

2015

## The Two-Sided Speedy Trial Problem

Brooks Holland

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wlro>



Part of the [Criminal Procedure Commons](#)

---

### Recommended Citation

Holland, Brooks (2015) "The Two-Sided Speedy Trial Problem," *Washington Law Review Online*: Vol. 90 , Article 3.  
Available at: <https://digitalcommons.law.uw.edu/wlro/vol90/iss1/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington Law Review Online by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

## THE TWO-SIDED SPEEDY TRIAL PROBLEM

Brooks Holland\*

### INTRODUCTION

In *The Not So Speedy Trial Act*,<sup>1</sup> Shon Hopwood invokes the famous maxim, “justice delayed is justice denied,”<sup>2</sup> to critique how the Speedy Trial Act of 1974 (“Act”) has been applied in federal courts.<sup>3</sup> The Act, as Hopwood observes, was adopted to minimize long and largely unregulated delays in bringing criminal defendants to trial.<sup>4</sup> Hopwood argues that, by demanding that trials take place within seventy days of a defendant’s indictment or initial appearance, the Act aims to protect the procedural justice interests of both defendants and the public.<sup>5</sup>

In light of the “enormous public interest involved in speedy trials,” Hopwood surmises “that federal trial and appellate courts would follow the strict strictures of the Act.”<sup>6</sup> But in reality, Hopwood posits, the Act does not accomplish the goal of uniformly speedy federal trials because defense lawyers, prosecutors, trial judges, and appellate courts collude to dodge the Act’s requirements by utilizing various doctrinal side steps.<sup>7</sup> This collusion, Hopwood continues, results from the convergence of institutional interests to de-prioritize uniformly speedy trials,<sup>8</sup> and the fact that “there is no real incentive for anyone to follow the Act.”<sup>9</sup> To minimize the doctrinal discordance between the Act and real-world practice, Hopwood prescribes how lawyers, academics, and federal

---

\* Associate Professor of Law, Gonzaga University School of Law. The author currently serves as Chair of the Washington State Bar Association Council on Public Defense, and is a member of the Society of American Law Teachers Board of Governors.

1. Shon Hopwood, *The Not So Speedy Trial Act*, 89 WASH. L. REV. 709 (2014).

2. *Id.* at 710.

3. *See generally* 18 U.S.C. § 3161 (2012).

4. *See* Hopwood, *supra* note 1, at 712–16.

5. *See id.*

6. *Id.* at 710.

7. *See id.* at 738–39 (summarizing non-compliance with the Act by prosecutors, defense lawyers, and courts).

8. *See id.* at 739.

9. *Id.* at 738–39.

courts can better fulfill the Act's requirements.<sup>10</sup>

Hopwood has written a valuable paper, and I cannot question his thorough research into the Act's history and design, his diagnosis of how lawyers and judges may avoid the Act's requirements, and his prescription for ensuring fuller doctrinal compliance with the Act. Instead, I wish to enlarge the criminal justice inquiry that I believe Hopwood's paper invites. The interest in speedy trials highlighted by Hopwood is not restricted to federal courts.<sup>11</sup> On the contrary, the vast majority of criminal cases are heard in state courts,<sup>12</sup> which are controlled by state speedy trial statutes.<sup>13</sup> I do not assume that Hopwood means to speak solely to federal courts operating under the Act when he emphasizes that justice delayed is justice denied. Rather, the premise underlying Hopwood's call for stricter doctrinal compliance with the Act appears to be that more uniformly speedy trials will ensure greater justice for everyone—that efficient justice is a stand-alone priority for our criminal justice system in whatever court those delays may occur.

If we apply Hopwood's underlying premise about speedy trials to the criminal justice system beyond federal court, what picture will we see? I believe we will see that Hopwood's concern over trial delays remains quite valid regardless of venue. The states also suffer from chronic institutional delays—some delays even more startling than the federal court examples that Hopwood chronicles.<sup>14</sup> But this fuller picture may

---

10. *See id.* at 740–45.

11. *See, e.g.*, *Klopfert v. North Carolina*, 386 U.S. 213, 222–23 (1967) (incorporating Sixth Amendment speedy trial right against the states as a fundamental right under the Fourteenth Amendment Due Process Clause).

