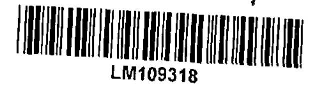


BY THE COMPTROLLER GENERAL

Report To The Congress

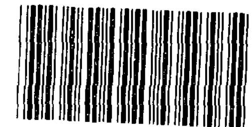
OF THE UNITED STATES

Speedy Trial Act--Its Impact On The Judicial System Still Unknown

District courts have not fully identified or documented problems of complying with the Speedy Trial Act. When it becomes effective July 1, 1979, the act will permanently establish a 100-day arrest-to-trial time for disposition of Federal criminal cases.

No objective evidence exists for deciding if this time limit should be altered. Many district judges and U.S. attorneys anticipate that under most circumstances defendants will be processed within the required time, but they believe trade-offs will result that could decrease the system's ability to promote justice.

GAO recommends actions and suggests alternatives which will allow the judiciary and the Congress to decide how the courts can fully comply with the act and minimize potential adverse effects on the judicial system.



GGD-79-55
MAY 2, 1979

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-178779

To the President of the Senate and the
Speaker of the House of Representatives

C W0 00091

This report discusses the implementation problems associated with the requirements of the Speedy Trial Act of 1974 and the courts' efforts to comply with this act. The report points out that the district courts have not fully identified and documented the extent and impact of the problems that will hinder compliance when the act's permanent 100-day arrest-to-trial time frame becomes effective. As a result, no objective evidence exists for deciding if the act's permanent time frames should be changed to effectively process defendants. Chapter 2 contains recommendations to the judiciary and suggests alternatives for the Congress to consider which would provide a more adequate basis to decide what changes, procedural or legislative, are needed to achieve full compliance with the act and minimize the potential adverse impacts on the judicial system.

We made our review pursuant to the December 1968 agreement between the Director, Administrative Office of the U.S. Courts, and the Comptroller General provided for in the September 1968 resolutions of the Judicial Conference of the United States.

Copies of this report are being sent to the Director, Office of Management and Budget; the Attorney General; and the Director, Administrative Office of the U.S. Courts.

Elmer B. Staats

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

SPEEDY TRIAL ACT--ITS IMPACT ON THE JUDICIAL SYSTEM STILL UNKNOWN

D I G E S T

Four years ago, the Congress passed the Speedy Trial Act, which requires that a Federal criminal case be processed within the established time frames totaling 100 days. Generally, cases not processed within this period, as extended by allowable delays, must be dismissed with or without prejudice.

To allow district courts to move smoothly toward the 100-day limit, the act provided a 4-year phase-in period during which specific steps within the time limit were to become effective gradually. GAO found that the district courts did not develop sufficient data to identify the reasons for implementation problems. During the phase-in period, the courts relied on limited data and subjective judgments of court officials, judges, and U.S. attorneys rather than on a systematic evaluation of empirical data to document the problems in meeting the time frames. As a result, limited evidence exists for suggesting either procedural or legislative time frame changes.

ACT REQUIRES PROCESSING DEFENDANTS WITHIN ESTABLISHED TIME FRAMES

Beginning on July 1, 1979, the Speedy Trial Act requires the dismissal of certain Federal criminal cases where a defendant is not processed within the following time frames:

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--arrest to indictment, 30 days;

--indictment to arraignment, 10 days;

--arraignment to start of trial, 60 days. 1/

At dismissal, a district judge will determine if the defendant will be freed from future prosecution.

If large numbers of cases are dismissed, the purposes of the act could be frustrated. Criminal defendants, if guilty, will escape justice or the criminal justice system will incur additional costs to retry the case.

Court statistics show that many criminal defendants have not been processed within the act's permanent 100-day arrest-to-trial time frame. At least 5,469, or 18.6 percent, of the cases completed during the year ended June 30, 1978, exceeded one or more time frames. (See p. 9.)

COURT OFFICIALS ANTICIPATE PROBLEMS IN IMPLEMENTING THE ACT

Some district court officials dismiss the fact that full implementation had not been achieved on the grounds that had the permanent time frames and the dismissal sanction been in effect, steps would have

1/Delays occasioned by certain statutorily prescribed contingencies or "excludable periods of delay" are not included in the time frame computations.

been taken to insure implementation of the act's time frames. Officials in three districts cautioned that additional resources would be needed, while officials in another district cautioned that changes in the volume and nature of criminal cases could affect the district's ability to meet the permanent time frames.

However, many court officials and U.S. attorneys believe that achieving full compliance with the act will be a reactive process resulting in the following undesirable trade-offs.

--U.S. attorneys may be unable to prosecute all criminal defendants effectively (e.g., more cases declined for prosecution or more lenient plea bargains accepted).

--Defense attorneys may not have sufficient time to prepare their client's case.

--Civil litigants whose cases are not subject to statutory time frames may have a longer wait for their day in court since criminal cases will receive priority.

--Criminal cases may cost more to process (e.g., additional travel costs or multiple trials). (See pp. 15 to 21.)

LACK OF OBJECTIVE, DOCUMENTED DATA FRUSTRATES EFFORTS TO COPE WITH PROBLEMS

District courts have not developed the data essential to identify problems that will hinder compliance when the permanent 100-day time frame becomes effective. As a result, no objective evidence exists for deciding if the act's permanent time frames should be adjusted or if procedures should be

changed to effectively process defendants within the existing time frames. (See p. 9.)

Nonetheless, the Judicial Conference, the Administrative Office of the U.S. Courts, and the Department of Justice have taken the position that Congress should lengthen the act's time frames cumulatively from 100 to 180 days. While this position comes from those whose opinion must be given great weight, neither they nor the Congress can be assured that the action called for is necessary and that it would have the desired effect. (See p. 12.)

Neither the Congress nor the components of the criminal justice system want a speedy trial if it results in an ineffective system. Logically, increasing the act's time frames by 80 percent would lessen the adverse trade-offs identified to date. However,

- --is such a long extension in the time frames necessary?
- --would a shorter time frame be possible if additional resources were made available?
- --what combination of time extensions and additional resources would preserve both the quality of justice and the goals of the act?
- --does existing law provide sufficient safety mechanisms with which to minimize or prevent adverse trade-offs?

The Congress needs answers to these questions and the justice system components need to do more to be able to provide them.

RECOMMENDATIONS TO THE JUDICIARY

GAO recognizes that implementing the act as scheduled entails some risk. Numerous problems associated with meeting the act's time frames may adversely affect the justice system. However, without information on the magnitude and severity of the impact, neither GAO, the justice system, nor the Congress can adequately weigh the adverse effects to formulate appropriate remedial actions.

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The Judicial Conference of the United States, in cooperation with the Administrative Office of the U.S. Courts and the Judicial Councils should

--develop data on a representative basis that clearly shows why cases are not being processed within the 100-day arrest-to-trial time frame;

--assess the cause, severity, and impact of these problems to formulate and justify rule changes, additional resources, or amendments to the act;

--quantify the problems and identify the various alternatives at the district court level, as well as systemwide, which could be used to overcome these problems and allow effective implementation of the act without decreasing the quality of justice; and

--periodically report the problems with the act and improvements needed to the Congress.

AGENCY COMMENTS

The Administrative Office of the U.S. Courts, the Federal Judicial Center, and the Department of Justice all disagreed with GAO's conclusions that there was insufficient data available to consider proposed amendments to the Speedy Trial Act. All three agencies contend that data now available provides a substantial enough basis for formulating and considering recommendations for remedial action by Congress before July 1, 1979. In this regard, all three agencies have suggested that the time frames be extended from 100 to 180 days. (See ch. 3 and apps. VI, VII, VIII.)

GAO disagrees and believes that because there is limited data on the implementation problems, neither the Congress nor the courts have enough evidence to decide what legislative time frames or procedural changes are necessary to allow for full compliance and to minimize potentially adverse trade-offs. As a result, no one can be assured that an extended time frame is necessary or that it will avert the expected problems. Increasing the time frame by 80 percent would logically lessen the adverse trade-offs identified to date. However, no one knows what combination of time extensions and additional resources would preserve both the quality of justice and the goals of the act.

GAO believes more attention should be paid to the system's ability to resolve problems within the framework of existing law and within the permanent time frames. GAO points out that the act specifically suspends the running of the time frames for any 1 of 15 specified contingencies. This includes an authorization to provide a continuance when,

among other matters, it would serve the "ends of justice" to do so. In situations involving an especially congested court calendar, there are circumstances where a judicial emergency may be declared, thus suspending the applicability of certain permanent time frames. However, the problems that cannot be resolved within this framework of safety mechanisms have not been specifically identified.

ALTERNATIVES FOR CONSIDERATION BY THE CONGRESS

The Congress is faced with the decision as to whether the Speedy Trial Act should be implemented as now required on July 1, 1979, or modified. The Judicial Conference, Administrative Office of the U.S. Courts, and the Department of Justice have taken the position that there is a need to increase the time frame from 100 to 180 days so that a large number of criminal cases will not be dismissed. However, problems that cannot be resolved within the act's safety mechanisms have not been specifically identified. Therefore, GAO believes in view of the unavailability of detailed data to support the position of increasing the time frame by 80 percent, that a viable alternative would be to modify the act to require the courts to use the permanent 100-day time frame and postpone the implementation of the dismissal sanction for 18 to 24 months.

