WHAT DOES SPEED HAVE TO DO WITH IT?: AN ANALYSIS OF THE SEVENTH CIRCUIT’S APPLICATION OF THE SPEEDY TRIAL ACT

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INTRODUCTION

The Sixth Amendment grants everyone the fundamental right to a speedy trial.1 It is our constitutional right to be charged and tried in an efficient and expeditious manner.2 This right is also protected by a federal statute, the Speedy Trial Act.3 While it would seem that this right is well-protected by both constitutional and federal law, in practice, it may not be. Many claims for a violation of one’s right to a speedy trial have been ignored; for example, in one Seventh Circuit case, the trial did not commence for over 430 days from the date of the charge.4 One reason that the Seventh Circuit affirms these lengthy delays is because it has been liberal with its application of the

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1 U.S. CONST. amend. VI; see Barker v. Wingo, 407 U.S. 514, 529–30 (1972) (stating that the right to a speedy trial is a fundamental right).

2 U.S. CONST. amend. VI.


4 See United States v. Cunningham, 393 F. App’x 403, 405–06 (7th Cir. 2010) (where 430 days passed between the indictment and trial but the Act was not violated because the court invoked the ends-of-justice exception).
excludable days exception provided in the Speedy Trial Act,\(^5\) as well as with what is considered a reasonable amount of time to bring the defendant to trial.\(^6\) Another reason is the lack of an efficient analytical standard for courts to use to determine if a violation of one’s right to a speedy trial occurred. The Seventh Circuit also chooses to affirm dismissal without prejudice a majority of the time, which allows the defendant to be reprosecuted, even though the Speedy Trial Act has been violated.\(^7\) As a result of the Seventh Circuit’s approach, defendants are tried well after what is required by the Speedy Trial Act, and those at fault for the delay are not punished.

This Note will examine the Seventh Circuit’s interpretation of the Sixth Amendment and the Speedy Trial Act, in light of the precedent passed down from the Supreme Court. The Seventh Circuit’s application of the right to a speedy trial will also be compared to the approach of the other circuit courts. This analysis helps to establish a theory that the right to a speedy trial may be more myth than reality in actual practice within the Seventh Circuit. While a bright-line rule of when a person’s right to a speedy trial has been violated may not be feasible, a more workable standard must be developed. The Seventh Circuit must find a way to balance one’s individual rights with the public interest. In addition, the Seventh Circuit must provide a meaningful remedy when a violation occurs, as well as deter violations through sanctions. This Note attempts to provide a balancing structure for these rights, as well as to recommend a better approach to provide a meaningful remedy for the violation of the right to a speedy trial.

\(^5\) See 18 U.S.C. §§ 3161(h)(1)(A)–(H) (excluding some days from the seventy-day requirement).

\(^6\) See, e.g., United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010); United States v. Killingsworth, 507 F.3d 1087, 1089 (7th Cir. 2007); United States v. Arango, 879 F.2d 1501, 1507-08 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509, 511 (7th Cir. 1988).

\(^7\) See Hills, 618 F.3d at 631–32.
I. BACKGROUND

A defendant’s right to a speedy trial is protected by the Sixth Amendment to the United States Constitution and by federal statute.\(^8\) The Seventh Circuit has repeatedly analyzed the right under both contexts to determine if a violation of one’s right to a speedy trial occurred and to decide whether to dismiss with or without prejudice.\(^9\)

A. A Constitutional Right: The Sixth Amendment

While public policy should, and does, shape our laws and the way they are applied, our Founding Fathers established certain constitutional rights that were considered fundamental and were to be left untouched and unlimited.\(^10\) One of these constitutional rights is the right to a speedy trial and is found in the Sixth Amendment to the United States Constitution.\(^11\) The Sixth Amendment was put in place “(1) to prevent oppressive pretrial incarceration[,] (2) to minimize anxiety and concern of the accused[,] and (3) to limit the possibility that defense will be impaired.”\(^12\) In light of these factors, one can infer that the Founding Fathers thought that the right to a speedy trial was necessary and fundamental to preserve our rights and liberty as individuals.

The federal government has further expressed and defined this right through a statute, the Speedy Trial Act.\(^13\) However, the Speedy Trial Act does not, and indeed cannot, limit the Sixth Amendment’s


\(^9\) See Sykes, 614 F.3d at 305–06; Hills, 618 F.3d at 631–32; Killingsworth, 507 F.3d at 1087; Arango, 879 F.2d at 1501; Fountain, 840 F.2d at 509.

\(^10\) See U.S. CONST. amend. VI; Barker v. Wingo, 407 U.S. 514, 529–30 (1972) (stating that the right to a speedy trial is a fundamental right).

\(^11\) U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . .”).

\(^12\) Hills, 618 F.3d at 631–32.

\(^13\) Phipps, 933 N.E.2d at 1192–93.
guarantee of a speedy trial. As a result, courts must remember that the right they are ensuring is one guaranteed by the United States Constitution.

**B. A Statutory Right: The Speedy Trial Act**

The Speedy Trial Act assures that the defendant receives a speedy trial by setting out time limits in which the trial must occur. Under the Act, any information or indictment “shall be filed within thirty days from the date on which such individual was arrested or served with a summons.” In addition, the trial of a defendant shall occur within seventy days from the date of the indictment.

However, there are some periods of time that are considered excluded.

The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

1. any period of delay resulting from other proceedings concerning the defendant, including but not limited to

   (A) delay resulting from any proceeding . . . to determine the mental competency or physical capacity of the defendant;

   (B) delay resulting from trial with respect to other charges against the defendant;

   (C) delay resulting from any interlocutory appeal;

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14 See U.S. Const. art. VI, § 1, cl. 2.
16 Id. § 3161(b).
17 Id. § 3161(c)(1).
18 Id. § 3161(h).
(D) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(E) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district . . . ;

(F) delay resulting from transportation of any defendant . . . ;

(G) delay resulting from consideration by the court of a proposed plea agreement . . . ; and

(H) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.19

In addition, a period of delay to allow the defendant to demonstrate his good conduct and a “period of delay resulting from the absence or unavailability of the defendant or an essential witness” are excluded.20 Furthermore, delay because a continuance is granted by a judge on his own motion or at the request of the defendant or government is also excluded.21

If the time limit governing when an indictment or information can be filed is violated, the charge “shall be dismissed or otherwise dropped.”22 If the time limit required by 18 U.S.C. § 3161(c) is violated, the indictment shall be dismissed on motion of the defendant.23 When the court is determining whether to dismiss with or without prejudice, it shall consider “the seriousness of the offense[.]

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19 Id. §§ 3161(b)(1)(A)–(H).
20 Id. §§ 3161(b)(2), (3)(A).
21 Id. § 3161(7)(A).
22 Id. § 3162(a)(1).
23 Id. § 3162(a)(2).
the facts and circumstances of the case which led to the dismissal[,] and the impact of a reprosecution on the administration of [the Act] and on the administration of justice.” 24 These factors seem to almost always favor dismissal without prejudice in the Seventh Circuit.

In United States v. Taylor, the Supreme Court reviewed the Speedy Trial Act’s legislative history and determined that prejudice to the defendant is a substantial factor in determining whether to dismiss with or without prejudice as well. 25 The Supreme Court also determined that the legislative history shows that Congress did not intend for a certain type of dismissal to be the presumptive remedy for a Speedy Trial Act violation. 26 Instead, courts have significant discretion when deciding if a violation occurred and whether to dismiss with or without prejudice. 27

The Supreme Court in Barker v. Wingo has provided insight into the policy reasons behind the Sixth Amendment Right to a speedy trial. 28 These same policy reasons, as well as the Sixth Amendment, helped to shape the Speedy Trial Act. One important policy concern is that the accused be treated with “decent and fair procedures”; however, there is also a societal interest in providing a speedy trial. 29 When courts are unable to provide a speedy trial, the defendant may gain an advantage. 30 For example, defendants may be able to negotiate more effectively or manipulate the system, and those who are out on bond have the opportunity to commit additional crimes. 31 In addition, lengthy delays could have detrimental effects on defendants’ rehabilitation because they are often confined for long periods of time. 32 Defendants could also use delay as a tactic by waiting until

24 Id.
26 Id. at 334.
27 United States v. Fountain, 840 F.2d 509, 512 (7th Cir. 1988).
29 Id.
30 Id.
31 Id.
32 Id. at 520 (this also contributes to prison overcrowding).
witnesses are unavailable or their memories fade. As a result, in addition to protecting the defendant’s rights, the Speedy Trial Act serves an important societal function.

C. The Supreme Court’s Application of the Sixth Amendment and the Speedy Trial Act

In United States v. Taylor, the Supreme Court stated that:

[A] district court must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review. Only then can an appellate court ascertain whether a district court has ignored or slighted a factor that Congress has deemed pertinent to the choice of remedy, thereby failing to act within the limits prescribed by Congress.

The Supreme Court in Taylor also stated that “the district court’s judgment of how opposing considerations balance should not be lightly disturbed.” If the district court does not articulate the reasons for its decision, the appellate courts and Supreme Court are put in a difficult position. Do they act with deference or do they analyze the facts and circumstances of the case to decide how they would hold? The following cases demonstrate the approach that the Supreme Court has taken with regard to the right to a speedy trial.

1. Vermont v. Brillon

In Vermont v. Brillon, the defendant was arrested for felony domestic assault and habitual offender charges and was tried three

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33 Id. at 521.
35 Id.
years later. The defendant was convicted of second-degree aggravated domestic assault in the district court. The Vermont Supreme Court vacated, and the United States Supreme Court granted certiorari. The Supreme Court then reversed and remanded.

