *supra* note 10, at 15; O’Brien, *Not Ready*, *supra* note 205.

207. BRONX DEFENDERS, *supra* note 10, at 16; O’Brien, *Not Ready*, *supra* note 205.

208. See *People v. Stewart*, No. 2007NY058725, 21 Misc.3d 1109(A), at *3 (N.Y. Crim. Ct. 2008) (“On March 10, the People were not ready, and the case was adjourned to June 9, for trial. On March 11, the People filed and served a certificate of readiness. Thus, 1 day is chargeable to the People.”).

209. 91 N.Y.2d 434 (1998).

this practice, the defendant implicitly acknowledged that the prosecution was in fact ready on the tenth day of a forty-eight day adjournment.²¹⁰ Today, however, “off-calendar” statements of readiness are sometimes filed multiple times in the course of a single case, with no demonstrations of actual readiness.²¹¹ While some judges have castigated prosecuting attorneys for this tactic,²¹² it is largely tolerated in the New York City criminal courts.²¹³

The speedy trial clock can be manipulated in the opposite direction, too. Rather than declaring “not ready” and either requesting a short adjournment or filing an “off-calendar” statement of readiness, the prosecution may also choose to announce “ready” at the very first appearance, the arraignment.²¹⁴ This stops the speedy trial clock before it even begins, although the district attorney knows there is no chance of a trial actually taking place that day.²¹⁵ The backlog of cases in the New York criminal courts means that the case will be put off, at least for a low-level misdemeanor, for an average of 120 days,²¹⁶ not a single day of which is charged against the speedy trial clock.²¹⁷ This practice is particularly pernicious for the hundreds of misdemeanor defendants who cannot afford bail, and are held at Rikers Island before trial.²¹⁸ For them, it means “real-time incarceration of 30, 60, or 90 days, or more, but the ‘speedy’ trial clock does not

210. *Id.* at 441 n.3 (“In fact, defendant himself before the trial court requested that only 8 days of the relevant 48-day period be charged to the People [January 14 to January 22, the date of the notice of readiness], which suggests that he acknowledged at least implicitly the genuineness of the notice of readiness.”).

211. O’Brien, *Not Ready*, *supra* note 205.

212. *See, e.g.*, *People v. Khachiyani*, 194 Misc.2d 161, 164-65 (N.Y. Crim. Ct. Kings Cnty. 2002) (detailing the abuses of the word “ready” by the People and the consequences for calculating speedy trial time); *People v. Lin Chen*, NY Slip Op 52153(U) [21 Misc 3d 1123(A)] (N.Y. Supreme Ct. Kings Cnty. 2008) (“Repeated and flagrant failures” by the prosecution to comply with Court orders for a year and a half cannot be “shielded by an early, apparently *pro forma* statement of readiness.”).

213. *Khachiyani*, 194 Misc.2d at 164 (“Calculation of speedy trial time . . . is complicated by a culture that has permitted the People to use the word ‘ready’ in a myriad of situations not contemplated by CPL 30.30 and the governing case law.”).

214. Thomas M. O’Brien, *D.A. Announces ‘Ready for Trial’ at Arraignment*, N.Y.L.J. (Aug. 16, 2010), <http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/criticalarticleondasreadyfortrialatarrainmentpractice.aspx> [hereinafter O’Brien, *D.A. Announces*].

215. *Id.*

216. BRONX DEFENDERS, *supra* note 10, at 6.

217. O’Brien, *D.A. Announces*, *supra* note 214.

218. MARY T. PHILLIPS, NEW YORK CITY CRIMINAL JUSTICE AGENCY, PRETRIAL DETENTION AND CASE OUTCOMES, PART 1: NON-FELONY CASES 16 (2007).

move.”²¹⁹ The likelihood of the prosecution being “actually, presently ready for trial,”²²⁰ as the law requires, is low. At the arraignment:

The arrest has occurred in the last 24 hours, the prosecutor has only just picked up the file, the defendant is still dazed from spending a night trying to sleep on a bench in a holding cell, and defense counsel is hurriedly trying to obtain basic facts from the client to make a pitch for affordable bail or release.²²¹

In theory, the district attorney’s announcement of readiness is “a representation to a court, as an officer of the court, that, subject to scheduling, the People have their witnesses available and willing to proceed, and they have the evidence they need to proceed.”²²² This is rarely, if ever, the case at arraignment, but the district attorney is safe in the knowledge that no trial will actually occur.

Part of the problem is that the courts have poorly defined the concept of “readiness,”²²³ making it difficult for defendants to challenge the prosecution’s assertion.²²⁴ New York courts have held that “ready for trial” under CPL 30.30 “encompasses two necessary elements. First, there must be a communication of readiness by the People which appears on the trial court’s record [S]econd . . . the prosecutor must make his statement of readiness when the People are in fact ready to proceed.”²²⁵ This definition is circular; defining readiness as readiness. Opinions contain “tough talk” about what “trial readiness” means,²²⁶ but they provide little guidance. While the courts have been clear

219. O’Brien, *D.A. Announces*, *supra* note 214.

220. *People v. Ausby*, No. 2011BX063659, 2013 WL 3927852, at *11 (Table) (Crim. Ct. Bronx Cnty. July 12, 2013).

