IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SUIT NO.: 79 OF 1999

BETWEEN:

PATRICK BAILEY **PLAINTIFF**

V

ATTORNEY GENERAL OF ST. VINCENT AND THE GRENADINES
DIRECTOR OF PUBLIC PROSECUTIONS **DEFENDANTS**

Mr. Theodore Browne for the Plaintiff
Miss Dawn Lewis for the Defendants

[10th May, 18th May, 1999]

JUDGMENT

Adams J.

The Applicant in these proceedings approaches this Court in pursuance of Section 16(1) of the Constitution of St. Vincent and the Grenadines seeking a declaration that there has been an infringement of his right to a fair trial within a reasonable time accorded to persons in St. Vincent under the provisions of Section 8 of the said Constitution.

Subsection (1) of Section 8 is set out in part hereunder:

> "8(1) If any person is charged with a criminal offence then unless the charge is withdrawn the case shall be afforded a fair hearing within a reasonable time by an independent and impartial Court established by law." (Underlining mine)

The allegation being made by the applicant is that section 8 has been violated by virtue of delay and he seeks to substantiate his allegation by virtue of the facts related below.

The applicant Bailey was charged on the 11th of March, 1994 with the crime of rape. He was taken before the Magistrate for the first time in relation to this charge on the 1st day of April, 1997, and the preliminary inquiry was concluded on the 31st August, 1998; so that having been charged it took him just over three years to appear before a Court and as it turned out a little more than four years before the preliminary inquiry was completed.

No facts were put forward by the Prosecution either by affidavit or oral evidence as to the reason for the delay resulting between the date of charge and the applicant's first appearance in Court; though reasons were given for the slow pace at which the preliminary inquiry proceeded.

It becomes useful to look at the cases which have dealt with this matter of delay, and to make an effort at the extraction of whatever principles might emerge from such scrutiny.

While this judgment is concerned then with the question of possible injustice which may arise from unreasonable delay in bringing the citizen to trial, it is important to appreciate that while the principles underlining the right to an expeditious hearing are evolving as our written constitutions are being interpreted, the English from whom we have inherited our jurisprudential legacy continue to develop common law principles when dealing with the question of delay in their courts as they did before we were granted written constitutions on becoming independent nations. It was Lord Templeman in Bell v DPP of Jamaica who reminded us of this when he said:

> "Their Lordships do not in any event accept the submission that prior to the Constitution the law of Jamaica applying the common law of England was powerless to provide a remedy against unreasonable delay nor do they accept the alternative submission that a remedy could only be granted if the accused proved some specific, such as the supervening death of a witness. Their Lordships consider that in a proper case without positive proof of prejudice, the Court of Jamaica would and could have insisted on setting a date for trial and then if necessary dismissing the charges for want of prosecution. Again in a proper case the court could treat the renewal of charges after the lapse of a reasonable time as an abuse of the process of the court." (emphasis mine).

A glance at some cases provides an enlightening insight into how principles relating to delay in trials have been operating in England.

In the case of R v Brentford Justices exp. Wong 73 CAR p.67 the defendant had been involved in an accident on January 30th, 1978 and it was on July 28 of the same year that an information was laid by the police. Under section 104 of the Magistrates Court Act 1952 it was provided as follows:

> "104. Except as otherwise expressly provided by any enactment a Magistrates Court shall not try an information or hear a complaint unless the information was laid or the complaint made within six months from the time when the offence was committed or the matter of complaint arose."

Having laid the information and obtained the summons, the prosecution then retained these documents, deliberately not serving them until October, when apparently a letter was sent to the applicant telling him he would be prosecuted. But up to then the summons had not be served. They were eventually served on December 7, 1978.