During his trial, Brillon was appointed at least six different attorneys. The United States Supreme Court noted that assigned counsel acts on behalf of their clients, just as retained counsel does, and that delays sought by counsel are usually attributable to their clients. The Court stated that the Vermont Supreme Court erred when it attributed to the State the failure of assigned counsel to move the defendant’s case forward. The Vermont Supreme Court also failed to properly take into account the role of Brillon’s disruptive behavior. The Supreme Court held that delays caused by defense counsel, including appointed counsel, were attributable to the defendant and that Brillon was not denied his constitutional right to a speedy trial.

2. Barker v. Wingo

In Barker v. Wingo, the defendant, a state prisoner, challenged his conviction in a habeas corpus proceeding. The district court denied

37 Id.
38 Id. at 1283.
39 Id.
40 Id. at 1287.
41 Id.
42 Id. at 1291.
43 Id. at 1292 (“His strident, aggressive behavior with regard to [his third counsel], whom he threatened, further impeded prompt trial and likely made it more difficult for the Defender General’s office to find replacement counsel.”).
44 Id. at 1293.
the petition, and the Sixth Circuit affirmed. The Supreme Court also affirmed.

The Supreme Court laid out four factors to determine if a defendant had been deprived of his constitutional right to a speedy trial: “Length of [the] delay, the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant.” Unless the delay is “presumptively prejudicial,” there is no need to analyze the other factors. The Supreme Court then stated that these factors must be “considered together with such other circumstances as may be relevant.”

The Supreme Court determined that a delay between arrest and trial of well over five years was extraordinary, but that two other factors outweighed this deficiency. First, the defendant suffered minimal prejudice. Second, the Court inferred that the defendant did not want a speedy trial because he did not assert his right for four years. The Court noted that while the Commonwealth of Kentucky was granted sixteen continuances, Barker did not object until the twelfth. The Commonwealth was then granted additional continuances to which Barker did not object.

In addition, the Court noted that delay could often be used as a defense tactic and that a violation of one’s right to a speedy trial does not per se prejudice the defendant. The Court rejected outright “the rule that a defendant who fails to demand a speedy trial forever waives

46 Id.
47 Id.
48 Id. at 530.
49 Id.
50 Id. at 533 (leaving the factors open-ended).
51 Id. at 533–34.
52 Id.
53 Id.
54 Id. at 516–17.
55 Id. at 517.
56 Id.
his right.”57 The Court stated that the better rule is one where the defendant’s assertion or failure to assert his right is a factor to be considered.58 This places “the primary burden on the courts and the prosecutors to assure that cases are brought to trial.”59 The Court stated that unless there were extraordinary circumstances, it would be disinclined to rule that a defendant was denied his rights if the defendant failed to object to continuances and did not want a speedy trial.60 As a result, the Supreme Court held that Barker was not deprived of his right to a speedy trial.61

3. United States v. Taylor

In United States v. Taylor, the defendant was indicted for conspiracy to possess cocaine with intent to distribute.62 The district court dismissed the indictment with prejudice, and the Ninth Circuit affirmed.63 The Supreme Court reversed.64

The Supreme Court stated that “review must serve to ensure that the purposes of the [Speedy Trial] Act and the legislative compromise it reflects are given effect.”65 The Court noted that the trial was delayed for numerous reasons, including the defendant’s obligation to testify in another trial and slow processing by the trial court and the Government.66 The Court also analyzed the factors laid out in Barker and noted that the defendant’s alleged crime was serious, the Government’s conduct was lackadaisical, and the defendant failed to

57 Id. at 528.
58 Id.
59 Id. at 529.
60 Id. at 536.
61 Id.
63 Id. at 326.
64 Id.
65 Id. at 336.
66 Id. at 328.
appear for trial. The Supreme Court also stated that the district court did not provide explanations for its findings with regard to these factors, and it did not consider each of the necessary factors. The Supreme Court pointed out that the district court did not make a finding of prejudice and that while that is not dispositive, it is a factor that favors reprosecution.

The Court criticized the district court’s reasoning by stating that the deterrent effect of barring reprosecution should not alone support a decision to dismiss with prejudice because it would make all the other factors in 18 U.S.C. § 3162(a)(2) superfluous. The Supreme Court stated that the district court abused its discretion because it did not weigh the factors correctly, it failed to explain why the Government was lackadaisical, it failed to consider that the defendant did not suffer prejudice, and it failed to take into account the defendant’s contribution to the delays. As a result, the Supreme Court reversed and held that no violation of the Speedy Trial Act occurred.

D. Other Circuits’ Application of the Sixth Amendment and the Speedy Trial Act

Just as it is important for the Supreme Court to act with deference to the district courts, it is important for the federal courts of appeals to do so as well. It is also necessary for the district courts to fully explain their reasoning so that the courts of appeals can provide meaningful

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67 Id. at 338–40.
68 Id.
69 Id. at 341.
70 Id. at 342 (where the district court’s decision to dismiss with prejudice was heavily influenced by the court’s concern that not to do so would condone the Government’s behavior).
71 Id. at 342.
72 Id. at 343.
73 Id.
The following cases illustrate the other circuit courts’ application of both the Sixth Amendment right and the statutory right to a speedy trial.

1. The Third Circuit

In United States v. Stradford, Stradford and two co-defendants were charged with defrauding multiple lending agencies and engaging in other financial fraud. The district court denied Stradford’s motion to dismiss the indictment on Speedy Trial Act grounds, and the Third Circuit affirmed.

The magistrate judge granted a continuance so that the parties could conduct plea discussions. The government required Stradford to consent to excluding that time for the purpose of the Speedy Trial Act if they were to discuss a plea bargain. Before the discussions began, Stradford filed a motion to dismiss the indictment for violations of the Speedy Trial Act. The district court denied Stradford’s motion. The Third Circuit reviewed the district court’s interpretation of the Speedy Trial Act de novo, the factual findings for clear error, and the decision granting a continuance for an abuse of discretion.

The Third Circuit noted that one of the enumerated exceptions for the Speedy Trial Act that allows for time to be excluded is “‘[a]ny period of delay resulting from a continuance . . . if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public

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\[74\] Id. at 336–37.

\[75\] See U.S. CONST. amend. VI.


\[77\] No. 08-3256, 2010 WL 3622995, at *1 (3d Cir. Sept. 20, 2010).

\[78\] Id.

\[79\] Id.

\[80\] Id.

\[81\] Id.

\[82\] Id.

\[83\] Id. at *2.
and the defendant in a speedy trial.” Stradford argued that the continuance order was invalid because it contained inaccurate statements; however, the court stated that the reference to the wrong name was just careless error and the fact that the negotiations were not clearly in progress as the order stated did not matter. The continuance order was not invalidated because the district court had set forth its reasons for granting the ends-of-justice continuance as was required by 18 U.S.C. § 3161(h)(7)(A). As a result, the Third Circuit held that a Speedy Trial Act violation did not occur.

2. The Fifth Circuit

In United States v. Gonzalez-Rodriguez, the defendant was convicted in the district court for possession of methamphetamine with intent to distribute. Defendant “moved to dismiss the indictment on grounds that his rights under the Speedy Trial Act had been violated.” The district court denied the defendant’s motion to dismiss because the Speedy Trial Act was not violated. The time it took to dispose of the oral motion for detention was considered excludable under § 3161(h)(1)(D) of the Act. The Fifth Circuit affirmed the defendant’s conviction.

The Government made an oral motion for detention with the district court. The Fifth Circuit stated that “the day on which a pretrial motion is made and the day on which the hearing is held are both excluded for purposes of computing excludable delay under 18

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84 Id. (citing Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) (2006)).
85 Id. at *3.
86 Id. at *3–4.
87 Id. at *4.
88 621 F.3d 354, 357 (5th Cir. 2010).
89 Id. at 359.
90 Id.
91 Id.
92 Id. at 358.
93 Id.
U.S.C. § 3161(h)(1)(D).”\(^94\) The court noted that the Guidelines to the Administration of the Speedy Trial Act of 1974 recognize the starting date as the date that the motion is filed or made orally.\(^95\) “[T]he purpose of § 3161(h)(1)(D) is to ‘exclude all time that is consumed in placing the trial court in a position to dispose of a motion[,]’”\(^96\) The court saw no reason why an excludable delay would not be triggered by an oral motion in light of the purpose of the section.\(^97\) Therefore, the time that the district court took to decide the pretrial motion was excludable.\(^98\) As a result, the Fifth Circuit affirmed the district court’s holding that the Speedy Trial Act had not been violated.\(^99\)

3. The Eighth Circuit

In *United States v. Orozco-Osbaldo*, the defendant was charged with conspiracy to possess and distribute methamphetamine.\(^100\) The defendant appealed the district court’s denial of his motion to dismiss for violation of the Speedy Trial Act.\(^101\) The Eighth Circuit affirmed the dismissal because the time spent by the district court considering joinder of defendants was prompt disposition of a pretrial motion.\(^102\)

The Eighth Circuit stated that the district court was correct to exclude the time during which it considered a motion for joinder because it was excludable under § 3161(h)(1)(D) of the Act.\(^103\) The court considered it to be a “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on,

\(^94\) Id. at 368.

\(^95\) Id.

\(^96\) Id. at 368–69.

\(^97\) Id. at 369.

\(^98\) Id.

\(^99\) Id.

\(^100\) 615 F.3d 955, 956–57 (8th Cir. 2010).

\(^101\) Id.

\(^102\) Id.

