Pace Law Review

Volume 35
Issue 3 *Spring 2015*

Article 5

April 2015

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John H. Wilson

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I. Introduction

If you practice criminal law, you have heard these words: "The People are filing a supporting deposition, and stating ready." For the most part, these terms of art are translated as follows: "By filing this document with the Court, which is a statement signed by a witness to the events alleged in the Criminal Court complaint, and serving it on the defense, the People have cured the hearsay present in said complaint. The complaint is now a Criminal Court information, and the Court now has full jurisdiction over this matter. The People now also state ready for trial, meaning, the time limitations of CPL section 30.30 have stopped accruing, and there is no longer any jurisdictional impediment to proceeding to trial."

Most likely, you have also either heard, or said these words, as well: "Judge, the People cannot be ready since the complaint is facially insufficient." This translates as follows, "Even if the hearsay has been cured from the complaint, there are other reasons this complaint is jurisdictionally defective. As a result of these defects, the People cannot proceed to trial, and their time continues to run under CPL section 30.30."

But do these concepts all follow one after the other in logical order? Does conversion of the complaint to an information, that is, curing the hearsay contained in said complaint, mean that

* John H. Wilson served as a judge in Criminal Court in both Brooklyn and the Bronx between 2005 and 2014. A former prosecutor and defense attorney, he is the author of *New York Search and Seizure Case Law Guide*. *See* JOHN H. WILSON, NEW YORK SEARCH AND SEIZURE CASE LAW GUIDE (2014).

the People are now ready for trial and that there is no longer any impediment to the commencement of trial? What is the impact of a facially insufficient complaint on New York Criminal Procedure Law ("CPL") section 30.30 calculations?

In this article, we will explore these intersecting concepts of conversion, facial sufficiency, and readiness. As we shall see, readiness for trial does not necessarily follow from the conversion of a complaint - and dismissal on CPL section 30.30 grounds does not necessarily follow from a finding of facial insufficiency.

II. Time Limitations for Prosecution of a Criminal Action Under CPL Section 30.30

Unlike the statute of limitations, which controls the time within which a criminal action may be commenced, CPL section 30.30 enumerates the time limitations for the prosecution of all criminal matters after commencement of the action. Subdivision (1)(a) provides for six months to prosecute a felony;[1] (1)(b) provides for 90 days for Class A misdemeanors ("punishable by a sentence of imprisonment of more than three months");[2] under (1)(c), the People have 60 days to prosecute Class B misdemeanors ("not more than three months");[3] and (1)(d) provides for a 30 days limitations period for the prosecution of violations.[4]

The time periods stated in CPL section 30.30 "are generally calculated based on the most serious offense charged in the accusatory instrument and are measured from the date of commencement of the criminal action."[5]

A criminal action "commences" with the filing of the accusatory instrument with a local criminal court.[6] This is almost always the same day as a defendant's arraignment; however, in cases where a defendant has been given a Desk Appearance Ticket ("DAT"), "the criminal action must be

1. N.Y. CRIM. PROC. LAW § 30.30(1)(a) (McKinney 2006).
2. *Id.* § 30.30(1)(b).
3. *Id.* § 30.30(1)(c).
4. *Id.* § 30.30(1)(d).
5. People v. Cooper, 779 N.E.2d 1006, 1007 (N.Y. 2002).
6. *See* N.Y. CRIM. PROC. LAW § 100.05 (McKinney 2009).

deemed to have commenced on the date the defendant first appears in a local criminal court in response to the ticket."[7] If the defendant appears, but the accusatory instrument has not yet been filed with the court, in this instance, the People are charged with the time between the defendant's initial appearance, and the filing of the accusatory instrument.[8] The actual day of filing of the accusatory instrument is not included in CPL section 30.30 calculations.[9]

III. What Constitutes Readiness for Trial?

When the People state "ready" for trial, they must have removed all legal impediments to the commencement of their case. In other words, the People are ready to proceed when they have "done all that is required of them to bring the case to a point where it may be tried."[10]

A statement of readiness pertains only to the People's readiness to begin trial. Stating "ready" for pre-trial hearings is not a statement of readiness.[11]

There is also no such thing as "ready" for conversion, a fallacious concept discussed fully in *People v. Khachiyan*.[12] There, the Criminal Court of Kings County noted that the People "use the word 'ready' in a myriad of situations not contemplated by CPL § 30.30 . . . ."[13]

As the *Khachiyan* Court stated, "the case law makes it quite clear that 'ready for trial' means *only* 'ready for trial.'"[14]

7. *See* N.Y. CRIM. PROC. LAW § 30.30(5)(b) (McKinney 2009).