Having, it seemed, come to the conclusion that the prosecution seemed doubtful whether to prosecute or not, Donaldson LJ had this to say:

> "For my part I think that it is open to justices to conclude that it is an abuse of the process of a court for a prosecutor to lay an information when he has not reached a decision to prosecute. The

> process of laying an information is I think assumed by Parliament to be the first stage in the continuous process of bringing a prosecution. Section 104 of the Magistrates Court Act is designed to ensure that prosecutions shall be brought within a reasonable time. That purpose is wholly frustrated if it is possible for a prosecutor to obtain summonses and then, in his own good time and at his convenience serve them. Of course there may be delays in service of summonses due perhaps to the evasiveness of the defendant; there may be delays due to administrative reasons which are excusable, but that is not so in this case."

After referring to the fact that two years had elapsed since the alleged offence Lord Donaldson remitted the matter to the justices (who had doubted their jurisdiction to dismiss the information) with the suggestion that the summons may properly be dismissed.

> "....if I was sitting as a justice" he said, "I would unhesitatingly exercise it in that way and second because through no fault of the prosecutor or of the applicant two years have now elapsed and that is an additional reason, if there is any doubt in the matter, for resolving it in favour of the applicant by dismissing the summons."

The case of Brentford Justices was followed in 1982 by R v Grays Justices ex parte Graham 75 CAR p229. There the accused appeared before the justices in August 1981 charged with numerous offences under the Theft Act and allegedly committed in January 1980. When the committal proceedings began the prosecution indicated it was not ready to proceed. The justices refused an adjournment and the prosecution offered no evidence. Four months later 29 summonses based on 29 of the original informations were served upon the applicant who sought to prohibit the justices from proceeding to inquire into the new summonses on the ground that the delay since the commission of the alleged offence - which delay was not the fault of the applicant - and the continued prosecution were vexatious and an abuse of the process of the court.

The Divisional court conceded that there were times when delay alone if sufficiently prolonged, might render criminal proceedings vexatious and an abuse of the process of the courts but that the delay being complained about did not fall into that category, and since bad faith on the part of the prosecution was not shown the court simply ordered that the proceedings were to be carried on with the necessary urgency.

In 1984 came the case R v West London Stipendiary Magistrate ex parte Anderson 80 CAR 143. There the applicant was charged with contravening section 9(3) of the Road Traffic Act 1972, in October of 1979. He was not arrested on warrant until December 1982 i.e. some three years later and appeared to answer the charge in April of 1983. He contended before the Magistrate that there was such a delay between the date of the offence and the date he was arrested that to proceed with the hearing would amount to an abuse of the process of the court. As it turned out there was a considerable conflict between the police and the applicant as to how,

when and where he had been served the summonses requiring his attendance in court, with the result that the Magistrate found in favour of the police holding that the applicant had made no effort to ascertain since the date of the accident what the police were going to do about the matter and, that there was no trace of any bad faith on the part of the police.

On appeal to the Divisional Court the citizen won his appeal, the Divisional Court saying:

> "Having regard to the detailed affidavit evidence now before us, and to the disputed issues of fact arising on the face of the evidence to which we have already referred it is not easy for this Court to draw any firm conclusion as to the cause or causes of the delay which occurred... However we cannot overlook the fact that a period of well over four years has elapsed since the commission of the alleged offence of which well over a year has elapsed since the applicant was arrested by the Police. If the matter were now to be remitted further time would inevitably lapse before the application before the Magistrate was reheard. Furthermore, we consider it probable on the evidence before us that some part of the delay before the applicant's arrest must be attributed to inefficiency on the part of the prosecution."

An order prohibiting the further hearing of the matter was accordingly made.

These cases which I have cited so far indicate that among the factors that the court should take into account when deciding whether there has been unreasonable delay are

(a) what effort the citizen has himself made in seeking acceleration of the prosecuting process

(b) whether the police have acted in bad faith

(c) whether the delay has been caused by the prosecution's inefficiency

(d) whether the system has failed

(e) whether the appellant has himself contributed to the delay

and of course

(f) the length of the delay.