\(^103\) Id. at 957–58.
or other prompt disposition of, such motion.”104 As a result, the time was excludable, and there was no violation of the Speedy Trial Act.105

4. The Ninth Circuit

In United States v. Boyd, the defendant was convicted of “possession of methamphetamine with intent to distribute . . . [,] possession of a firearm in relation to a drug trafficking offense . . . [,] and being a felon in possession of a firearm.”106 The defendant appealed the decision of the district court, claiming a violation of the Speedy Trial Act.107 The Ninth Circuit affirmed the decision of the district court.108

The defendant claimed that his rights under the Speedy Trial Act were violated because the government colluded with state authorities to delay his prosecution in an effort to buy time until a federal indictment could be obtained.109 In affirming the district court, the Ninth Circuit stated that any delays by the state in prosecuting were in good faith.110 In addition, the Ninth Circuit stated that while it disapproved of the same prosecutor bringing both state and federal claims for the same conduct (as had occurred in this case), “the district court did not clearly err in finding that no collusion occurred here.”111 As a result, the Ninth Circuit agreed that no violation of the Speedy Trial Act occurred.112

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104 Id.
105 Id.
106 392 F. App’x 595, 596 (9th Cir. 2010).
107 Id.
108 Id. at 597.
109 Id.
110 Id. (meaning that the prosecution did not intentionally delay the trial because any delay was done for the benefit of the trial).
111 Id.
112 Id.
E. The Seventh Circuit’s Application of the Sixth Amendment and the Speedy Trial Act

The Seventh Circuit has decided multiple cases that required an analysis of the Speedy Trial Act. Many of the cases required review to determine if the district court correctly decided to dismiss with or without prejudice. The Supreme Court in Taylor stated that the district court should “clearly articulate” the reasons for its decision because a district court’s judgment “should not be lightly disturbed.” As a result, the Seventh Circuit has the challenging task of balancing the necessary factors to determine if the district court abused its discretion, as well as determining if a violation of the Speedy Trial Act warrants dismissal with or without prejudice.

In the cases discussed below, the Seventh Circuit determined that only dismissal without prejudice should be granted despite the fact that there were lengthy delays and laziness on the part of the prosecution. However, if lengthy delays and laziness on the part of the prosecution does not warrant dismissal with prejudice, what does? The following section of this Note begins with an analysis of the Seventh Circuit’s interpretation, in five different cases, of the Supreme Court’s analysis. It will then discuss the similarities and differences among the Seventh Circuit, the other circuits, and the Supreme Court in their application of the Sixth Amendment and the Speedy Trial Act.

113 See, e.g., United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010); United States v. Killingsworth, 507 F.3d 1087, 1088 (7th Cir. 2007); United States v. Arango, 879 F.2d 1501, 1507 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509, 511 (7th Cir. 1988).
114 Id.
116 See, e.g., Sykes, 614 F.3d at 305–06; Hills, 618 F.3d at 631–32; Killingsworth, 507 F.3d at 1087; Arango, 879 F.2d at 1501; Fountain, 840 F.2d at 509.
1. United States v. Killingsworth

In United States v. Killingsworth, the defendant was charged with possession of cocaine with intent to distribute, as well as possession of a firearm used in furtherance of a drug-trafficking crime.\(^{117}\) The district court dismissed the indictment with prejudice for violation of the Speedy Trial Act.\(^{118}\) The Seventh Circuit reversed and remanded.\(^{119}\)

Killingsworth was indicted on two counts and pled not guilty.\(^{120}\) However, arraignment on the indictment was never scheduled, and Killingsworth did not receive a trial within the time required by the Speedy Trial Act.\(^{121}\) Just three days after the Speedy Trial Act deadline had passed, Killingsworth filed a motion to dismiss the indictment with prejudice.\(^{122}\) During the hearing on the motion to dismiss, the government put forth two arguments.\(^{123}\) The first was that the government had never been required to request an arraignment in a criminal case where an individual had already been indicted.\(^{124}\) The second was that the government had contacted the magistrate judge’s chambers at least twice to inquire about the arraignment but had not received a reply.\(^{125}\) The district court stated that the offense was a serious one, but that it was impossible to determine if the court or government was at fault for the violation.\(^{126}\) The district court

\(^{117}\) 507 F.3d at 1087.
\(^{118}\) Id.
\(^{119}\) Id.
\(^{120}\) Id. at 1089.
\(^{121}\) Id.
\(^{122}\) Id.
\(^{123}\) Id.
\(^{124}\) Id.
\(^{125}\) Id.
\(^{126}\) Id.
ultimately decided to dismiss with prejudice because Killingsworth himself was not responsible for the delay.\textsuperscript{127}

In reviewing the decision, the Seventh Circuit stated that the district court undervalued how serious the crime was.\textsuperscript{128} It also stated that the district court “overemphasized Killingsworth’s conduct and gave insufficient weight to the fact that the court itself may have been at fault for failing to move the case along.”\textsuperscript{129} The court noted the fact that the delay was not intentional on the part of the government and that Killingsworth himself stated that he suffered no prejudice.\textsuperscript{130} The court determined that these two factors—absence of bad faith by the government and lack of prejudice to the defendant—leaned in favor of dismissal without prejudice.\textsuperscript{131} The Seventh Circuit stated that “the purpose of the Act would not be served by requiring the court to impose the maximum sanction for a minimum violation” because it was a serious offense, the delay was minor, and there was no bad faith shown.\textsuperscript{132}

The district court had also examined the fact that Killingsworth was cooperating and just sitting in jail during this period.\textsuperscript{133} The Seventh Circuit stated that whether a defendant was detained pending trial was not an explicit factor to consider under the Speedy Trial Act and was not its primary focus.\textsuperscript{134} As a result, the Seventh Circuit determined that the district court abused its discretion by dismissing the indictment with prejudice.\textsuperscript{135} The Seventh Circuit then reversed the decision of the district court and dismissed the indictment without prejudice, stating that “insufficient weight was given to the seriousness

\textsuperscript{127} Id. at 1090.
\textsuperscript{128} Id.
\textsuperscript{129} Id.
\textsuperscript{130} Id.
\textsuperscript{131} Id. at 1091.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
\textsuperscript{134} Id.
\textsuperscript{135} Id. at 1087.
of the offense, the lack of bad faith on the part of the government, and the absence of prejudice to Killingsworth.”

2. United States v. Arango

In United States v. Arango, the defendant was charged with a narcotics offense. The district court denied Arango’s motion to dismiss the indictment with prejudice. The Seventh Circuit found no abuse of discretion and affirmed the district court’s decision.

The district court dismissed the indictment against Arango “based upon a seventy-two to ninety-three day . . . violation of the Speedy Trial Act.” In determining whether to dismiss without prejudice, the district court analyzed the same three factors that were used in Killingsworth. On appeal, Arango argued that the district court abused its discretion by dismissing without prejudice because of the “substantial and prejudicial length of the delay.”

In its review, the Seventh Circuit examined the district court’s analysis of the three factors. It noted that possession of large amounts of cocaine is a serious offense. In addition, the court stated that a three-month delay was not “per se ‘substantial’ enough to justify dismissing the charges with prejudice.” Arango also failed to show any actual prejudice or how the delay impaired his rights. The Seventh Circuit focused on the fact that the delay was the result of the

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136 Id.
137 879 F.2d 1501 (7th Cir. 1989).
138 Id. at 1502.
139 Id. at 1509.
140 Id. at 1507.
141 Id. at 1507–08 ((1) whether it was a serious offense, (2) whether the delay was minor, and (3) whether there was bad faith).
142 Id. at 1508.
143 Id.
144 Id.
145 Id.
146 Id.
court’s misunderstanding of the status of motions, some of which were filed by the defendant.\textsuperscript{147} The Seventh Circuit stated that because the delay was through no fault of the government, “dismissing the indictment with prejudice would not serve any purpose of encouraging the government to avoid the neglect or bad faith in the prosecution of its cases.”\textsuperscript{148} As a result, the Seventh Circuit affirmed the district court’s decision to dismiss without prejudice.\textsuperscript{149}

3. United States v. Fountain

In \textit{United States v. Fountain}, the defendant was charged with first-degree murder and conspiracy to commit murder.\textsuperscript{150} The district court dismissed the murder indictment without prejudice.\textsuperscript{151} The Seventh Circuit affirmed the district court’s decision.\textsuperscript{152} Fountain’s trial was put on hold in an effort to get a witness to the murder to testify at his trial.\textsuperscript{153} The court re-arraigned Fountain, and eight days later, he invoked his rights under the Speedy Trial Act.\textsuperscript{154} The district court dismissed the indictment without prejudice, and a grand jury re-indicted Fountain the same day.\textsuperscript{155} Fountain argued that the Speedy Trial Act only postponed his trial.\textsuperscript{156} The Seventh Circuit partially agreed with him and stated that more time elapsed than if he would have “accepted the violation of the Speedy Trial Act stoically.”\textsuperscript{157} Instead, since Fountain’s motion to dismiss took the case off the trial calendar and caused a subsequent dismissal and

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\textsuperscript{147} Id. \\
\textsuperscript{148} Id. \\
\textsuperscript{149} Id. at 1509. \\
\textsuperscript{150} 840 F.2d 509, 511 (7th Cir. 1988). \\
\textsuperscript{151} Id. \\
\textsuperscript{152} Id. at 523. \\
\textsuperscript{153} Id. at 511. \\
\textsuperscript{154} Id. \\
\textsuperscript{155} Id. \\
\textsuperscript{156} Id. \\
\textsuperscript{157} Id.
\end{flushright}

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reindictment, the trial occurred 209 days after the mandate was issued.\textsuperscript{158}

The Seventh Circuit conceded that a violation of the Speedy Trial Act occurred and stated that district courts have broad discretion in deciding to dismiss with or without prejudice.\textsuperscript{159} The Seventh Circuit distinguished its approach from that of the other circuits.\textsuperscript{160} The Seventh Circuit noted that its precedent required consideration of all the “statutory desiderata” in deciding when to dismiss with or without prejudice, while other circuits, such as the Ninth, have held that a “‘lackadaisical’ attitude by prosecutors requires dismissal with prejudice.”\textsuperscript{161} In this case, the Seventh Circuit admitted that the prosecution was careless, but stated that other statutory factors had to be considered as well.\textsuperscript{162}