This alternative would leave intact the 100-day time frame; however, because the dismissal sanction would not be in effect, criminal cases would not be dismissed. If the Congress adopts this alternative, it should require the courts to fully identify and document the problems encountered for those cases exceeding the 100-day time frame. This information would provide a more adequate basis for deciding what the appropriate time frame should be.

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ABBREVIATIONS

GAO General Accounting Office

CHAPTER 1

INTRODUCTION

In an effort to reduce crime and the danger of recidivism, the Congress passed the Speedy Trial Act of 1974 (P.L. 93-619). Extensive congressional interest and the substantial impact the act could have on various Federal entities in the criminal justice system (investigators, prosecutors, court administrators, et. al.) prompted our review of the act's implementation. Subsequently, the Chairman, Subcommittee on Crime, House Committee on the Judiciary, expressed particular interest in our work and specifically requested us to (1) review the judicial system's progress in meeting the act's time frames and (2) answer specific questions related to the act's implementation. (See apps. I and II.)

We reviewed in detail the operations of eight district courts (eastern Virginia, middle North Carolina, eastern and western Michigan, southern Iowa, western Missouri, central California, and Arizona). Chapter 4 contains additional details on the scope of the review.

The Speedy Trial Act established uniform time frames that generally must be followed by U.S. district courts 1/ in processing criminal cases. These time frames affect all aspects of the Federal criminal justice system and could substantially influence the handling of a criminal matter at any stage. For example, U.S. attorneys say that, in developing a case, they will have to be concerned not only with the adequacy of evidence but also with the ability to obtain the evidence within the time frames established by law. U.S. attorneys say that practical problems, such as transporting defendants to court in a timely fashion;

1/This report will show statistics and activities of 94 district courts. Recently, however, the Congress established a 95th district court in the northern Mariana Islands.

arranging for the court appearance of defendants, prosecutors, and others; and scheduling grand juries must be overcome once the case is introduced into the criminal justice system. If attempts are made to meet the permanent time frames but the practical problems cannot be readily overcome, the suspect's case may be dismissed before the criminal justice system has an opportunity to fully develop the case.

The Congress recognized that problems might develop with statutory time frames and therefore gave the criminal justice system over 4 years to prepare for the Speedy Trial Act's full implementation. This report addresses the progress made by the criminal justice system in implementing the act and the actions needed to avoid potentially adverse trade-offs and to encourage timely implementation.

THE ACT REQUIRES PROCESSING DEFENDANTS WITHIN ESTABLISHED TIME FRAMES

In general, the act requires that, effective July 1, 1979, district courts must bring criminal defendants to trial within 100 days of arrest, as extended by certain delays permitted by law. The 100-day time frame is divided into three intervals with a specific time limit for each interval: arrest to indictment (30 days), indictment to arraignment (10 days), and arraignment to start of trial (60 days).

To allow district courts to move smoothly toward the 100-day limit, the act provided a 4-year phase-in period during which the permanent time frames were to be gradually implemented. The table below summarizes the act's time frames by interval over the phase-in period.

Time Frames (in days)

Period	Arrest or summons to indictment (interval I)	Indictment to arraignment (interval II)	Arraignment to trial (interval III)	Total
7/01/75 to 6/30/76	No limits	No limits	No limits	No limits
7/01/76 to 6/30/77	60	10	180	250
7/01/77 to 6/30/78	45	10	120	175
7/01/78 to 6/30/79	35	10	80	125
7/01/79 permanent	30	10	60	100

During the phase-in period, each district court also had the option of adopting time frames which were shorter than those specified on page 2.

The act prescribes various sanctions if the time frames are not met. 1/ Effective July 1, 1979, the court generally must dismiss a case (1) if an indictment or information has not been filed within the allotted time or (2) at the defendant's request if an indictment or information has been filed, but trial was not commenced within the act's time frames. The right to dismissal under the Speedy Trial Act is considered waived, however, if the defendant enters a plea of guilty or nolo contendere (no contest) or otherwise fails to request dismissal prior to trial. Once a case is dismissed, the propriety of reprosecution depends in part on the charges, indictment, or information being dropped without prejudice. 2/ Sanctions, in the form of fines, reduced compensation, and/or denial to practice before a particular court, can be levied against prosecuting and defense attorneys who knowingly delay a case without justification.

Excludable delays

The Congress recognized that the particular facts and needs of certain cases would prevent indictment, arraignment, and trial from occurring within rigid and fixed time frames. The Speedy Trial Act therefore specifies events or contingencies, referred to as excludable periods of delay, that for the duration of their occurrence suspend the running of the act's timetables. Put differently, any authorized period of excludable delay will not be counted in determining whether a criminal case is processed within the 100-day arrest-to-trial time frame. Unavailability of a defendant or an essential witness would

---

1/Delays occasioned by certain contingencies, set forth in the act and commonly referred to as excludable periods of delay, are not included in the 100-day arrest-to-trial computation.

2/If the judge rules the case is dismissed "with prejudice," future criminal proceedings may not be instituted against the defendant for the same alleged offense. If the case is dismissed "without prejudice," proceedings for the same alleged offense ordinarily could be instituted at the discretion of the Federal prosecutor.

be one contingency, for example, which would suspend running the act's time frames. (See app. V for a general listing of authorized periods of excludable delay.)

In addition to authorizing excludable periods of delay for specific events, contingencies, and situations, the Speedy Trial Act permits the court to grant a continuance that will suspend running the act's timetables when, in the judgment of the court, the ends of justice served by granting a continuance outweigh the best interest of the public and the defendant in a speedy trial. The framers of the act envisioned that defendants would nevertheless be expeditiously processed through the system.

District planning groups

The act specified that each district court must establish a planning group composed of participants from various entities of the criminal justice system--judges, prosecutors, defense attorneys, and individuals skilled in criminal justice research. Among other things, the planning group was to

--develop a plan for the prompt disposition of criminal cases within the time requirements of the act;

--describe procedural techniques, innovations, systems, and other methods, including the development of reliable methods for gathering and monitoring information and statistics, that would expedite the trial or other disposition of criminal cases; and

--inform the Congress of the nature of the problems experienced in implementing the act and recommend changes which would bring about further improvements in the administration of justice.

We are aware of two Federal courts which have raised constitutional questions about the act. One district court concluded that legislatively imposed time frames are an unconstitutional encroachment on the judiciary, and the Second Circuit stated the act presents constitutional questions. Appendix IV contains additional information on questions that concern the act's constitutionality.

ADMINISTRATIVE STRUCTURE OF THE JUDICIARY

The judicial branch of the Government has 3 levels of administration--the Judicial Conference of the United States, the judicial councils of the 11 circuits, and the district courts. Associated with this structure are the judicial conferences of the circuits, the Administrative Office of the U.S. Courts, and the Federal Judicial Center.

Judicial Conference of the United States

The Judicial Conference consists of 25 members: the Chief Justice of the United States, the chief judge of the Court of Claims, the chief judge of the Court of Customs and Patent Appeals, and a chief and district judge from each of the 11 circuits.

The Judicial Conference is a policymaking body for the Federal judicial system. Its areas of interest include the condition of the business in the courts, assignment of judges, just determination of litigation, general rules of practice and procedures, promotion of simplicity in procedures, fairness in administration, and elimination of unjustifiable expense and delay. Except for its direct authority over the Administrative Office, the Judicial Conference is not vested with the day-to-day administrative responsibility for the Federal judicial system.

Judicial councils

The United States is divided into 11 judicial circuits, each containing a court of appeals (circuit court) and from 1 to 18 district courts. Each of the 11 judicial circuits has a judicial council consisting of the circuit court judges and presided over by the chief judge of the circuit. The councils are required to meet at least twice a year. Each judicial council considers the quarterly reports on district court activities prepared by the Administrative Office and takes such action as may be appropriate. Additionally, the councils promulgate orders to promote the effective and expeditious administration of the business of the courts within their circuit.

Each judicial council may appoint a circuit executive to exercise administrative power and perform duties delegated by the council.

U.S. district courts

Each State has at least one district court and some have as many as four. Altogether there are 89 district courts in the 50 States and 1 each in the District of Columbia and the Commonwealth of Puerto Rico. Also, there are four territorial courts, one each in the Canal Zone, Guam, Virgin Islands, and northern Mariana Islands.

The standard rules of civil and criminal procedures for the U.S. district courts provide the general rules of practice for these courts. The judges of each district court, however, formulate local rules and orders and generally determine how the court's internal affairs will be handled.

Each court has a clerk of the court who is appointed by and is directly responsible to the district judges. The clerk is the court's fiscal and disbursing officer and is responsible for maintaining the court's records and performing other court-assigned duties. He functions as the court's executive officer and attempts to promote administrative procedures which will help move the court's work expeditiously.

Judicial conferences of the circuit courts

Each circuit has an annual judicial conference, composed of the circuit and district court judges of the circuit, to provide an informational and advisory forum for the judges. The court of appeals for each circuit shall provide for representation and active participation of members of the bar of such circuit. The conference is not designed to exercise administrative authority but helps improve administration through exchange of ideas and suggestions.

Administrative Office of the United States Courts

The Administrative Office is headed by a Director and a Deputy Director appointed by the U.S. Supreme Court. The Director is the administrative officer of all U.S. courts except the Supreme Court. Under the supervision and direction of the Judicial Conference, the Director:

--Supervises administrative matters relating to the office of clerks and other clerical and administrative court employees.