In the case of R v Telford Justices 1991 2 AER 854 ex parte Badham the applicant was taken before the Justices on 18th May, 1989, charged with rape alleged to have been committed on a Saturday evening some time between 15th February, 1973 and 14th February, 1974 when the complainant was either 11 or 12 years old. The complainant did not actually report the offence until September 1988, 16 years after the alleged rape. The applicant submitted that the justices should not proceed with the committal proceedings on the ground that it would be an abuse of the process of the court to enquire into the allegations. The justices discussed the application holding that the delay was not unjustifiable. The applicant applied for an order of prohibition to prevent the justices from proceeding further. The Queens Bench Division from which the order of prohibition was sought held that where an accused alleged that committal

proceedings would be an abuse of the process of the court by reason of delay in making a complaint to the police or lapse of time between the commission of the alleged offence and the commencement of the committal proceedings (except where the accused had deliberately concealed the offence or himself) he had to show on the balance of probabilities that a fair trial was impossible and on the facts the applicant would be prejudiced in the preparation and conduct of his defence after such a long lapse of time since the alleged offence and therefore the committal proceedings would be an abuse of process.

Quite apart from the reason provided by the Queens Bench Division this case in my view ought not to have been allowed to proceed after a lapse of 16 years had it arisen in a country such as St. Vincent and the Grenadines where under the Constitution one of the ingredients of a fair trial is that it be heard within a reasonable time. Indeed trials involving the allegation of delay under constitutions such as that of St. Vincent and the Grenadines have as I will later show not been allowed to proceed where delays have been for much shorter periods than 16 years - a period which did not seem to trouble the Telford Justices (supra).

In 1992 a grand opportunity offered itself when the Attorney General of England referred to the Court of Appeal for its opinion on the questions [see Attorney General's Reference (No. 1 of 1990) 1992 3 AER p 169]:

(a) whether proceedings on indictment could be stayed on the grounds of prejudice resulting from delay in the institution of those proceedings even though that delay was not occasioned by any fault on the part of the prosecution

(b) if so, what degree of likelihood and seriousness of any prejudice was required to justify a stay of such proceedings

The facts giving rise to the reference were that the respondent was a police officer who on the 16th August, 1987 had been called with other officers to an incident following a wedding party in West London. Several complaints were made by members of the public about the behaviour of the police (including the respondent) at the incident. As a result the respondent was charged with two offences of assault occasioning actual bodily harm. The case went up for trial on 11th December, 1989. Submissions were then made on behalf of the policeman that the proceedings delayed somewhat by disciplinary investigations, constituted an abuse of the process of the court. The judge having heard arguments ordered that the proceedings should be stayed. The case was again before the court in December of 1989 and on that occasion the prosecution offered no evidence. A verdict of not guilty was entered by direction. The questions referred to above were then placed before the Court of Appeal by the Attorney General.

The Attorney General argued that there was no delay either in the investigation of the complaint against the respondent or in the bringing of the proceedings against him which could properly amount to an abuse of the process of the court; that any delay which did occur was reasonable and that there was no finding by the judge of any specific prejudice to the respondent in the preparation of his case, caused by any delay in the proceedings against him.

Counsel for the policeman referred to and depended upon the provisions of Magna Carta, more particularly clause 29 of the 1225 version -

> "No freeman shall be taken or imprisoned, or be desseised of his freehold or liberties or free customs or be outlawed or exiled or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right."

Counsel for the respondent argued that if a trial had taken place after a time which was obviously longer than that normally required for the preparation of a trial then there has been the kind of delay prohibited by Magna Carta.

Rejecting the argument put forward by the respondent counsel, Lane CJ who gave the judgment in the Court of Appeal had this to say:

> "We disagree with the whole basis of that argument. In the context of the rest of clause 29 as already set out it seems clear to us that the delay or deferment means at its lowest wrongful delay or deferment such as is not justified by the circumstances of the case....The abuse alleged may arise in many different forms. It may involve complaints about the methods used to investigate the offence, see R v Heston Francois 1984 1 AER 785 1984 QB 278. It may be used as Connelly v DPP itself was, on the allegation that the defendant is being prosecuted more than once for what is in effect the same offence. It may be a misuse of the process of the court to escape statutory time limits, see R v Brentford Justices (supra). However, the most usual ground is that based on delay, that is to say the lapse of time between the commission of the offence and the start of the trial. The number of applications based on this ground has increased alarmingly over the past few years."