12. The dominance of the state courts in adjudicating criminal matters can be seen in some relative data. For example, in 2006, federal district courts had 66,860 total criminal filings of any kind. *See Sourcebook of Criminal Justice Statistics Online*, SUNY ALBANY, available at <http://www.albany.edu/sourcebook/pdf/t5112006.pdf> (last visited Mar. 26, 2015). By contrast, in that same year, state courts recorded 1,132,290 felony convictions alone. *See id.*, available at <http://www.albany.edu/sourcebook/pdf/t5442006.pdf> (last visited Mar. 26, 2015). This state-federal criminal caseload disparity also can be seen in correctional data. *See* U.S. DEP'T. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Correctional Populations in the United States*, at 11–12 (2013), available at <http://www.bjs.gov/content/pub/pdf/cpus13.pdf> (last visited Mar. 26, 2015) (reporting that of a total correctional population in the United States in 2013 of 6,906,200 persons, 6,559,200 persons were incarcerated under state jurisdiction, and 347,000 persons were incarcerated under federal jurisdiction; and of 2,217,000 persons in physical custody, 2,002,000 persons were in state prisons or local jails, and 215,000 were in federal custody).

13. *See, e.g.*, N.Y. CRIM. PROC. LAW § 30.30 (West 2006); WASH. CRIM. R. 3.3(b) (2015). For a brief history of how Washington State's speedy trial law evolved from a statutory rule to a court rule, see WASH. STATE COURTS, *Washington State Courts – Time for Trial*, available at [https://www.courts.wa.gov/programs\\_orgs/pos\\_tft/index.cfm?fa=pos\\_tft.reportDisplay&fileName=appendixB](https://www.courts.wa.gov/programs_orgs/pos_tft/index.cfm?fa=pos_tft.reportDisplay&fileName=appendixB) (last visited Jan. 21, 2015).

14. *See infra* notes 19–28.

reveal that the problem with delayed trials is only one side of a larger and pressing criminal justice dynamic. Some cases are tried too slowly, as Hopwood persuasively demonstrates. Many other cases, however, are tried too *speedily*, in ways that equally undermine any sound conception of criminal justice.

This two-sided speedy trial dynamic results from the reality of modern criminal justice. Theoretically, our criminal courts offer a trial-based system of justice. But in reality, the criminal justice system trudges toward adversarial trials far less often than it hurtles to barely adversarial plea-bargained dispositions. Consequently, in thousands of misdemeanor and even felony matters each year, the speedy trial problem includes the mirror image of justice delayed: a system of rushed, unconsidered justice with very few trials, or even specters of trials.

In this response, I will suggest that the principal phenomenon driving Hopwood's premise may not be a lack of doctrinal compliance with the Act or any other speedy trial law, but instead the lack of adequate criminal justice resources. More robust resources should minimize many of the incentives identified by Hopwood for lawyers and judges to drag their feet in proceeding to trial. At the same time, more resources should slow the process for some of the thousands of cases that swiftly and routinely are plea-bargained, and maybe even place a few more of those cases on track for an actual *trial*. Thus, if we improve criminal justice resources to adequate levels, we will realize more fully the benefits of the valuable doctrinal reforms advocated by Hopwood.

## I. A TWO-SIDED SPEEDY TRIAL PROBLEM

Hopwood documents numerous instances of lengthy pre-trial delay that appear unrelated to the administration of justice.<sup>15</sup> Trial courts countenance these delays under the Act, Hopwood maintains, by improperly accepting speedy trial waivers or by granting ends-of-justice continuances without an adequate basis.<sup>16</sup> Further, trial courts are not incentivized to act differently because appellate courts rarely reverse these decisions and do not hold defense counsel accountable for failing to press for a speedy trial.<sup>17</sup>

These institutionalized trial delays are a criminal justice problem that extends well beyond federal courts. *The New York Times*, for instance,

---

15. See Hopwood, *supra* note 1, at 716–38.

16. See *id.* at 716–29.

17. *Id.* at 729–38.