--Prepares and submits various reports regarding the state of the court dockets and other statistical data to the chief judges of the circuits, the Congress, the Attorney General, and/or the Judicial Conference.

--Audits vouchers and accounts of the courts and its clerical administrative personnel and determines and pays the necessary expenses of courts, judges, and other court officials.

Federal Judicial Center

The Federal Judicial Center was created to study the operation of the courts and stimulate and coordinate these studies by individuals and other agencies; propose to the Judicial Conference recommendations for improving the courts' administration and management; stimulate, create, develop, and conduct programs of continuing education and training for judicial branch personnel, including judges, clerks of courts, probation officers, and U.S. magistrates; and provide staff, research, and planning assistance to the Judicial Conference and its committees.

CHAPTER 2

SPEEDY TRIAL ACT'S IMPACT

ON THE JUDICIAL SYSTEM

STILL UNKNOWN

The Federal criminal justice system was given 4 years to prepare for implementing the Speedy Trial Act's permanent 100-day arrest-to-trial time frame. Although substantial implementation progress has been made, more needs to be done. District courts have not fully identified and documented the extent and impact of the problems that will hinder compliance with the act. Court officials and U.S. attorneys can provide only an account of anticipated problems rather than a systematic evaluation of actual problems experienced during the act's phase-in period. Lacking an objective assessment of the true compliance problems and remedial actions needed to reduce court delays, the Congress will have difficulty determining, with any degree of certainty, the act's effects on the Federal judicial system.

Court statistics show that many criminal defendants, at least 5,469 for the year ending June 30, 1978, had not been processed within the act's permanent time frames. In addition, of 16,000 cases pending at June 30, 1978, about 2,400 were over 180-days-old but did not involve fugitive defendants, thereby likely exceeding one or more time frames.

District court officials cited current and anticipated problems--the lack of a current dismissal sanction, the need for additional resources, and changes in criminal caseload--as difficulties in fully implementing the act's time frames both during the 4-year transition period and for the period following July 1, 1979. Also requiring major consideration are what officials believe are undesirable trade-offs that could decrease the system's ability to promote equal justice. For example,

--U.S. attorneys may be unable to prosecute all criminal defendants effectively.

--Defense attorneys may not have sufficient time to prepare their clients' case.

--Civil litigants whose cases are not subject to statutory time frames may have a longer wait for their day in court since criminal cases will receive priority.

--Criminal cases may cost more to process.

Lack of documentation fully depicting the problems and impacts which will cause overruns undercuts the courts ability to establish a sound basis for deciding the modifications needed in the act or the administrative and procedural changes necessary to allow for full compliance and minimize the potential adverse trade-offs.

EXTENT AND IMPACT OF PROBLEMS THAT COULD HINDER COMPLIANCE SHOULD BE KNOWN

District courts have not developed the data essential to identify problems that will hinder compliance when the permanent 100-day arrest-to-trial time frame becomes effective. As a result, no objective evidence exists for deciding if the act's permanent time frames should be adjusted or if procedures should be changed to effectively process defendants within the existing time frames. Court statistics for the year ending June 30, 1978, showed that at least 5,469 criminal defendants had not been processed within the act's permanent time frames; yet, documentation for the reasons and/or problems for such overruns has not been provided. The table on page 10 shows statistics on the implementation experience with the permanent time frames during the years ending June 30, 1977, and June 30, 1978.

Prior to passage of the act, the Congress was aware that some district courts would have problems disposing of criminal cases within the proposed time frames of the act. The Congress, however, was uncertain about what actions to take to resolve these problems. This uncertainty about a strategy was best expressed in the November 27, 1974, House Committee on the Judiciary's report.

> "Although all segments of the Federal criminal justice system are aware of the many problems which are causing delay in the trial of criminal and civil cases, there seems to be little consensus on what must be done to alleviate these problems. The Subcommittee found in its hearings a tendency on the

Criminal Defendants Meeting the July 1, 1979

Speedy Trial Time Standards for the Two Year

Period Ending June 30, 1978

Interval	Permanent time frames	Year ending June 30, 1977			Year ending June 30, 1978 (note a)		
		Total defendants processed	Total defendants meeting permanent time frame (note a)		Total defendants processed	Total defendants meeting permanent time frame (note b)	
			Number	Percent		Number	Percent
Arrest to indictment	30	18,849	14,836	78.8	9,169	7,565	82.5
Indictment to arraignment	10	44,859	39,122	87.2	26,966	24,377	90.4
Arraignment to trial	60	45,815	34,393	75.0	29,400	23,931	81.4

a/Statistics do not reflect 15,847 pending cases, of which 2,436 were pending over 6 months without fugitive defendants.

b/Defendants meeting interval after excludable periods of delay authorized by 18 U.S.C. 3161(h).

part of each participant in the system to direct the blame for delay to another component of the system. * * *"

"The Committee believes that whatever the real causes of delay are within the Federal court system that they can be remedied only by the concerted action of those who are responsible for operating the system * * *. The Congress cannot predetermine what is necessary in order to reduce delays and increase the efficiency of the courts, nor can it make advance commitments for resources before a better understanding of the problem is achieved. The planning process * * * charges all parts of the system with the responsibility of working together to find solutions for delay. Those solutions may require the addition of new judges, clerks, the purchase of computers, or perhaps will require the Congress to pass legislation reforming current criminal procedures such as limiting the scope of habeas corpus petitions and pretrial motions. Until the causes of delay are better understood by the criminal justice system, the most worthwhile approach to the problem of delay is in improving the lines of communication between the components of the system. * * *"

To avoid adverse compliance problems and allow the district courts sufficient time to prepare an effective and orderly implementation approach, the Congress provided the system a 4-year transition period (July 1, 1975 through June 30, 1979). During this period, the Congress specifically required the district courts to plan an implementation strategy, identify compliance problems, and recommend the rule changes, statutory amendments, and appropriations needed to comply with the permanent time frames.

During the past 4 years, the district courts did attempt to identify problems that would hinder compliance. District court planning groups included discussions of compliance problems experienced and anticipated in their July 1, 1976, and July 1, 1978, implementation plans. (See pp. 15 and 17 to 19 for a discussion of some of the problems.) The Judicial Conference augmented this effort by establishing an Ad Hoc Subcommittee on the Speedy Trial

Act. In April 1977, the Ad Hoc Subcommittee requested the Chief Judge and U.S. attorney of each district to report on implementation problems with the act. In June 1977, the Ad Hoc Subcommittee, in conjunction with the Administrative Office and Judicial Center, held a conference to surface additional implementation problems. The results of these efforts showed that district judges and U.S. attorneys generally anticipated difficulty complying with the permanent time frames when they become effective.

U.S. attorneys discussed potential problems in complying with specific time frames. For example, many U.S. attorneys believed that the 30-day arrest-to-indictment interval will not be sufficient for investigative agencies to complete a followup investigation or for grand juries to hold adequate hearings on each case. U.S. attorneys also said that the 10-day indictment-to-arraignment period is not long enough to allow judges, magistrates, marshals, prosecutors, and defendants and their attorneys to schedule arraignments efficiently, especially in geographically large court districts. In addition, the attorneys said that the limited time given to defense attorneys to evaluate their case prior to arraignment will result in more pro forma not guilty pleas. Finally, U.S. attorneys anticipated that the 60-day arraignment-to-trial period would not allow adequate time to prepare for trial in some cases, particularly in such complex cases as fraud, white-collar crime, public corruption, organized crime, and conspiracy. The Judicial Conference has taken the position that the Congress should lengthen the permanent 100-day arrest-to-trial time frame to 180 days.

Although the studies to identify these problems made necessary inroads, the usefulness of the information gathered is limited and the adequacy of the recommendation is therefore questionable, because it is based on limited data and perceptions rather than a comprehensive analysis of the problems and impacts of meeting the time frame. The lack of comprehensive data on the problems and impacts hinders the judiciary from assessing the criminal justice system's ability to effectively implement and comply with the time frames. Lacking this assessment, the judiciary is not in a position to adequately identify or justify corrective actions. Extending the act's time frames by 80 percent would logically lessen the potential adverse trade-offs identified to date. At the same time, however, such a long extension in the time frames may severely undercut the objective of the act--speedier trials.

To determine specific reasons for defendants not being processed within the act's permanent time frames, we reviewed 393 defendants' cases in 8 district courts. Each of these cases was reported as being terminated during the 6-month period ending June 30, 1977, and court statistics indicated that the July 1979 time frame for one or more of the three intervals had been exceeded.

Because district court case files did not contain sufficient information to identify the specific reasons defendants were not being processed within the act's time frames, we had to rely on opinions and observations from judicial officials. This detailed data is needed by the district courts to gain perspective on the specific implementation problems that exist, and by the Administrative Office of the U.S. Courts to gain a comprehensive understanding of the extent of the problems systemwide. The Administrative Office's Speedy Trial Act Coordinator said that he did not request this type of data but agrees that the information is needed for assessing implementation problems.