221. O’Brien, *D.A. Announces*, *supra* note 214.

222. *People v. England*, 84 N.Y.2d 1, 4 (1994).

223. *See generally* Graham & Schwarz, *supra* note 193, at 574–75 and accompanying footnotes, 587 n.119.

224. O’Brien, *D.A. Announces*, *supra* note 214.

225. *People v. Kendzia*, 64 N.Y.2d 331, 337 (1985).

226. *See, e.g., England*, 84 N.Y.2d at 4 (“[R]eadiness is not defined by an empty declaration that the People are prepared to present their direct case.”); *Kendzia*, 64 N.Y. 2d at 337 (“The statute contemplates an indication of present readiness, not a prediction or expectation of future readiness.”); *People v. Ausby*, No. 2011BX063659, 2013 WL 3927852, at *11 (Table) (Crim. Ct. Bronx Cnty. July 12, 2013) (“In the end, ‘ready for trial’ means ‘ready for trial.’ It is not just words.”).

that the conversion²²⁷ of an instrument is by itself insufficient for trial readiness,²²⁸ in practice, many judges do not require prosecutors to provide any further evidence to show readiness.²²⁹ To be sure, an “illusory” statement of readiness is ineffective to stop the speedy trial clock.²³⁰ However, absent a deficient accusatory instrument, it is exceedingly difficult for a defendant to prove the prosecution is not actually ready.²³¹ Given the state of the law and crowded dockets, the prosecution has little to fear from making a premature declaration of readiness. Although the court in *People v. Ausby* wrote that the prosecution “must do more than just mouth the word ready,”²³² district attorneys are often doing just that when it comes to declaring trial readiness at arraignment.

Another area where New York case law has compounded the problems inherent in CPL 30.30 is by permitting prosecutors to repeatedly change their status from “ready” to “not ready.”²³³ As the defendants who participated in MAP found out,²³⁴ even when the prosecution files an off-calendar statement of readiness, dis-

227. Under New York law, a misdemeanor defendant may initially be charged with a criminal complaint, a document containing factual allegations establishing probable cause to believe the accused committed a specific crime. See N.Y. CRIM. PROC. LAW §§ 100.10(4); 100.40(4)(b) (McKinney’s 1990). However, in order to go forward, the prosecution must “convert” the complaint to an information by filing a sworn statement by someone with first-hand knowledge of the facts (e.g. the police officer). See N.Y. CRIM. PROC. LAW §§ 170.65; 100.40(1) (McKinney’s 1985).

228. *People v. Khachyan*, 194 Misc.2d 161, 164–65 (N.Y. Crim. Ct. Kings Cnty. 2002) (“While conversion is, of course, a necessary precondition of the People’s readiness, if the People are in fact ready to proceed to trial, and not simply converted, they may answer ready for trial.”).

229. At least one court has decided that “a good faith declaration of readiness ends the CPL 30.30 period.” *Graham & Schwarz*, *supra* 193, at 575 n.60, *construing* *People v. Anderson*, 105 A.D.2d 38, 39 (N.Y. 1984).

230. *England*, 84 N.Y.2d at 4–5.

231. See generally *Graham & Schwarz*, *supra* 193, at 575 n.60 (“It should be noted that ‘evidence necessary for the commencement of trial’ is an elusive concept which the courts have generally avoided.”).

232. *People v. Ausby*, No. 2011BX063659, 2013 WL 3927852, at *12.

233. See, e.g., *People v. Farrell*, 863 N.Y.S.2d 579 (Sup. Ct. 2008). The prosecution stated “ready” at arraignment on February 24, 2007. Then, after several excluded adjournments, they stated “not ready” on November 28, 2007 and requested a two-week adjournment. At the next court date, February 11, 2008, the prosecution again stated “not ready,” but tried to make an “off-calendar” statement of readiness the same day. On April 28, 2008, the prosecution said “not ready” but requested an adjournment of seven days. At the next court date, May 16, 2008, the prosecution stated “not ready” again, and this time requested a five-day adjournment, and the case was put on for May 27, 2008. On that date, they again stated “not ready” and asked for an adjournment to June 4, 2008. In all, the prosecution was charged with 29 speedy trial days after fifteen months.