profiled the County of Bronx, New York, as offering perhaps some of the worst examples of institutionalized trial delay.<sup>18</sup> As the *Times*' series of articles reported, "a plague of delays in the Bronx criminal courts is undermining one of the central ideals of the justice system, the promise of a speedy trial."<sup>19</sup> This report noted that in 2011, New York City had 141 defendants who had waited more than three years in jail for a trial, with eighty-five of these cases in the Bronx.<sup>20</sup> These excessive delays extended to misdemeanor cases,<sup>21</sup> and responsibility was laid at the feet of the court, prosecutors, and defense lawyers.<sup>22</sup> These delays have proliferated notwithstanding New York's own speedy trial statute, and for reasons that may track Hopwood's diagnosis of the Act's own failings.<sup>23</sup>

Delays of this magnitude are inexcusable, and they inflict more than theoretical harms. A recent article in *The New Yorker* powerfully illustrated these harms in the case of Kalief Browder.<sup>24</sup> Browder was charged with robbery at the age of sixteen, and was held in jail at Riker's Island pending trial.<sup>25</sup> Browder refused to plead guilty and demanded a trial.<sup>26</sup> But that trial never happened.<sup>27</sup> And by the time the prosecution moved to dismiss the case, Browder, who had entered jail at sixteen, "had missed his junior year of high school, his senior year, graduation, the prom. He was no longer a teen-ager; four days earlier, he had turned twenty."<sup>28</sup> The tragic circumstances of these delays make Hopwood's proposals to invigorate the Act, or any other speedy trial law, easy to embrace.

Yet, for every Kalief Browder, numerous individuals receive *too*

---

18. See *infra* notes 19–22.

19. William Glaberson, *Waiting Years for Day in Court*, N.Y. TIMES, Apr. 14, 2013, at A1.

20. William Glaberson, *For 3 Years After Killing, Evidence Fades as Suspect Sits in Jail*, N.Y. TIMES, Apr. 16, 2013, at A20.

21. See William Glaberson, *Even for Minor Crimes in Bronx, No Guarantee of Getting a Trial*, N.Y. TIMES, May 1, 2013, at A1.

22. See William Glaberson, *Court in Slow Motion, Exhibit A: One Lawyer*, N.Y. TIMES, Apr. 15, 2013, at A1.

23. See Thomas M. O'Brien, *The Undoing of Speedy Trial in New York: The 'Ready Rule'*, N.Y. L.J. (Jan. 14, 2014), available at <http://www.newyorklawjournal.com/id=1202638065307/The-Undoing-of-Speedy-Trial-in-New-York-the-Ready-Rule> (identifying how case law has weakened New York's speedy trial statute, and suggesting fixes).

24. Jennifer Gonnerman, *Before the Law*, THE NEW YORKER, Oct. 6, 2014, at 26–32.

25. *Id.* at 26.

26. *Id.* at 28, 30.

27. *Id.* at 31.

28. *Id.*

speedy of a trial, because our criminal justice system is no longer principally a trial system. Rather, as the U.S. Supreme Court recently acknowledged, “ours ‘is for the most part a system of pleas, not a system of trials.’”<sup>29</sup> This plea system prioritizes and rewards early guilty pleas, which relieve an overburdened system of the resources and uncertainty that extended pre-trial litigation and trial would require.<sup>30</sup> And nowhere is the speedy guilty plea more prevalent than with misdemeanor cases, because “the volume of misdemeanor cases, far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result.”<sup>31</sup>

As a result, “[i]n many jurisdictions, cases are resolved at the first court hearing, with minimal or no preparation by the defense. . . . This process is known as meet-and-plead or plea at arraignment/first appearance.”<sup>32</sup> Indeed, “it is common for defense counsel in our large urban courts to offer a guilty plea on behalf of their clients within minutes of having first met the defendant.”<sup>33</sup> Misdemeanor convictions nevertheless can impact individuals’ lives tremendously, not only due to the loss of liberty that can result, but also from the myriad “collateral consequences” that can follow convictions for even seemingly minor criminal offenses.<sup>34</sup>