8. *See* People v. Stirrup, 694 N.E.2d 434, 438-39 (N.Y. 1998)

9. *See generally* People v. Stiles, 514 N.E.2d 1368 (N.Y. 1987); People v. Eckert, 458 N.Y.S.2d 494 (Crim. Ct. 1983).

10. *See* People v. England, 636 N.E.2d 1387, 1389 (N.Y. 1994) (citing People v. McKenna, 555 N.E.2d 911, 913 (N.Y. 1990)). *See generally* People v. Dauphin, 976 N.Y.S.2d 465 (App. Div. 2013); People v. Brewer, 880 N.Y.S.2d 56 (App. Div. 2009); People v. Khachiyan, 752 N.Y.S.2d 243 (Crim. Ct. 2002).

11. *See* People v. Chavis, 695 N.E.2d 1110 (N.Y. 1998).

12. *Khachiyan*, 752 N.Y.S.2d at 245-46.

13. *Id.* at 245.

14. *Id.* at 246 (citing People v. Clinton, 578 N.Y.S.2d 808, 814 n.4 (Crim. Ct. 1991) (emphasis added)) ("Unfortunately, the People tend to file corroborating affidavits and announce ready as if readiness and conversion were one and the same concept.").

In *People v. Kendzia*,[15] the Court of Appeals defined a proper statement of readiness: "there must be a communication of readiness by the People which appears on the trial court's record. This requires either a statement of readiness by the prosecutor in open court . . . or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk, to be placed in the original record."[16]

For a statement of readiness to be valid, the People must be ready to commence trial at the time the statement is made. "[T]he prosecutor must make [the] statement of readiness when the People are in fact ready to proceed."[17] A statement of readiness is not "a prediction or expectation of future readiness."[18]

In *People v. Sibblies*,[19] the Court of Appeals invalidated an off-calendar statement of readiness, leading to the dismissal of a misdemeanor information. Ms. Sibblies was initially arrested for felony assault on a police officer after a traffic stop. On February 8, 2007, the People reduced the charge against Ms. Sibblies to a misdemeanor assault. Then, "on February 22, 2007, the People filed an off-calendar certificate of readiness and a supporting deposition. Eight days later, on March 2, 2007, the People requested the medical records of the officer injured in the altercation."[20] On the next scheduled court appearance date of March 28, 2007, the People stated not ready since they were "continuing to investigate and are awaiting medical records (of the officer)."[21]

Justice Jonathan Lippman held that once the People declared "not ready" in court after stating ready off calendar, the provisions of CPL Section 30.30(3)(b) apply; that is, the People's "present unreadiness is due to some exceptional fact or

15. 476 N.E.2d 287 (N.Y. 1985).

16. *Id.* at 289; *see* People v. Wilson, 655 N.E.2d 168 (N.Y. 1995); People v. Bonilla, 942 N.Y.S.2d 509 (App. Div. 2012); People v. Mahmood, 824 N.Y.S.2d 757 (Crim. Ct. 2006).

13. *Kendzia*, 476 N.E.2d at 290.

18. *Id. See generally* People v. Nunez, 851 N.Y.S.2d 128, 129 (App. Div. 2008) ("[T]he record supports the motion court's finding that the [People's] request . . . was merely an illusory expectation of future readiness.").

19. 8 N.E.3d 852 (N.Y. 2014).

20. *Id.* at 853.