Answering the questions which had been posed by the Attorney General for the court to answer Lord Lane proceeded:

> "One therefore reaches the anomalous situation whereby the earlier and stricter rule has been broadened, so it seems by the weight of subsequent decisions in R v Telford Justices (supra) Mr. Hooper Q.C. appearing before us on behalf of the Attorney General felt constrained to concede that the answer to the Attorney General's first question is a qualified "yes" ... Stays imposed on the grounds of delay or for any other reason should only be employed in exceptional circumstances. If they were to become a matter of routine it would be only a short time before the public understandably viewed the process with suspicion and mistrust -

> we respectfully adopt the reasoning of Brennan J in Jago v District Court of New South Wales (1989) 168 CLR 23. In principle therefore if even where the delay can be said to be unjustifiable, the imposition of a permanent stay should be the exception rather than the rule, still more rare should be cases where a stay can properly be imposed in the absence of any fault on the part of the complainant or prosecution. Delay due merely to the complexity of the case or contributed to by the actions of the defendant himself should never be the foundation for a stay. In answer to the second question posed by the Attorney General no stay should be imposed unless the defendant shows on a balance of probabilities that owing to the delay he will suffer serious prejudice to the extent that no fair trial can be held, in other words that the continuance of the prosecution amounts to a misuse of the process of the court. In assessing whether there is likely to be prejudice and if so whether it can properly be described as serious, the following matters should be borne in mind. First the power of the judge at common law and under the Police and Criminal Evidence Act to regulate the admissibility of evidence. Secondly, the trial process itself which would ensure that all relevant factual issues arising from delay will be placed before the jury as part of the evidence for their consideration, together with the powers of the judge to give appropriate directions to the jury before they consider their verdict."

As I proceed to consider the approach of the courts of the Caribbean including of course the Privy Council I consider whether such approach should be a different one from that taken by the English without constitutional provisions such as ours and where the emphasis is to be found in the question "has there been an abuse of the process which amounts to an unfair trial."

This question was asked in Attorney General of Hong Kong v Cheung Wai-bun 1993 2 AER p 510 in the context of examining the question of delay under the Hong Kong Bill of Rights which specifically provides against delay in the following terms:

> 11 (2) (c) "In the determination of any criminal charge against him everyone shall be entitled to the following minimum guarantees in full equality.....(c) to be tried without undue delay."

The trial Judge Duffy J had in the course of the trial decided that to all intents and purposes his power to grant a stay at common law and under the Bill of Rights was the same.

The Privy Council however expressed themselves cautiously as to whether this was so or not when they said:

> "There remains the question as to whether Duffy J was correct in saying that there is no material distinction between the onus on a defendant who seeks to have a prosecution stayed as being an abuse of the process at common law and the onus which faces a defendant who wishes to establish that he is entitled to have the proceedings stayed under the Bill of Rights ... Their Lordships recognize that it is possible to argue that there is a difference of approach at common law and under the Bill. However, as any difference in the approach to be adopted is only likely to be of significance in a very small minority of applications for stay, their Lordships have decided that it is preferable not to determine the extent of the difference in this case, where it would be merely an academic exercise, but to leave it to be determined in a case where the existence of the difference would materially affect the result of the appeal. The issue is one which can be more satisfactorily examined in the context of a case where a difference in approach could have practical consequences."

But the Privy Council in Director of Public Prosecutions v Tokai 1996 3 WLR p 149 at p 158 expressed themselves forthrightly when in referring on their behalf to a passage in the judgment of Lord Templeman in Bell v Director of Public Prosecutions Lord Keith of Kinkel said:

> "This passage highlights the distinction between the constitutional right to a trial within a reasonable time and the constitutional right only to a fair trial. The latter right in to be secured by the procedure exercised by the trial judge which in an exceptional case involving delay may include the grant of a stay. The former right however may be invoked by constitutional motion in advance of any trial. In drawing this distinction their Lordships have not overlooked that in Vincent v Queen 1997 1WLR 862 Lord Woolf said at p867 the provisions of section 20(1) and (6) of the Jamaica constitution "do no more than codify in writing the requirement of common law which is to ensure that an accused person receives a fair trial". That case was however not concerned with the right to a hearing within a reasonable time and so far as Lord Woolf's words were to be read as applying to that aspect of section 20(1) they must be regarded as obiter and as not being the subject of particular consideration."