---

29. *Missouri v. Frye*, \_\_\_U.S.\_\_\_, 132 S. Ct. 1399, 1407 (2012) (quoting *Lafler v. Cooper*, \_\_\_U.S.\_\_\_, 132 S. Ct. 1376, 1388 (2012)); see also U.S. SENT’G COMM’N, *Overview of Federal Criminal Cases Fiscal Year 2013*, at 5 (Aug. 2014) (reporting that in the federal system, “[t]he vast majority of offenders plead guilty. In fiscal year 2013, 96.9 percent of all convicted defendants pleaded guilty”); JaneAnne Murray, *A Better Way to Plead Guilty*, N.Y. TIMES, Jan. 23, 2015, at A27 (commenting that “[o]ur modern criminal justice system is designed to avoid jury trials. . . . Once charged, defendants are encouraged to plead guilty in part to avoid the ‘trial penalty’—a longer sentence after trial, often a much longer one”).

30. See Jenny Roberts, *Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts*, 45 U.C. DAVIS L. REV. 277, 306–07 (2011) (commenting that “judges, defense counsel, and prosecutors all have enormous incentive to pursue early guilty pleas—as early as the initial arraignment in some jurisdictions”); Steven Zeidman, *Padilla v. Kentucky: Sound and Fury, or Transformative Impact*, 39 FORDHAM URB. L.J. 203, 207 (2011) (noting the “premium on, and pressure for, guilty plea dispositions at the first possible moment”); NAT’L ASS’N CRIM. DEF. LAW., *Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts*, at 33 (Apr. 2009) (noting “one time only” plea offers and other pressure for defendants to plead guilty early in the proceeding) [hereinafter NACDL].

31. *Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972).

32. NACDL, *supra* note 30, at 31.

33. Richard Klein, *Judicial Misconduct in Criminal Cases: It’s Not Just the Counsel Who May Be Ineffective and Unprofessional*, 4 OHIO ST. J. CRIM. L. 195, 203 (2006).

34. See generally Roberts, *supra* note 30, at 297–306 (discussing the complexities of misdemeanor practice, and the major collateral consequences that can result from even a minor criminal conviction); K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271, 300–14 (2009) (identifying

The recent federal court decision in *Wilbur v. City of Mount Vernon*<sup>35</sup> illustrates this premium on speedy dispositions, free of the inefficiencies of robust adversarial tests like a trial. In *Wilbur*, two Washington State cities (“Cities”) contracted with a law office to provide public defense in misdemeanor matters.<sup>36</sup> Plaintiffs sued the Cities, claiming that through these contracts, the Cities systemically supplied constitutionally inadequate public defense services.<sup>37</sup> After holding a trial, the District Court found:

The period of time during which [counsel] provided public defense services for the Cities was marked by an almost complete absence of opportunities for the accused to confer with appointed counsel in a confidential setting. Most interactions occurred in the courtroom: discussions regarding possible defenses, the need for investigation, existing physical or mental health issues, immigration status, client goals, and potential dispositions were, if they occurred at all, perfunctory and/or public. There is almost no evidence that [counsel] conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their clients. Substantive hearings and trials during that era were rare. In general, counsel presumed that the police officers had done their job correctly and negotiated a plea bargain based on that assumption. . . . Adversarial testing of the government’s case was so infrequent that it was virtually a non-factor in the functioning of the Cities’ criminal justice system. . . . [I]n light of the sheer number of cases [counsel] handled, the services they offered to their indigent clients amounted to little more than a “meet and plead” system.<sup>38</sup>

I cannot imagine that the practices challenged in *Wilbur* would seem terribly anomalous to most experienced public defenders and prosecutors. Anecdotally, I have seen lawyers plead dozens of clients guilty during a single first appearance court session. These lawyers were typically doing the best they could under the circumstances to help their

---

collateral consequences to high-volume misdemeanor dispositions, in addition to incarceration, to include immigration, public housing, driving, employment, community, procedural justice, substantive justice, and lawyer ethics consequences).

35. 989 F. Supp. 2d 1122 (W.D. Wash. 2013).

36. *Id.* at 1124.

37. *Id.* at 1123.