We asked judges, prosecutors, and clerks their opinion on the specific problems that may have prevented the judicial system from meeting the permanent time frames for the 393 defendants' cases reviewed. Most officials said that many of these cases would have been processed within the intervals in question had the permanent time frames and the dismissal sanction been effective. However, officials in three districts cautioned that additional resources would be needed, while officials in another district cautioned that changes in the volume and nature of criminal cases could affect the district's ability to meet the permanent time frames. These officials stated that at least 103, or 26 percent, of the 393 defendants exceeded the time frames because the district was attempting to meet longer transitional time frames and the dismissal sanction was not effective. An additional 86, or 22 percent, of the defendants actually met the permanent time frames but had been reported as exceeding those time frames because allowable excludable time had not been computed or had been computed improperly.

The following table indicates some of the more substantive problems offered as reasons for processing delays in our sampled cases.

Problems	Number of defendants (note a)	Percent of defendants
Plea bargaining negotiations were in process	64	16
Case was unusual or complex	37	9
Investigative reports were received too late because priority processing had not been requested	30	8
Grand jury was not readily available	24	6
Defendant did not appear for scheduled arraignment	24	6
Case could not be scheduled because of court congestion	17	4

a/More than one problem may have been cited as applicable to a single defendant.

For a detailed discussion of these problems and proposed solutions, see appendixes II and III.

The Department of Justice recognized the importance of compliance problem data and conducted its own study which was recently released. This study notes that given the degree to which a more exhaustive analysis was precluded by such limitations as lack of systematic and accurate recordkeeping in the districts visited and the time and budgetary constraints on the project, the description of the sources and types of delays that occur in these districts must be regarded as tentative. Nevertheless, the report points out that:

--The most frequent causes of delay were time spent waiting for investigative reports, time spent considering plea offers, and time spent waiting for defense counsel.

--The single most significant source of delay, in terms of days of delay, was time spent considering plea offers.

--The most significant cost of compliance with the act is continued and aggravated delay in the disposition of civil cases.

COMPLIANCE WITH TIME FRAMES MAY CAUSE TRADE-OFFS IN THE QUALITY OF JUSTICE

National statistics indicate many defendants are currently not processed within the act's permanent time frames. The final implementation plans for four of the eight districts reviewed (western Missouri, eastern Virginia, middle North Carolina, and southern Iowa) indicate that compliance for most defendants can be achieved when the permanent time frames and dismissal sanction take effect. In three other districts (Arizona, eastern and western Michigan) the final implementation plans indicate that compliance with the permanent time frames can be achieved with additional resources. The final implementation plan for the central district of California indicates that compliance with the permanent time frames is anticipated if the volume and nature of criminal cases remains substantially the same. These officials believe, however, that achieving full compliance will be a reactive process resulting in undesirable trade-offs that could decrease the system's ability to promote equal justice.

U.S. attorneys may be unable to prosecute all criminal defendants effectively

U.S. attorneys say that to avoid case dismissals, they may have to decline prosecution in more cases; obtain an indictment before the defendant is arrested, thereby increasing the risk the defendant will flee; seek an indictment before the investigation is complete, thus causing a possibly inaccurate indictment; or offer overly lenient plea bargains to avoid trial. These actions could reduce the effectiveness of Federal prosecutions.

Some U.S. attorneys say that prosecutors may decline cases when they anticipate a high risk of noncompliance with one or more of the time frames. For years, U.S. attorneys have declined, for a variety of reasons, over 60 percent of the criminal complaints brought to them for prosecution. In determining which cases to prosecute, U.S. attorneys consider several factors, including their opinions of which violations are the most significant, the status of their workload, input from Department of Justice and other enforcement agencies, local needs and conditions,

suggestions from district judges, and the certainty of conviction. On July 1, 1979, U.S. attorneys may have to to start considering whether a particular case can be processed within the fixed time frames before accepting the case.

In addition to declining more cases, several U.S. attorneys say they may hesitate to arrest defendants prior to indictment, particularly in such complex cases as those involving drugs and embezzlement. It usually takes a long time to investigate and indict defendants involved in these types of cases. Avoiding arrests might be one way for the prosecutor to get additional time to develop the case but may also allow the suspect to flee and avoid prosecution.

After July 1, 1979, a prosecutor will have to obtain an indictment within 30 days of arrest, as extended by excludable delays. Some assistant U.S. attorneys claim this time limit may reduce the effectiveness of prosecutions in complex cases, such as corruption, fraud, or narcotics, where multiple defendants and/or multiple charges are involved. Prosecutors say it may be difficult to develop cases against codefendants within 30 days or to prosecute additional charges involving the original defendants.

Finally, U.S. attorneys say that if court dockets are congested or if the prosecutor is not ready to go to trial within 60 days of arraignment, the Federal Government may settle for a lenient plea bargain 1/ to avoid freeing the defendant without punishment. U.S. attorneys estimate that only about 15 percent of all defendants actually reach trial, because successful plea bargaining often results in a guilty plea. The plea bargaining leverage a prosecutor has may decrease when a defense counselor knows that the complexity of the case or court congestion could increase the chances of his client's case being dismissed.

1/There is no definition of plea bargaining common throughout the United States. We define plea bargaining as a negotiation between the prosecutor and the defense to obtain a guilty plea from the defendant in exchange for a reduction in charges or a favorable recommendation at sentencing.

Defendants may not be given sufficient time to prepare their cases

Meeting the act's time frames may involve trade-offs to defendants and their attorneys as well. Thirty-four district court planning groups indicated that the burdens of the act's time requirements appear to be falling primarily on the defendant and defense counsel who claim to have insufficient time to prepare a case, particularly when an indictment precedes arrest.

Defense attorneys anticipate difficulty in gaining the confidence of their client; considering alternatives to prosecution, such as pretrial diversion 1/; or working out a plea bargain because of the time frames. Court-appointed defense attorneys say they often meet their client for the first time at the arraignment hearing and may not have sufficient time to evaluate the charge or develop the case by the trial date. In addition, some judges said that they may require a defendant to select another attorney if his is not available for scheduled court sessions.

Civil litigants may have a longer wait for their day in court

Although criminal defendants may receive "speedy trials" as defined by the Speedy Trial Act, it may be partly at the expense of civil litigants. The act specifies that, in accelerating the processing of criminal cases, courts should seek to avoid underenforcement, overenforcement, discriminatory enforcement of civil laws, or undue delays in the disposition of civil cases. As of June 30, 1978, pending civil cases in all district courts were at an alltime high of 166,462--8 percent greater than at the end of the previous year and 79 percent greater than at the end of 1970. Cases pending 3 years or more also increased 36 percent over the previous year.

Forty-four district court planning groups reported increased delays in the disposition of civil cases for the 2-year period ending June 30, 1978. District officials in

1/Pretrial diversion is a program designed to divert certain persons charged with a criminal offense from the traditional criminal justice process prior to trial and place them in a structured rehabilitation program.

seven of the eight districts reviewed said that the act has been responsible for some increase in the number of pending civil cases.

--District of Arizona officials cited civil docket neglect as one of the most critical adverse effects of their efforts to meet the act's time frames.

--Eastern district of Michigan officials said the civil docket had been virtually ignored because of their efforts to implement the act.

--Middle district of North Carolina officials said that court resources previously available for civil cases had been redirected toward criminal cases because of the Speedy Trial Act requirements.

Both the Judicial Conference of the United States and the Attorney General's Advisory Committee of U.S. Attorneys are concerned that the emphasis on criminal cases meeting the act's time frames has reduced the ability of district court judges to conduct civil trials.

The district court planning groups recognized this problem and in their July 1, 1978, implementation plans made the following requests for additional court personnel.

Additional Judicial Staff Resources
Requested for Compliance with the
Speedy Trial Act

Judicial personnel	Additional personnel required
Judgeships	120, 2 temporary
Magistrates	31
Court reporters	13, 1 temporary
Deputy clerks	43
Speedy trial clerks	25
Probation officers	33
Probation clerks	16
Public defenders	11
Public defenders-clerks	6
Community defender attorneys	3
Community defense clerks	1
Assistant U.S. attorneys	169
Support staff for prosecutors	17
U.S. marshals	160
U.S. marshals clerks	21
Total	669, 3 temporary

The district court planning groups said that in most instances, the requests for additional resources were based on preexisting needs resulting from increased caseloads over the years and a particular need to comply with the Speedy Trial Act time frames. On October 20, 1978, the President signed the Omnibus Judgeship bill which created 117 district court judgeships and 35 circuit court judgeships as well as support staff to accompany these judgeships. The judiciary believes that these additional judges will help perform overall court duties and help implement the broad requirements of the Speedy Trial Act.

Criminal cases may cost more to process

To avoid case dismissals and meet the time frame for indictment, arraignment, and trial, additional costs may be incurred due to increased travel, multiple trials, additional indictments and court appearances, and increased use of U.S. marshals. Twenty-two district court planning groups have reported, in their final plans, increased administrative burdens resulting from more frequent

convening of grand juries, increased recordkeeping responsibilities, and a need to transport prisoners more frequently for the 2-year period ending June 30, 1978.

Assistant U.S. attorneys in the eastern district of Virginia anticipate that additional travel costs will occur after July 1, 1979. To get an indictment within 30 days of arrest, the assistant U.S. attorneys say they may have to travel to another division 1/ within the district to find an available grand jury.

A few U.S. attorneys anticipate increased costs for additional trials when the permanent time frames become effective. Cases involving multiple defendants are usually delayed until the Government and all defendants are prepared for trial. By delaying the case, only one trial for all the defendants is necessary, saving the cost and court time as well as minimizing the risk of jeopardizing witnesses' testimony or of mistrials involved in multiple trials. Effective July 1, 1979, scheduling a trial for multiple defendants may be more difficult if the time frame for one or more defendants elapses before all attorneys are prepared for trial. This may involve severing the defendants and scheduling more than one trial. However, the law allows the exclusion of a reasonable period of delay when the defendant is joined for trial with a codefendant for whom the time for trial has not run and no motion for severence has been granted.

