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 SOUTER delivered the opinion of the Court.

In this case we consider whether the delay of 8½ years between petitioner's indictment and arrest violated his Sixth Amendment right to a speedy trial. We hold that it did.

On February 22, 1980, petitioner Marc Doggett was indicted for conspiring with several others to import and distribute cocaine. See 84 Stat. 1265, 1291, as amended, 21 U. S. C. §§846, 963. Douglas Driver, the Drug Enforcement Administration's principal agent investigating the conspiracy, told the United States Marshal's Service that the DEA would oversee the apprehension of Doggett and his confederates. On March 18, 1980, two police officers set out under Driver's orders to arrest Doggett at his parents' house in Raleigh, North Carolina, only to find that he was not there. His mother told the officers that he had left for Colombia four days earlier.

To catch Doggett on his return to the United States, Driver sent word of his outstanding arrest warrant to all United States Customs stations and to a number of law enforcement organizations. He also placed Doggett's name in the Treasury Enforcement Communication System (TECS), a computer network that helps Customs agents screen people entering the country, and in the National Crime Information Center computer system, which serves similar ends.

The TECS entry expired that September, however, and Doggett's name vanished from the system.

In September 1981, Driver found out that Doggett was under arrest on drug charges in Panama and, thinking that a formal extradition request would be futile, simply asked Panama to "expel" Doggett to the United States. Although the Panamanian authorities promised to comply when their own proceedings had run their course, they freed Doggett the following July and let him go to Colombia, where he stayed with an aunt for several months. On September 25, 1982, he passed unhindered through Customs in New York City and settled down in Virginia. Since his return to the United States, he has married, earned a college degree, found a steady job as a computer operations manager, lived openly under his own name, and stayed within the law.

Doggett's travels abroad had not wholly escaped the Government's notice, however. In 1982, the American Embassy in Panama told the State Department of his departure to Colombia, but that information, for whatever reason, eluded the DEA, and Agent Driver assumed for several years that his quarry was still serving time in a Panamanian prison. Driver never asked DEA officials in Panama to check into Doggett's status, and only after his own fortuitous assignment to that country in 1985 did he discover Doggett's departure for Colombia. Driver then simply assumed Doggett had settled there, and he made no effort to find out for sure or to track Doggett down, either abroad or in the United States. Thus Doggett remained lost to the American criminal justice system until September 1988, when the Marshal's Service ran a simple credit check on several thousand people subject to outstanding arrest warrants and, within minutes, found out where Doggett lived and worked. On September 5, 1988, nearly 6 years after his return to the United States and 8½ years after his indictment, Doggett was arrested.

He naturally moved to dismiss the indictment,

arguing that the Government's failure to prosecute him earlier violated his Sixth Amendment right to a speedy trial. The Federal Magistrate hearing his motion applied the criteria for assessing speedy trial claims set out in *Barker* v. *Wingo,* 407 U. S. 514 (1972): "[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Id.,* at 530 (footnote omitted). The Magistrate found that the delay between Doggett's indictment and arrest was long enough to be "presumptively prejudicial," Magistrate's Report, reprinted at App. to Pet. for Cert. 27–28, that the delay "clearly [was] attributable to the negligence of the government," *id.,* at 39, and that Doggett could not be faulted for any delay in asserting his right to a speedy trial, there being no evidence that he had known of the charges against him until his arrest, *id.,* at 42–44. The Magistrate also found, however, that Doggett had made no affirmative showing that the delay had impaired his ability to mount a successful defense or had otherwise prejudiced him. In his recommendation to the District Court, the Magistrate contended that this failure to demonstrate particular prejudice sufficed to defeat Doggett's speedy trial claim.

The District Court took the recommendation and denied Doggett's motion. Doggett then entered a conditional guilty plea under Federal Rule of Criminal Procedure 11(a)(2), expressly reserving the right to appeal his ensuing conviction on the speedy trial claim.