21. *Id.*

circumstance."[22] The statute cites the example of "the sudden unavailability of evidence material to the People's case."[23]

Following this rule, Justice Lippman stated that the trial court "may hold a hearing on the issue [but i]f the People cannot demonstrate an exceptional fact or circumstance, then the People should be considered not to have been ready when they filed the off-calendar certificate."[24]

Justice Lippman's rationale for his holding will resonate with all practitioners of criminal law; "allowing, without scrutiny, declarations of readiness off-calendar and subsequent declarations of unreadiness at the next appearance creates the possibility that this scenario could be reenacted *ad seriatim*."[25]

Justice Victoria Graffeo's concurrence was decided on "a narrower basis than the one proposed by Chief Justice Lippman."[26] Citing to *People v. Kendzia*,[27] Judge Graffeo reiterated the Court of Appeals' definition for a proper statement of readiness: first, "there must be a communication of readiness by the People which appears on the trial court's record. This requires either a statement of readiness by the prosecutor in open court . . . or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk, to be placed in the original record. . . ."[28]

For the purpose of the concurrence in *Sibblies*, Justice Graffeo concentrated on the second requirement for readiness: "the People 'must in fact be ready to proceed at the time they declare readiness.'"[29]

Rather than require a hearing on whether or not there was an "exceptional fact or circumstance" to explain the People's

22. N.Y. CRIM. PROC. LAW § 30.30(3)(b).

23. *Sibblies*, 8 N.E.3d at 854-55 (citing N.Y. CRIM. PROC. LAW § 30.30(3)(b)).

24. *Id.*

25. *Id.*

26. *Id.*

27. 64 N.Y.2d 331(1985).

28. *Sibblies*, 8 N.E.3d at 857 (citing People v. Kendzia, 476 N.E.2d 287, 290 (N.Y. 1985)); *see* People v. Wilson, 655 N.E.2d 168, 168 (N.Y. 1995); People v. Bonilla, 942 N.Y.S.2d 509 (App. Div. 2012): People v. Mahmood, 824 N.Y.S.2d 757 (Crim. Ct. 2006).

29. *Sibblies*, 8 N.E.3d at 856 (quoting People v. Chavis, 695 N.E.2d 1110, 1112 (N.Y. 1998)).

subsequent non-readiness, Justice Graffeo believed that when "the prosecutor gave no explanation for the change in circumstances between the initial statement of readiness and the subsequent admission that the People were not ready to proceed without the medical records . . . [t]he February 22 statement of readiness therefore did not accurately reflect the People's position."[30]

In reaching this conclusion, Justice Graffeo cited to *People v. Bonilla*,[31] where the First Department held that the People's statement of readiness was illusory when the People "answered ready for trial but later requested two adjournments so that they could further investigate the case."[32]

Given the narrow basis for Justice Graffeo's concurrence, her opinion is the one being followed.[33] However, the *Sibblies* opinion highlights a fundamental issue that will be discussed in more detail below; that is, when the People announce readiness, it is necessary for the People to *actually be ready* for trial.

IV. Facial Sufficiency as a Jurisdictional Prerequisite

Under CPL section 100.10, there are several forms of local criminal court accusatory instruments.[34] The ones to be addressed here are misdemeanor complaints and informations.

CPL section 100.10(4) defines a "misdemeanor complaint" as "a verified written accusation by a person, filed with a local criminal court, charging one or more other persons with the commission of one or more offenses . . . it serves as a basis for the commencement of a criminal action, but it may serve as a basis for prosecution thereof only when a defendant has waived prosecution by information. . . ."[35]

Under CPL section 100.10(1), an information "is a verified

30. *Id.* at 856-57.

31. 942 N.Y.S.2d 509 (App. Div. 2012).

32. *Sibblies*, 8 N.E.3d at 856.

33. *See* People v. McLeod, 988 N.Y.S.2d 436, 439 (Crim. Ct. 2014) (citing Marks v. United States, 430 U.S. 188, 193 (1977)) ("[T]he holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.").

34. N.Y. CRIM. PROC. LAW § 100.10 (McKinney 2009).

35. *Id.* § 100.10(4).

written accusation by a person, filed with a local criminal court, charging one or more other persons with the commission of one or more offenses . . . it may serve as a basis both for the commencement of a criminal action and for the prosecution thereof in a local criminal court."[36]

Further, under CPL section 100.15(1), "an information [and] a misdemeanor complaint . . . must be subscribed and verified by a person known as the 'complainant.'" That person "may be any person having knowledge, whether personal or upon information and belief, of the commission of the offense or offenses charged."[37]

While both documents may serve as a basis for the commencement of a criminal action, there is a fundamental difference between a complaint and an information. A complaint may serve as a "basis for prosecution" only when a defendant waives prosecution by information. No such waiver is necessary when the instrument is an information.

