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Implementation of the Speedy Trial Guarantee in Louisiana

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Conclusion

The major problem of the current system is the lack of established guidelines or standards for judges to use when determining the sentence. In addition to needed guidelines, review of sentencing procedures is also necessary to insure that established guidelines are followed. Due to the Louisiana supreme court's stated inability to review sentences without express statutory power,[49] needed reform must necessarily proceed from an informed legislature that is ready to extend judicial review to this important aspect of the criminal process. Until such legislative reform, internal court action in the form of seminars for judges wherein a free exchange of ideas regarding sentencing could be extremely helpful in alleviating some problems. Also, the judicial administrator could compile and distribute sentencing data to members of the judiciary, to be used in formulating sentencing guidelines. Even with such information appellate review of sentences is still essential if the defendant is to have a forum in which to seek redress when the judicial guidelines are disregarded. Without review, the objectives set forth by the ABA in drafting the standards relating to appellate review of sentences would in large measure, be defeated.

Julian Glenn Dupree

IMPLEMENTATION OF THE SPEEDY TRIAL GUARANTEE IN LOUISIANA

The right to a speedy trial, recognized from the time of the Magna Charta[1] is secured by the Constitutions of the United States[2] and Louisiana,[3] and by the Louisiana Code of Criminal

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sentencing problem is for the legislature to revise some of the current penalties which are provided for the various crimes. *See, e.g.*, Ruben, *Disparity & Equality of Sentences—A Constitutional Challenge*, 40 F.R.D. 55, 56 (1966); Wechsler, *Sentencing, Correction, & the Model Penal Code*, 109 U. PA. L. REV. 465, 472-75 (1961).

49. State v. Polk, 258 La. 738, 247 So.2d 853 (1971).

1. "To none will we sell, to none deny or delay right of justice." 4 W. BLACKSTONE, COMMENTARIES *422.

2. U.S. CONST. amend. VI provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

3. LA. CONST. art. I, § 9: "In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury . . . ."

Procedure.[4] A primary reason for the guarantee is that delay often prejudices the defendant's ability to present a defense, due to the disappearance of evidence and witnesses, fading memories and a loss of perspective of past events. Preventing undue and oppressive incarceration and minimizing the anxiety accompanying public accusation are also generally recognized as factors in protecting a defendant's right to a speedy trial.[5] There are societal interests as well: a speedy trial facilitates effective prosecution and maximizes the effect of the criminal law.[6] In addition, the public must bear the costs of maintaining prisoners in jail (and often support for families of incarcerated breadwinners). When the accused is freed on bail or reconizance, the public interest in speedy trial lies in minimizing opportunities to flee or engage in criminal activity.

Although the United States Supreme Court has never applied the speedy trial guarantee to delays before arrest or indictment, it has been argued that the scope of the right should include such delays, since prejudice to the defendant's ability to prepare a defense can occur during this period.[7] However, most courts have been reluctant to agree, reasoning that the speedy trial guarantee is applicable only to an "accused,"[8] that statutes of limitation control this delay,[9] or that its application to delays in institution of prosecution would unduly handicap police efforts to apprehend criminals.[10] This Comment will examine only post-arrest delays under the Louisiana Code of Criminal Procedure in light of considerations underlying the constitutional right to a speedy trial.

Constitutional Limitations

The sixth amendment right to a speedy trial is "necessarily

4. LA. CODE CRIM. P. art. 701: "The state and the defendant have the right to a speedy trial." Articles 571-83 deal with the specific time limitations upon institution of prosecution and limitations upon bringing the accused to trial. *See* notes 43-47 and accompanying text *infra*.

5. United States v. Ewell, 383 U.S. 116, 120 (1966).

6. *See* J. BENTHAM, THE THEORY OF LEGISLATION 326 (Ogden ed. 1931): "It is desirable that punishment should follow offense as closely as possible; for its impression on the minds of men is weakened by distance."

7. *See* Note, 20 STAN. L. REV. 476, 489 (1968).

8. *See, e.g.*, People v. Jordan, 45 Cal. 2d 697, 708, 290 P.2d 484, 491 (1955); State v. Vawter, 236 Ore. 85, 91, 386 P.2d 915, 918 (1963).