234. See BRONX DEFENDERS, *supra* note 10.

strict attorneys can revert to being “not ready” at the following court date, effectively charging their delay to the defendant instead.²³⁵ The only consequence is that once the prosecution declares “not ready,” the speedy trial clock resumes.²³⁶ However, after the prosecution “make[s] a timely bona fide announcement, on the record, of readiness for trial,” subsequent delay on its part does not vitiate the prior declaration of readiness.²³⁷ As such, the prosecution only loses the speedy trial time which accrues after it lapses back into the “unready” state, but none from the intervening period. By permitting the prosecution to oscillate between ready and not ready with impunity, the courts enable the sixty-day period prescribed for trying a low misdemeanor to stretch into over six hundred.²³⁸

Recently, there has been an important and encouraging development in the case law. In *People v. Sibblies*,²³⁹ the New York Court of Appeals dismissed a misdemeanor information on statutory speedy trial grounds when the prosecution filed an off-calendar statement of readiness and then stated “not ready” at the next court date. The People’s stated reason for the change in readiness was that they were awaiting receipt of an injured officer’s medical records which they intended to introduce as evidence.²⁴⁰ The *Sibblies* Court reached the unanimous decision that the People must be charged with the entire adjournment because their prior statement of readiness was not an accurate representation of their actual, present ability to proceed to trial.²⁴¹ In the months following *Sibblies*, several lower courts have followed suit in dismissing complaints under CPL 30.30 due to invalid statements of readiness. For instance, in *People v.*

235. O’Brien, *Undoing of Speedy Trial*, *supra* note 161.

236. Graham & Schwarz, *supra* note 193, at 579 (“If the People are ready at one point in the proceedings but are not ready thereafter, the applicable time period may begin to run again and may continue running until the People again effectively announce their readiness for trial.”).

237. *People v. Jones*, 483 N.Y.S.2d 345, 351 (App. Div. 1984).

238. See Glaberson, *Long Waits*, *supra* note 1. Graphic on web version of the article shows how Anthony Fearon’s marijuana possession case stretched over 600 days. The prosecution stated “ready” on three separate occasions and “not ready” five times.

239. 22 N.Y. 3d 1174 (2014).

240. *Id.* at 1175–76.

241. The Court of Appeals was split evenly between two concurring opinions, with Chief Judge Lippman holding that the People failed to show an “exceptional fact or circumstances” which occasioned their subsequent non-readiness, and Judge Graffeo finding that the People’s off-calendar statement of readiness was “illusory” in light of their in-court admission that they needed the injured officer’s medical records. *Id.* at 1179, 1181.

McCoy,²⁴² the court dismissed a misdemeanor information because the People's off-calendar statement of readiness was belied by their on-the-record admission that they could not go forward without the minutes from the defendant's family court proceeding.²⁴³ Similarly, the court in *People v. Rivera*²⁴⁴ found that the People's failure to state "ready" on ten consecutive court dates rendered their initial off-calendar statement of readiness "illusory."²⁴⁵

This trend of lending greater judicial scrutiny to the People's declarations of readiness is a welcome and necessary step towards restoring meaning to the speedy trial right codified at CPL 30.30. However, it is not enough to fix a speedy trial statute which is based on when the prosecution declares its readiness as opposed to when the defendant actually goes to trial. Prosecutors can still reap the benefit of long adjournments due to a congested court calendar, effectively putting pressure on the defendant to plead guilty. In order to remedy the larger problem, structural reform is required. The next Part of this Note examines several possibilities for such reform.

V. ALTERNATIVE STATUTORY APPROACHES

New York's speedy trial statute is an outlier. While virtually every state has some form of a speedy trial right by statute or court rule, New York is the only one that employs a "ready rule," rather than a law based on the occurrence of an actual trial.²⁴⁶ As explained in Part IV, the "ready rule" of CPL 30.30 is poorly designed to ensure defendants receive a prompt trial in an era during which the courts are swamped with misdemeanor cases. However, New York is not the only jurisdiction coping with crowded dockets.²⁴⁷ This Part will consider statutory approaches

242. No. 2013BX09823, 44 Misc.3d 1205(A) (N.Y. Crim. Ct. Bronx Cnty. June 20, 2014).

243. *Id.* at *2.

244. No. 2012BX013075 (N.Y. Crim. Ct. Bronx Cnty. June 20, 2014).

245. *Id.* at *5.

246. For ten years, Texas also had a "ready rule" until the Court of Criminal Appeals declared it unconstitutional in *Meshell v. State*, 739 S.W.2d 246 (1987). See generally Daniel C. Brown, *Meshell v. State: The Death of Texas Speedy Trial?*, 41 BAYLOR L. REV. 341 (1989).

247. See Maureen Dimino, *Misdemeanor Courts Are in Need of Repair*, 33 CHAMPION 36 (2009) (citing a National Association of Criminal Defense Lawyers study which found

devised in other jurisdictions to ensure the right to a speedy trial. First, this Part will examine the federal speedy trial statute.²⁴⁸ Next, this Part will briefly compare the speedy trial statutes in four states, ranging from the most permissive to the least in terms of their treatment of delay due to court congestion: Indiana, Kansas, Arizona, and Florida.