A split panel of the Court of Appeals affirmed. 906 F. 2d 573 (CA11 1990). Following Circuit precedent, see *Ringstaff* v. *Howard,* 885 F. 2d 1542 (CA11 1989) (en banc), the court ruled that Doggett could prevail only by proving "actual prejudice" or by establishing that "the first three *Barker* factors weigh[ed] heavily in his favor." 906 F. 2d, at 582. The majority agreed with the Magistrate that Doggett had not shown

actual prejudice, and, attributing the Government's delay to "negligence" rather than "bad faith," *id.,* at 578–579, it concluded that *Barker*'s first three factors did not weigh so heavily against the Government as to make proof of specific prejudice unnecessary. Judge Clark dissented, arguing, among other things, that the majority had placed undue emphasis on Doggett's inability to prove actual prejudice.

We granted Doggett's petition for certiorari, 498 U. S. ––– (1991), and now reverse.

The Sixth Amendment guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial . . . ." On its face, the Speedy Trial Clause is written with such breadth that, taken literally, it would forbid the government to delay the trial of an "accused" for any reason at all. Our cases, however, have qualified the literal sweep of the provision by specifically recognizing the relevance of four separate enquiries: whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result. See *Barker, supra,* at 530.

The first of these is actually a double enquiry. Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay, 470 U. S., at 530–531, since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness. If the accused makes this showing, the court must then consider, as one factor among several, the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim. See *id.,* at 533–534. This

latter enquiry is significant to the speedy trial analysis because, as we discuss below, the presumption that pretrial delay has prejudiced the accused intensifies over time. In this case, the extraordinary 8½ year lag between Doggett's indictment and arrest clearly suffices to trigger the speedy trial enquiry;[1] its further significance within that enquiry will be dealt with later.

As for *Barker*'s second criterion, the Government claims to have sought Doggett with diligence. The findings of the courts below are to the contrary, however, and we review trial court determinations of negligence with considerable deference. See *Cooter & Gell* v. *Hartmarx Corp.,* 496 U. S. 384, 402 (1990); *McAllister* v. *United States,* 348 U. S. 19, 20–22 (1954); 9 C. Wright & A. Miller, Federal Practice and Procedure § 2590 (1971). The Government gives us nothing to gainsay the findings that have come up to us, and we see nothing fatal to them in the record. For six years, the Government's investigators made no serious effort to test their progressively more questionable assumption that Doggett was living abroad, and, had they done so, they could have found him within minutes. While the Government's lethargy

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[1]Depending on the nature of the charges, the lower courts have generally found postaccusation delay "presumptively prejudicial" at least as it approaches one year. See 2 W. LaFave & J. Israel, Criminal Procedure §18.2, p. 405 (1984); Joseph, Speedy Trial Rights in Application, 48 Fordham L. Rev. 611, 623, n. 71 (1980) (citing cases). We note that, as the term is used in this threshold context, "presumptive prejudice" does not necessarily indicate a statistical probability of prejudice; it simply marks the point at which courts deem the delay unreasonable enough to trigger the *Barker* enquiry. Cf. Uviller, *Barker* v. *Wingo:* Speedy Trial Gets a Fast Shuffle, 72 Colum. L. Rev. 1376, 1384–1385 (1972).

may have reflected no more than Doggett's relative unimportance in the world of drug trafficking, it was still findable negligence, and the finding stands.

The Government goes against the record again in suggesting that Doggett knew of his indictment years before he was arrested. Were this true, *Barker*'s third factor, concerning invocation of the right to a speedy trial, would be weighed heavily against him. But here again, the Government is trying to revisit the facts. At the hearing on Doggett's speedy trial motion, it introduced no evidence challenging the testimony of Doggett's wife, who said that she did not know of the charges until his arrest, and of his mother, who claimed not to have told him or anyone else that the police had come looking for him. From this the Magistrate implicitly concluded, Magistrate's Report, reprinted at App. to Pet. for Cert. 42–44, and the Court of Appeals expressly reaffirmed, 906 F. 2d, at 579–580, that Doggett had won the evidentiary battle on this point. Not only that, but in the factual basis supporting Doggett's guilty plea, the Government explicitly conceded that it had

> "no information that Doggett was aware of the indictment before he left the United States in March 1980, or prior to his arrest. His mother testified at the suppression hearing that she never told him, and Barnes and Riddle [Doggett's confederates] state they did not have contact with him after their arrest [in 1980]." 2 Record, Exh. 63, p. 2.