9. *See, e.g.*, United States v. Ponczko, 367 F.2d 737 (7th Cir. 1966); Bruce v. United States, 351 F.2d 318 (5th Cir. 1965).

10. *See, e.g.*, Halcomb v. Eckel, 110 Ohio App. 208, 165 N.E.2d 479 (1959).

relative. It is consistent with delays and depends upon circumstances."[11] Although "the delay must not be purposeful or oppressive,"[12] "the essential ingredient is orderly expedition and not mere speed."[13] In *Klopfer v. North Carolina*,[14] the right was deemed "as fundamental as any of the rights secured by the Sixth Amendment,"[15] and, accordingly, was made applicable to state prosecutions by the due process clause of the fourteenth amendment.[16] The United States Supreme Court has recognized as basic three demands of criminal justice underlying the speedy trial guarantee: preventing undue and oppressive incarceration prior to trial; minimizing anxiety and concern accompanying public accusation; and limiting the possibilities that long delay will impair the ability of an accused to defend himself.[17]

The recent decision in *Barker v. Wingo*[18] set out for the first time the criteria by which the right to a speedy trial is to be judged. The opinion identified four factors courts should assess when faced with speedy-trial claims: length of the delay, reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.[19]

The length of the delay must be examined first, because without a delay which is "presumptively prejudicial" there is no need to inquire into the other factors.[20] However, the decision in *Barker* does not attempt to specify such a period, regarding the length of delay that will provoke inquiry as "necessarily dependent upon the peculiar circumstances of the case."[21]

The second factor, the reason for the delay, also carries variable weight. Deliberate attempts to hamper the defense should be weighed heavily against the government; a more neutral reason (*e.g.*, overcrowded courts) should be weighed less

11. Beavers v. Haubert, 198 U.S. 77, 87 (1905).
12. Pollard v. United States, 352 U.S. 354, 361 (1957).
13. United States v. Ewell, 383 U.S. 116, 120 (1966), *quoting from* Smith v. United States, 360 U.S. 1, 10 (1959).
14. 386 U.S. 213 (1967).
15. *Id.* at 223.
16. *Id.* at 226. *See also* Dickey v. Florida, 398 U.S. 30 (1970); and Smith v. Hooey, 398 U.S. 374 (1969).
17. Smith v. Hooey, 393 U.S. 374 (1969); United States v. Ewell, 383 U.S. 116, (1966).
18. 92 S. Ct. 2182 (1972).
19. The Court discussed issues which had been raised by Justice Brennan in his concurring opinion in *Dickey v. Florida*, 398 U.S. 30, 39 (1970).
20. Barker v. Wingo, 92 S. Ct. 2182 (1972).
21. *Id.*

heavily, but ultimate responsibility must rest with the government rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.[22]

Two approaches have been used in the past with regard to the third factor, *i.e.*, whether a defendant must have previously demanded a trial in order to assert denial of the speedy trial guarantee. The first approach is the establishment of a time period within which a defendant must either be brought to trial or the charge dismissed; this type of rule is usually promulgated legislatively,[23] although courts have also imposed it.[24] A second approach would require the defendant to make a demand in order to later assert denial of his right to a speedy trial.[25] The "demand rule" has been construed within the concept of waiver: a defendant is deemed to have waived his right to a speedy trial for the period prior to making a demand.[26] The Court in *Barker* rejected a mechanical application of either: the specified time limit approach because there is "no constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months,"[27] and the demand waiver rule because it is inconsistent with prior

22. *Id.*, citing as an example *United States v. Butler*, 426 F.2d 1275 (1st Cir. 1970) where the court thought a delay of nine months overly long, absent a good reason, in a case that depended on eyewitness testimony. At least one writer has criticized *Barker* in its treatment of the temporal factor and feels the Court's determination of the length of the delay as a "triggering mechanism" may be read to preclude further consideration of length of delay after inquiry is triggered. *See* Uviller, *Barker v. Wingo: Speedy Trial Gets a Fast Shuffle*, 72 COLUM. L. REV. 1376, 1385 (1972).

23. *See, e.g.*, LA. CODE CRIM. P. arts. 578-83.

24. The United States Court of Appeals for the Second Circuit has established that in the district courts in the Second Circuit, except in unusual circumstances, the charge will be dismissed unless the government is ready for trial within six months of arrest.