A. THE SPEEDY TRIAL ACT OF 1974

The Speedy Trial Act of 1974²⁴⁹ (hereinafter “the Act”) was not born primarily out of national concern for the long delays suffered by criminal defendants.²⁵⁰ To the contrary, Congress’ stated purpose in passing the bill was “reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial.”²⁵¹ Nevertheless, the Act received bipartisan support as it was thought to represent a superior “alternative to preventive detention” for criminal defendants.²⁵² The statutory history also reflects Congress’ view that “the adoption of speedy trial legislation [wa]s necessary . . . to give real meaning to that Sixth Amendment right,”²⁵³ making express note of the Supreme Court’s invitation to legislative action in *Barker*.²⁵⁴

As amended,²⁵⁵ the Act’s core provisions require that a federal defendant be formally charged within 30 days of arrest,²⁵⁶ and brought to trial within 70 days of his indictment.²⁵⁷ The Act also provides some protection for the defendant from being tried too quickly: unless a defendant consents, a trial may not commence

that there were approximately 10.5 million misdemeanor prosecutions nationwide in 2006).

248. Speedy Trial Act of 1974, 18 U.S.C.A. § 3161 (West 2008) (amended 1979).

249. 18 U.S.C.A. § 3161 (West 2008) (amended 1979).

250. HERMAN, *supra* note 102, at 204–05.

251. Garcia, *supra* note 97, at 56.

252. HERMAN, *supra* note 102, at 205.

253. H.R. REP. NO. 93-1508 (1974), *reprinted in* 1974 U.S.C.C.A.N. 7401, 7404.

254. *Id.* at 7405. In *Barker v. Wingo*, 407 U.S. 514, 523 (1972), the Court indicated that prescribing a specific time period in which a defendant must be tried “would have the virtue of clarifying when the [speedy trial] right is infringed and of simplifying the courts’ application of it,” but “such a result would require this Court to engage in legislative or rulemaking activity.”

255. The Act was amended by Congress in 1979 due to pressure from the Department of Justice and the American Bar Association to delay the implementation of its sanctions. ROBERT L. MISNER, *SPEEDY TRIAL: FEDERAL AND STATE PRACTICE*, 215 (1983).

256. 18 U.S.C.A. § 3161(b) (West 2008) (amended 1979).

257. *Id.* at (c)(1).

for 30 days from the indictment.²⁵⁸ Like most speedy trial statutes, the Act sets out a number of exclusions for the calculation of speedy trial time.²⁵⁹ The most controversial of these exclusions is codified at § 3161(h)(7)(a), which allows the judge at his own motion, or a motion by either of the parties, to grant a continuance based on his finding “that the ends of justice served by taking such action outweigh the best interest of the public and the accused in speedy trial.”²⁶⁰ This section has been attacked as giving courts free reign to subvert the time limits set out by the Act, thereby defeating its purpose.²⁶¹ Another notable feature of the Act is that exclusions for court congestion are expressly prohibited.²⁶²

In addition to its substantive provisions, the Act as originally written is also noteworthy for its phased rollout²⁶³ and mandate that each district convene a Planning Group to implement the Act in its respective jurisdiction.²⁶⁴ With regard to the former, the Act’s speedy trial deadlines were to be realized gradually over a five-year period, with progressively tighter deadlines imposed during that span.²⁶⁵ With regard to the latter, the Act demanded that each district court create a Speedy Trial Planning Group composed of “the Chief Judge, the United States Attorney, the Federal Public Defender, and ‘others skilled in the criminal justice system.’”²⁶⁶ The Planning Group would “produce a workable plan to administer [the Act]” which would “become a part of the local district rules.”²⁶⁷ Congress made this provision in recognition of the fact “that the local district courts, and those who prac-

258. *Id.* at (c)(2).

259. This list includes, but is not limited to, delays due to competency hearings, pretrial motions, the absence or unavailability of a main witness, and where the accused is a joint defendant. *Id.* at (h)(1)(A)(D), (h)(3)(A), (h)(6).

260. *Id.* at (h)(7)(A).

261. See J. Andrew Read, Comment, *Open-Ended Continuances: An End Run Around the Speedy Trial Act*, 5 GEO. MASON L. REV. 733 (1997) (arguing that open-ended continuances under the “ends of justice” provision should be barred). *But see* Greg Ostfeld, Comment, *Speedy Justice and Timeless Delays: The Validity of Open-Ended “Ends-of-Justice” Continuances under the Speedy Trial Act*, 64 U. CHI. L. REV. 1037 (1997) (arguing that open-ended continuances may be appropriate in certain circumstances).

262. 18 U.S.C.A. § 3161(h)(7)(C) (West 2008) (amended 1979).

263. MISNER, *supra* note 255, at 208–09.

264. *Id.*

265. *Id.* (Year One: no limit except for in-custody defendants; Year Two: 250 days after arrest; Year Three: 175 days; Year Four: 125 days; Year Five: 100 days).