What I gather the Privy Council to have been doing was disagreeing with Lord Woolf that the right to trial without undue delay guaranteed under Section 20 of the Jamaica constitution was secured in a similar fashion as it had been by common law.

It is quite clear however that this was not the view of the Privy Council when in Director of Public Prosecutions v Tokai (supra) they actually drew a distinction between the common law approach and that of most Caribbean constitutions in relation to the right to an expeditious trial. This is how the distinction was explained by Lord Keith of Kinkel:

> "Their Lordships consider that the difference between the common law position and that where there is an express constitutional right to trial without undue delay or within a reasonable time is that in the latter case complaint by way of constitutional motion can more readily be regarded as the appropriate remedy where on the other hand common law principles are to be applied in order to determine whether the trial be a fair one. The matter is primarily for the trial judge to decide. One of the matters he will take into account in making his decision is the extent to which suitable directions to the jury are capable of obviating any prejudice to the accused resulting from the delay. That is not an aspect which would be conveniently available to the court on a constitutional motion."

In the case before me the accused man was charged on the 11th March, 1994 and did not appear before a magistrate until 1st of April, 1997. To these facts I will necessarily return later in this judgment.

In the judgment in the case of Bell v Director of Public Prosecution 1985 2ER p 586 at p. 591, 592 Lord Templeman suggested the approach that should be taken when deciding whether a trial complied with the requirement of its being heard within a reasonable time. This is what he had to say:

> "...the Courts of Jamaica must balance the fundamental right of the individual to a fair trial within a reasonable time against the public interest in the attainment of justice in the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions to be found in Jamaica. The administration of justice in Jamaica is faced with a problem not unknown in other countries of disparity between the demand for legal service and the supply of services. Delays are inevitable. The task of considering these problems falls on the legislature of Jamaica mindful of the provision of the Constitution ... The task of deciding whether and what periods of delay explicable by the burdens imposed on the Court by the weight of criminal causes suffice to contravene the rights of a particular accused to a fair hearing within a reasonable time falls on the Courts of Jamaica and in particular on members of the Court of Appeal who have extensive knowledge and expertise of conditions in Jamaica."

As has often happened an outstanding analysis of similar constitutional concerns came to our assistance from the jurisdiction of the Supreme Court of the United States of America in the case of Barker v Wingo 407 US 514 (1972).

The Court was there grappling with the sixth amendment to the Constitution of the United States which provides as follows:-

> "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherever the crime shall have been committed which District shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour and to have the assistance of counsel for his defence."

The Court laid down in Barker v Wingo four factors which it suggested ought to be taken into consideration whenever the issue of delay was to arise. Those factors were enumerated as firstly the length of delay, secondly the reasons given by the prosecution to justify the delay, thirdly, the responsibility of the accused for asserting his rights, and fourthly, any prejudice that might be caused to the accused.

In respect of the length of the delay as a factor to be taken into account Justice Powell had this to say:

> "Until there is some delay which is presumptively prejudicial there is no necessity for inquiry into the other factors that go into the balance. Nevertheless because of the imprecision of the right to speedy trial the length of delay that will provoke such an inquiry is necessarily dependent upon the particular circumstances of the case."

In relation to the reasons which the prosecution might put forward for delaying the trial Justice Powell said:

> "A deliberate attempt to delay the trial in order to hamper the defence should be weighted heavily against the Government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances 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."

Powell J. went on to provide the explanation for the need to look at the accused's responsibility in the context of the asserted delay.