25. The approaches are not always mutually exclusive. In *State v. Dupree*, 256 La. 146, 235 So.2d 408 (1970), the court found an interruption of the period of limitations by the defendant's escape. The court refused to rule that the interruption terminated when the defendant was captured and incarcerated in another jurisdiction, based upon the theory that the defendant made no demand to be tried on the outstanding Louisiana charge.

26. A similar approach was taken in the court of appeals in *Barker v. Wingo*, 442 F.2d 1141 (6th Cir. 1971). *See also* Barker v. Wingo, 92 S. Ct. 2182, 2189 nn. 22-23.

27. 92 S. Ct. at 2188. "The states, of course, are free to prescribe a reasonable period consistent with constitutional standards, but our approach must be less precise." *Id.*

decisions dealing with waiver of constitutional rights.[28] Waiver is "an intentional relinquishment or abandonment of a known right or privilege,"[29] and the court has strongly disapproved presumption of acquiescense from a silent record.[30] The decision in *Barker* does not disregard demand; assertion or failure to assert is to be considered, but is only one factor in the balancing test.[31] Affirming language in *Dickey v. Florida*,[32] *Barker* places the primary burden on the courts and prosecutors to assure that cases are brought to trial.[33]

The fourth factor in the balancing test is the prejudice the defendant suffered due to the delay. The opinion in *Barker* directs that prejudice be examined in light of the interests the right to a speedy trial was designed to protect: preventing oppressive pre-trial incarceration, minimizing anxiety and limiting the possibility that the defense will be impaired.[34] The Court notes that pre-trial incarceration often means loss of a job, disruption of family life and enforced idleness. "The time spent in jail is simply dead time . . . . Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence,

28. *Id.* at 2189-90, *citing* Boykin v. Alabama, 395 U.S. 238 (1969); Miranda v. Arizona, 384 U.S. 436 (1964); Carnley v. Cochran, 369 U.S. 506 (1962); Johnson v. Zerbst, 304 U.S. 458 (1938); Aetna Ins. Co. v. Kennedy, 301 U.S. 389 (1937); Ohio Bell Tel. Co. v. Public Util. Comm'n, 301 U.S. 292 (1937).

29. Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

30. *See* cases cited at note 28 *supra*.

31. 92 S. Ct. at 2191: "We think the better rule is that the defendant's assertion of or failure to assert his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of the right. Such a formulation avoids the rigidities of the demand-waiver rule and the resulting possible unfairness in its application. It allows the trial court to exercise a judicial discretion based on the circumstances, including due consideration of any applicable formal procedural rule. It would permit, for example, a court to attach a different weight to a situation in which the defendant knowingly fails to object from a situation in which his attorney acquiesces in long delay without adequately informing his client or from a situation in which no counsel is appointed. It would also allow the court to weigh the frequency and force of the objections as opposed to attaching significant weight to a purely *pro forma* objection."

32. 398 U.S. 30, 37-38 (1970): "Although a great many accused persons try to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging party is to provide a prompt trial."

33. 92 S. Ct. at 2192: "We hardly need add that if delay is attributable to the defendant, then his waiver may be given effect under the standard waiver doctrine, the demand rule aside."

34. *Id.* at 2193, *citing* Smith v. Hooey, 393 U.S. 374 (1969); Klopfer v. North Carolina, 386 U.S. 213 (1967); and United States v. Ewell, 383 U.S. 116 (1966). It is noteworthy that in *Klopfer*, the petitioner did not allege an impairment of his ability to prepare a defense; the remand was based on anxiety and concern accompanying public accusation.

contact witnesses or otherwise prepare his defense."[35] In *Barker*, which the Court considered to be a "close" case, the prejudice was minimal; no witnesses died or disappeared.[36] Although the delay at the behest of the prosecution was well over five years, the Court found that Barker did not desire a speedy trial.[37] The state first wanted to try an alleged accomplice, one Manning, and Barker consented to the prosecution's numerous motions for continuance, not objecting until Manning was finally (after two hung juries and two reversals) convicted. As to Barker, the Court found

> "[t]he probable reason for Barker's attitude was that he was gambling on Manning's acquittal. The evidence was not terribly strong against Manning as the reversals and hung juries suggest, and Barker undoubtedly thought that if Manning were acquitted, he would never be tried."[38]

So although the court discouraged mechanical application of the so-called "demand rule,"[39] the decision in *Barker* is grounded essentially on the defendant's failure to assert his right to a speedy trial.