While one of the Government's lawyers later expressed amazement that "that particular stipulation is in the factual basis," Tr. 13 (March 31, 1989), he could not make it go away, and the trial and appellate courts were entitled to accept the defense's unrebutted and largely substantiated claim of Doggett's ignorance. Thus, Doggett is not to be taxed for invoking his speedy trial right only after his arrest.

The Government is left, then, with its principal contention: that Doggett fails to make out a successful speedy trial claim because he has not shown precisely how he was prejudiced by the delay between his indictment and trial.

We have observed in prior cases that unreasonable delay between formal accusation and trial threatens to produce more than one sort of harm, including "oppressive pretrial incarceration," "anxiety and concern of the accused," and "the possibility that the [accused's] defense will be impaired" by dimming memories and loss of exculpatory evidence. *Barker,* 407 U. S., at 532; see also *Smith* v. *Hooey,* 393 U. S. 374, 377–379 (1969); *United States* v. *Ewell,* 383 U. S. 116, 120 (1966). Of these forms of prejudice, "the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." 407 U. S., at 532. Doggett claims this kind of prejudice, and there is probably no other kind that he can claim, since he was subjected neither to pretrial detention nor, he has successfully contended, to awareness of unresolved charges against him.

The Government answers Doggett's claim by citing language in three cases, *United States* v. *Marion,* 404 U. S. 307, 320–323 (1971), *United States* v. *MacDonald,* 456 U. S. 1, 8 (1982), and *United States* v. *Loud Hawk*, 474 U. S. 302, 312 (1986), for the proposition that the Speedy Trial Clause does not significantly protect a criminal defendant's interest in fair adjudication. In so arguing, the Government asks us, in effect, to read part of *Barker* right out of the law, and that we will not do. In context, the cited passages support nothing beyond the principle, which we have independently based on textual and historical grounds, see *Marion, supra,* at 313–320, that the Sixth Amendment right of the accused to a

speedy trial has no application beyond the confines of a formal criminal prosecution. Once triggered by arrest, indictment, or other official accusation, however, the speedy trial enquiry must weigh the effect of delay on the accused's defense just as it has to weigh any other form of prejudice that *Barker* recognized.[2] See *Moore* v. *Arizona,* 414 U. S. 25, 26–27, and n. 2 (1973); *Barker, supra,* at 532; *Smith, supra,* at 377–79; *Ewell, supra,* at 120.

As an alternative to limiting *Barker,* the Government claims Doggett has failed to make any affirmative showing that the delay weakened his ability to raise specific defenses, elicit specific testimony, or produce specific items of evidence. Though Doggett did indeed come up short in this respect, the Government's argument takes it only so far: consideration of prejudice is not limited to the specifically demonstrable, and, as it concedes, Brief for United States 28, n. 21; Tr. of Oral Arg. 28–34 (Feb. 24, 1992), affirmative proof of particularized prejudice is not essential to every speedy trial claim. See *Moore, supra,* at 26; *Barker, supra,* at 533. *Barker* explicitly recognized that impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony "can rarely be shown." 407 U. S., at 532. And though time can tilt the case against either side, see *id.,* at 521; *Loud Hawk, supra,* at 315, one cannot generally be sure which of them it has prejudiced more severely. Thus,

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[2]Thus, we reject the Government's argument that the effect of delay on adjudicative accuracy is exclusively a matter for consideration under the Due Process Clause. We leave intact our earlier observation, see *United States* v. *MacDonald,* 456 U. S. 1, 7 (1982), that a defendant may invoke due process to challenge delay both before and after official accusation.

we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other *Barker* criteria, see *Loud Hawk, supra,* at 315, it is part of the mix of relevant facts, and its importance increases with the length of delay.

This brings us to an enquiry into the role that presumptive prejudice should play in the disposition of Doggett's speedy trial claim. We begin with hypothetical and somewhat easier cases and work our way to this one.