> "Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts

> will be affected by the length of the delay and most particularly by the personal prejudice which is not always readily identifiable that he experiences. The more serious the deprivation the more likely a defendant is to complain."

Justice Powell finally dealt with the prejudice confronting the accused which could result from excessive delay. This is how he put it:

> "Prejudice should be assessed in the light of the interests of defendants which the speedy trial was designed to protect. This Court has identified three such interests:
>
> (i) to prevent oppressive pre-trial incarceration
>
> (ii) to minimize anxiety and concern of the accused
>
> (iii) to limit the possibility that the defence will be impaired."

Some thirty years ago, the case of the Crown v Ogle 1968 11 WIR p439 out of Guyana gave rise to consideration of delay in a criminal trial. There was a delay of three years between the committal of the accused by the Magistrate and the trial. The prosecution was in the additional difficulty of having to use the depositions as evidence because of the absence of other witnesses caused by the delay in bringing on the trial.

Crane J held that the delay was excessive and together with the fact that the depositions would have had to be read as an alternative to oral evidence (which the judge did not allow) the prosecution offered no evidence after which the judge ordered that the accused be acquitted.

The Privy Council in the Jamaica case of Bell v Director of Public Prosecutions addressed the matter of delay. Bell had been arrested in May of 1977 and convicted on 20th October, 1977 for a number of serious firearms offences for which he was sentenced to inter alia life imprisonment. The Court of Appeal quashed the conviction and ordered a retrial for a variety of reasons. That retrial was delayed for four years until finally in November 1981 the Crown offered no evidence against Bell.

Much to the alarm of Bell and his attorney, in February of 1982 Bell was re-arrested and despite objections by his attorney was ordered to be retried on May 11, 1982. Bell applied to the Supreme Court of Jamaica for a declaration that his right to a fair hearing under the Constitution had been infringed. The Supreme Court dismissed his application and the Court of Appeal of Jamaica affirmed that decision. Bell went to the Privy Council, and that Court acting upon the principles which had been expressed in the case of Barker v Wingo above ordered the grant of a declaration in favour of Bell that his right to a fair hearing within a reasonable time had been infringed. The Privy Council expressed the view that the operative period of delay began on 7th March, 1979 when the Court of Appeal of Jamaica had ordered a retrial saying that it was the duty of those charged with the administration of justice to ensure that the order for a retrial was obeyed without avoidable delay. It is important to note however that the Privy Council expressed the view that the delay of 32 months would not in a normal trial (given the prevailing conditions in Jamaica) have been considered unreasonable delay. The Privy Council took the opportunity to observe that at common law, courts have an inherent jurisdiction to prevent a trial

which would be oppressive because of unreasonable delay and can do so by insisting on setting a date for trial and dismissing the charge for want of prosecution if the prosecution does not proceed and also by treating any renewal of the charge after the lapse of a reasonable time as an abuse of the process.

Sandiford v The Director of Public Prosecutions 1979 28 WIR p152 provided yet another opportunity for the courts to advise on the importance of proceeding to trial within a reasonable time. In that case the applicant was charged jointly with another for murder. He applied under Article 19 of the Constitution of Guyana claiming that he had been denied a fair hearing within a reasonable time under article 10(1). The gist of Sandiford's complaint was that having appeared before a magistrate on 25th July, 1978 some 14 months had gone and the prosecution had not seen it fit to hold the necessary preliminary inquiry; that further the Director of Public Prosecutions in so doing was causing himself and family undue hardship, and that his continuous incarceration without trial was illegal and unconstitutional.

The reply by the Director of Public Prosecutions was

> "that the Prosecution has always been willing and able to proceed with the preliminary inquiry and will be in a position to do so whenever and as soon as the court is able to proceed with the hearing."