Implementation of the Guarantee in Louisiana Prosecutions

Although specific time limitations to encourage expeditious handling of criminal cases are not constitutionally compelled,[40] most states, including Louisiana,[41] have chosen to use the device. The American Bar Association has approved such a rule:

> "A defendant's right to a speedy trial should be expressed by rule or statute in terms of days or months running from a specified event. Certain periods of necessary delay should be excluded in comprising the time for trial, and these should be specifically identified by rule of statute insofar as is practicable."[42]

35. 92 St. Ct. at 2193.
36. One difficulty in looking to an apparent absence of prejudice is that what has been forgotten cannot be shown from an examination of the record.
37. Barker v. Wingo, 92 S. Ct. 2182, 2194 (1972).
38. *Id.*
39. *Id.* at 2194-95.
40. *See* note 27 and accompanying text *supra*.
41. *See* LA. CODE CRIM. P. arts. 578-83.
42. AMERICAN BAR ASSOCIATION PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SPEEDY TRIAL § 2.1 (1968) [hereinafter cited as ABA, STANDARDS RELATING TO SPEEDY TRIAL.]

Louisiana has two types of time limitations: one set of rules covers the period between alleged commission of the offense and the institution of prosecution;[43] the second set establishes the time in which the state must bring a defendant to trial, counting from the time of institution of prosecution.[44] The Code of Criminal Procedure articles which are particularly important in determining allowable delays after institution of prosecution are the following:

"Art. 578

Except as otherwise provided in this chapter, no trial shall be commenced:

(1) In capital cases after three years from the institution of prosecution;

(2) In other felony cases after two years from the date of institution of the prosecution and;

(3) In misdemeanor cases one year from the date of institution of prosecution.

The offense charged shall determine the applicable limitation."

"Art. 579

The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant, at any time, with the purpose to avoid detection, apprehension or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state, or

43. LA. CODE CRIM. P. arts. 571-77. Article 571 provides "[t]here is no time limitation upon the institution of prosecution for any crime for which the death penalty may be imposed." Although the Supreme Court has recently ruled the death penalty unconstitutional in most circumstances, *Furman v. Georgia*, 92 S. Ct. 2726 (1972), presumably those crimes which were formerly regarded as capital remain so for procedural matters. Article 572 limits institution of prosecution to six years for felonies necessarily punishable by imprisonment at hard labor, four years for other felonies, two years for misdemeanors where imprisonment is possible and six months for misdemeanors punishable only by a fine or forfeiture.

44. *See* LA. CODE CRIM. P. arts. 578-83.

(2) The defendant cannot be tried because of insanity or because his presence cannot be obtained by legal process, or for any other cause beyond the control of the state.

The period of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists."

The code also provides for a suspension[45] of the period for the time required for ruling on the defendant's preliminary motions providing that "in no case shall the state have less than one year after the ruling to commence trial."[46] Similarly, when there is a mistrial or an order for a new trial the state has one year or the remainder of the original period, whichever is longer, in which to bring the defendant to trial.[47]

One subject not covered specifically in the articles dealing with time limitation is the effect of a motion for a continuance. The American Bar Association Minimum Standards provide: "The court should grant a continuance only upon a showing of good cause and only for as long as necessary, taking into account not only the request of the prosecution or defense, but also the public interest in prompt disposition of the case."[48] Although under Louisiana law a motion for a continuance must be tried contradictorily,[49] and is within the discretion of the court,[50] there is no authority in the trial judge to deny the motion where both parties consent.[51] The Code does not specifically provide what effect a consensual continuance has upon the running of the time limitations, but the Louisiana supreme court has ruled that where the state consents to the defendant's motion for continuance, the time limitations continue to run.[52] The reasoning is that where the state does not oppose the motion, the reason

45. When "suspended," the time a defendant is held which had run prior to the cause of suspension is included in computation; "interruption" starts the period over. *See id.* art. 579, comment (a).

46. *Id.* art. 580.

47. *Id.* art. 582.