38. *Id.* at 1124.

clients by seizing on a quick disposition opportunity to avoid a more damaging possible case outcome, or by avoiding pre-trial incarceration because the client could not afford bail.<sup>39</sup> But no one seriously would argue that criminal convictions obtained by guilty plea on the first or second court appearance are generally the product of meaningful adversarial testing of the prosecution's accusation.<sup>40</sup> Even more, no one would suggest that these cases suffer from justice delayed.

This speedy-disposition emphasis can occur in more serious cases too, and even in federal court. For example, under "Operation Streamline," federal defendants in unlawful reentry immigration cases<sup>41</sup> commonly plead guilty after meeting with a lawyer for only thirty minutes about the case and any possible defenses.<sup>42</sup> These defendants may go from charge to conviction in one day, pleading guilty as part of a group hearing, where the judge takes a plea from multiple defendants at once.<sup>43</sup> Unlawful reentry cases, however, are serious matters authorizing up to two years of imprisonment.<sup>44</sup> Unlawful reentry cases with aggravated circumstances can authorize up to twenty years.<sup>45</sup> Even in return for foregoing numerous protections that the Constitution guarantees, many

---

39. See Robert Lewis, *No Bail Money Keeps Poor People Behind Bars*, WNYC NEWS (Sept. 19, 2013), <http://www.wnyc.org/story/bail-keeps-poor-people-behind-bars/> (noting study showing that for every 100 defendants who have \$500 bail imposed, only nineteen defendants will post bail at arraignment, and forty defendants will remain in jail until their case is decided); Julie Turkewitz, *Experimental Program Helps Defendants Make Bail in Backlogged Bronx*, N.Y. TIMES, Jan. 23, 2014, at A22 (recounting choice of defendant charged with misdemeanor crimes and facing \$1,000 bail: "[p]lead guilty and go home, or sit in jail and wait for a trial"). One recent study found that 76.5 percent of federal defendants were detained by the court prior to trial or other case disposition. See U.S. DEP'T OF JUSTICE, *Federal Justice Statistics, 2009*, at 10 (Dec. 2011), available at <http://www.bjs.gov/content/pub/pdf/fjs09.pdf> (last visited Mar. 26, 2015).

40. See Zeidman, *supra* note 30, at 222 (observing that "the criminal court in practice is hardly adversarial"); Steven Zeidman, *Policing the Police: The Role of the Courts and the Prosecution*, 32 FORDHAM URB. L.J. 315, 339 (2005) (opining that "[a]lthough the Criminal Court has been fraught with problems, an overabundance of adversarialness is not one of them"); Gerald E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117, 2118 (1998) (commenting on how criminal justice in most instances has become more administrative in nature than adversarial).

41. See 8 U.S.C. § 1326 (1996).

42. See Joshua Partlow, *In Arizona Court, a Fast Track to Jail and Then Home for Illegal Immigrants*, WASH. POST, Feb. 11, 2014, at A11; Amanda Myers, *More Hispanics Go To Federal Prison*, USA TODAY, (June 4, 2011, 11:01 AM), [http://usatoday30.usatoday.com/news/nation/2011-06-04-immigration-hispanic-offenders-federal-prison\\_n.htm](http://usatoday30.usatoday.com/news/nation/2011-06-04-immigration-hispanic-offenders-federal-prison_n.htm).

43. See Partlow, *supra* note 42, at A11.

44. See 8 U.S.C. § 1326(a) (authorizing two years in prison for unlawful reentry offense).

45. See 8 U.S.C. § 1326(b) (authorizing up to twenty years in prison for unlawful reentry offense with certain aggravating factors).

fast-track defendants still receive jail terms of thirty to 180 days.<sup>46</sup> These fast-track guilty plea proceedings are wondrously efficient, and no one would worry that these cases are defying the Act. Yet, some commentators have argued that the efficiency of these fast-track programs is “endangering our very justice system.”<sup>47</sup>

My point is not to argue that we do not have the speedy trial problem elucidated by Hopwood. We certainly do. But in my view, this problem is not an independent, free-standing phenomenon. Rather, this problem is one side of a two-sided speedy trial dynamic, with both too much and too little efficiency bookending a more optimal efficiency and efficacy range of criminal justice.