Thus, the local criminal court's jurisdiction over a misdemeanor complaint is limited, compared to its jurisdiction over an information. Moreover, there is no reference whatsoever to CPL section 30.30 and its time limitations in any of these statutes conferring jurisdiction to the criminal court over misdemeanor complaints and informations.

V. Necessity for Conversion of Misdemeanor Complaints

As discussed above, to convert a misdemeanor complaint to an information, the hearsay allegations must be "cured." This procedure is based upon CPL section 100.40(1), which states that "(a)n information, or a count thereof, is sufficient on its face when . . . (c) *Non-hearsay* allegations of the factual part of the information and/or of any supporting deposition establish, if true, every element of the offense charged and the defendant's commission thereof."[38]

This requirement for non-hearsay allegations is also referenced in CPL section 100.15(3): "Nothing contained in this

36. *Id.* § 100.10(1).
37. *Id.* § 100.15(1).
38. *Id.* § 100.40(1) (emphasis added).

section . . . limits or affects the requirement, prescribed in subdivision one of section 100.40, that in order for an information or a count thereof to be sufficient on its face, every element of the offense charged and the defendant's commission thereof must be supported by *non-hearsay* allegations of such information and/or any supporting depositions."[39]

In *People v. Dumas*,[40] the Court of Appeals stated that "the factual part of a misdemeanor complaint must allege 'facts of an evidentiary character' demonstrating 'reasonable cause' to believe that the defendant committed the crime charged."[41] However, these facts can be of a hearsay nature, since "the misdemeanor complaint is designed to provide the court with sufficient facts for the court to determine whether the defendant should be held for further action."[42] For that "further action" to occur, however, the misdemeanor complaint must be converted into an information.

On this basis, then, there is rarely any controversy in applying the time limitations of CPL section 30.30 to a misdemeanor complaint; that is, one in which the hearsay has not been cured. Thus, if the People fail to file the supporting deposition of a complaining witness, the complaint is routinely dismissed on 30.30 grounds.[43]

Of course, there are some exceptions to this general rule. In *People v. Casey*,[44] the Court of Appeals stated that the "non-hearsay requirement is met so long as the allegation would be admissible under some hearsay rule exception."[45] Thus, in *People v. Valentine*,[46] a complaint containing uncorroborated statements by the complainant was sufficient, since the statements were "excited utterances, which are exceptions to the hearsay rule and thus admissible."[47]

In some instances, the People have relied upon the business

39. *Id.* § 100.40 (emphasis added).
40. 497 N.E.2d 686 (N.Y. 1986).
41. *Id.* at 686-87.
42. *Id.* (citing N.Y. CRIM. PROC. LAW §§ 100.15(3), 100.40(4)(b) (McKinney 2009)).
43. *See* People v. Gannaway, 728 N.Y.S.2d 325 (Crim. Ct. 2000).
44. 740 N.E.2d 233 (N.Y. 2000).
45. *Id.* at 236.
46. 969 N.Y.S.2d 718 (App. Term 2013).
47. *See generally id.* (citing *Casey*, 740 N.E.2d at 236).

records exception to the hearsay rule, and provided the supporting deposition of a person who states they have reviewed the records in question. Some courts have held that the People must produce the records for the exception to apply, on the theory that such an assertion by a deponent is "double hearsay."[48] Others have held that production of the records is not necessary.

In *People v. Wilson*,[49] the court's basis for its disagreement with the *Ross* and *Tisdale* courts is based upon *Casey* and *People v. Kalin*,[50] where the Court of Appeals held that "so long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, [these allegations] should be given a fair and not overly restrictive or technical reading."[51]

The *Wilson* court relied also upon *Casey*'s discussion of "the requirement for presentation of documents at pretrial to overcome hearsay issues.[52] *Casey* held that 'a non-hearsay requirement is met so long as the allegation would be admissible under some hearsay rule objection.'"[53]

Under this theory, if the documents could *potentially* fit under the hearsay exception for business records, there would be no need for the court to review said documents before deeming a complaint an information that references the complainant's review of such records.[54]

48. *See generally* People v. Tisdale, 859 N.Y.S.2d 898 (Crim. Ct. 2008); People v. Ross, 814 N.Y.S.2d 861 (Crim. Ct. 2006).