The Seventh Circuit “observed that first-degree murder is a grave offense,” and that it is important to “deter murder and punish murderers” because “murder was a more serious offense than the violation of the Speedy Trial Act.”\textsuperscript{163} The court also noted that a “defendant who waits passively while the time runs has less claim to dismissal with prejudice than does a defendant who demands, but does not receive, prompt attention.”\textsuperscript{164} In addition, the court observed that the delay in this case did not lead to the detriment of Fountain.\textsuperscript{165} In light of all of these factors, the Seventh Circuit affirmed, stating that the district court did not abuse its discretion by dismissing the indictment without prejudice.\textsuperscript{166}

\textsuperscript{158} \textit{Id.}
\textsuperscript{159} \textit{Id.} at 512 (“[R]eview on appeal is deferential.”).
\textsuperscript{160} \textit{Id.}
\textsuperscript{161} \textit{Id.}
\textsuperscript{162} \textit{Id.}
\textsuperscript{163} \textit{Id.}
\textsuperscript{164} \textit{Id.} at 513.
\textsuperscript{165} \textit{Id.}
\textsuperscript{166} \textit{Id.}
However, after stating its holding, the Seventh Circuit went on to express its distaste at how the case proceeded.\textsuperscript{167} The court focused on the fact that Fountain did not have counsel for a significant period of time and that counsel may have prevented some of the problems that Fountain encountered.\textsuperscript{168} In addition, the court acknowledged that there was no excuse for the prosecution’s neglect of the case.\textsuperscript{169} The Seventh Circuit also stated that if the same problem were to recur, it would “not be so easy to chalk it up to inadvertence.”\textsuperscript{170}

4. \textit{United States v. Hills}

In \textit{United States v. Hills}, Tylman, Hills, and Winters were indicted with “conspiracy to impede the IRS” and for filing false income tax returns.\textsuperscript{171} They were tried in a joint trial in the district court.\textsuperscript{172} The district court found Tylman and Hills guilty of conspiracy, and Hills and Winters guilty of filing false tax returns.\textsuperscript{173} The defendants claimed that the district court made various errors, that their statutory and constitutional rights to a speedy trial were violated, and that a search had violated their Fourth Amendment rights.\textsuperscript{174} The Seventh Circuit affirmed Tylman’s and Winters’s convictions, vacated Hills’s convictions, and remanded.\textsuperscript{175}

The Seventh Circuit first addressed the defendants’ claim that their statutory right to a speedy trial had been violated.\textsuperscript{176} The defendants argued that their right was violated because multiple continuances delayed the trial beyond the seventy-day period.

\begin{footnotes}
\item\textsuperscript{167} \textit{Id.}
\item\textsuperscript{168} \textit{Id.}
\item\textsuperscript{169} \textit{Id.}
\item\textsuperscript{170} \textit{Id.}
\item\textsuperscript{171} 618 F.3d 619, 624 (7th Cir. 2010).
\item\textsuperscript{172} \textit{Id.}
\item\textsuperscript{173} \textit{Id.}
\item\textsuperscript{174} \textit{Id.} at 625.
\item\textsuperscript{175} \textit{Id.} at 624.
\item\textsuperscript{176} \textit{Id.} at 625.
\end{footnotes}
prescribed by the Speedy Trial Act. The Seventh Circuit determined that the proper level of review was for abuse of discretion and that a showing of actual prejudice was required. In reviewing the district court’s analysis, the Seventh Circuit examined the excludable days exception and stated that “no showing of actual delay in trial is required.” The court stated that it would follow its established precedent, which allowed certain classifications of delay, such as pretrial motions, to be automatically excludable. The Seventh Circuit determined that the district court’s automatic exclusion, based on ends-of-justice grounds, was proper in this case.

In addition, the Seventh Circuit stated that when a court excludes time based on ends-of-justice grounds, it must explain its reasoning. The Seventh Circuit noted that congestion of a court’s trial calendar is not a reason for exclusion on ends-of-justice grounds. The court established the following as factors to analyze when determining whether exclusion based on ends-of-justice grounds is proper:

[W]hether failure to grant a continuance would result in a miscarriage of justice, whether the case is so complex that adequate trial preparation is impossible under the Speedy Trial Act’s time limits, and whether the failure to continue would deny the defendant reasonable time to obtain counsel, or would deny counsel the time necessary for effective preparation.

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178 Hills, 618 F.3d at 626.
179 Id.
180 Id. at 626–27.
181 Id. (allowing automatic exclusion for pre-trial motions, continuances, and on ends-of-justice grounds).
182 Id. at 628–29.
183 Id.
184 Id. (citing Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(C) (2006)).
The Seventh Circuit examined the district court’s reasoning for granting the continuance, which included the complexity of the case and the fact that the defendants would not be greatly prejudiced by a delay since they were not in custody. The Seventh Circuit determined that the district court’s reasoning was sufficient to meet the requirements of § 3161 of the Act. As a result, the time was properly excluded and the court determined that the defendants’ Speedy Trial Act claim failed.

The defendants also argued that they had a personal right to a speedy trial and that Tylman’s counsel could not override their decision to exercise that right by filing a motion for a continuance. The court stated that this argument was without merit because “trial tactics have always been within counsel’s province.” Counsel does not have to obtain a defendant’s consent prior to making a tactical decision, such as the decision to seek a continuance.

The Seventh Circuit also considered the defendants’ constitutional right to a speedy trial under the Sixth Amendment. The court stated that it would review the district court’s legal conclusions de novo and its factual findings for clear error.

The factors analyzed to determine a Sixth Amendment speedy trial violation include “whether delay before trial was uncommonly long[,] whether the government or the criminal defendant is more to blame for that delay[,] whether, in due course, the defendant asserted his right to a speedy trial[,] and whether he suffered prejudice as the delay’s result.” The court also stated that a delay of one year is

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185 Id. at 628–29.
186 Id.
187 Id. at 629–30.
188 Id.
189 Id. at 626–28.
190 Id.
191 Id.
192 Id.
193 Id.
presumptively prejudicial. While the Speedy Trial Act requires defendants to be tried within seventy days, this is not a requirement in the constitutional analysis. Instead, the constitutional analysis focuses more on a presumption of prejudice and if the time that passed was reasonable. The court determined that there was a presumption of prejudice in this case because there was a two-year delay. However, the court determined that the delay was mostly attributable to the defendants for the following reasons: the continuance was to allow counsel more time to prepare, the delay occurred because of the defendants’ difficulty securing counsel, and the defendants caused a delay when they incorrectly believed the government was withholding information. The court also determined that the defendants failed to show that they suffered any prejudice by the delay. A defendant must demonstrate prejudice with specificity, and in this case, the defendants did not show that their defenses were prejudiced. In addition, the defendants did not show evidence of anxiety or that they were subjected to pretrial incarceration. As a result, the defendants’ constitutional right to a speedy trial was not violated.

194 Id. at 629–30.
196 Hills, 618 F.3d at 626–28.
197 Id. at 629–30 (where there was a presumption of prejudice because the trial occurred two years after the indictment).
198 Id. at 630–32.
199 Id. at 632–33.
200 Id. at 632 (only two witnesses stated that passage of time affected their memories).
201 Id. at 632–33.
202 Id.
5. United States v. Sykes

In United States v. Sykes, the defendant was convicted on four counts of bank robbery in the district court.\textsuperscript{203} Sykes then filed a motion to dismiss the indictment for violation of the Speedy Trial Act.\textsuperscript{204} The district court dismissed the charges without prejudice and ordered Sykes released.\textsuperscript{205} The Seventh Circuit affirmed the district court’s decision.\textsuperscript{206}

The same day that the district court dismissed the charges without prejudice, a grand jury indicted Sykes for the same four bank robberies.\textsuperscript{207} Sykes disrupted the proceedings, and the judge entered a plea of not guilty on his behalf.\textsuperscript{208} Four days before the trial, Sykes moved to dismiss the charges based on his right to a speedy trial (and his Fifth Amendment right to meaningful access to the courts).\textsuperscript{209}

The Seventh Circuit stated that “[t]he Speedy Trial Act generally requires a federal criminal trial to begin within seventy days from the date the defendant is charged or makes his initial appearance.”\textsuperscript{210} However, there are some exclusions to the seventy-day rule that can be found in § 3161(h) of the Speedy Trial Act.\textsuperscript{211} These exclusions allow time to be automatically excluded when determining if the time limit provided by the Act has been violated.\textsuperscript{212} “After [seventy] nonexcludable days have passed, the Act requires the district court to

\textsuperscript{203} 614 F.3d 303, 305–06 (7th Cir. 2010).
\textsuperscript{204} Id. at 307.
\textsuperscript{205} Id.
\textsuperscript{206} Id. at 305–06.
\textsuperscript{207} Id. at 307.
\textsuperscript{208} Id. (“[H]e again made some bizarre arguments and otherwise disrupted the proceedings. The judge held him in contempt and entered not guilty pleas on his behalf.”).
\textsuperscript{209} Id.
\textsuperscript{210} Id. at 309–10 (citing Speedy Trial Act, 18 U.S.C. § 3161(c)(1) (2006)).
\textsuperscript{211} 18 U.S.C. § 3161(h) (2006); Sykes, 614 F.3d at 309–10.
\textsuperscript{212} Sykes, 614 F.3d at 309–10.
dismiss the charges ‘on motion of the defendant.’”\textsuperscript{213} In this case, Sykes made such a motion, and the district court dismissed the charges.\textsuperscript{214}

