tice permitting a prosecutor to take *nolle prosequi* with leave, which discharged an indicted defendant from custody but left him subject at any time thereafter to prosecution at the discretion of the prosecutor, was condemned as violating the guarantee of a speedy trial.[23]

When the Right is Denied.—"The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice."[24] No period of time is *per se* too long under this guarantee,[25] nor must any particular prejudice to a fair trial be shown.[26] The Court, rather, has adopted an ad hoc balancing approach. "We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant."[27]

The fact of delay triggers an inquiry into the circumstances of the case. Reasons for delay will vary: indeed, reasons for delay, and allocation of responsibility for it, may be disputed.[28] A deliberate delay for advantage will weigh heavily, whereas the absence of a

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[23] Klopfer v. North Carolina, 386 U.S. 213 (1967) (the statute of limitations had been tolled by the indictment). In Pollard v. United States, 352 U.S. 354 (1957), the majority assumed and the dissent asserted that sentence is part of the trial and that too lengthy or unjustified a delay in imposing sentence could run afoul of this guarantee.

[24] Beavers v. Haubert, 198 U.S. 77, 87 (1905) (holding that the guarantee could not be invoked by a defendant first indicted in one district to prevent removal to another district where he had also been indicted). A determination that a defendant has been denied his right to a speedy trial results in a decision to dismiss the indictment or to reverse a conviction in order that the indictment be dismissed. Strunk v. United States, 412 U.S. 434 (1973). A trial court denial of a motion to dismiss on speedy trial grounds is not an appealable order under the "collateral order" exception to the finality rule. One must raise the issue on appeal from a conviction. United States v. MacDonald, 435 U.S. 850 (1977).

[25] *Cf.* Pollard v. United States, 352 U.S. 354 (1957); United States v. Ewell, 383 U.S. 116 (1966). *See* United States v. Provoo, 350 U.S. 857 (1955), *aff'g* 17 F.R.D. 183 (D. Md. 1955).

[26] United States v. Marion, 404 U.S. 307, 320 (1971); Barker v. Wingo, 407 U.S. 514, 536 (1972) (Justice White concurring).

[27] Barker v. Wingo, 407 U.S. 514, 530 (1972). For the federal courts, Congress under the Speedy Trial Act of 1974 imposed strict time deadlines, replacing the *Barker* factors.

[28] *E.g.* Boyer v. Louisiana, 569 U.S. ___, No. 11–9953, slip op. (2013) (writ of *certiorari* dismissed as improvidently granted). Three Justices of the five-Justice *Boyer* majority wrote in concurrence that the record disclosed Boyer's requests for continuances as the single largest contributor to delay in bringing Boyer to trial. Examining the same record, four dissenting Justices concluded that most of the delay was caused by Lousiana's failure to provide funding for Boyer's defense, which failure, according to the dissent, should weigh against the state under Speedy Trial analysis.