Several U.S. attorneys said that the 30-day time frame following arrest does not provide sufficient time to complete the followup investigation. This could result in either not getting an indictment because of insufficient investigative information or requiring a superseding indictment when all the charges are thoroughly investigated, thereby increasing court processing time and costs.

U.S. Marshals Service officials are concerned that other duties, such as warrant and summons activities, are being neglected because more deputy marshals are required to transport defendants to meet the 10-day arraignment time frame. To meet the 10-day requirement, defendants are being moved individually rather than in groups, thus generating increased costs.

1/The district is divided into four geographical divisions with judicial proceedings held in each division.

Another potential trade-off may result if prosecutors start asking for priority on investigative laboratory reports in a large number of cases. Federal Bureau of Investigation officials said that routine investigative laboratory reports are currently processed in about 45 days. If the volume of priority requests increased significantly, a problem might occur in fulfilling all requests. However, Bureau officials said every effort would be made to meet the priority demands through the use of overtime. Additionally, they indicated that hiring additional laboratory personnel may be necessary but that training a new technician takes a minimum of 2 years.

CONCLUSIONS

The district courts' lack of sufficient data on implementation problems undercuts their ability to systematically evaluate the impact of the Speedy Trial Act. As a result, neither the courts nor the Congress has sufficient evidence for deciding legislative time frame or procedural changes necessary to allow for full compliance and to minimize potential adverse trade-offs. The following questions relating to the act's effect on the judicial system persist:

--Will the criminal justice system be able to process all cases within the act's time frames when the dismissal sanction takes effect on July 1, 1979?

--What needs to be done to insure that all defendants receive a speedy trial without affecting the system's ability to administer justice equitably?

These basic questions cannot be answered with certainty because too little is known about the reasons for implementation problems incurred by the judicial system in attempting to meet the act's time frames. Reliance has been placed on limited data and what officials anticipated as problems rather than from systematic evaluations of actual experience during the act's phase-in period.

The Judicial Conference has taken the position that the Congress should lengthen the act's time frames cumulatively from 100 to 180 days. Although Judicial Conference members, who proposed this suggestion are a highly credible source, neither they nor the Congress can be assured that the extended time frames are necessary or that an extension would avert the problems expected to compromise the criminal justice system.

Neither the Congress nor the components of the criminal justice system want to achieve a speedy trial if it results in an ineffective criminal justice system. Logically, increasing the act's time frames by 80 percent would lessen the adverse trade-offs identified to date. However,

--Is such a long extension in the time frames necessary?

--Would a shorter time frame be possible if additional resources were made available?

--What combination of time extensions and additional resources would preserve both the quality of justice and the goals of the act?

--Does existing law provide sufficient safety mechanisms with which to minimize or prevent adverse trade-offs?

The Congress needs answers to these questions and the judicial system's components need to do much more to provide them.

RECOMMENDATIONS TO THE JUDICIARY

We recognize that implementing the act as scheduled entails some risk. We know that problems associated with meeting the act's time frames may result in adverse impact on the justice system. However, without information on the magnitude and severity of these impacts, neither us, the justice system, nor the Congress are in a position to adequately weigh the adverse impacts in order to formulate appropriate remedial actions.

We, therefore, recommend that the Judicial Conference of the United States, in cooperation with the Administrative Office of the U.S. Courts and the Judicial Councils,

--develop data on a representative basis that clearly shows why cases are not processed within the act's 100-day arrest-to-trial time frame;

--assess the causes, severity, and impact of these problems to formulate and justify the need for rule changes, additional resources or amendments to the act;

--quantify the problems and identify the various alternatives at the district court level, as

well as systemwide, which could be used to overcome these problems and which would allow for the act's effective implementation without decreasing the quality of justice; and

--provide periodic reports to the Congress to demonstrate the problems with the act and needed improvements.

ALTERNATIVES FOR CONSIDERATION BY THE CONGRESS

The Congress is faced with the decision as to whether the Speedy Trial Act should be implemented as now required on July 1, 1979, or modified. The Judicial Conference, Administrative Office of the U.S. Courts, and the Department of Justice have taken the position that there is a need to increase the time frame from 100 to 180 days so that a large number of criminal cases will not be dismissed. However, problems that cannot be resolved within the act's safety mechanisms have not been specifically identified. Therefore, we believe, in view of the unavailability of detailed data to support the position of increasing the time frame by 80 percent, that a viable alternative would be to modify the act to require the courts to use the permanent 100-day time frame and postpone the implementation of the dismissal sanction for 18 to 24 months. 1/

This alternative would leave intact the 100-day time frame; however, because the dismissal sanction would not be in effect, criminal cases would not be dismissed. If the Congress adopts this alternative, it should require the courts to fully identify and document the problems encountered for those cases exceeding the 100-day time frame. This information would provide a more adequate basis for deciding what the appropriate time frame should be.

1/If the Congress adopts this alternative, the remedial provisions of existing law (compulsory pre-trial release and review of release conditions) that now apply to continuously detained and designated high-risk defendants whose trials do not begin within specified time frames, should be extended to correspond to the period for which the act's dismissal sanction is suspended. These provisions would otherwise expire on June 30, 1979, and be supplanted by the act's dismissal sanction.

CHAPTER 3

AGENCY COMMENTS AND OUR EVALUATION

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

The Administrative Office disagreed with the conclusions and recommendations included in our report. (See app. VI.) It stated that Congress needs answers to the questions the report poses now, not at a future date. It further believes that the information now available provides a substantial enough basis for formulating answers with a reasonable degree of certainty to support recommendations for remedial action by Congress before July 1. The Administrative Office said it is convinced that any further delays of remedial action will inevitably result in consequences completely inapposite to the Speedy Trial Act's fundamental objectives.

We agree with the Administrative Office's comment that Congress needs answers now; unfortunately, the answers are not fully available. The only empirical data available is statistical data which shows how many cases exceed the various interval time frames. Even the Administrative Office's final report on the implementation of the Speedy Trial Act states that the effects of the act would not be known until the time limits are enforced with sanctions. However, the report states that experiences gained thus far indicate that the act will have the following impacts:

- --Courts will need to require more frequent convening of grand juries.
- --There will be increased delays in the disposition of civil cases.
- --Defense counsel will have insufficient time to pursue a defense.
- --Clerks' offices will be required to prepare detailed reports, keep records and report on time which is excludable.

The Administrative Office's report, however, fails to quantify the problems associated with the cases that exceeded the time frames. For example, do most of the cases exceed the time frames because (1) grand juries were not available to indict an accused, (2) investigative reports were not received in a timely manner, (3) defense lawyers were not adequately prepared, or (4) plea bargains were in process? No one knows the extent and degree these problems impact on the courts' compliance with the time frames of the Speedy Trial Act. Therefore, we take exception to extending the time frame on the basis of such limited data. We believe the Congress needs this data so that it has a solid basis for deciding whether the act should be modified or if administrative procedures should be modified.

The Administrative Office's final report noted that the majority of the district court plans indicated that the effect on criminal justice administration of the prevailing time limits has been more rapid disposition of criminal cases and a decrease in criminal backlog. Planning groups also report that administration of criminal justice was improved through more efficient administrative procedures and improved cooperation and planning between the courts, prosecution, clerk's offices, and defense. The prompt administration of criminal justice was said by some planning groups to improve the quality of justice. The report goes on to say that a speedy trial enables witnesses' memories to be fresh, trial is held before witnesses become unavailable, and, if convicted, the punishment bears a greater association with the crime.

The Administrative Office says that the soundest basis for an assessment would be actual experience under full implementation of the act's permanent time frames. We agree. However, we believe that more precise data could and should have been developed to show what changes, legislative or administrative, were needed to insure compliance with the act's permanent time frames. We believe quantitative data could have been developed to show reasons cases exceeded the time frames, such as grand juries not being available, or plea bargains being negotiated. However, this information was not developed.

The Administrative Office said that it must view our recommendations that more data be developed and remedial action be delayed until it has been developed as really advocating "trial by fire." We believe that a more adequate basis is necessary to establish the need for an

approximate doubling of the act's permanent time frame. Even the Administrative Office's data shows that district courts are complying with the act's requirements about 80 to 90 percent of the time. We agree that individual criminal cases do raise special problems which, in fact, preclude processing within the required 100-day period. However, the act provides that a judge can grant a continuance when, among other matters,

--not granting a continuance would result in a miscarriage of justice or

--the case is so unusual and so complex due to the nature of the prosecution that it is unreasonable to expect adequate preparation within the time frame established.

We believe these provisions allow the courts latitude to handle most cases within the 100-day time frame if excludable time is considered. However, problems that cannot be resolved within the frame work of the act's safety mechanisms have not been specifically identified. In this regard, district court officials stated that many cases exceeded the permanent time frames because the dismissal sanction was not effective or that the district court was trying to meet longer transitional time frames rather than the permanent time frames.

The Administrative Office stated it knows enough now to remedy the damage which inflexible time frames will cause. Its solution is to extend the time frames to 180 days. We believe if this is done, no one will ever know if the courts could comply with the 100-day time frame.

