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## Try Exercising This Constitutional Right And You're Apt To Regret It

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The Sixth Amendment states, “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 wherein the crime shall have been committed...” Those words stand as clearly as they did when the Bill of Rights was adopted, but these days, Americans who insist on a jury trial may find themselves punished for doing so.

Here’s the problem. The American judicial system is so overwhelmed with cases that prosecutors don’t want to bother with trials. They would much rather strong-arm the defendant into a plea bargain, thus avoiding the cost and risk of a trial.

Defendants who resist the strong-arming are likely to suffer what Cato Institute legal scholar Clark Neily calls here “the trial penalty.” He writes, “It is among the most important features of America’s criminal justice system, and yet there is no reference to it in the Constitution, it is not taught in high school civics classes or even law schools, and most lawyers have never heard of it. Nevertheless, the Trial Penalty is the grease that keeps the massive engine of American criminal justice humming along at peak efficiency.”

More than 95 percent of criminal cases are settled with plea bargains and prosecutors would be happy if that number went over 99 percent, so defendants who demand a trial are usually hit by threats of various repercussions if they don’t cooperate. Human Rights Watch (HRW) states in this article, “In the rare cases in which defendants insist on going to trial, prosecutors make good on their threats. Federal drug offenders convicted after trial receive sentences on average three times as long as those who accept a plea bargain...”

In that article, HRW attorney Jamie Fellner says, “We don’t let police beat suspects to get convictions. Threatening someone with a life sentence can be just as coercive – and just as wrong.”

The choice that is often presented to defendants is either plead guilty and receive a 5 to 10 year sentence, or face life imprisonment without possibility of parole if they insist on going to trial. The HRW article quotes federal judge John Gleeson as saying that some of the threatened sentences “are so excessively severe they take your breath away.”

How bad things have gotten with respect to the constitutional right to a speedy trial is illustrated by a recent decision by the Second Circuit, *Tigano v. United States*.

The case arose in 2008 when Joe Tigano and his father were arrested, charged with producing more than 1,000 marijuana plants, distributing the weed, and firearms violations. They both faced long prison terms, possibly life. Tigano senior decided to take the deal offered by the feds: plead guilty to growing 50 plants and the other charges would be dropped. But Tigano junior wouldn't plead guilty. He insisted on his Sixth Amendment right to a speedy trial.