The Seventh Circuit reviewed the district court’s decision for abuse of discretion, “but undertook more substantive scrutiny to ensure that the judgment [was] supported in terms of the factors identified in the statute.”\textsuperscript{215} The Seventh Circuit reviewed the district court’s explanation and analysis of the facts and determined that there was not an abuse of discretion.\textsuperscript{216} The district court correctly concluded that the bank robbery charges were “quite serious” and that “a dismissal with prejudice would result in ‘a gross miscarriage of justice’ given the gravity of the offenses.”\textsuperscript{217} The district court stated, and the Seventh Circuit agreed, that the delay was “‘unconscious’ on the part of the government and the court” and instead was a result of the actions of Sykes.\textsuperscript{218} Sykes also waited to claim the Speedy Trial Act violation until his motion to dismiss.\textsuperscript{219} In addition, the Seventh Circuit agreed with the district court’s statement that any claim of prejudice would be weak because Sykes was “‘largely responsible’ for most of the continuances.”\textsuperscript{220} The Seventh Circuit stated that because “Sykes did not bring the delay to the court’s attention as the number of nonexcludable days accumulated,” it could justify dismissal without prejudice.\textsuperscript{221} The court noted that “a defendant who waits passively while the time runs has less claim to dismissal with prejudice than does a defendant who demands, but does not receive, prompt

\textsuperscript{213} Id. (citing 18 U.S.C. § 3162(a)(2)).
\textsuperscript{214} Id.
\textsuperscript{215} Id. (citing United States v. Taylor, 487 U.S. 326, 337 (1988)).
\textsuperscript{216} Id. at 310.
\textsuperscript{217} Id. at 309–10.
\textsuperscript{218} Id.
\textsuperscript{219} Id.
\textsuperscript{220} Id.
\textsuperscript{221} Id. at 310.
attention.”\textsuperscript{222} However, there is not a “presumption in favor of dismissal without prejudice for violations of the Speedy Trial Act.”\textsuperscript{223}

The Seventh Circuit also focused on the fact that Sykes had repeatedly made frivolous arguments.\textsuperscript{224} The court stated that while the delay was lengthy (224 nonexcludable days), it was only one factor to consider.\textsuperscript{225} A delay of that length does not require dismissal without prejudice on its own.\textsuperscript{226} As a result, the Seventh Circuit agreed with the district court’s analysis of the case and affirmed its decision to dismiss without prejudice.\textsuperscript{227}

II. A COMPARISON OF THE SEVENTH CIRCUIT’S APPROACH WITH THE APPROACH OF OTHER CIRCUITS AND THE SUPREME COURT

The Seventh Circuit’s approach when analyzing a defendant’s constitutional and statutory right to a speedy trial is generally consistent with the approach of other circuits and the Supreme Court. In addition, the Seventh Circuit’s analysis of a court’s discretion to dismiss with or without prejudice has been in line with that of the other courts.

\textbf{A. The Constitutional Right}

The Supreme Court in \textit{Barker} analyzed four major factors in determining if the defendant’s constitutional right to a speedy trial had been violated.\textsuperscript{228} It looked at (1) the length of the delay, (2) the reason for the delay, (3) whether the defendant asserted his right, and (4)

\begin{itemize}
\item \textsuperscript{222} Id. (citing United States v. Fountain, 840 F.2d 509, 513 (7th Cir. 1988)) (showing a consistent consideration of a defendant’s assertion of his right in the Seventh Circuit).
\item \textsuperscript{223} Id.
\item \textsuperscript{224} Id.
\item \textsuperscript{225} Id.
\item \textsuperscript{226} Id.
\item \textsuperscript{227} Id. at 311–12.
\item \textsuperscript{228} Barker v. Wingo, 407 U.S. 514, 530 (1972).
\end{itemize}
whether the defendant suffered prejudice.\textsuperscript{229} The Supreme Court also noted the detrimental effect that imprisonment could have on the defendant and the possibility that the defendant would use delay as a tactic.\textsuperscript{230}

The Seventh Circuit in \textit{Hills} evaluated all of the factors laid out in \textit{Barker}.\textsuperscript{231} In addition to those factors, the court stated that a delay of one year was presumptively prejudicial.\textsuperscript{232} The court put emphasis on who was at fault for the delay and the need for the defendant to demonstrate prejudice with specificity.\textsuperscript{233}

\textit{B. The Statutory Right}

The Speedy Trial Act lists multiple periods of delay that are excluded when computing the time within which the trial must commence.\textsuperscript{234} These periods of delay are often automatically excludable and include pre-trial motions, continuances, and exclusions based on ends-of-justice grounds.\textsuperscript{235} The Fifth Circuit in \textit{Gonzalez-Rodriguez} and the Eighth Circuit in \textit{Orozco-Osbaldo} held that pretrial motions are automatically excluded under § 3161(h)(1)(D) of the Act.\textsuperscript{236} According to the Fifth and Eighth Circuits, a violation of the Speedy Trial Act does not occur as long as there is prompt disposition of the pretrial motion.\textsuperscript{237}

\textsuperscript{229} \textit{Id.}
\textsuperscript{230} \textit{Id.} at 520–21.
\textsuperscript{231} United States v. Hills, 618 F.3d 619, 627 (7th Cir. 2010).
\textsuperscript{232} \textit{Id.} at 629–30.
\textsuperscript{233} \textit{Id.} at 632.
\textsuperscript{235} \textit{Hills}, 618 F.3d at 626–27.
\textsuperscript{236} United States v. Gonzalez-Rodriguez, 621 F.3d 354, 369 (5th Cir. 2010); United States v. Orozco-Osbaldo, 615 F.3d 955, 957–58 (8th Cir. 2010).
\textsuperscript{237} \textit{Gonzalez-Rodriguez}, 621 F.3d at 369; \textit{Orozco-Osbaldo}, 615 F.3d at 956–57.
The Supreme Court in *Taylor* adopted the same factors used for the constitutional analysis that were provided in *Barker*.238 While the Seventh Circuit in *Hills* considered one common factor with *Taylor*—whether the defendant suffered prejudice—its view fell more in line with that of the Fifth and Eighth Circuits.

The Seventh Circuit in *Hills* focused on a need to show actual prejudice, but stated that there was no need to show actual delay.239 The court also noted some situations where time was automatically excludable.240 The Seventh Circuit then established factors to determine whether it was proper to exclude days based on ends-of-justice grounds.241 These factors led to the exclusion of additional situations, including where (1) there would be a miscarriage of justice, (2) the complexity of the case required it, and (3) the case required more time (for example, to allow for discovery or to appoint counsel).242 However, the court left these exclusions open to interpretation by simply stating that a court must explain its reasoning when excluding time based on ends-of-justice grounds.243

**C. Dismissal With or Without Prejudice**

The Speedy Trial Act provides the following factors for courts to consider when deciding to dismiss with or without prejudice: “the seriousness of the offense[,] the facts and circumstances of the case which led to the dismissal[,] and the impact of a reprosecution on the administration of [the Act] and on the administration of justice.”244 However, instead of relying solely on the factors required by the Act, the courts have developed their own version of factors to analyze.

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239 *Hills*, 618 F.3d at 626.
240 *Id.* at 626–27 (e.g., pretrial motions).
241 *Id.* at 628–29 (citing Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(C) (2006)).
242 *Id.*
243 *Id.*
244 18 U.S.C. § 3162(a)(2).
The Supreme Court in *Taylor* focused on the seriousness of the crime, the lackadaisical conduct of the government, and the defendant’s failure to appear for trial when determining whether to dismiss with or without prejudice.\(^{245}\) The Court also required a finding of prejudice to even consider dismissal with prejudice because reprosecution is favored if there is no finding of prejudice.\(^{246}\)

Like the Supreme Court, the Seventh Circuit in *Killingsworth* focused on the seriousness of the crime, whether the defendant suffered prejudice, if a detriment to the defendant occurred, and if the delay was intentional.\(^{247}\) The Seventh Circuit in *Arango* focused on similar factors, but also considered who was at fault for the delay to be an important factor.\(^{248}\) The Seventh Circuit in *Fountain* took its own approach and focused primarily on whether the government was careless, if the defendant had asserted his right, and if the defendant suffered any detriment.\(^{249}\)

The Seventh Circuit further expanded on these factors in *Sykes*. The court in *Sykes* focused on the seriousness of the crime, the facts and circumstances of the case, whether the defendant suffered prejudice, whether the delay was a conscious effort on the part of the defendant or the government, whether the defendant asserted his right, and the length of the delay.\(^{250}\) This approach seems to mesh together the approach required by the Speedy Trial Act with that of the Supreme Court and previous cases in the Seventh Circuit. However, none of the cases discussed in this Note considered the impact of reprosecution,\(^{251}\) as is required by the Speedy Trial Act.\(^{252}\)


\(^{246}\) *Id.* at 341.

\(^{247}\) United States v. Killingsworth, 507 F.3d 1087, 1090–91 (7th Cir. 2007).

\(^{248}\) United States v. Arango, 879 F.2d 1501, 1508 (7th Cir. 1989) (stating that since the delay was the fault of the court, there could be no deterrent effect from punishing the prosecution that was not at fault).

\(^{249}\) United States v. Fountain, 840 F.2d 509, 512–13 (7th Cir. 1988).

\(^{250}\) United States v. Sykes, 614 F.3d 303, 309–10 (7th Cir. 2010).

\(^{251}\) *See supra* Parts I.C, I.D, I.E.

\(^{252}\) *See Speedy Trial Act, 18 U.S.C. § 3162(a)(2) (2006).*
III. The Reality of the Right’s Application

The Seventh Circuit focuses on the same factors as the Supreme Court when determining whether a violation of one’s constitutional right to a speedy trial occurred. However, the Seventh Circuit ignores the approach taken by the Supreme Court in *Taylor* when it determines if a violation of the Speedy Trial Act occurred. Instead, the Seventh Circuit focuses on the excludable days exception. The Seventh Circuit seems to espouse the idea that considering multiple factors can help to protect a defendant’s rights more thoroughly. Its application of these factors to determine a constitutional and a statutory violation is usually thorough.