In conclusion, we believe the Congress must decide whether the information presented by the Administrative Office provides a reasonable basis to modify the act by extending the time frames or whether more precise information is needed to make such a decision. We believe, as pointed out earlier, that Congress does not have available the precise information to determine the feasibility of the 100-day time frame or what length the time frame should be.

FEDERAL JUDICIAL CENTER

The Federal Judicial Center, in commenting on our report, said it agrees that predicting the impact of full implementation is difficult. (See app. VII.) However, it

believes our report overstates the extent of difficulty because it overemphasizes the contribution to such prediction of "hard data." The Center believes we underemphasized the contribution of what might be termed "soft data," such as the impressions and judgments of those who work daily with the act. The Center further states that analyzing the factors that affect the criminal justice process--and separating out the impact of a single variable such as the Speedy Trial Act--are exceedingly complex tasks. Therefore, the Center believes that soft data--in the form of perceptions of those within the system about what changes the act is causing--may in many cases be the best data available. The Center believes this illustrates the importance of relying on the informed view of those who have been working with the act on a daily basis. The Center, thus, supports the 180-day time frame position of the Judicial Conference.

We agree with the Center that the views of the people who work with the act daily must be given great weight. However, we believe that, because there is limited data on the implementation problems, neither the Congress nor the courts has sufficient evidence for deciding what legislative time frames or procedural changes are necessary to allow for full compliance and to minimize potential adverse trade-offs. No one can be assured that extended time frames are necessary or that an extension would avert the problems expected to compromise the criminal justice system. Logically, increasing the act's time frames by 80 percent would lessen the adverse trade-offs identified to date. However, no one knows whether such a long extension is needed or what combination of time extensions and resources are needed. We believe that Congress needs answers to these questions and the judicial system needs to do more to provide them.

DEPARTMENT OF JUSTICE

The Department of Justice disagreed with our conclusion that sufficient data is unavailable to consider, in a meaningful fashion, proposed amendments of the act. (See app. VIII.) The Department's disagreement is based on the following two factors.

--That the Administrative Office of the United States Courts has collected a substantial amount of data on the operation of the act to date. Also, the Department said it understands the

Administrative Office responded to our report and that its response contains an assessment of the data collected and analyzed. The Department further noted that the Judicial Conference has submitted a legislative proposal to amend the act on the basis of the Administrative Office's data.

--That the Department has completed its own study of the Speedy Trial Act implementation which affirms the validity of the data reported by the Administrative Office. The Department has submitted to the Congress amendments which will, among other things, enlarge the total time frames from arrest-to-trial from 100 to 180 days.

As discussed on pages 24 to 26 of this report, the Administrative Office's data merely shows how many cases exceeded the interval time frames but does not identify and quantify the problems associated with the cases that exceeded the time frames. No one knows the extent and degree these anticipated problems will impact on the courts' compliance with the time frames of the Speedy Trial Act. In addition, the Administrative Office's final report noted that the effect on criminal justice administration of the prevailing time limits has been more rapid disposition of criminal cases and a decrease in criminal case backlog. (See p. 25.)

Additionally, the Department's own study stated that the Administrative Office's data was found useful in addressing broad issues; however, the data did not provide the specific case information needed to address many of the issues under examination.

With regard to the Department's own study, we question the Department's recommendation to extend the time frame from 100 to 180 days when its study concluded that the degree of compliance with the Speedy Trial Act in terms of the ultimate time limits for each interval was relatively high for the year ending June 30, 1978; at least 4 out of 5 cases were processed within the time permitted for each interval.

We agree that the Department's study provided additional statistics as to the extent of problems experienced by cases that exceeded the time frames. However, the

Department's study noted that, given the degree to which a more exhaustive analysis was precluded by such limitations as lack of systematic and accurate-record-keeping in the district's visited and the time and budgeting constraints on the project, the description of the sources and types of delays that occurred must be regarded as tentative. The Department's study did point out that delays were most frequently observed in cases involving drug-related offenses; involving multiple defendants; and cases in which courts granted motions addressed to the indictment, motions for severence, and motions for additional discovery. Additionally, the study noted that the most frequently observed sources of delay were consideration of plea offers, unavailability of investigative reports, and unavailability of defense counsel.

In conclusion, the Department's study stated the Federal system is capable of a high degree of compliance with the time limits of the Speedy Trial Act that will come into effect on July 1, 1979. The study stated that a substantial number of criminal cases will be dismissed after the dismissal sanction of the act becomes effective, unless measures are taken to improve current compliance with the act. The study suggested three alternatives that could be taken, singly or in combination, as follows:

--Extension by legislation, either of the time limits of the act or of the effective date of the dismissal sanction or both.

--Interpretation and application, by the courts, of the act's exclusions in a manner that reduces the number of delinquent cases.

--Provision, by Congress, of additional resources to process criminal cases.

The study said that in the absence of effective measures along the above lines, an unacceptable level of dismissals can be avoided only through reduction, by prosecutors, of the number of criminal cases accepted for processing by the system.

We believe that individual cases do raise special problems which, in fact, do preclude processing within the required 100-day period. However, the act provides that a judge can consider granting a continuance if failure to do so would result in a miscarriage of

justice or if the case is so unusual and so complex due to the nature of the prosecution that it is unreasonable to expect adequate preparation within the time frame established. We believe these provisions allow the courts latitude to handle most cases within the 100-day time frame if excludable time is considered. However, problems that cannot be resolved within the framework of the act's safety mechanisms have not been specifically identified. Court officials told us that many cases exceeded the permanent time frames because the dismissal sanction was not effective or that the district court was trying to meet longer transitional time frames rather than the permanent time frames.

Even though the Department's study went further than the Administrative Office's data, it failed to fully address the questions that still must be answered such as:

--Is an 80-percent increase necessary?

--Would a shorter time frame be possible if additional resources were made available?

--What combination of time extensions and additional resources would preserve both the quality of justice and the goals of the act?

--Does existing law provide sufficient safety mechanisms with which to minimize or prevent adverse trade-offs?

We continue to believe that the Congress still needs answers to these questions so that an informed judgment can be made to determine whether legislative or procedural changes are necessary to insure speedy trials.

In summary, we believe more attention should be paid to the system's ability to resolve problems within the framework of existing law and within the permanent time frames. We wish to point out that the act specifically suspends the running of time frames for any 1 of 15 specified contingencies. (See app. V.) This includes an authorization to provide a continuance when, among other matters, it would serve the "ends of justice" to do so. In situations involving an especially congested court calendar, there are circumstances where a judicial emergency may be declared, thus suspending the applicability

of certain permanent time frames. Contingencies or problems that cannot be resolved within this framework of safety mechanisms need to be specifically identified.

CHAPTER 4

SCOPE OF REVIEW

We performed our review at U.S. district courts in eastern and western Michigan, eastern Virginia, middle North Carolina, western Missouri, southern Iowa, central California, and Arizona. We also performed detailed work at the Administrative Office of the U.S. Courts in Washington, D.C.

The information developed was obtained through

- --discussions with district judges, U.S. attorneys, defense attorneys, and other personnel involved in processing criminal defendants;
- --review of 393 closed cases which exceeded the permanent time frames in the eight districts during January 1, 1977, through June 30, 1977; and
- --analysis of criminal justice statistics provided by the Administrative Office of the U.S. Courts.

NINETY-FIFTH CONGRESS

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August 2, 1977

The Honorable Elmer B. Staats
Comptroller General of the
United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

As you know, I chair the Subcommittee on Crime of the House Committee on the Judiciary. In the four years this Subcommittee has been in existence we have had a very good relationship with your staff which investigates criminal justice matters. As you know, we have relied heavily on the reports produced by your agency which dealt with the Law Enforcement Assistance Administration.

In 1975 this Subcommittee was responsible for passage of the Speedy Trial Act. That act is unique in that it provides for four year graduated time limits to go into effect until July 1, 1979, when final time limits and sanctions would be effective. Unique also is the fact that the law provided for the development of individual district plans of operation.

Since July 1, 1979 is the effective date of activation of a 100 day time limit for criminal cases in district courts, and since the Congressional Budget Office requires that any new 1979 authorization legislation be reported out of Committee by May 15, 1978, legislative hearings on amendments to the Speedy Trial Act should begin by January, 1978. In preparation, the Subcommittee has been working very hard to develop data upon which responsible amendments may be considered. There has been developed very little in the way

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of objective data, however, in the area. The Judiciary, the Justice Department and the United States Attorneys have historically been opposed to the Speedy Trial Act. Even the defense bar will find benefits in delay of criminal trials.

In order to develop an objective evaluation of the impact of the Speedy Trial Act upon the federal judiciary and its benefits to society, we would like GAO to continue with its self initiated study of Title I of the act. We understand that you have already begun a survey of the Federal District Courts efforts to implement the act, and we have no objections to your issuing a report on the subject to all Members of Congress. I believe that the study you will conduct as a result of my general request will be beneficial as a general assessment of the Speedy Trial Act. This study will be of specific benefit to the Subcommittee in its deliberations.

