Post 8/13/71

Speedy Trials and Constitutional Rights

After a lawyer loses an internationally publicized landmark case before the Supreme Court by a six to three vote, I suppose it is normal for him to be disappointed and perhaps even to sulk and pout a bit. But somehow I had hoped that Attorney General Mitchell would take his "Pentagon papers" defeat in stride and not — 16 days later — use the annual American Bar Association meeting in London as the forum to launch a bitter and sweeping attack on the court's recent decisions that have strengthened our civil liberties.

Although The Post's editorial ("Mr. Mitchell and the Court," July 20) was generally critical of the Attorney General, it failed to come to grips with his basic arguments.

At three separate points in his address, he referred to the provision in the Constitution's Sixth Amendment which requires a "speedy trial" in criminal matters. He then went on to make seven references to the fact that criminal trials in the United States are not conducted speedily. The thrust of the Attorney General's comments was that he, as prosecutor, and the state were being deprived of their right to a "speedy trial." That is the last thing on earth that the framers of the Constitution had in mind when they wrote the Sixth Amendment. The Attorney General failed to recognize that the Sixth Amendment provides that "In all criminal prosecutions, the *accused* shall enjoy the right to a speedy and public trial . . ." That Amendment, as well as the Fourth and Fifth Amendments, were designed to protect the defendant and not the prosecutor or his client.

The defendant who has the "right" to a speedy disposition of his case has other legal rights, as well. If he wants to contest points made and procedures adopted by the prosecutor, that is also the defendant's right, even though it slows down the trial process. In brief, there is nothing in the Constitution which requires, as an abstract proposition, that trials be conducted with speed and certainly there is nothing which gives such a right to the state (as it does in such countries as Spain, Portugal and the Soviet Union).

The speech was disappointing and disillusioning in several other respects. The Attorney General referred twice to the fact that the only issue before and court should be whether the defendant is guilty or innocent. This is a callous disregard of, and a failure to understand, why our Constitution provides defendants with procedural protections. His speech re-echos the cry of those prosecutors whose thirst for conviction is greater than their thirst for — not to mention their often inability to understand or sympathize with — the protection that the civil liberties amendments give a defendant. In a democratic system, such as ours, society should have a far greater commitment to keeping the Bill of Rights alive than to incarcerating defendants.

The Attorney General referred disparagingly to defendants' Constitutional protections as "technical challenges" and then went on to bemoan the fact that courts comb "every aspect of a case . . . for possible charges of Constitutional violation." There can be no doubt that the Attorney General's conviction job would be a lot easier and less frustrating if Constitutional "technicalities" would suddenly disappear and if courts were less concerned with "Constitutional violations." But the ease of his office chores should not be his goal—particularly when weighed against the enforcement of Constitutional protections.

In several places in the speech, the Attorney General referred to the growing concern in America about our system of justice. His statistics are correct, although one may differ as to why it is that the skepticism has arisen. Instead of arguing that the confidence in the judiciary would be increased by the relaxation of Constitutional principles, the Attorney General should have argued that one of the ways to increase respect for law—and this is particularly true for our minority citizens — is for more people, and particularly prosecuting attorneys and trial judges, to be concerned with the Constitutional rights of defendants. This would help to reduce the necessity for the large number of appeals to which the Attorney General referred on several occasions in his speech. It would also reduce the frequency that appellate courts reverse trial courts — another one of the Attorney General's criticisms — which at times cavalierly ignore defendants' Constitutional rights.

Apparently, the Attorney General fails to understand that one of the purposes of the Bill of Rights was to make the quest for the truth between the prosecutor and the defendant more equal. The former has all the power of the state (with all of its policemen, investigators, and other specialists) behind it, while the defendant in a criminal case usually has none of those powers or anything resembling them. The framers of the Constitution attempted to grapple with this imbalance by adopting the Fourth, Fifth and Sixth Amendments. Any relaxation of those rights would tilt the scale of justice in favor of the prosecutor. Indeed, I have a feeling that one of the reasons why the Supreme Court has continuously expanded the civil liberties provisions of the Constitution is because it has recognized that, as time has gone on, the prosecuting staffs have become more capable, more efficient and certainly have had at their disposal more and more funds for investigation and prosecution.

I suppose it was appropriate for the Attorney General to begin his address with a quotation from Dickens' "Bleak House," since the address was delivered in London. Another, quotation from Dickens, which he could have used, it seems to me, more appropriately, is the opening sentence from "A Tale of Two Cities": "It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epic of belief, it was the epic of incredulity, it was the season of Light, it was the season of Darkness . . ."

MARCUS COHN.

Washington.