49. 899 N.Y.S.2d 582 (Crim. Ct. 2010).

50. 906 N.E.2d 381 (N.Y. 2009).

51. *Id.* at 384 (citing People v. Konieczny, 813 N.E.2d 626, 630 (N.Y. 2004) (quoting *Casey*, 740 N.E.2d at 236)). *See generally* People v. Jennings, 946 N.Y.S.2d 68 (App. Term 2011); People v. Mack, 920 N.Y.S.2d 243 (App. Term 2010).

52. *Wilson*, 899 N.Y.S.2d at 585.

53. *Id.* (citing *Casey*, 740 N.E.2d at 236).

54. It should be noted that the *Wilson* court's view, that it is unnecessary for the court to review the business records upon which the deponent relies in verifying a misdemeanor complaint, is inconsistent with the procedure conducted by the court in cases where a child is called upon to verify the charges stated in a misdemeanor complaint. Before the court accepts the People's assertions regarding the child's capacity to swear to the facts contained in a complaint, the court either conducts its own voir dire of the child, or reviews the transcript of the People's voir dire of the child, pursuant

In further support of its position, the *Wilson* court noted that "the Court of Appeals has increasingly taken [this] position," as well as the Appellate Term, Second Department.[55]

The *Wilson* court's position is consistent with the standard for a facially sufficient information stated in *Casey* and *Kalin*. If the non-hearsay facts stated in an information establish each and every element of the offense charged, as well as the defendant's commission of said crime, then the information states a *prima facie* case, and is facially sufficient.[56]

Echoing *Dumas*, however, the *Kalin* court did warn that "standing alone, a conclusory statement. . . does not meet the reasonable cause requirement."[57]

Since both *Dumas* and *Kalin* involved an officer's ability to identify drugs, the factual allegations stated in the complaint must "provide[s] some information as to why the officer concluded that the substance was a particular type of illegal drug."[58]

VI. Post - Conversion Readiness

Conversion of the misdemeanor complaint gives rise to an important issue - once the People have converted the misdemeanor complaint to an information, can they now state "ready"? The answer depends on whether or not they really *are* ready for trial.

As stated above, for the People to be "ready" for trial, they must have removed all legal impediments to the commencement of their case; that is, they have "done all that is required of them

to CPL section 60.20(2). N.Y. CRIM. PROC. LAW § 60.20(2) (McKinney 2009). *See generally* People v. Richard, 929 N.Y.S.2d 723 (Crim. Ct. 2011); People v. Soler, 544 N.Y.S.2d 287 (Crim. Ct. 1989). This procedure is conducted to fulfill the Court's duty to insure that the infant complainant actually has the capacity and intelligence to understand the nature of an oath. *See* People v. Lashaway, 978 N.Y.S.2d 388 (App. Div. 2013). Following the same principle, then, the court should review the business records used by a deponent to insure that said records actually support the charges.

55. *Wilson*, 899 N.Y.S.2d at 585; *see* People v. Mayes, 858 N.Y.S.2d 856 (App. Div. 2008).

56. *Wilson*, 899 N.Y.S.2d at 583. *See generally* People v. Alejandro, 511 N.E.2d 71 (N.Y. 1987).

57. People v. Kalin, 906 N.E.2d 381, 383 (N.Y. 2009).

58. *See id.* at 385.

to bring the case to a point where it may be tried."[59]

Often, the People make their announcement of readiness at the time they cure the hearsay from a misdemeanor complaint. For instance, relying upon *Kalin*, the People often state ready in drug possession cases in the absence of a laboratory report.[60]

While it is true that *Kalin* states "so long as the factual allegations of an information give an accused notice sufficient to prepare a defense . . . [these allegations] should be given a fair and not overly restrictive or technical reading,"[61] nothing in this holding addresses whether a sufficient complaint means that the People have done all that is necessary to bring the case to a point where it may be tried.

In fact, two recent cases decided by the author of this article illustrate the difference between conversion and readiness.