We hope you will be able to determine the progress already made toward meeting the Title I time frame and the difficulties involved. We expect that an objective determination could be made of the potential problems and trade-offs the act could create. To do this it will be necessary for you to identify the data base and reporting system used by the district courts to assess the utility of the statistics being kept by the Administrative Office of the Courts on which they will base their proposed amendments. This will involve studies of representative and/or unusual districts and include discussions with judges, clerks, U.S. Attorneys and the defense bar to determine in what way the act is being complied with at present. Some of the issues that will require careful review at headquarters and in the districts selected include the following:

(1) What are the problems that prevent the district courts from complying with the 30 day time limit from arrest to indictment?

   (a) Why is it difficult for assistant U. S. Attorneys to prepare a thorough investigation within the 30 day time limit?

   (b) How widespread is the policy of no arrest prior to indictment?

   (c) How widespread is the use of "holding indictments" and superseding indictments?

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(2) What are the problems that prevent the district courts from complying with the 10 day time limit from indictment to arraignment?

(a) Is the distance that must be traveled in some districts the central problem that prevents compliance with the 10 day time limit? How do some districts alleviate this difficulty?

(b) Do many districts recommend the extention of the Magistrate's judicial powers?

(c) Does the short time period provided to evaluate cases result in pro forma not guilty pleas? Has the number of guilty pleas increased or decreased since the enactment of the legislation?

(3) What are the problems that prevent the district courts from complying with the 60 day time limit from arraignment to trial?

(a) Has the number of cases that are declined, reduced or refused increased because the 60 day limit is too short?

(b) How often do judges empanel juries and weeks later begin the actual trial simply because the 60 day time limit is too short?

(4) What are the problems that prevent the district courts from complying with the 60 day time limit for retrials?

(5) What aspects of Section 3161(h) provisions for excludable time are presenting problems in the district courts, and why have these difficulties arisen?

(a) How often do judges grant severances in multi-defendant cases rather than granting an excludable delay as provided in Section 3161(h)(7)?

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(b) Why do the district courts request discretion in granting a continuance as provided in Section 3161(h)(8) when discretion is already included in the act?

(c) How often do judges restrict the granting of a continuance solely for exceptional cases? Why do some judges refuse to grant a continuance for complex cases as provided in the act?

We would suggest that you study at least one district court which has already implemented the 100 day total time period. Arizona's Southern District may be appropriate because the workload of the individual judges is high even with the assistance of visiting judges, and they claim to be experiencing problems under the Speedy Trial Act.

We suggest that you use for comparison the Western District of Missouri which has not yet implemented the final time period but claims it will have no difficulty doing so. In addition, we understand you are presently conducting a survey of the Eastern District of Michigan. As you know, Michigan is 82nd in the nation in average time from arrest to disposition of criminal cases and claims it will not be able to implement the Speedy Trial Act. In choosing any other districts to study we suggest you keep in mind the complaints of the Judiciary concerning numbers of criminal cases which are unusually protracted and districts which require an inordinate amount of travel and make ineffective use of magistrates. Some districts have jurisdiction over a military base or an Indian reservation and, therefore, their caseload is skewed with misdemeanors.

It is our understanding that your sample or study will be of only a few districts and the factual information we receive will pertain to only those districts. But the Subcommittee is hopeful we will receive recommendations from you on the broader issues. The Subcommittee is looking for answers to broad questions. Should the Speedy Trial Act be applicable uniformly to all 94 districts? Can it work? Will other federal laws creating additional judgeships, additional use of magistrates, and elimination of diversity jurisdiction

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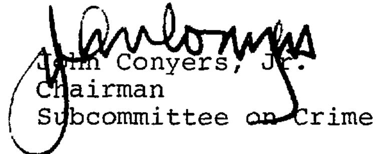
have a beneficial effect on the operation of the Speedy Trial Act? From your own analysis, which sections of the act need amendment and how?

I hope this request can be considered only as a broad outline of possibilities of review of Title I of the Speedy Trial Act. Any refinements your staff may have are welcome.

Thank you in advance for your attention to this matter.

Sincerely,



John Conyers, Jr.
Chairman
Subcommittee on Crime

RESPONSES TO QUESTIONS REQUESTED

BY THE CHAIRMAN,

SUBCOMMITTEE ON CRIME,

HOUSE COMMITTEE ON THE JUDICIARY

The Speedy Trial Act implementation problems discussed in this appendix are based on a review of 393 closed cases which exceeded the permanent time frames during the period January 1 through June 30, 1977. Specific problems were identified through discussions with district judges, clerks, and Federal prosecutors responsible for the cases.

We believe that many of the delays in processing these cases resulted from the case management techniques used in the district courts; that is, these techniques did not always show the courts' ability to meet the permanent time frames because the permanent time frames and dismissal sanction were not in effect and many districts used longer transitional time frames. For example, 5 of the 8 districts reviewed used transitional time frames, which accounted for 2,257 of the 2,878 (78.4 percent) defendants exceeding intervals I or III for the 2-year period ending June 30, 1978. Court officials generally believe many of the problems discussed in this appendix can be overcome when the permanent time frames and dismissal sanction become effective on July 1, 1979. However, officials in three districts cautioned that additional resources would be needed, while officials in another district cautioned that changes in the volume and nature of criminal cases could affect the district's ability to meet the permanent time frames.

What are the problems that prevent the district courts from complying with the 30-day time limit from arrest to indictment?

District courts process most defendants within the permanent interval I time frame (indictment within 30 days of arrest). During the year ending June 30, 1977, 86.3 percent of the defendants in the eight districts reviewed were indicted within the 30-day interval. For the following year, the rate increased to 90.7 percent. The statistical table on page 39 developed from Administrative Office data shows the interval I processing rates for the eight districts.

Defendants Processed Within the Permanent

Interval I Time Frame for District Courts Reviewed

July 1, 1976, to June 30, 1978

District	Year ending June 30, 1977			Year ending June 30, 1978 (note a)		
	Total defendants processed	Total defendants meeting 30-day time frame	Total defendants exceeding net 30-day time frame (note b)	Total defendants processed	Total defendants meeting 30-day time frame	Total defendants exceeding net 30-day time frame (note b)
Middle North Carolina	113	103	10	86	86	0
Eastern Virginia	571	499	72	115	81	34
Eastern Michigan	377	235	142	158	118	40
Western Michigan	126	104	22	55	47	8
Southern Iowa	18	17	1	23	22	1
Western Missouri	79	79	0	54	50	4
Arizona	778	680	98	271	258	13
Central California	880	823	57	632	602	30
Total	2,942	2,540	402	1,394	1,264	130
Total for 94 districts	18,849	14,836	4,013	9,169	7,565	1,604

a/Statistics do not reflect 15,847 pending cases, of which 2,436 were pending over 6 months without fugitive defendants. Thus, statistics for the period are subject to change.

b/Defendants exceeding interval after excludable time allowed by 18 U.S.C. 3161 had been deducted, as reported by district court.

APPENDIX II

Three districts (Arizona, eastern Virginia, and eastern Michigan) were responsible for three-fourths of the defendants in our sample who were not indicted within 30 days of arrest. Of the three districts, only Arizona worked under a 30-day time frame. Officials in these three districts said there were a variety of reasons for not indicting a defendant within 30 days of arrest.

In the eastern district of Michigan, the majority of defendants in our sample cases were not indicted within the 30-day limit, primarily for two reasons:

--Plea bargaining negotiations had not been completed.

--Investigative reports had not been received in sufficient time because priority processing had not been requested.

An official in the U.S. attorney's office said that many defendants (10 of 31 cases sampled) were not indicted within 30 days of arrest because prosecutors were engaged in plea bargaining negotiations which were expected to result in guilty pleas shortly after the 30-day time frame would expire. As a result, prosecutors elected to exceed the time frame to obtain the guilty pleas, thereby avoiding the need to revise the indictments to reflect the charges to which defendants eventually plead guilty. He added that he expects to comply with the time frame on July 1, 1979, by continuing plea negotiations after indictment.

Secondly, the U.S. attorney said that investigative agencies' reporting delays resulted in exceeding the 30-day permanent time limit. The Speedy Trial Act final implementation plan for the eastern district of Michigan, however, recognized the problem of late investigative reports and identified priority processing as a possible alternative.

The chief of the U.S. attorney's office Criminal Division in Tucson, Arizona, said that getting timely arrest reports from investigative agencies was a problem in complying with the 30-day arrest-to-indictment requirement. He cited two investigative agencies (the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco and Firearms) as being slow in submitting their reports. An assistant U.S. attorney said that a new requirement has been instituted which requires investigative agencies to

submit their reports within 5 days of arrest. Compliance with this requirement should alleviate the problem of late investigative reports.

Court officials in the eastern district of Virginia said that defendants were not indicted within 30 days of arrest because the grand jury was not in session in the division 1/ where the alleged offense occurred. The district's final plan for implementing the Speedy Trial Act stated that the assistant U.S. attorney would probably travel to a division with a grand jury in session to obtain an indictment when the permanent time frames and dismissal sanction become effective. This option should result in increased court costs.

Why is it difficult for assistant U.S. attorneys to prepare a thorough investigation within the 30-day time limit?

Assistant U.S. attorneys said they had difficulties completing thorough investigations within 30 days of arrest primarily because they did not receive investigative reports in time, and they were unable to investigate complex or multidefendant cases in such a short time frame. The latter problem is discussed in detail below.