## II. MANAGING THE TWO-SIDED SPEEDY TRIAL PROBLEM

How did we get to this two-sided speedy trial dynamic, with too much efficiency on one side and too little efficiency on the other side? The dynamic did not arise from the will of any one institutional actor. As Hopwood asserts, judges, prosecutors, and defense lawyers collude from mutual, institutional interests to delay criminal trials<sup>48</sup>— a phenomenon not restricted to federal court.<sup>49</sup> And, a similar “we’re in this together” mentality can operate at the other end of the speedy trial dynamic, where the system pushes defendants to plead guilty, and to plead guilty quickly.<sup>50</sup>

To de-calcify this institutional congruence at the delay end of the speedy trial spectrum, Hopwood proposes several doctrinal solutions to improve implementation of the Act.<sup>51</sup> These thoughtful solutions would help if taken seriously. Similarly, the system would benefit from further doctrinal clarity at the other end of the speedy trial spectrum regarding how lawyers and courts should process guilty pleas at high volumes.<sup>52</sup>

---

46. See Partlow, *supra* note 42, at A11.

47. *Id.* (quoting criminal defense lawyer and immigration activist who opposes fast-track plea proceedings).

48. Hopwood, *supra* note 1, at 738–39.

49. See Glaberson, *supra* note 19, at A1 (reporting that “[f]ailures by nearly every component of the criminal justice system have contributed to what is known inside the building as a ‘culture of delay,’” practiced by prosecutors, defense lawyers, and judges).

50. See Zeidman, *supra* note 30, at 217; *cf. also* Partlow, *supra* note 42, at A11 (noting defense lawyer who participates in fast-track plea proceedings who nevertheless self-assessed the quality of this representation positively).

51. See Hopwood, *supra* note 1, at 740–42.

52. See, e.g., *Padilla v. Kentucky*, \_\_U.S.\_\_, 130 S. Ct. 1473 (2011) (addressing how lawyers can ensure effective assistance under the Sixth Amendment during the plea bargaining process when the plan implicates immigration consequences for the client); *Lafler v. Cooper*, \_\_U.S.\_\_, 132 S. Ct.

The conclusion is difficult to resist, however, that disobedience of doctrine is more of a symptom, and not the source of, the problem.<sup>53</sup> Lawyers and judges do not typically delay trials because they are lazy or do not care about the administration of justice. More often, in my experience, defense lawyers delay trials because of high caseloads that require more time to investigate, consult with clients, obtain and review complex discovery, and complete other work necessary for competent and diligent trial preparation.<sup>54</sup> Judges, in turn, delay trials because they have packed dockets and do not have the staff or courtrooms to resolve pre-trial issues efficiently across all these cases and also conduct jury trials.<sup>55</sup> Prosecutors also are not ready for trial due to their own resource constraints.<sup>56</sup> The same phenomenon controls at the other end of the spectrum where defense lawyers, judges, and prosecutors take too many guilty pleas with too little adversarial testing of criminal charges: the demands of an over-burdened criminal justice system force this hand on everyone.<sup>57</sup>

Doctrinal solutions targeting these institutional actors and their individual decisions thus, at least to some degree, ask these actors to fix a structural problem by doing more work with the same—or even fewer—resources.<sup>58</sup> Criminal justice actors must be more efficient in trial matters with the same caseloads, the same staff, the same resources,

---

1376 (2012) (addressing effective assistance in plea bargaining); *Missouri v. Frye*, \_\_U.S.\_\_, 132 S. Ct. 1399 (2012) (addressing effective assistance in plea bargaining).

53. Cf. Zeidman, *supra* note 30, at 206 (noting that if the Supreme Court’s decision in *Padilla* regarding immigration advice in criminal cases in fact addresses a problem “of national dimension, . . . we run the risk of fashioning a solution, in this case by way of the holding in *Padilla*, that addresses only the symptoms”).

54. Cf. MODEL RULES OF PROF’L CONDUCT R. 1.1 (2011) (defining competence); MODEL RULES OF PROF’L CONDUCT R. 1.3 (2011) (defining diligence).