266. Read, *supra* note 261, at 742.

267. MISNER, *supra* note 255, at 208.

tice in the courts, knew how best to accomplish practically the Act's goal."²⁶⁸

B. STATE SPEEDY TRIAL STATUTES AND COURT CONGESTION

Among the ways in which state speedy trial statutes and rules differ is in their approach to the issue of court congestion. This section will briefly describe four of them: Indiana, Kansas, Arizona, and Florida. Many states statutes are silent on the subject, leaving it to their courts to decide.²⁶⁹ The approaches of states that do address court congestion in their statutes fall loosely into three categories: (1) permissive, (2) intermediate, and (3) intolerant. The first of these categories, permissive, provides that delay from court congestion shall be excluded from the speedy trial period. One state with a permissive statute is Indiana. In Indiana's Rules of Criminal Procedure, Rule 4 states that "No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year . . . except . . . where there was no sufficient time to try him during such period because of congestion of the court calendar."²⁷⁰ In such a situation, the statute requires the prosecutor to "file a timely motion for continuance,"²⁷¹ but does not suggest it will be subject to any serious judicial scrutiny.²⁷²

On the other end of the spectrum are the states with statutes or rules that are intolerant of delay based on court congestion. These states, like the Act, expressly proscribe granting a continuance due to a crowded docket.²⁷³ Florida is one such state. Its speedy trial rule²⁷⁴ provides that the "court may order an extension of the time periods provided . . . when exceptional circumstances are shown to exist."²⁷⁵ In the same section, the rule declares "[e]xceptional circumstances shall *not* include general congestion of the court's docket . . ." ²⁷⁶ (emphasis added). While the

268. *Id.* at 209.

269. *See e.g.*, CAL. PENAL CODE § 1382 (West 2010); MASS. R. CRIM. P. 36 (West 1996); NEB. REV. STAT. ANN. § 29-1207 (West 2010).

270. IND. R. CRIM. P. 4(C) (West 1987).

271. *Id.*

272. Additionally, a judge may "take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance." *Id.*

273. *See supra* Part V.A., note 262 and accompanying text.

274. FLA. R. CRIM. P. 3.191 (West 2013).

275. *Id.* 3.191(l).

276. *Id.*

word “general” may seem to imply that extraordinary congestion would merit a continuance, this is not included in the six examples of exceptional circumstances listed in the rule.²⁷⁷

Statutes in the intermediate category, like Kansas’ and Arizona’s, work a compromise when it comes to handling delay from court congestion. They provide some allowance for delay due to court congestion, but place limits on its usage for continuances. Kansas takes a very straightforward approach. If “because of other cases pending for trial, the court does not have sufficient time to commence the trial of the case within the time fixed for trial,” the judge may issue one continuance “of not more than 30 days.”²⁷⁸ However, the court is limited to this one, single month-long continuance.²⁷⁹ Arizona, on the other hand, has a more flexible rule regarding court congestion. Court Rule 8²⁸⁰ provides that when “congestion is attributable to extraordinary circumstances,” the resulting delay may be excluded.²⁸¹ However, when the court finds that the congestion is caused by “extraordinary circumstances,” the presiding judge must promptly apply to the Chief Judge of the Arizona Supreme Court for suspension of the Rules of Criminal Procedure.²⁸²

VI. FIXING NEW YORK’S SPEEDY TRIAL LAW: POSSIBILITIES

This Part proposes several reforms for making the speedy trial right meaningful again for New York defendants. One major improvement would be to bring an end to the aggressive “Broken Windows”-style policing which has produced a permanent backlog of misdemeanor cases in the New York criminal courts.²⁸³ This reform has been championed by many participants in and observers of the criminal justice system, and is one that this author supports.²⁸⁴ Putting aside changes in police policy, however, Part

277. *Id.* 3.191(l)(1)–(6).

278. KAN. STAT. ANN. § 22-3402(e)(4) (West 2014).

279. *Id.*

280. ARIZ. R. CRIM. P. 8.4 (West 2011).

281. *Id.* 8.4(d).

282. *Id.*

283. *See supra* Part III.

284. *See e.g.*, Editorial, *Broken Windows, Broken Lives*, N.Y. TIMES, July 25, 2014, <http://www.nytimes.com/2014/07/26/opinion/broken-windows-broken-lives.html>; Patricia J. Williams, *It’s Time to End ‘Broken Windows’ Policing*, THE NATION (Jan. 8, 2014), <http://www.thenation.com/article/177842/its-time-end-broken-windows-policing>; K. Babe

VI focuses on potential *legal* reforms for restoring the speedy trial right.²⁸⁵ First, it suggests a plan for redesigning CPL 30.30 by borrowing from the Act and the state statutes and rules explored in the previous Part. Specifically, it envisions a shift to a genuine speedy trial rule with an intermediate approach to court congestion similar to the Kansas statute or Arizona court rule. Second, it points out possible footholds for renewed constitutional speedy trial claims by New York City misdemeanor defendants.

A. FIXING NEW YORK'S BROKEN CLOCK

The first and most obvious change would be to amend CPL 30.30 so that it establishes definite time periods by which a defendant must be brought to trial. From the beginning, the New York “ready rule” was offered as a watered-down substitute for a genuine speedy trial law.²⁸⁶ Logically, it does not make sense as a protection of speedy trials. To the defendant denied his speedy trial right, it makes no difference “that the district attorney was ‘ready’ and judges [were] ‘willing’ to hear [his] case.”²⁸⁷ Abandoning the “ready rule” means judges no longer must decide when the prosecution’s representation of readiness is genuine, a major problem under the current regime.²⁸⁸

Any reformed version of CPL 30.30 should anticipate the problem of court congestion, and include a provision to address it. There is a strong argument to be made for adopting an intolerant posture towards court congestion as a source of delay in the same way as the Act²⁸⁹ or the Florida rule.²⁹⁰ In New York, there “has been an egregious failure on the part of many public officials to properly anticipate calendar congestion problems and to adopt

Howell, *From Page to Practice and Back Again: Broken Windows Policing and the Real Costs to Law-Abiding New Yorkers of Color*, 34 N.Y.U. REV. L. & SOC. CHANGE 439 (2010).