48. ABA, STANDARDS RELATING TO SPEEDY TRIAL § 1.3.

49. LA. CODE CRIM. P. art. 711.

50. *Id.* art. 712.

51. *Id.* art. 713: "A continuance shall be granted when the state and the defendant both request it, or as otherwise provided by law."

52. State v. Hudson, 263 La. 72, 267 So.2d 198 (1972); *cf.* State v. Benson, 254 La. 867, 227 So.2d 913 (1969).

that the defendant cannot be tried is not one "beyond the control of the state" as provided in article 579. Presumably, if the state opposes the motion unsuccessfully, an interruption would occur under article 579.

Some of the Louisiana jurisprudence reflects reliance on the literal wording of the Code without regard to the interests those provisions are designed to protect. In *State v. Montgomery*[53] the defendant was originally indicted and convicted in 1963, but his conviction was reversed in 1966. After the new trial was ordered, the defendant escaped from the parish jail and was at large for two hours. In 1969, he was convicted again on the original charge and appealed, pleading the running of the limitation on bringing to trial. The supreme court, in affirming the conviction, held that the period of limitation had been interrupted by the two hour jailbreak, with the result that a new three year period of limitation began running after the defendant's recapture. The majority opinion relied on article 579, which provides for an interruption if "(1) the defendant at any time, with the purpose to avoid detection, apprehension or prosecution flees the state, is outside the state, or is absent from his usual place of abode within the state." The court concluded that "it matters not how long the conduct specified in Article 579(1) persists or whether it has any effect on the progress of the trial. *The simple fact of its occurrence results in, at that time, an interruption.*"[54] Justice Barham, dissented, arguing that "[t]he determination of the period of limitation for the retrial of this defendant was established at the moment the order for a new trial became final."[55] Article 582 required that the defendant be brought to trial "within one year from the date the new trial is granted . . . or within the period established by Article 578, whichever is longer." Since the escape occurred after the new trial was granted, the dissent reasoned, it could only interrupt the one year period which had attached. Therefore, a trial in 1969 was not timely. The dissent did not reach the question of whether there was an interruption of the time limitation by the escape. The reasoning of the dissent was adopted by the Legislature in the enactment of a new provision, article 583, during the 1972

53. 257 La. 461, 242 So.2d 818 (1970).
54. *Id.* at 466, 242 So.2d at 819.
55. *Id.* at 470, 242 So.2d at 821.

session.[56] The Montgomery decision however, still stands as authority for the proposition that the mere occurrence of one of the events listed in article 579 results in an interruption, without regard to whether it delays the bringing to trial. When there is no resulting delay, as the state conceded in *Montgomery*,[57] an interruption seems merely punitive. Since escape is itself a substantive offense under the Criminal Code,[58] fear of affecting an interruption is not likely to further deter an escape attempt. Moreover, if the provisions dealing with time limitations are to implement the right to a speedy trial, the writer submits that an interruption should occur only if the situation does in fact result in prevention or delay in bringing the defendant to trial.

Another problem area in the application of Louisiana procedural rules occurs when the defendant is incarcerated prior to the return of an indictment or the filing of a bill of information. The American Bar Association Minimum Standards recommend that the time for trial begin running from the date the charge is filed, except where the defendant has been continuously held in custody or on bail or recognizance until formal charging to answer for the same crime or a crime based on the same conduct or arising from the same criminal episode. In that situation, the time for trial should commence running from the date the defendant was first held to answer.[59] In a recent case, *State v. Gladden*,[60] the Louisiana supreme court held that the "date of institution of prosecution" referred to in article 579 is the date of indictment or information, not the earlier date when the defendant was arrested and incarcerated. In *Gladden*, the defendant raised the issue of delay by means of both the running of time limitations and the denial of the constitutional right to a speedy trial. In ruling on the question of the time limitations, the court held, without citing any authority, that the two year period of limitation did not commence running until formal charges had been filed several months after the defendant was arrested. The writer submits that the interests which the speedy

56. LA. CODE CRIM. P. art. 583 provides: "The period of limitation established by Article 582 shall be interrupted by any of the causes stated in Article 579. Where such interruption occurs, the state must commence the new trial within one year from the date the cause of the interruption no longer exists." *Added by* La. Acts 1972, No. 677 § 1.