On the other hand, the Seventh Circuit’s approach in determining whether to dismiss with or without prejudice began as almost identical to the Supreme Court’s approach and has expanded with time. The Seventh Circuit has expanded on the factors laid out in the Speedy Trial Act, especially “the facts and circumstances of the case which led to the dismissal.” The Supreme Court and earlier Seventh Circuit decisions focused on the seriousness of the crime, whether the defendant was prejudiced, and if the delay was intentional (or a result of laziness by the prosecution). However, the Seventh Circuit

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255 See *Hills*, 618 F.3d at 623–24.
256 Id. at 626–29.
257 See generally United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); *Hills*, 618 F.3d at 623–24; United States v. Killingsworth, 507 F.3d 1087 (7th Cir. 2007); United States v. Arango, 879 F.2d 1501 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509 (7th Cir. 1988).
259 See *Taylor*, 487 U.S. at 326.
260 See *Hills*, 618 F.3d at 619; *Killingsworth*, 507 F.3d at 1087; *Arango*, 879 F.2d at 1501; *Fountain*, 840 F.2d at 509.
261 See *Taylor*, 487 U.S. at 338–41; *Killingsworth*, 507 F.3d at 1090–91; *Arango*, 879 F.2d at 1508.
expanded this approach in Sykes by also examining the facts and circumstances of the case, who was at fault for the delay, and the length of the delay.262 These additional factors provide more insight, but lean heavily toward dismissal without prejudice. With regard to determining whether to dismiss with or without prejudice, the Seventh Circuit may have the more thorough approach (as compared to the Supreme Court and other circuits).

IV. IS THE RIGHT TO A SPEEDY TRIAL PROTECTED IN PRACTICE?

While the Seventh Circuit is thorough in its analysis and application of multiple factors to determine if a violation of the right to a speedy trial has occurred, it may not always come to the correct conclusion. The Seventh Circuit is consistent in its analysis of all of the necessary factors used to determine if a violation has occurred; however, it applies these factors very liberally.263 The court seems to imply that a grave violation would have to occur for the defendant to receive a meaningful remedy.264 The court has done this by liberally applying the excludable days exception in § 3162 of the Speedy Trial Act.265 This has been done to the point where it encompasses almost every delay caused by either party.266

The Seventh Circuit in Hills “concluded that Congress intended certain classifications of delay to be excludable automatically.”267 This automatic exclusion includes time needed to decide pretrial motions, the granting of continuances, and exclusions based on ends-of-justice grounds.268 As a result, the Seventh Circuit has failed to analyze the

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262 United States v. Sykes, 614 F.3d 303, 309–10 (7th Cir. 2010).
263 See, e.g., Sykes, 614 F.3d at 305–06; Hills, 618 F.3d at 631–32; Killingsworth, 507 F.3d at 1087; Arango, 879 F.2d at 1501; Fountain, 840 F.2d at 509.
264 See generally Sykes, 614 F.3d at 305–06; Killingsworth, 507 F.3d at 1087; Arango, 879 F.2d at 1501; Fountain, 840 F.2d at 509.
265 See id.
266 See id.
267 Hills, 618 F.3d at 626.
268 Id.
necessity or reasonableness of each exclusion. Instead, the Seventh Circuit has simply automatically excluded the classifications of delay provided in the Speedy Trial Act and has left the exclusions on ends-of-justice grounds open for interpretation.\(^{269}\) This has made it difficult for the defendant to claim a violation because most classifications of delay are easily excludable under the Speedy Trial Act.

This approach by the Seventh Circuit does not promote the purpose of the Sixth Amendment, which was “(1) to prevent oppressive pretrial incarceration[,] (2) to minimize anxiety and concern of the accused[,] and (3) to limit the possibility that defense will be impaired.”\(^{270}\) The purpose of the right is frustrated when lengthy delays are disguised under excludable exceptions. In addition, the Seventh Circuit has completely ignored one purpose of the Sixth Amendment—prevention of oppressive pre-trial incarceration.\(^{271}\) The Seventh Circuit consistently has been only concerned with delay being used as a tactic by the defendant, and it has consciously ignored lengthy pre-trial incarceration.\(^{272}\) This is a result of the exclusions of the Speedy Trial Act not being applied to meet the purposes of the Sixth Amendment.

Even if the days are not excludable, the defendant’s right is often not protected. In cases where the court admits that a violation of the right to a speedy trial has occurred, it often decides that the defendant still did not suffer prejudice.\(^{273}\) The court requires the level of prejudice to be extremely high before it will consider the violation to be prejudicial.

This means that even if the Seventh Circuit determines that a violation that warrants dismissal did occur, the defendant is still on an

\(^{269}\) See Speedy Trial Act, 18 U.S.C. §§ 3161(h)(1)(A)–(H) (2006) (listing the excludable days); Hills, 618 F.3d at 626.

\(^{270}\) Hills, 618 F.3d at 631–32 (internal quotation marks omitted).

\(^{271}\) See id.

\(^{272}\) See id. at 628–29, 632–33; United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007) (stating that incarceration is not a focus).

\(^{273}\) See generally United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); Killingsworth, 507 F.3d at 1087; United States v. Arango, 879 F.2d 1501, 1501 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509, 509 (7th Cir. 1988)
uphill climb. Without a finding of prejudice to the defense, the court is unlikely to dismiss with prejudice. The Seventh Circuit has repeatedly dismissed these types of claims without prejudice, even when the delays have been lengthy and at the fault of the prosecution. When the court dismisses without prejudice, the defendant does not receive a meaningful remedy. While some cases, and even the Speedy Trial Act, consider dismissal without prejudice a sanction, it is unlikely that a defendant would consider this a meaningful remedy. The defendant will often be reprosecuted and in the end has only delayed the inevitable. This does not provide a remedy or a proper sanction for the violation.

Furthermore, the Seventh Circuit, along with the Supreme Court and other circuits, seem to gloss over who is to blame for the delay, making this factor less important than it was meant to be. It makes sense to hold the defendant accountable for any delays he caused; however, other delays not caused by the defendant should be

274 See Hills, 618 F.3d at 628–33; Killingsworth, 507 F.3d at 1090; Arango, 879 F.2d at 1508.
275 See Fountain, 840 F.2d at 512–13.
276 Speedy Trial Act, 18 U.S.C. § 3162(a)(2); Killingsworth, 507 F.3d at 1091 (considering dismissal without prejudice as a sanction); United States v. Lauderdale, No. 06-cr-30142-MJR, 2007 WL 1100617, at *5 (S.D. Ill. Apr. 11, 2007) (stating that “dismissal without prejudice is ‘not a completely negligible sanction, viewed from a deterrent standpoint, since the grand jury may refuse to reindict and since even if it does the defendant may be acquitted.’”).
277 See Fountain, 840 F.2d at 512–13.
278 See United States v. Taylor, 487 U.S. 326, 328, 343 (1988) (where slow processing by the court and government occurred and there was a lackadaisical attitude on the part of the government); Barker v. Wingo, 407 U.S. 514, 516–17 (1972) (where there were more than sixteen continuances granted); United States v. Orozco-Osbaldo, 615 F.3d 955, 957–58 (8th Cir. 2010) (allowing all days needed to decide pre-trial motions to be excluded); United States v. Boyd, 392 F. App’x 595, 597 (9th Cir. 2010) (allowing delay because it was caused in good faith by the state); Killingsworth, 507 F.3d at 1089–90 (stating that it is impossible to determine if the court or government was at fault for the delay and that the delay was unintentional); Fountain, 840 F.2d at 513 (expressing distaste at how the case proceeded because of the prosecution’s neglect of the case).
attributable to the prosecution. It should not matter if the court or the prosecutor was responsible for the unreasonable delay. No matter which is at fault (as long as it is not the defendant), the defendant’s right has been unjustly violated. If the defendant is not responsible for the delay, it makes sense to hold the prosecution liable for that delay and to recognize a violation of the defendant’s right. The defendant deserves an adequate remedy when he has suffered a loss of his rights, and the prosecution should be deterred from allowing any future violations.

In addition, the fact that the delay was unintentional should not be considered. The notion that the prosecution did not intentionally violate the defendant’s rights should have no bearing on the court’s decision. It matters that the defendant’s rights were violated, not that the prosecution did not intentionally let it happen. Laziness on the part of the prosecution should favor the defendant and lean toward a finding that a violation of the defendant’s rights occurred.

While the Seventh Circuit often claims policy reasons for its approach of dismissing without prejudice, the policy reasons behind the Speedy Trial Act and Sixth Amendment do not support the court’s approach. It is true that one of the Seventh Circuit’s policy considerations is to protect the public and to prevent the impairment of the deterrent effect of punishment, but other policy considerations

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279 See Barker, 407 U.S. at 529–30 (stating that it is proper to put the burden of ensuring a speedy trial on the prosecution).

280 See United States v. Arango, 879 F.2d 1501, 1508 (7th Cir. 1989) (where the court unreasonably differentiated between the court and prosecution being at fault).

281 See generally United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); Killingsworth, 507 F.3d at 1087; Arango, 879 F.2d at 1501; Fountain, 840 F.2d at 509.

282 See Fountain, 840 F.2d at 512–13 (“We therefore inquire not whether the prosecution was careless (it was), but whether the district judge made a reasoned decision in light of the statutory criteria.” Even though the prosecution was careless, “the district court was entitled to dismiss the indictment without prejudice.”).