285. As it is, no radical shift in New York City’s police policy seems forthcoming. See Joseph Goldstein, *Street Stops Still “Basic Tool,” Bratton Says*, N.Y. TIMES (Mar. 4, 2014), http://www.nytimes.com/2014/03/05/nyregion/bratton-says-street-stops-and-fighting-low-level-crime-will-remain-crucial.html?ref=stopandfrisk&_r=0.

286. Clines, *supra* note 173. Opponents of the rule when it was proposed accurately predicted “that district attorneys would have free reign in seeking trial delays under the bill and that the present clogged criminal court process would continue.” *Id.*

287. *People v. Ganci*, 27 N.Y.2d 418, 430 (1971) (Fuld, C.J., dissenting).

288. See *supra* Part IV.C.2.

289. 18 U.S.C.A. § 3161(h)(7)(C) (West 2008).

290. FLA. R. CRIM. P. 3.191(l) (West 2013).

measures for their solution. To place the consequences of these failures on the accused makes little practical or moral sense.”²⁹¹

However, the backlash to such a decision would be tremendous, as specters of a “legalized jailbreak” would likely re-emerge.²⁹² In the spirit of finding a workable solution, this Note endorses an intermediate approach in the style of Kansas’s statute²⁹³ or Arizona’s court rule.²⁹⁴ The former has the advantage of simple administration. Even if judges granted one thirty-day continuance for congestion in every single case, it would still be a dramatic improvement over the present system. The drawback to this rule is its mechanical nature, and it may be ill-suited to deal with fluctuations in a court’s docket. Specifically, the concern is that a single, automatic, month-long continuance would be too lenient when dockets are less crowded, and too restrictive in busier times. The benefit of Arizona’s approach is increased accountability. Any judge would think carefully before putting a request in writing to the Chief Judge of the New York Court of Appeals asking that the speedy trial law be suspended due to “extraordinary circumstances.” The approaches of Kansas and Arizona represent sensible and moderate options for the legislature in reshaping CPL 30.30. However, modeling an amended CPL 30.30 after Indiana’s permissive Rule 4²⁹⁵ would only make the system’s current indulgence for congestion-caused delay an explicit feature of the statute.

Of course, in order to make statutory reform feasible, greater judicial resources will need to be allocated towards placing more judges and staff into overwhelmed New York criminal courts like those in the Bronx. There are ways to find these resources within the current system. First, Chief Judge Lippman’s temporary transfer of judges and creation of a “blockbuster part” in the Bronx to clear the felony backlog suggests that the same strategy could be employed for misdemeanors.²⁹⁶ Second, New York currently spends approximately \$570 million a year in pretrial de-

291. Christopher L. Blakesley, *Speedy Trial and the Congested Trial Calendar*, 1972 UTAH L. REV. 268, 274–75 (1972).

292. See Alfonso A. Narvaez, *Governor Offers Prompt-Trial Bill*, N.Y. TIMES, Feb. 29, 1972 (reporting that District Attorneys had argued Justice Fuld’s proposed speedy trial rule “would constitute ‘legalized jailbreak’ because of the current lack of courtroom space and personnel”).

293. KAN. STAT. ANN. § 22-3402 (West 2014).

294. ARIZ. R. CRIM. P. 8.4 (West 2011).

295. IND. R. CRIM. P. 4 (West 1987).

296. See *supra* Part III, note 79 and accompanying text.

tention costs,²⁹⁷ and twenty-five percent of non-felony defendants have bail set.²⁹⁸ Although the amount of bail is often modest, between \$50 and \$2,000, many defendants are unable to pay it.²⁹⁹ Chief Judge Lippman has been an outspoken critic of New York's bail system, calling it "unfair to poor people and unnecessarily expensive."³⁰⁰ By setting bail on fewer low-level defendants, the state could decrease its pretrial detention costs, and free up funds for having more and faster trials. Finally, New York City criminal courts have recently seen an impressive drop in the arrest-to-arraignment time, cutting the average time below 24 hours in all five boroughs for the first time since 2001.³⁰¹ Through the combination of a new computer-tracking initiative to find the source of delay in processing and an increased culture of accountability to address it, New York courts have made significant progress in this long problematic area.³⁰² Perhaps applying similar technology to track the sources of delay during the life of the case, and subsequently address them, could help bring cases to trial sooner. This would also increase pressure on prosecutors and judges to ensure cases are promptly tried if a public computer system compared them to their peers.

