

# The Breakfast Club

## Constitutional Minute for 9 May 2023

### Right #16: Right to a Speedy and Public Trial

“In all criminal prosecutions, the accused shall enjoy the right to a *speedy* and *public* trial,”

Ah, public trials, what would we do without them? Some Americans would never experience one were it not for live TV, other Americans have way too much familiarity with trials. Remember the [Perry Mason TV series](#)? Now there’s [Drop Dead Diva](#) to replace and update it. What is it that attracts us to watching some poor soul’s life or property hang in the balance of [twelve “angry” men](#) and women? We definitely want to see justice done, the law upheld, and occasionally that seems to not be the result. But still we watch.

Some [famous trials](#) in the age of television kept [millions of people](#) watching their screens. There have been [ignominious trials](#), [“show” trials](#) and trials where the outcome was a [foregone conclusion](#). The [trial of King Charles I](#) was a big deal, certainly for the King; it resulted in his beheading and the verbatim transcript has been preserved for the curious. The [trial of William Penn](#) is famous, the [trial of John Peter Zenger](#) less so, but equally important; Gouverneur Morris, who helped draft the U. S. Constitution, noted, *“The trial of Zenger in 1735 was the germ of American Freedom, the morning star of liberty that subsequently revolutionized America.”*<sup>i</sup> John Adams made a name for himself by defending British soldiers after the Boston Massacre.

Jesus was subjected to a trial of sorts. Pilate found him blameless,<sup>ii</sup> nevertheless he was crucified. Other trial outcomes have caused [riots](#) and wanton destruction. Most [Supreme Court hearings](#) are preceded by trials in lower courts. There is even a [website](#) devoted to descriptions of famous trials. Metaphorical trials make great book titles: I especially liked the book [America on Trial: A Defense of the Founding](#), by Robert Reilly. If you have \$300 laying around you can use it to learn “all-star” [Keith Mitnik’s Trial Methods](#).

I think that’s enough rabbit holes for now, back to the Sixth Amendment. Why were speedy and public trials such a big deal for America’s founders? Ask Mr. Jefferson; he devoted quite a bit of space in the Declaration to complaining about “mock trials” being conducted after British soldiers shot citizens, of the King depriving the colonists “of the benefits of Trial by Jury,” and of “transporting us beyond Seas to be tried for pretended offences.” A trial moved to London or even Nova Scotia because New England juries refused to convict, was neither speedy nor public.

In a 1789 letter to Thomas Paine Jefferson states: *“I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution.”*

Notice there’s a big caveat of this clause: it only applies to *criminal* prosecutions, not civil ones.

It is [commonly accepted](#) that no more than about 5 percent of all criminal cases [misdemeanors and felonies], ever go to trial in this country, the other 95 per cent are either dismissed entirely, or [plea bargained to avoid trial](#).

How has the Supreme Court viewed the right to a “speedy trial?”

In [Beavers v. Haubert \(1905\)](#), the Court held that “speedy” does not always mean right away. There may be reasons for some trial delays.

In [Klopper v. North Carolina \(1967\)](#), the Court ruled that the right to a speedy trial is so fundamental that it should apply to trials in state courts as well as those in federal courts.

In [Barker v. Wingo \(1971\)](#), the Court decided unanimously that a defendant can waive their right to a speedy trial, either implicitly or explicitly.

In [Strunk v. United States \(1973\)](#), the Court ruled that if the speedy trial right is violated, the Court must dismiss the indictment against the defendant or reverse any conviction.

The [Speedy Trial Act of 1974](#) mandated that, beginning in 1980, the period of delay in all federal and district courts shall not exceed 100 days, subject to a variety of excludable periods of delay. An indictment must be filed within 30 days from the date of arrest or service of the summons and a trial must begin within 70 days from the date of indictment.

In [United States v. Lovasco \(1976\)](#), the court clarified that the right to a speedy trial applies only after a person has been accused of a crime, that any pre-indictment delay does not deprive a person of due process even if the delay is found to prejudice his defense.

In an unusual admittance of error, U.S. Attorneys [recently admitted](#) that at least one J6 defendant (Wow!) was denied his right to a speedy trial. [This LA Times article](#) explains how complicated is gathering the evidence needed by both J6 defense attorneys and prosecutors.

But is a speedy trial always in the best interest of a defendant? Your attorney may decide he or she needs more time to prepare and gather witnesses and evidence. If you are out on bail, you may find you are unable to appear on the date of trial. Sometimes delays are unavoidable.

As to a *public* trial, courts have repeatedly held that the general public and press have a First Amendment interest in open court proceedings. Defendants can sometimes waive this right, but they can't force a trial to be conducted in private.

At York County's [Circuit Court](#), trials (dockets) are generally conducted on Tuesdays and Thursdays at 9:00 am, 10:30 am and 1:00 pm. Yes, they are open to the public; see you there.

For further reading:

[The Mammoth Book of Famous Trials](#), by Roger Wilks, 2006

[The Sixth Amendment: An Illustrated History](#), by Robert McWhirter, 2017

[Sixth Amendment Supreme Court Decisions](#), by Robert Dittmer, 2016

Next week: Right #17: Right to an Impartial Jury

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<sup>i</sup> <https://www.wvaj.org/index.cfm?pg=HistoryTrialbyJury>

<sup>ii</sup> John 19:4, "I find no basis for a charge against him."