57. 257 La. at 464, 242 So.2d at 819.

58. LA. R.S. 14:110 (Supp. 1972).

59. ABA, STANDARDS RELATING TO SPEEDY TRIAL § 2.2.

60. 260 La. 735, 257 So.2d 388 (1972).

trial guarantee attempts to protect are affected by all *post-arrest* delays. If the constitutional right to a speedy trial is designed to protect the defendant from oppressive pre-trial incarceration, and the time limitations are to implement that right, then the period of limitation should commence running from the moment of incarceration. The anxiety and concern accompanying public accusation are presumably also felt when one has been arrested, even though formal charges have not yet been filed. To an accused in jail awaiting trial, witnesses and evidence which tend to prove his innocence are as difficult to obtain before formal "institution of prosecution" as afterwards, and arguably more difficult to obtain because the (presumptively innocent) defendant does not know what crime(s) he is alleged to have committed.

In dealing with the constitutional issue, the supreme court in *Gladden* found "the state's prosecution to this cause was attended by delays, in large part, attributable either to Gladden's request for continuance or the fact that he was in Federal custody and unavailable when the state was able to try him."[61] Since a partial cause of the delay was the federal marshal's shortage of deputies, and a resulting inability to deliver the defendant to state authorities for trial, it is submitted that the issue of time limitations under the Code could have been resolved by the application of article 580(2), which provides for an interruption when the defendant cannot be tried "because his presence cannot be obtained by legal process, or for any other cause beyond the control of the state." Thus the conviction could have properly been affirmed without disallowing the defendant credit for time actually spent in jail prior to indictment, a holding which ignores the considerations underlying the right to a speedy trial. By analogy, it is noteworthy that a sentencing judge is now required to credit convicted defendants with all time actually spent in confinement;[62] surely a defendant should also get credit for this time for purposes of computing time limitations.

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61. *Id.* at 747, 257 So.2d at 392.

62. LA. CODE CRIM. P. art. 880 was amended in 1970 to require the court to give a defendant credit toward service of his sentence for time spent in actual custody prior to the imposition of sentence. The former law allowed such credit at the court's discretion.

Conclusion

Due to the "slippery"[63] nature of the right to a speedy trial and the *ad hoc* balancing test used to determine whether the right has been denied, it is doubtful that a statutory scheme could master its nuances. The ABA Standards offer guidelines in protecting both the defendant's and society's interests, but even a strict adherence to the standards would not likely solve all potential problems in this area. Although the Louisiana supreme court has recognized that the constitutional right cannot be infringed by legislative enactments, such enactments "do serve to establish legislative recognition of the time that body has in all probability found to be reasonable delays for prosecutions."[64] It is therefore unlikely that Louisiana courts will find a denial of the constitutional right where the time limitations have not expired. *Gladden* and *Montgomery* emphasize the wording of code provisions at the expense of the right which the time limitations attempt to protect. Although no statutory formula, however precise, could fully and fairly implement the right to a speedy trial in all cases, the writer submits that judicial reflection on the underlying considerations could serve to minimize anomalous results in the application of procedural rules.

Mark Gilbert Murov

PROBATION: A COMPARATIVE STUDY OF LOUISIANA LAW AND THE ABA STANDARDS

Probation, the most frequently employed form of correctional treatment,[1] was first used as an ameliorative device to soften the edges of a rigid, punitive system.[2] While the punishment of crime was once considered to serve a prophylactic purpose[3] in itself, the focus today centers on the treatment and rehabilitation of offenders and the correction and prevention of factors which bring about criminal behavior.[4] Probation

63. Barker v. Wingo, 92 S. Ct. 2182, 2188 (1972).

64. State v. Gladden, 260 La. 735, 744, 257 So.2d 388, 391 (1972).

1. Cohen, *Sentencing, Probation, and the Rehabilitative Ideal: The View from Mempa v. Rhay*, 47 TEX. L. REV. 1, 26 (1968).

2. *Id.*

3. Andenaes, *General Prevention—Illusion or Reality?*, 43 J. CRIM. L.C. & P.S. 176 (1952).

4. Bassett, *Discretionary Power and Procedural Right in the Granting and Revoking of Probation*, 60 J. CRIM. L.C. & P.S. 479 (1969) [hereinafter cited as *Bassett*].