Another way in which New York could borrow from the Act is by phasing in a new speedy trial timeframe and mandating local courts to develop plans on how to implement it.³⁰³ These suggestions are vulnerable to the critique that neither aspect of the Act fared particularly well when it was enacted in the 1970s.³⁰⁴ Also, a program allowing New York City criminal courts to gradually provide defendants with their right to a speedy trial seems like a

297. See Turkewitz, *supra* note 90.

298. Natapoff, *supra* note 29, at 1321 (citing Mosi Secret, *N.Y.C. Misdemeanor Defendants Lack Bail Money*, N.Y. TIMES, Dec. 2, 2010, at A27, available at <http://www.nytimes.com/2010/12/03/nyregion/03bail.html>).

299. Turkewitz, *supra* note 90 (In 2012, only 14 percent of Bronx defendants who had bail set at \$500 or less were able to post at arraignment, while in the other boroughs, the number ranged from 15 to 43 percent.).

300. *Id.*

301. James C. McKinley Jr., *New York Courts Cut Time Between Arrest and Arraignment*, N.Y. TIMES (Mar. 19, 2014), <http://www.nytimes.com/2014/03/20/nyregion/new-york-courts-meet-elusive-goal-from-arrest-to-arraignment-in-under-24-hours.html>.

302. *Id.*

303. See *supra* Part V.A.

304. Congress was forced to amend the Act the year before its sanctions became fully effective due to the fear from the Justice Dept. and the ABA that they would be oppressive. See MISNER, *supra* note 255, at 215; see also Read, *supra* note 261, at 742–47 (attacking the efficacy of the District Court Plans under the Act).

compromise at the defendant's expense. However, given the amount of pushback that any proposed amendment to CPL 30.30 would likely get from prosecutors and possibly judges (who would suddenly have to hear more cases), bringing everyone to the table first might make it more palatable. It is also hard to imagine how the courts could go overnight from routinely taking over a year to hear misdemeanor cases to trying them all within ninety days or less without first devising a plan with the input of those attorneys, judges, and court officers who work there.³⁰⁵

B. REVIVING THE CONSTITUTIONAL RIGHT

This Note stresses the inefficacy of New York's current speedy trial statute, CPL 30.30, in ensuring a criminal defendant's speedy trial right. Absent an unlikely overhaul of that statute, a frustrated New York defendant misdemeanor defendant, like Rue, Melendez, or Cardona from Part I, *supra*, may elect to make a constitutional claim. While the Supreme Court has not always been very receptive to speedy trial challenges,³⁰⁶ there is language and logic in its precedents that suggests maybe it should or even could be.

First, the Supreme Court has held that the public as well as the defendant have a constitutional interest in speedy trials.³⁰⁷ Society is served by timely prosecution, "both to restrain those guilty of crime and to deter those contemplating it."³⁰⁸ Additionally, speedy trials keep down pretrial detention costs, lessen the threat of fugitive defendants, and promote rehabilitation efforts.³⁰⁹ In *Barker*, the Court voiced dismay at the "the inability of courts to provide a prompt trial [which] has contributed to a large backlog of cases in urban courts,"³¹⁰ a situation not unlike the one described in this Note. Perhaps a Bronx defendant could use the Court's evident concern for the public's interest in speedy trials to help vindicate his own.

Second, there is a colorable argument that a *Barker* analysis should come out in a typical Bronx misdemeanor defendant's fa-

305. This is assuming that CPL § 30.30 remained in effect except for tying the speedy trial clock to trial rather than prosecutorial readiness within its prescribed time periods.

306. See *supra* Part IV.A.

307. *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

308. *Dickey v. Florida*, 398 U.S. 30, 42 (1970).

309. *Barker*, 407 U.S. at 520.

310. *Id.* at 519.

vor. The first factor is the length of the delay. It must be “presumptively prejudicial” to trigger the rest of the inquiry.³¹¹ A misdemeanor defendant who has been going back and forth to court for over a year should meet that hurdle, particularly because *Barker* stated, “the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.”³¹² The second factor, the cause of the delay, should also tip in favor of the defendant because the government bears “ultimate responsibility” for congested courts.³¹³ The third factor is whether and how the defendant has asserted his speedy trial right. If, as in the case of many New York City misdemeanor defendants, he has been repeatedly coming to court and asking for a trial, this should satisfy the third factor.³¹⁴

Finally, the fourth factor requires the defendant to show that he has suffered actual prejudice.³¹⁵ Here, the defendant could make two plausible arguments. First, he could argue under *Doggett v. United States*³¹⁶ that a specific demonstration of prejudice is not necessary because the delay is excessive to the point of presumptively compromising the trial’s reliability.³¹⁷ The defendants in MAP waited (in vain) an average of 240 days for trial in routine, low-level marijuana possession cases,³¹⁸ a crime for which the New York City Police Department recorded 227,000 arrests between 2007 and 2011.³¹⁹ These trials often involve just one or two witnesses, including the police officer who makes hundreds of nearly identical arrests each year.³²⁰ For these mundane, highly similar incidents, it stands to reason that a witness’

311. *Id.* at 530.