In *People v. Colon*,[62] the People filed a statement of readiness with a supporting deposition, thus converting the misdemeanor complaint into an information.[63] However, the court asked the People how they could proceed to trial without a laboratory analysis. The People stated that they were ready, "pursuant to *Kalin*."[64]

As it happened, once the laboratory report was produced, it was dated several days *after* the People's statement of readiness. In that circumstance, the court held it impossible for the People to have been actually ready when they announced ready for trial:

> If one of the necessary elements of the People's case is proof that the substance recovered from this Defendant is marijuana, and that substance was not analyzed until October 7, 2013, then the Statement of Readiness filed and served on September 27, 2013 is illusory, nothing more than

59. *See* People v. England, 636 N.E.2d 1387, 1389 (N.Y. 1994).

60. For a discussion of the procedural due process considerations regarding the court's acceptance of a statement of readiness in the absence of a laboratory report, see People v. Nunn, 882 N.Y.S.2d 887 (Crim. Ct. 2009).

61. 906 N.E.2d at 384.

62. 990 N.Y.S.2d 438 (Crim. Ct. 2014).

63. *See generally id.*

64. *Id.* at 438.

a prediction or expectation of future readiness.[65]

Following this reasoning, in *People v. Beckett*,[66] the author found another statement of readiness made by the People to be illusory. In *Beckett*, the People stated ready at the arraignment of the defendant, despite the fact that the laboratory analysis of the drugs recovered in defendant's apartment was not available until five days after the defendant's arraignment.[67] Thus, the statement of readiness was "an illusory statement of future readiness."[68]

Beckett makes explicit the point made in *Colon* - that is, the reliance upon *Kalin* for a statement of readiness is misplaced. "There is nothing in the *Kalin* decision that allows the People to equate conversion of the complaint to an information with readiness for trial."[69]

VII. Standards for Facial Sufficiency of Informations

So far, we have discussed the application of CPL section 30.30 to misdemeanor complaints; that is, an accusatory instrument which contains hearsay. In such an accusatory instrument, facial sufficiency is a secondary issue to conversion, since there is rarely, if ever, any debate that CPL section 30.30 time limitations are not applicable.[70]

In turning to a consideration of facial sufficiency of informations, that is, an accusatory instrument upon which a misdemeanor trial may commence, we must remember that the rules stated here apply equally to misdemeanor complaints. However, the issue of facial sufficiency is more often addressed after the misdemeanor complaint has been converted, or deemed to be an information.

65. *Id.*; *see* People v. Kendzia, 476 N.E.2d 287, 290 (N.Y. 1985) (holding that a statement of readiness is not "a prediction or expectation of future readiness.").

66. 987 N.Y.S.2d 576 (Crim. Ct. 2014).

67. *Id.* at 579.

68. *Id.* at 579 (citing *Colon*, 990 N.Y.S.2d at 438 (citing People v. Nunez, 851 N.Y.S.2d 128, 129 (App. Div. 2008))).

69. *Id.* at 580.

70. N.Y. CRIM. PROC. LAW § 100.05 (McKinney 2009).

The necessity for an information to be facially sufficient is cogently discussed in *People v. Camacho*.[71] There, the court noted that when an information is found to be facially insufficient, curing the defect "is imperative, because . . . the court's jurisdiction is no longer assured."[72]

There are many ways in which an information can be deemed facially insufficient. If the instrument states an incorrect date of occurrence, for instance, the document is void and fatally defective.[73] If the location stated in the complaint is wrong, the document is also facially deficient.[74] Since these defects appear on the face of the information, they are considered "facial" deficiencies.

Under CPL section 170.30(1), "after arraignment upon an information . . . or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that: (a) It is defective within the meaning of Section 170.35."[75] CPL section 170.35(1) further states that "an information . . . or a misdemeanor complaint, or a count thereof, is defective within the meaning of paragraph (a) of subdivision one of section 170.35 when: (a) It is not sufficient on its face pursuant to the requirements of section 100.40."[76]

On a review of the facial sufficiency of a criminal court information, the court's review is limited to whether or not the People's allegations as stated in the information are, in fact, sufficient. This means that the facts alleged need only establish the existence of a *prima facie* case, even if those facts would not be legally sufficient to prove guilt beyond a reasonable doubt.[77] As was stated in *People v. Prevete*,[78] "accusatory instruments are to be accorded 'a fair and not overly restrictive or technical reading' and will be upheld so long as they serve the

71. 711 N.Y.S.2d 283 (Crim. Ct. 2000).