55. The United States Courts recently reported that in the fiscal year ending in September 2014, 677 federal District Court judges handled 392,241 filings alone, apart from case terminations and pending matters. These judges’ overall caseloads thus permitted them to average eighteen trials completed in the year. See U.S. COURTS, *United States District Courts—National Judicial Caseload Profile*, available at <http://www.uscourts.gov/viewer.aspx?doc=/uscourts/Statistics/FederalCourtManagementStatistics/2014/district-fcms-profiles-september-2014.pdf> (last visited March 10, 2015).

56. In *Wilbur*, for example, the District Court found that due to resource limitations, the people of the city “received even more ineffective representation than the individuals charged with crimes.” *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1127 n.7 (W.D. Wash. 2013).

57. See Zeidman, *supra* note 30, at 207 (noting that “[i]t is also beyond question that many of these faulty pleas are the result of the chronic underfunding and resultant overburdening of public defenders who labor under crushing caseloads”).

58. See *Wilbur*, 989 F. Supp. 2d at 1129 n.9 (noting that the federal court system, which had long served as the “gold standard” for indigent public defense, “has been adversely affected by successive years of reduced budgets and the 2013 sequestration cuts”).

the same remuneration. Yet, to make the room necessary for this efficiency, these solutions expect these actors to dispose of hundreds or thousands of cases carefully and competently, still with the same caseloads, the same staff, the same resources, the same remuneration. Thus, as one scholar observed, “while lawyer [or court] ignorance, indifference, and malevolence are part of the problem, a focus on individual lawyering practices [or court decisions] obfuscates the larger, structural issue—indigent defense systems with otherwise competent attorneys [and courts] who are under-resourced, overwhelmed, and overburdened with cases.”<sup>59</sup>

The two-sided speedy trial dynamic accordingly should be treated as a structural, systemic problem, and not solely as the product of poor individual legal judgments.<sup>60</sup> Indeed, a contrary message of do-more-with-less can breed deep institutional skepticism, which I have witnessed, in whether society truly cares about the values that the doctrine is telling lawyers and judges to prioritize in individual decision-making—like a speedy trial. If society really wants speedier trials, the law meaningfully would address some of structural barriers to speedy trials for lawyers and judges who take their roles seriously. If society wants well-advised guilty pleas that follow meaningful adversarial testing of the government’s case, society should address some of the structural barriers to eliminating meet-and-plead systems of justice.

Some jurisdictions are taking these barriers to both efficient and effective criminal justice more seriously. For example, the Washington State Supreme Court has adopted indigent defense standards, including detailed caseload standards, to help to ensure that lawyers have the competence, resources, and time to work deliberately on all criminal matters, but also to work efficiently in cases heading to trial.<sup>61</sup> The

---

59. Zeidman, *supra* note 30, at 210.

60. *Cf. Wilbur*, 989 F. Supp. 2d at 1124 (finding that “municipal policymakers have made deliberate choices regarding the funding, contracting, and monitoring of the public defense system that directly and predictably caused the deprivation”); *see generally* Roberts, *supra* note 30, at 329–70 (exploring misdemeanor ineffectiveness as an institutional and structural dynamic).

61. *See* In the Matter of the Adoption of New Standards for Indigent Def. and Certification of Compliance, Ord. No. 25700-A-1004 (Wash. 2012); Roberts, *supra* note 30, at 356–59 (noting the importance of misdemeanor professional standards). In April 2013, the Washington State Supreme Court delayed the implementation of the misdemeanor caseload standard to January 1, 2015, to permit more study of attorney time in misdemeanor cases, and for the Washington Office of Public Defense to develop a model misdemeanor case weighting policy. *See* In the Matter of the Standards for Indigent Def. Implementation of CrR 3.1(d), JuCR 9.2(d) and CrRLJ 3.1(d), Ord. No. 25700-A-1016 (Wash. 2013); WASH. STATE OFFICE OF PUB. DEF., *Model Misdemeanor Case Weighting Policy* (Apr. 2014), available at [http://www.opd.wa.gov/documents/0192-2014\\_MM\\_CaseWeightingPolicy.pdf](http://www.opd.wa.gov/documents/0192-2014_MM_CaseWeightingPolicy.pdf) (last visited Mar. 26, 2015).