312. *Id.* at 531.

313. *Id.*

314. The third factor is the defendant’s responsibility to assert his right. While there is no mandatory demand-waiver rule, the “failure to assert the right will make it difficult for a defendant to prove that he was denied speedy trial.” *Id.* at 532.

315. *Id.* at 532.

316. 505 U.S. 647 (1992).

317. In *Doggett*, the Court found a speedy trial violation in a delay of over eight years from the indictment of a defendant for conspiracy to import and distribute cocaine from Columbia. In applying the *Barker* factors, the Court found that the defendant need not affirmatively show prejudice, because the extremity of the delay presumptively compromised the trial’s reliability. *Id.* at 655.

318. See *supra* Part II.A, note 31 and accompanying text.

319. BRONX DEFENDERS, *supra* note 10, at 4.

320. See Natapoff, *supra* note 29, at 1346 (“[U]nlike serious offenses of burglary, rape or homicide, the ‘evidence’ of a misdemeanor defendant’s guilt will often be no more than a police officer’s assertion of loitering, trespassing, speeding, handing something to someone else, acting as a nuisance or other behavior.”).

factual recall will be diminished or blurred after eight months to a year. A misdemeanor defendant should not be obligated to prove specific prejudice when his case has dragged on that long.

Second, the *Barker* Court identified three defendant interests protected by the Speedy Trial right.³²¹ Even if a Bronx misdemeanor defendant is unable to argue that he has been prejudiced by pretrial incarceration or impairment to his defense, he could rely on the third protected interest: avoiding the disadvantages of undue “restraints on his liberty and living under a cloud of anxiety, suspicion, and often hostility.”³²² The misdemeanor defendant suffers prejudice from the stress and anxiety caused by the process. Although being accused of a non-violent misdemeanor typically does not carry the same stigma as a serious felony, defendants with open cases still may face serious economic,³²³ social,³²⁴ psychological costs.³²⁵ As the Court opined in *Moore v. Arizona*:

Inordinate delay, wholly apart from possible prejudice to a defense on the merits, may “seriously interfere with the defendant’s liberty, whether he is free on bail or not, and . . . may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family, and his friends.”³²⁶

This list of detriments faced by an accused person mirrors quite closely the experiences of many New York City misdemeanor de-

321. 407 U.S. 514, 532 (1972).

322. *Id.* at 533.

323. See BRONX DEFENDERS, *supra* note 10, at 12 (explaining that for defendants working in the public sector or in jobs requiring a state-issued license, like security guards, home health aides, and cab drivers, an open case of any kind can “lead to immediate suspension without pay, and ultimately, termination”); Howell, *supra* note 46, at 305 (reporting that New York Board of Education employees must immediately report any arrest, even for a violation, and are often suspended or reassigned while their case is pending).

324. See William A. Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 MO. L. REV. 771, 797 (“Any arrest has a profound and long-lasting effect on the arrestee . . . [W]idespread public feeling that ‘where there’s smoke, there’s fire’ often leaves a cloud of suspicion hanging over an arrestee even if no conviction follows.”).

325. See Natapoff, *supra* note 29, at 1323–24 (recounting the story of Paul Butler, a law professor wrongfully accused of a misdemeanor assault). After being released at arraignment, Butler “went home and cried,” and despite hiring a premium defense lawyer and confidence in his own innocence, Butler “remained frightened and uncertain up until the moment of acquittal.” Natapoff suggests that if “Butler, with all his credentials, legal knowledge, and litigation experience found the misdemeanor experience this unpredictable and traumatizing,” it must be significantly more so for the “average undereducated defendant who lacks the benefit of high-caliber counsel.” *Id.*

326. *Moore v. Arizona*, 414 U.S. 25, 27 (1973).

defendants denied their speedy trial right.³²⁷ One of these two arguments could swing the fourth *Barker* factor in the defendant's favor. Along with the first three factors, a hypothetical Bronx misdemeanor defendant would have a strong speedy trial claim under a *Barker* analysis.

VII. CONCLUSION

The right to a speedy trial is a basic promise of the Constitution, and it has gone missing from New York City's criminal courts. While the speedy trial right is elusive in most parts of the city, it is particularly so for defendants languishing in Bronx misdemeanor court. This issue did not arise overnight, and it will probably require institutional and social changes to correct. One way in which New York can go about starting to solve this problem is by reforming its speedy trial statute, CPL 30.30. New York should adopt a true speedy trial standard: one which mandates the time in which a defendant must be brought to trial, rather than merely requiring the prosecution to assert that it's "ready." It must also design a statute that has at least a heavy presumption against exclusions for court congestion, similar to Kansas' or Arizona's, or else judges will be able to thwart the scheme by granting routine continuances. Rather than systematically denying speedy justice to its citizens, New York should realize that, "when the system of criminal justice as a whole is at fault in causing the delay, it is the obligation of that system to eliminate it."³²⁸

327. See *supra* Part II.B, notes 45–49 and accompanying text.

328. Blakesley, *supra* note 291, at 273.