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## Constitutional Law—Excessively Long Jury Trial Not a Denial of Due Process

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enough. "The court's impression of the defendant's guilt stood out so strongly that formal instructions could not cure the damages."<sup>28</sup>

On these grounds, the Court stated that the conviction should be reversed. As to defendant's second contention, the Court held that since there is to be a new trial, he should be allowed to examine the written statement which he had requested. In *People v. Walsh*<sup>29</sup> the Court stated that where a witness testified to having made a written statement, and inspection by the presiding judge reveals contradictory matter, its use for cross examination on the question of credibility should be allowed.

The conviction was reversed and a new trial ordered with a lone dissent by Judge Desmond on the ground that none of the matters discussed in the majority opinion raised any substantial question of law.

#### EXCESSIVELY LONG JURY TRIAL NOT A DENIAL OF DUE PROCESS

The question of whether an excessively long jury trial constitutes a denial of due process has not been previously decided in the courts of New York State. In general the requirement of due process is met if the defendant is accorded a fair trial, conducted according to the law of the land.<sup>30</sup> A denial of due process has been defined as the failure to observe that fundamental fairness essential to the very concept of justice.<sup>31</sup>

The Court of Appeals in *People v. Clemente*<sup>32</sup> decided for the first time that the length of a trial is not an essential element in determining whether due process of law has been satisfied. In this case the jury trial lasted for 14 months, and the Court of Appeals held that the trial may not be condemned as a denial of due process solely because it lasted for 14 months. The test to determine whether due process has been denied is whether under all the circumstances the defendants have been accorded a fair trial. The Court also indicated that it is the responsibility of defense counsel to object to the introduction of cumulative evidence which prolongs the trial unnecessarily, and that when defense counsel fails in this respect, it must share responsibility for the length of the trial. The Court of Appeals affirmed the judgments of conviction of the Appellate Division.<sup>33</sup>

The argument of the defense in the instant case, that because the trial was so lengthy and frequently interrupted (the trial was discontinued during the summer months) and because the evidence and testimony were so overwhelming in quantity, the jury could not reach a reasoned verdict, is rejected by the Court of Appeals. To say that a long and complicated trial renders it impossible for a jury to reach a just verdict would be to cast doubt on the

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28. *People v. Velleman*, 247 App. Div. 172, 286 N.Y. Supp. 918 (1st Dep't 1936).

29. 262 N.Y. 140, 186 N.E. 422 (1933).

30. *People v. Dunn*, 157 N.Y. 528, 52 N.E. 572 (1899).

31. *People v. Leyra*, 302 N.Y. 353, 98 N.E.2d 553 (1951).

32. 8 N.Y.2d 1, 200 N.Y.S.2d 625 (1960).

33. *People v. Clemente*, 9 A.D.2d 548, 190 N.Y.S.2d 831 (2d Dep't 1959).

effectiveness of the jury system as a legal institution. A necessary assumption in our judicial system is that juries are capable of intelligently weighing the evidence in a long and complicated trial.

Another consideration is that if a limitation on the length of a jury trial were to be established, a denial of due process might occur. Both parties should have the opportunity to fully present their case and a time limitation might lead to unfairness and thus to a denial of due process.

#### FAILURE TO POLL JURY HELD NOT TO BE DENIAL OF DUE PROCESS

In an Appellate Division case, *People v. Light*,<sup>34</sup> prosecuted under an indictment, it was held that the failure of the trial court, after the foreman had announced the purported verdict of the jury, to poll individual members of the jury regarding their confirmation of such verdict and to make inquiry of all the jurors as to whether or not the verdict as recorded, was their verdict, resulted in an incomplete verdict requiring a new trial. That court based its verdict on the interpretation of Section 433 of the Code of Criminal Procedure.<sup>35</sup> The Court of Appeals, in several previous cases,<sup>36</sup> held that unless the defendant called the trial court's attention to the failure of that court to comply with Section 433 he waived his opportunity and could not take advantage of it on appeal.

The instant case, *People v. Marilla*,<sup>37</sup> arose under the prosecution for operating a motor vehicle while in an intoxicated condition.<sup>38</sup> The City Court of Buffalo entered a judgment of conviction which was affirmed by the Supreme Court of Erie County. The defendant appealed on the basis that, upon the jury's return after reaching their verdict, it was possible that one of the jurors might have been missing or in the alternative, that the verdict as announced was not that of all the jurors. The defendant did not raise this objection in the trial court. On appeal the defendant contends that the failure to poll the jury was, in effect a denial of a constitutional right. The failure resulting in an incomplete verdict thereby depriving defendant of his effective right to due process of law.

The Court of Appeals, in a per curiam decision,<sup>39</sup> held that the failure of the defendant to raise this objection at the trial court level precluded him

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34. 285 App. Div. 496, 138 N.Y.S.2d 262 (4th Dep't 1955).

35. Code of Criminal Procedure § 433:

When the jury have agreed upon their verdict, they must be conducted into the court by the officer having them in charge. Their names must then be called, and if all do not appear, the rest must be discharged without giving a verdict.

In that event, the cause must be tried again, at the same or another term.

36. *People v. Baumgart*, 5 N.Y.2d 874, 182 N.Y.S.2d 24 (1959); *People ex rel. Meers*, 4 N.Y.2d 898, 174 N.Y.S.2d 649 (1958); *People v. Manfredi*, 1 N.Y.2d 743, 152 N.Y.S.2d 290 (1956).

37. 7 N.Y.2d 319, 197 N.Y.S.2d 154 (1960).

38. N.Y. Vehicle and Traffic Law § 70(5). Note: under the Vehicle and Traffic law effective October 1, 1960 this provision is now found in § 1192.

39. *Supra* note 37.