283 Anne E. Melley, Annotation, Construction and Application of the Speedy Trial Act, 46 A.L.R. FED. 2D 129 § 3 (2010).

284 Id.
deal with the denial of the defendant’s liberty.285 Another function of the Speedy Trial Act is to hold the prosecution accountable for its actions and to ensure that the government does not ignore a case or leave a defendant in prison awaiting trial for an unreasonable amount of time.286 None of these policy reasons are met when the defendant is not tried in an expeditious manner or when the defendant is not provided a remedy. The prosecution receives no punishment for violating the defendant’s rights if it can simply bring the case against the defendant again.287 Justice is not served, and the defendant loses his liberty. It is important for the court to balance the threat that the defendant poses to society against a protection of the defendant’s rights. The Seventh Circuit has not struck this balance because it seems to require an extraordinary violation to even consider dismissal with prejudice.288

The Seventh Circuit has stated additional public policy reasons for why it rarely dismisses with prejudice, such as the theory that it is better to deny a criminal his rights than to let him walk free.289 While it may be true that society would be safer and that many citizens would probably prefer that the defendant not walk free, the court has missed the point. While public policy should, and does, shape our laws and the way they are applied, our Founding Fathers established certain

285 Barker v. Wingo, 407 U.S. 514, 519 (1972); see United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010) (internal quotation marks omitted) (listing the purposes of the Sixth Amendment: “(1) to prevent oppressive pretrial incarceration[,] (2) to minimize anxiety and concern of the accused[,] and (3) to limit the possibility that defense will be impaired.”).
286 See id.
287 See Speedy Trial Act, 18 U.S.C. § 3162(a)(2) (2006) (including dismissal with or without prejudice as a sanction); United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007) (“Courts view dismissal without prejudice as a sanction.”).
288 See generally United States v. Sykes, 614 F.3d 303 (7th Cir. 2010); Killingsworth, 507 F.3d at 1087; United States v. Arango, 879 F.2d 1501 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509 (7th Cir. 1988).
289 See Fountain, 840 F.2d at 512.
rights that were considered fundamental\textsuperscript{290} and were to be left untouched and unlimited. This means that the Speedy Trial Act should be interpreted in a way that promotes the purposes of the Sixth Amendment.

With the way that the Seventh Circuit currently applies the Speedy Trial Act, the defendant can actually benefit from not asserting his right to a speedy trial.\textsuperscript{291} The defendant may actually end up being detained longer by asserting his right because if the court determines that no violation occurred, the defendant would have been detained the entire time that the court is making that decision. In addition, after the court determines that a violation did not occur, the trial continues. Even if the court determines that the defendant’s rights were violated, it can end up making the process longer and more strenuous for the defendant because he is often subject to reprosecution.\textsuperscript{292} This was not the intent of the Speedy Trial Act or the Sixth Amendment;\textsuperscript{293} as a result, a better process must emerge.

V. CHANGE IS REQUIRED

The defects discussed above have created negative effects on the rights of defendants in the Seventh Circuit. There are some technical issues with the court’s approach, as well as some possibly unintended consequences.

One technical issue is the lack of a well thought out standard in the Seventh Circuit with regard to the use of the excludable days exception. The courts’ ability to exclude days based on ends-of-justice grounds\textsuperscript{294} could result in unintended consequences. The court can exclude days if it can show that the reasons for granting the

\textsuperscript{290} Barker, 407 U.S. at 529–30 (stating that the right to a speedy trial is a fundamental right).
\textsuperscript{291} See Fountain, 840 F.2d at 511.
\textsuperscript{292} See id. (where the trial was longer—delayed 209 days—because the defendant asserted that a violation occurred).
\textsuperscript{293} United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010).
\textsuperscript{294} See id. at 628–29.
continuance outweigh the best interests of the public and the defendant.\footnote{Id.} This exclusion is open-ended and gives the court the opportunity to expand it far beyond the intent of the legislature. Since the right to a speedy trial is protected by the Constitution\footnote{U.S. CONST. amend. VI.} and the Speedy Trial Act,\footnote{Speedy Trial Act, 18 U.S.C. § 3161 (2006).} it is one that is considered important and fundamental.\footnote{Barker v. Wingo, 407 U.S. 514, 529–30 (1972).} This would seem to imply that other interests should almost never outweigh the defendant’s right to a speedy trial. In addition, the public has an interest in a guilty defendant being tried and sentenced quickly and efficiently.\footnote{Melley, \textit{supra} note 283, at § 3 ("to serve the public interest by . . . reducing a defendant’s opportunity to commit crimes while on pretrial release.").} While there may be occasions when one party needs more time for discovery or preparation,\footnote{See \textit{Hills}, 618 F.3d at 626–30 (tactical decisions, including continuances, are within counsel’s discretion).} this should not be looked at lightly. The parties should be required to adhere to the deadlines imposed by the court. Excluding days on ends-of-justice grounds should only be used in limited circumstances that should be better outlined by Congress in the Speedy Trial Act.

Another possible unintended consequence results from an attorney’s ability to make a tactical decision.\footnote{See \textit{id.} at 626–28.} The defendant’s attorney has the authority to make decisions regarding the progression of the case.\footnote{\textit{Id.}} While the defendant has the right to decide to testify, to plead guilty or not guilty, and to settle, the defendant’s attorney has the right to make decisions regarding which motions to file.\footnote{\textit{Id.}} In effect, this means that the defense attorney could unnecessarily delay the case. If the defendant tried to claim a violation, he would likely fail because the court would attribute the delay to the defendant.\footnote{See \textit{Vermont v. Brillon}, 129 S. Ct. 1283, 1287 (2009).} This is
because any action of the defendant’s counsel is attributed to the defendant. As a result, as long as the defense counsel can justify his decision as reasonable, he could unnecessarily delay the case, and the defendant would not be afforded a remedy.

Lastly, delay seems to be the only result of a recognized violation of the right to a speedy trial. In one case, the court noted that the defendant’s trial was lengthened by the assertion of his right to a speedy trial. A defendant’s assertion of a violation of his rights should not lengthen or further delay the process. However, because the courts almost always dismiss without prejudice, the case is simply brought again. This means that the only effect of the defendant’s assertion of his right is to delay his conviction or acquittal. It may be better for the defendant to just accept the violation of his right and allow the trial to continue, instead of start all over again. A better remedy should be provided if this is going to be the continued approach. Otherwise, the only remedy is for the court to recognize the violation of the defendant’s right and for the defendant to be charged again. When this occurs, the defendant does not gain anything from asserting his right.

305 See id.
306 United States v. Fountain, 840 F.2d 509, 511 (7th Cir. 1988).
307 See, e.g., United States v. Sykes, 614 F.3d 303, 305–06 (7th Cir. 2010); United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010); United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007); United States v. Arango, 879 F.2d 1501, 1509 (7th Cir. 1989); Fountain, 840 F.2d at 509, 513.
308 See Fountain, 840 F.2d at 511 (more time passed before trial than if the defendant had not asserted his right to a speedy trial).
309 See Speedy Trial Act, 18 U.S.C. § 3162(a)(2) (2006) (including dismissal with or without prejudice as a sanction); Killingsworth, 507 F.3d at 1091 (“Courts view dismissal without prejudice as a sanction.”).
VI. A NEW APPROACH TO THE SPEEDY TRIAL ACT

With all the faults of the Seventh Circuit’s current approach to the Speedy Trial Act, a new bright-line rule must be established. While it is very difficult to establish the exact circumstances in which a violation occurs or in which a case should be dismissed with prejudice, a better standard than the one currently in place must emerge. One’s right to a speedy trial is protected by the Constitution, and this in and of itself shows the importance of the right to each individual.

In addition, besides protecting the defendant, the Speedy Trial Act also helps protect the public. One way in which the Act helps protect the public is by ensuring that the defendant is tried in an expeditious manner. The public interest is best served when the defendant is brought to justice in a timely and efficient manner. The defendant benefits because his constitutional and statutory right is protected and he does not have to endure unnecessary pre-trial incarceration. As a result, it is important to both the public and the defendant that a better way to assess the right to a speedy trial is developed.

One necessary step is to stop lengthy delays that are not the fault of the defendant. Even if the defendant’s case is not prejudiced (for example, by a witness’s loss of memory or similar situations), the defendant has still suffered harm. The defendant has a right to a speedy trial, and if the court does not enforce that right, he has suffered prejudice because his fundamental right has been limited.

310 U.S. CONST. amend. VI.
311 Melley, supra note 283, at § 3.
312 Id.
313 Id. ("to serve the public interest by . . . reducing a defendant’s opportunity to commit crimes while on pretrial release.").
314 This should partly be accomplished by limiting the excludable days exception. See supra Parts IV & V.
The Seventh Circuit in *Hills* stated that “delays approaching one year [are] presumptively prejudicial”, however, the court has not applied that presumption in its recent cases. The court should enforce the one-year threshold when determining if the defendant has been prejudiced. Any delay that is not attributable to the defendant and that is one year or longer would automatically show that the defendant has suffered prejudice. This finding of prejudice should then be considered with regard to choosing to dismiss with or without prejudice.

It is also important for the court to strike a balance between dismissing with and without prejudice. If a court recognizes that a defendant’s rights have been violated, the defendant still has no meaningful remedy unless the court chooses to dismiss with prejudice. If the court dismisses without prejudice, the defendant could be retried, and the offending party receives no punishment for its violation. While dismissal with prejudice should not be used liberally, it should at least be considered.

One solution is to afford the defendant a remedy through a civil suit. If the defendant’s rights have been violated, he could take action by suing the party that caused the delay. This would give the defendant an opportunity to get monetary compensation for the violation. However, this remedy would only compensate one group that the Speedy Trial Act was meant to protect. The Speedy Trial Act was enacted to protect the defendant, as well as to protect the public interest. A civil suit would compensate the defendant for a deprivation of his rights; however, it would not compensate the public for a violation of its rights. The public has an interest in quickly trying

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317 United States v. Hills, 618 F.3d 619, 630 (7th Cir. 2010).
318 See 18 U.S.C. § 3162(a)(2) (including dismissal with or without prejudice as a sanction); United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007) (“Courts view dismissal without prejudice as a sanction.”); United States v. Fountain, 840 F.2d 509, 511 (7th Cir. 1988) (where the defendant was indicted again).
319 Possibly a civil suit grounded in negligence or a malpractice action against counsel.
320 Melley, *supra* note 283, at § 3.
and sentencing guilty defendants, and this remedy does not address that interest. In addition, this solution does not deter future violations because the individuals at fault are not likely to be held responsible. The larger entity that employs the individual would probably pay for any damages awarded. In order for monetary compensation to be an effective remedy and deter future violations, the individual at fault must be held responsible, and the interests of the defendant and of the public must be addressed. Since the proper party is not likely to be held responsible and the remedy does not benefit both parties suffering from the violation, a different approach may better serve the ends of justice.