*Wilbur* decision holding local municipalities constitutionally accountable for passing the burden of competency and efficiency to lawyers and judges also should incentivize important structural changes.<sup>62</sup> Perhaps following *Wilbur's* lead, New York State settled an important lawsuit challenging its public defense systems, agreeing to significant resource and training reforms.<sup>63</sup>

These kinds of structural changes should help to bring the two sides of the speedy trial coin closer together and into equilibrium. Well-trained and -resourced lawyers and courts will move cases more efficiently to trial.<sup>64</sup> And, better-trained and -resourced lawyers and courts less likely will steamroll defendants into overly efficient dispositions. Rather, when the two sides of the speedy trial coin converge, more of the cases typically plea-bargained too speedily instead may enjoy a speedy *trial*, as Hopwood envisions.<sup>65</sup>

## CONCLUSION

Hopwood's paper champions the maxim, "justice delayed is justice denied."<sup>66</sup> Looking at the fuller picture of criminal justice, I might prefer the version of this maxim I recall from Martin Luther King, Jr.'s *Letter from Birmingham Jail*: "justice *too long* delayed is justice denied."<sup>67</sup> Not because delays contrary to justice should be tolerated for any time. Rather, because the flip side of justice delayed can be an equal danger: a rushed, unconsidered justice. We must calibrate our criminal justice

---

62. At a minimum, *Wilbur* has changed the structure of public defense services in the Cities subject to the District Court's order. See *Wilbur*, 989 F. Supp. 2d at 1133–37 (ordering injunctive relief against the Cities, including appointment of a Public Defense Supervisor and data collection and reporting requirements). But the Cities also paid a hefty price in attorney fees after losing in *Wilbur*. See *Wilbur v. City of Mount Vernon, Ord. Awarding Fees and Costs*, No. C11-1100RSL Dkt. No. 354 (W.D. Wash. Apr. 15, 2014) (awarding \$2,168,653.70 in attorney fees and \$43,496.50 in expenses). If municipalities' liability insurers become an advocate for criminal justice reform, real change could be on the horizon.

63. See N.Y.C.L.U., *Settlement Begins Historic Reformation of Public Defense in New York State*, (Oct. 21, 2014), available at <http://www.nyclu.org/news/settlement-begins-historic-reformation-of-public-defense-new-york-state> (last visited Jan. 15, 2015).

64. Cf. Emily Rose, Note, *Speedy Trial as a Viable Challenge to Chronic Underfunding in Indigent-Defense Systems*, 113 MICH. L. REV. 279, 281 (2014) (arguing that "the right to speedy trial is inextricably linked to providing adequate resources for indigent-defense systems").

65. Cf. Zeidman, *supra* note 30, at 221 (calling for "fewer pleas and more adversarial trials").

66. Hopwood, *supra* note 1, at 710.

67. Letter from Martin Luther King, Jr., 5–6, original document available at THE MARTIN LUTHER KING, JR. RESEARCH AND EDUC. INST., STAN. UNIV., [http://mlk-kpp01.stanford.edu:5801/transcription/document\\_images/undecided/630416-019.pdf](http://mlk-kpp01.stanford.edu:5801/transcription/document_images/undecided/630416-019.pdf) (emphasis added).

system to provide both speedy and deliberate trials across the full run of cases.

This kind of calibration in our complex and vast modern criminal justice system will necessitate deep structural changes. These structural changes, combined with important doctrinal reforms of the sort proposed by Hopwood, should present the best antidote to both sides of the speedy trial dynamic ably uncovered by Hopwood in *The Not So Speedy Trial Act*. The result, I hope, will be a criminal justice system that is not too fast, and not too slow, but just right.<sup>68</sup>

---

68. See WIKIPEDIA, *The Goldilocks Principle*, [http://en.wikipedia.org/wiki/Goldilocks\\_principle](http://en.wikipedia.org/wiki/Goldilocks_principle) (last visited Jan. 25, 2015).