SUPREME COURT OF THE UNITED STATES

No. 90–857

MARC GILBERT DOGGETT, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[June 24, 1992]

JUSTICE O'CONNOR, dissenting.

I believe the Court of Appeals properly balanced the considerations set forth in *Barker* v. *Wingo*, 407 U. S. 514 (1972). Although the delay between indictment and trial was lengthy, petitioner did not suffer any anxiety or restriction on his liberty. The only harm to petitioner from the lapse of time was potential prejudice to his ability to defend his case. We have not allowed such speculative harm to tip the scales. Instead, we have required a showing of actual prejudice to the defense before weighing it in the balance. As we stated in *United States* v. *Loudhawk*, 474 U. S. 302, 315 (1986), the "possibility of prejudice is not sufficient to support respondents' position that their speedy trial rights were violated. In this case, moreover, delay is a two-edged sword. It is the Government that bears the burden of proving its case beyond a reasonable doubt. The passage of time may make it difficult or impossible for the Government to carry this burden." The Court of Appeals followed this holding, and I believe we should as well. For this reason, I respectfully dissent.