The best solution may be to sanction the individual responsible for each violation. There is a long-standing sentiment to put the burden of ensuring a speedy trial on the prosecutors. It is practical to put the responsibility on the lawyers because they are in the best position to expedite the case by filing fewer motions and by speaking to the judge. If a lawyer were held responsible for his failure to abide by constitutional and statutory law, it may provide an incentive for him to efficiently expedite the process.

The Speedy Trial Act allows sanctions to be imposed on lawyers for conscious delay of trial. The Act allows the court to sanction the attorney at fault for the delay by reducing the amount of compensation paid to the attorney, imposing a fine, denying the attorney the right to practice before the court for a period of time, or filing a report with a

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321 See id. (interest stems from a need to reduce a “defendant’s opportunity to commit crimes while on pretrial release and preventing extended pretrial delay from impairing the deterrent effect of punishment.”)
322 If the employee was acting within the course of employment, the employer would be liable under the theory of respondeat superior.
324 United States v. Lauderdale, No. 06-cr-30142-MJR, 2007 WL 1100617, at *4 (S.D. Ill. Apr. 11, 2007) (“This rule reflects the long-held sentiment that the ultimate responsibility to ensure the prosecution of individuals is done legally and in a way that does not violate their rights should rest on the shoulders of those doing the prosecuting.”).
disciplinary committee. However, the Seventh Circuit has only discussed dismissal with or without prejudice as a sanction and has not discussed sanctioning a lawyer under § 3162(b). In *Fountain*, the court readily admitted that the lawyers were lackadaisical and at fault; however, it did not sanction those individuals. If the case was handled poorly enough for the court to mention it in its opinion, sanctions may be warranted. If the lawyer handled the case poorly once, he may handle it poorly again.

The Seventh Circuit in *United States v. Carlone* stated that “[c]ourts . . . have broad and flexible powers to prevent the abuse of their processes.” The Seventh Circuit stated that “[a]lternative sanctions are available that do not involve . . . windfalls for law breakers.” The court stated that these alternatives included revoking or shortening continuances (only prospectively) or refusing to grant future continuances. The Seventh Circuit should continue to build on these alternative sanctions with the sanctions provided in § 3162(b) of the Speedy Trial Act.

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326 *Id.* §§ 3162(b)(4)(A)–(E).
327 *See* United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007) (considering dismissal without prejudice as a sanction); *Lauderdale*, 2007 WL 1100617, at *5 (“dismissal without prejudice is ‘not a completely negligible sanction, viewed from a deterrent standpoint, since the grand jury may refuse to reindict and since even if it does the defendant may be acquitted.’”).
328 *See generally* United States v. Sykes, 614 F.3d 303 (7th Cir. 2010); *Killingsworth*, 507 F.3d 1087; United States v. Arango, 879 F.2d 1501 (7th Cir. 1989); United States v. Fountain, 840 F.2d 509 (7th Cir. 1988).
329 *See Fountain*, 840 F.2d at 513.
330 *See id.*
331 666 F.2d 1112, 1115–16 (7th Cir. 1981).
332 *Id.* (referring to the fact that dismissal with prejudice punishes “not only the prosecutor but the entire law-abiding public” because it forever precludes the government from trying defendants that have been accused of serious crimes).
333 *Id.*
If the court held the responsible party liable, as the statute provides for, it may help to protect the defendant’s rights. A violation is less likely if counsel knows that he could be required to pay a fine or be prohibited from practicing for a period of time. If the individuals are sanctioned, the defendant may feel like his right has been recognized and that the person responsible for the deprivation of that right has been held accountable. Sanctioning the lawyer who is at fault for the delay would also hold him responsible to the public for failure to try the defendant in an efficient and expedient manner. Sanctions would act as a deterrent in future cases because violators would know that there were consequences to their actions. In addition, sanctions are an attractive option because they do not prevent criminals from being punished “as a by-product of trying to prevent misconduct by government officers.” As a result, the public is still protected because sanctions allow the criminal to still be punished.

Sanctions could also deter the unnecessary expansion of the excludable days exception. If these exceptions are applied more conservatively, attorneys will not be able to hide under its expansive umbrella. Attorneys would not be able to designate as many forms of delay as excludable, which would cause them to be more cautious in the case proceedings. This would help to expedite the case because attorneys would not unnecessarily delay the trial for fear of sanctions.

In addition, there would be less concern for abuse of tactical decisions made by attorneys. Attorneys are allowed to make tactical decisions without approval of their clients; this includes requesting continuances. If sanctions can be awarded for unnecessary delay, attorneys would be less likely to abuse their authority to make these decisions. Sanctions would deter a defense attorney from requesting unnecessary continuances.

335 Id. §§ 3162(b)(4)(B)–(D) (providing for fines and denial of the right to practice).
336 Carlone, 666 F.2d at 1115–16.
337 United States v. Hills, 618 F.3d 619, 626–28 (7th Cir. 2010).
338 Id.
There would also be less concern about the ability to re prosecuted the defendant if the trial were conducted according to the requirements of the Sixth Amendment and the Speedy Trial Act. Sanctions could help deter delays, which would result in quicker trials and less violations.

Allowing the court to administer sanctions may be the most appropriate and efficient approach because the Speedy Trial Act already allows courts to do so.\textsuperscript{339} The court is well-versed in how and why the delay occurred, and therefore, it may be able to impose sanctions more quickly. In addition, the court will likely know who is truly at fault for the delay; therefore, it will be easier for it to provide justice to the victim of the violation.

More defined guidelines for imposing these sanctions must be defined in the Speedy Trial Act.\textsuperscript{340} The Act currently allows sanctions

In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 . . .\textsuperscript{341}

This seems to allow sanctions only when counsel has intentionally, knowingly, or willfully delayed the trial.\textsuperscript{342} This unnecessarily limits the applicability of the sanctions provided by the Speedy Trial Act.

\textsuperscript{339} See 18 U.S.C. §§ 3162(b)(4)(E)–(c) (“The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.”).
\textsuperscript{340} See id. §§ 3162(b)(4)(A)–(E) (listing the current sanctions).
\textsuperscript{341} Id. § 3162(b).
\textsuperscript{342} See id.
There may be situations where counsel is lackadaisical in his duties\textsuperscript{343} and while he does not intend to delay the trial, that is the direct result of his actions. In that situation, counsel is just as much at fault for the delay as if he willfully caused the delay. The Speedy Trial Act should expand its scope\textsuperscript{344} to allow sanctions for attorneys who unnecessarily neglect the case, both intentionally and unintentionally. This would provide a greater deterrent from violations and would hold counsel accountable for his duties.

The drawback of this remedy lies in what would occur if the court were at fault for the delay. It is unlikely that a judge will sanction himself; however, the Code of Conduct for United States Judges may provide for disciplinary action.\textsuperscript{345} The Code states that “[a] judge should dispose promptly of the business of the court.”\textsuperscript{346} This puts an obligation on the court to ensure that trials are conducted in an expeditious manner. In addition, the Code requires judges with supervisory authority to ensure that those under their control perform their duties “timely and effectively.”\textsuperscript{347} As a result, judges have an affirmative duty to ensure that the case is promptly decided, and supervisory judges have a duty to discipline judges that do not fulfill this duty.\textsuperscript{348} While the burden to ensure a speedy trial should still be placed on the prosecution, the Code provides a backup to ensure that the responsible party is punished.

\begin{footnotesize}
\begin{enumerate}
\item See United States v. Fountain, 840 F.2d 509, 513 (7th Cir. 1988) (stating that the prosecution neglected the case).
\item See 18 U.S.C. §§ 3162(b)(4)(E)–(c) (“The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.”).
\item Id. at canon 3(A)(5) (with commentary stating that judges are to reduce avoidable delays and ensure that lawyers cooperate).
\item Id. at canon 3(B)(4) (“A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.”).
\item Id. at canons 3(A)(5), 3(B)(4).
\end{enumerate}
\end{footnotesize}
There is no perfect remedy for the defendant; however, it is important for the court to find a balance between the defendant’s rights and the interests of the public. It is important for the court to protect society by ensuring that criminals end up in prison; however, this cannot be done without regard to the defendant’s constitutional and statutory rights. The court must find a balance that best promotes the imprisonment of criminals, as well as the purposes of the Sixth Amendment and the Speedy Trial Act. The Founders believed that the right to a speedy trial was so essential that they included it in the Constitution. Congress then strengthened this right through the Speedy Trial Act. This means that the court should show deference to the intentions of the Founders and of Congress. The court must do its part to protect and balance the interests and the rights of the defendant and the public. This balance is best met through the use of sanctions, as explained above.

CONCLUSION

The Seventh Circuit has a long uphill climb if it is going to find a way to protect defendants’ rights the way that they were intended to be protected by the Founding Fathers and Congress. While the Seventh Circuit is not out of line with the approach taken by the Supreme Court, that does not mean it is the best approach. The Seventh Circuit needs to take the initiative and take the first step toward striking that necessary balance between the interests of society and the rights of the defendant. This is not likely to happen unless the Seventh Circuit reduces the number of situations where excludable days are applicable and cuts down on the ability to expand these exclusions. Sanctions on the responsible individual provide the best remedy by deterring similar conduct in the future and still allowing criminals to be punished. The deterrent factor in turn protects the defendant by reducing the number of violations and lengthy delays. The Seventh Circuit should focus on

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349 See United States v. Hills, 618 F.3d 619, 631–32 (7th Cir. 2010).
350 See U.S. CONST. amend. VI.
effectively balancing the constitutional and statutory rights of individuals and the public. The Seventh Circuit should take the initiative and develop a new approach that establishes this balance through the use of sanctions on individuals.