72. *Id.* at 288 (citations omitted).

73. *See generally* People v. Easton, 121 N.E.2d 357 (N.Y. 1954) (citations omitted); People v. Schweizer, 289 N.Y.S. 964 (Crim. Ct. 1936).

74. *See* People v. Idema, 518 N.Y.S.2d 292, 298 (Just. Ct. 1987).

75. N.Y. CRIM. PROC. LAW § 170.30(1) (McKinney 2009).

76. *Id.* § 170.35(1).

77. *See* People v. Jennings, 504 N.E.2d 1079, 1084 (N.Y. 1986).

78. 809 N.Y.S.2d 777 (App. Term 2005).

fundamental purposes of providing the accused 'notice sufficient to prepare a defense' and in a form sufficiently 'detailed' to prevent a subsequent retrial for the same offense."[79]

Any discussion of the facial sufficiency of an information leads to an issue of intense debate; if the information is facially insufficient, the theory goes, then the People could never have been ready for trial. If they were never ready for trial, then shouldn't the accusatory instrument be dismissed pursuant to CPL section 30.30?

VIII. Application of CPL Section 30.30 to Facially Insufficient Informations

The "conventional wisdom" here was stated in the case of *People v. Colon*.[80] There, the prosecution cannot proceed to trial on a facially insufficient misdemeanor complaint since the "Criminal Court clearly has no jurisdiction to take to trial a defendant who is charged only by a complaint and who has not waived the filing of a sufficient information."[81] This view is premised on the holding in *People v. Case*;[82] "[a] valid and sufficient accusatory instrument is a nonwaivable jurisdictional prerequisite to a criminal prosecution."[83]

In *Colon*, the defendant returned after bench warrants were issued for his arrest in several unconverted matters - that is, the accusatory instruments were all misdemeanor complaints containing uncured hearsay allegations.[84] Defendant moved to dismiss all matters, asserting that the People's time to prosecute these matters had expired, pursuant to CPL section 30.30.[85] The motion was granted by the trial court, which was reversed by the Appellate Term, who in turn, was reversed by the Court of Appeals for reasons stated in the opinion of the Criminal Court.[86]

79. *Id.* at 778 (citations omitted).
80. 443 N.Y.S.2d 305 (Crim. Ct. 1981).
81. *Id.* at 307.
82. 365 N.E.2d 872 (N.Y. 1997).
83. *Id.* at 873.
84. *See Colon*, 443 N.Y.S.2d at 307-08.
85. *Id.* at 306.
86. *See* People v. Colon, 453 N.E.2d 548, 548 (N.Y. 1983).

This aspect of the *Colon* holding was superseded when the New York State legislature amended CPL section 30.30(4)(c) to exclude the time during which a defendant is absent from court while a bench warrant is pending.[87] However, the amendment only affected whether or not the People were required to cure the hearsay from an unconverted complaint while a defendant was absent, and a bench warrant was outstanding. The underlying concept remains the view taken by the majority of criminal defense attorneys - if the misdemeanor complaint, or information, is facially insufficient, then the court is without jurisdiction to try the case, and the People cannot be ready for trial. CPL section 30.30 time continues to run.

But is this always true? Does an insufficient complaint equal an inability to proceed to trial?

In *Camacho*, the court discussed the difference between a latent defect and a facial defect in what would otherwise constitute a criminal court information.[88] Citing to *Matter of Edward B.*,[89] the *Camacho* court noted that where "the case had proceeded beyond the pretrial stages and had entered the fact-finding stage, the need for (a facially sufficient) accusatory instrument . . . was no longer compelling . . . since the accused has already been brought before the court and the witnesses are available to describe the case against the accused, in person and under oath."[90]

Thus, a latent defect, such as the failure to provide a certificate of translation, is "dissipated" if such a defect is not noted until the time of trial. "As the Legislature has foreseen the . . . purpose of the statute is amply served by *facial* compliance."[91]

If the defect in the People's information is latent, the People

87. *See generally* People v. Bolden, 578 N.Y.S.2d 914 (App. Term 1992).