Our speedy trial standards recognize that pretrial delay is often both inevitable and wholly justifiable. The government may need time to collect witnesses against the accused, oppose his pretrial motions, or, if he goes into hiding, track him down. We attach great weight to such considerations when balancing them against the costs of going forward with a trial whose probative accuracy the passage of time has begun by degrees to throw into question. See *Loud Hawk, supra,* at 315–317. Thus, in this case, if the Government had pursued Doggett with reasonable diligence from his indictment to his arrest, his speedy trial claim would fail. Indeed, that conclusion would generally follow as a matter of course however great the delay, so long as Doggett could not show specific prejudice to his defense.

The Government concedes, on the other hand, that Doggett would prevail if he could show that the Government had intentionally held back in its prosecution of him to gain some impermissible advantage at trial. See Brief for United States, 28 n. 21; Tr. of Oral Arg. 28–34 (Feb. 24, 1992). That we cannot doubt. *Barker* stressed that official bad faith in causing delay will be weighed heavily against the

government, 407 U. S., at 531, and a bad-faith delay the length of this negligent one would present an overwhelming case for dismissal.

Between diligent prosecution and bad-faith delay, official negligence in bringing an accused to trial occupies the middle ground. While not compelling relief in every case where bad-faith delay would make relief virtually automatic, neither is negligence automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him. It was on this point that the Court of Appeals erred, and on the facts before us, it was reversible error.

Barker made it clear that "different weights [are to be] assigned to different reasons" for delay. *Ibid.* Although negligence is obviously to be weighed more lightly than a deliberate intent to harm the accused's defense, it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun. And such is the nature of the prejudice presumed that the weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness, cf. *Arizona* v. *Youngblood,* 488 U. S. 51 (1988), and its consequent threat to the fairness of the accused's trial. Condoning prolonged and unjustifiable delays in prosecution would both penalize many defendants for the state's fault and simply encourage the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority. The Government, indeed, can hardly complain too loudly, for persistent neglect in concluding a criminal prosecution indicates an uncommonly feeble interest in bringing an accused to justice; the more weight the Government attaches to securing a conviction, the harder it will try to get it.

To be sure, to warrant granting relief, negligence

unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice. But even so, the Government's egregious persistence in failing to prosecute Doggett is clearly sufficient. The lag between Doggett's indictment and arrest was 8½ years, and he would have faced trial 6 years earlier than he did but for the Government's inexcusable oversights. The portion of the delay attributable to the Government's negligence far exceeds the threshold needed to state a speedy trial claim; indeed, we have called shorter delays "extraordinary." See *Barker, supra,* at 533. When the Government's negligence thus causes delay six times as long as that generally sufficient to trigger judicial review, see n. 1, *supra,* and when the presumption of prejudice, albeit unspecified, is neither extenuated,[3] as by the defendant's acquiescence, *e.g., id.,* at 534–536, nor persuasively rebutted,[4] the defendant is

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[3]Citing *United States* v. *Broce,* 488 U. S. 563, 569 (1989), the Government argues that, by pleading guilty, Doggett waived any right to claim that the delay would have prejudiced him had he gone to trial. Brief for United States 30. Yet Doggett did not sign a guilty plea *simpliciter,* but a conditional guilty plea under Federal Rule of Criminal Procedure 11(a)(2), thereby securing the Government's explicit consent to his reservation of "the right to appeal the adverse Court ruling on his Motion to Dismiss for violation of Constitutional Speedy Trial provisions based upon post indictment delay." Plea Agreement, 2 Record Exh. 66, p. 1. One cannot reasonably construe this agreement to bar Doggett from pursuing as effective an appeal as he could have raised had he not pleaded guilty.

[4]While the Government ably counters Doggett's efforts to demonstrate particularized trial prejudice, it has not, and probably could not have, affirmatively

entitled to relief.

We reverse the judgment of the Court of Appeals and remand the case for proceedings consistent with this opinion.

So ordered.

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proved that the delay left his ability to defend himself unimpaired. Cf. Uviller, 72 Colum. L. Rev., at 1394–1395.