In condemning this response of the Director of Public Prosecutions to the allegations of Sandiford the trial judge was outspokenly critical when he said:

> "The complaint is that a period of fourteen months is so unreasonably long for a preliminary inquiry to come on for hearing that it has, in the circumstances, contravened the constitutional provisions with regard to a fair hearing. It has however been explained that the applicant's co-accused had escaped from custody in November 1978 i.e. some four months after his appearance before the Christianburg Magistrates Court already referred to and was not recaptured and returned to prison until May 1979 (i.e. six months later). So from 25th July, 1978 there were two periods of delay; of four and six months. These are capable of reasonable explanation, for four months delay in hearing the preliminary inquiry cannot be regarded as an unreasonable period for any accused in normal circumstances to wait; and it was not unreasonable for the prosecution to wait six months pending the recapture of D'Abreo. What is alarming however is the excuse proffered on behalf of the Director of Public Prosecutions for not proceeding with the preliminary inquiry during the last four months, i.e. from May to September 1979, when both the applicant and D'Abreo were in custody. Although no blame can be attached to the administration for the notorious shortage of magistrates the

> statement in paragraph 8 to which I have referred above is vague and indefinite; it leaves much to be desired. According to that statement there is no indication whatever when the prosecution will be "in a position" to proceed with the preliminary inquiry. Only that they would do so "as soon as the court is able". Here the prosecution appears to be blaming the court for not proceeding with the matter by indicating:
>
> > "I am quite willing to proceed with the matter but the court is holding me up by not having enough magistrates..."
>
> I cannot imagine anything more vague and indefinite in a motion in which there is an allegation that the fundamental right to a hearing is being contravened, and much as I dislike saying it it seems to me paragraph 8 cannot be considered in any other light than being contemptuous of the guaranteed right."

The case of Sandiford dealt with a delay of 14 months between arrest and commencement of preliminary inquiry. The case in which I am sitting involved a delay of three years between arrest and preliminary inquiry.

In the case before me evidence was provided by affidavit of the citizen Patrick Bailey that he encountered difficulty in getting employment. The prosecution had not prepared any affidavit in reply to that of the applicant Bailey, but with the consent of counsel for the applicant I allowed oral evidence to be led by the prosecution as to the delay caused during the hearing of the preliminary inquiry. I have been told that the prosecution are ready with the trial, and I accept the evidence called on their behalf that much of the delay during the preliminary inquiry was due to the fact that the Family Court was being set up; but counsel for the Director of Prosecutions with commendable candour indicated to the court that she was unable to provide this court with any reason why the applicant was not taken before a magistrate until three years and some days after he had been charged!

In the case of Andrew Westfield v The Attorney General and Director of Public Prosecutions - 464/1998 tried within this very jurisdiction of St. Vincent and the Grenadines Baptiste J unhesitatingly declared that the citizens' right to a trial within a reasonable time had been infringed, lamenting that -

> "It took the prosecution three years and ten months to have the applicant in court after he was first charged. No reason has been advanced for the delay."

The learned Judge went on to declare:

> "That Section 8 (1) of the Constitution which afforded the applicant the right to a fair trial within a reasonable time by an independent and impartial Court established by law has been infringed."

I am mindful as to what was said by Byron CJ in Criminal Appeal No. 13 of 1997:

> "The law seems to be that the burden to show the unreasonableness of the delay is primarily on the person who alleges contravention of his rights although in some cases the extent of the delay may be sufficient to discharge that burden at least *prima facie*."

I am also mindful of the fact that the interest of society in bringing offenders to justice must be measured against the need to protect the citizen from the invasion of his fundamental rights. In doing so I consider it a reasonable inference that the failure of the Prosecution to have provided the Court with a reason for the delay between charge and preliminary inquiry makes it more probable than not that there was no satisfactory reason to submit.

In a fledgling democracy such as St. Vincent and the Grenadines judges must for ever be vigilant lest we fail to detect the subtlety that sometimes slowly undermines the process of justice. Were we to fail in this noble task events might woefully lead us to that dreadful day when blindfolded as she always is Justice may be found prostrate within her hallowed walls and judges numbered among her assassins.

In view of all that I have said I make the declaration that the fundamental right of the applicant to a fair trial within a reasonable time has been contravened.

There will be no order as to costs.

Odel Adams
HIGH COURT JUDGE