88. People v. Camacho, 711 N.Y.S.2d 283 (Crim. Ct. 2000).

89. 606 N.E.2d 1353 (N.Y. 1992).

90. *Camacho*, 711 N.Y.S.2d at 287 (citing *In re* Edward B., 606 N.E.2d 1353, 1356 (N.Y. 1992)).

91. *Id.* (emphasis in original) (citing *In re Edward B.*, 606 N.E.2d at 1353); *see* People v. Antonovsky, 975 N.Y.S.2d 325 (Crim. Ct. 2011). In *Antonovsky*, while complainant's admission, that he had not read the complaint before signing a corroborating affidavit, means that the Complaint technically contained hearsay, his testimony during the People's direct examination effectively corroborated the contents of the Complaint. *Id.* at 327.

may proceed to trial with a facially insufficient charging instrument. If the defect is discovered during the pre-trial stage, it is considered facial.

When the defect is discovered pre-trial, should all time be charged to the People up to the date of discovery of the defect? In general, the answer is "no." In *People v. Odoms*,[92] the court held that "replacement of one accusatory instrument which is defective by another involving the same crime does not affect time computations . . . the fact that a superceding [sic] instrument is filed does not automatically render the entire period prior thereto as includable."[93]

In particular, the court in *Odoms* was concerned that a defendant could "silently lie in wait, while CPL Sec. 30.30 time expires, to raise an objection to the facial insufficiency of an information that was apparent at all times and then ask the court to charge the People ab initio."[94] Under these circumstances, the *Odoms* court deemed that "Defendant made an informed decision expressly waiving her speedy trial rights."[95]

In *Camacho*, the court did not have the same "bad faith" concerns. Nonetheless, *Camacho* also did not express a belief in retroactively charging the time to the People for a facially insufficient information. Instead, "the People should be allowed a reasonable period of time, to be determined by the court depending upon the particular factual circumstances of the case, to [cure the defect]. Any period of time beyond such reasonable period is chargeable to the People pursuant to CPL [section] 30.30."[96]

If *Odoms* expressed the worst case scenario, and effectively sanctioned the defense for "lying in wait" to assert a facial defect, in the hopes of gaining a dismissal under 30.30, *Camacho* provides a discretionary method to address a facial defect discovered pre-trial. Here, the Court can give the People a

92. 541 N.Y.S.2d 720 (Crim. Ct. 1989).

93. *Id.* at 720-21; *see also* People v. Diaz, 2014 WL 837070, at *3 (N.Y. Crim. Ct. Mar. 3, 2014); People v. Schiavone, 971 N.Y.S.2d 431, 435 (Crim. Ct. 2013).

94. *Odoms*, 541 N.Y.S.2d at 722.

95. *Id.* at 721; *see* People v. Wilson, 899 N.Y.S.2d 582 (Crim. Ct. 2010).

96. People v. Camacho, 711 N.Y.S.2d 283, 288 (Crim. Ct. 2000).

"reasonable" amount of time to cure the defect, and not charge the time to the People under CPL section 30.30. Were the People to take an unreasonable amount of time to make the correction, the Court reserves the right to charge the People with the excessive delay.[97]

IX. Conclusions

As in so many areas of legal analysis, the issues addressed here are often fact sensitive. There are very few, if any, bright line rules. The careful prosecutor will insure that she has the witnesses available, and all proof necessary in hand (or at least, in existence) at the time they state ready. The diligent defense attorney will seek dismissal of all allegations they believe to be insufficient, having fully reviewed the information prior to trial. But in the end, it is up to the Court, using its discretion, to determine when the People are, in fact, ready, and when the complaint is insufficient.

The important principle to remember is that the limitations of CPL section 30.30 are not to be read synonymously with the requirements for conversion and facial sufficiency. These are two intersecting, yet distinct areas of law which do not necessarily follow one after the other. The careful practitioner must learn to distinguish between the two, and apply each as necessary.

97. *See generally* People v. Gregg, 943 N.Y.S.2d 793 (Crim. Ct. 2011) ("Here, the People had the ability to correct the defect, and at Defendant's arraignment, the Court instructed the People to cure this error by 'filing a superceding [sic] information' . . . . [I]t is incomprehensible that the People should continue to ignore the Court's instructions.").