The Speedy Trial Act's final implementation plan for several districts stated that districts had difficulty completing investigations of complex cases and indictments of defendants within 30 days. Our case analysis showed that this problem occurred in 12 of the 104 cases. When it occurs after July 1, 1979, however, some U.S. attorneys said that, to avoid the dismissal sanction, they might seek an indictment within 30 days of arrest even if the investigation is incomplete. For example, an assistant U.S. attorney in the eastern district of Michigan said he took 48 days to indict three defendants on forgery charges because evidence was being developed to indict five other suspects in the same case. If the permanent time frames and dismissal sanction had been in effect, the assistant U.S. attorney said he would have indicted and prosecuted the three original defendants and the other five might never have been indicted or could have fled when they learned of the indictments.

1/The district is divided into four geographical divisions with judicial proceedings being held in each division.

How widespread is the policy of no arrest prior to indictment?

U.S. attorneys from all eight districts said they avoid arrests prior to indictment unless the suspects are likely to flee or commit additional criminal acts. The following chart shows the preindictment arrest rates for the districts reviewed.

Preindictment Arrest Rates July 1, 1977, to June 30, 1978 (note a)

District	Total defendants processed	Defendants arrested prior to indictment	
		Number	Percent
Middle North Carolina	316	86	27.2
Eastern Virginia	1,303	115	8.8
Eastern Michigan	1,314	158	12.0
Western Michigan	218	55	25.2
Southern Iowa	100	23	23.0
Western Missouri	612	54	8.8
Arizona	1,089	271	24.9
Central California	1,863	632	33.9
Total	6,815	1,394	20.5
Total for 94 districts	41,419	9,169	22.1

a/Statistics do not reflect 15,847 pending cases on June 30, 1978.

As the chart indicates, the preindictment arrest rates vary considerably among districts.

The U.S. attorney in seven of the eight districts said that the Speedy Trial Act has not affected the rate of pre-indictment arrests. The U.S. attorney from the middle district of North Carolina, however, said that the act has caused him to reduce the number of arrests prior to indictment. During the year ending June 30, 1978, 27 percent of the defendants in the middle district of North Carolina were arrested prior to indictment compared to 40 percent in the preceding year.

How widespread is the use of "holding indictments" and superseding indictments?

A superseding indictment is obtained when further investigation reveals that the original indictment is inaccurate or that additional charges and/or defendants should be added to the indictment. If, a prosecutor successfully obtains an indictment supporting some, but not all, of the charges that will ultimately be filed against the defendant, the original indictment is sometimes loosely and informally referred to as a "holding indictment."

U.S. attorneys in all eight districts said they did not indict defendants under the holding indictment procedure. Several U.S. attorneys stated that, after July 1, 1979, such a practice might be used to comply with the time limit and to allow them additional time for completing the investigation.

Statistics were not available on the use of holding indictments, so we were unable to substantiate the U.S. attorneys' claims in this area. However, the statistics on page 44 show the number of defendants with superseding indictments for the 2-year period July 1, 1976, to June 30, 1978. According to these statistics and our case analysis, superseding indictments are used on a limited basis.

APPENDIX II

Superseding Indictments

July 1, 1976, to June 30, 1978

District	July 1, 1976, to June 30, 1977 (note a) Total defendants processed (note c)	Defendants with superseding indictments Number	Percent	July 1, 1977, to June 30, 1978 (note b) Total defendants processed	Defendants with superseding indictments Number	Percent
Middle North Carolina	329	3	0.9	316	0	0
Eastern Virginia	1,113	53	4.8	1,303	42	3.2
Eastern Michigan	1,646	134	8.1	1,314	22	1.7
Western Michigan	264	18	6.8	218	9	4.1
Southern Iowa	109	4	3.7	100	0	0
Western Missouri	650	7	1.1	612	5	0.8
Arizona	1,407	230	16.3	1,089	96	8.8
Central California	2,329	273	11.7	1,863	98	5.3
Total	7,847	722	9.2	6,815	272	4.0
Total for 94 districts	46,897	3,104	6.6	41,419	1,790	4.3

a/Statistics do not reflect 17,109 pending cases on June 30, 1977.

b/Statistics do not reflect 15,847 pending cases on June 30, 1978.

c/Superseding indictment information was based on the total number of defendants as reported by the Administrative Office of the U.S. Courts in the September 30, 1977, implementation report.

What are the problems that prevent the district courts from complying with the 10-day time limit from indictment to arraignment?

District courts arraign most of their defendants within the interval II time frame (arraignment within 10 days of indictment). For the year ending June 30, 1977, the eight districts reviewed arraigned 92.7 percent of their defendants within the time frame. For the following year, the rate increased to 94.2 percent. The statistical table on page 46 shows a breakdown of interval II compliance rates for the eight districts.

Two districts (central California and eastern Michigan) accounted for 65 percent of the defendants not arraigned within 10 days of indictment. The most common problem, occurring in 19 of the 48 cases reviewed in these two districts, appeared to be the courts' inability to notify the defendant in time to have the defendant appear on the scheduled arraignment date.

Defendants Processed Within the Permanent

Interval II Time Frame for District Courts Reviewed

July 1, 1976, to June 30, 1978

District	Year ending June 30, 1977: Total defendants processed	Year ending June 30, 1977: Total defendants meeting 10-day time frame	Year ending June 30, 1977: Total defendants exceeding net 10-day time frame (note b)	Year ending June 30, 1978 (note a): Total defendants processed	Year ending June 30, 1978 (note a): Total defendants meeting 10-day time frame	Year ending June 30, 1978 (note a): Total defendants exceeding net 10-day time frame (note b)
Middle North Carolina	317	290	27	263	263	0
Eastern Virginia	969	939	30	885	865	20
Eastern Michigan	1,299	1,097	202	609	512	97
Western Michigan	227	186	41	126	109	17
Southern Iowa	102	92	10	74	69	5
Western Missouri	617	608	9	463	453	10
Arizona	1,403	1,323	80	667	644	23
Central California	2,220	2,096	124	1,261	1,180	81
Total	7,154	6,631	523	4,348	4,095	253
Total for 94 districts	44,859	39,122	5,737	26,966	24,377	2,589

a/Statistics do not reflect 15,847 pending cases, of which 2,436 were pending over 6 months without fugitive defendants. Thus, statistics for the period are subject to change.

b/Defendants exceeding interval after excludable time allowed by 18 U.S.C. 3161 had been deducted, as reported by district court.

In the eastern district of Michigan, defendants are usually notified by mail to appear for arraignment. According to the district's final implementation plan, mail delays do prevent defendants from knowing of the scheduled arraignment date in time to make an appearance. The district's final implementation plan states that, to comply with the 10-day interval when the dismissal sanction takes effect the district may abandon the present practice of requesting the defendant's appearance in favor of issuing a summons or arrest warrant. This practice, however, could substantially increase the workload of the marshal's office, resulting in increased cost of administering the court system.

Officials in the central district of California said procedures, such as setting an arraignment date at the time the defendant has his bail hearing, have been instituted to alleviate the notification delay problem. These procedures, they believe, have succeeded in the majority of cases. According to officials, however, certain circumstances require the mailing of notices-to-appear and mail delays similarily prevent defendants from knowing of the scheduled arraignment date in time to make an appearance.

Officials in the district of Arizona said this problem of attempting to comply with the 10-day limit can be eliminated by extending the time frame to 20 days or allowing excludable time for the service of summons.

In addition to the arraignment notification problem, the district of eastern Michigan also did not arraign some defendants within 10 days of indictment because plea negotiations were in process. The implementation plan foresees meeting this problem by continuing plea negotiations with the defendant after arraignment.

Is the distance that must be traveled in some districts the central problem that prevents compliance with the 10-day time limit? How do some districts alleviate this difficulty?

The distance to be traveled did not surface as a major problem preventing timely arraignments in the eight districts reviewed. District court officials said the availability of a magistrate or judge in outlying court locations helped alleviate any travel problems.

Although travel considerations did not prevent district courts from meeting the 10-day interval, 22 district courts' final implementation plans reported that administrative costs have increased because prisoners must to be transported more frequently to facilitate arraignment within this time frame.

Do many districts recommend the extension of the magistrate's judicial powers?

District court officials have mixed opinions on expanding magistrates' judicial powers. Although several court officials believe that magistrates' judicial powers should not be expanded, most officials we interviewed believe they should be. Those officials favoring expansion of magistrate authority most frequently recommended allowing magistrates to accept guilty pleas at arraignments in felony cases.

Does the short time period provided to evaluate cases result in pro forma not guilty pleas? Has the number of guilty pleas increased or decreased since the enactment of the legislation?

Historically, most defendants plead not guilty at arraignment unless a plea bargain agreement has been reached. An Administrative Office official said that statistics are not available to show whether the number of not guilty pleas at arraignment has changed since passage of the act. Court officials at seven of the eight districts reviewed believe that the act's requirements have not affected the number of not guilty pleas at arraignment. In contrast, officials of the middle district of North Carolina believe that the 10-day limit increased not guilty pleas, but they could not provide us data to support their claims.

What are the problems that prevent the district courts from complying with the 60-day time limit from arraignment to trial?

District courts are bringing to trial most defendants within the permanent interval III time frame (start of trial within 60 days of arraignment). For the year ending June 30, 1977, 77.4 percent of the defendants in the eight districts reviewed were brought to trial within 60 days of arraignment. For the following year, the rate increased to 85.4 percent.

The statistical table on page 50 shows a breakdown of the cases meeting the permanent interval III time frame for the eight districts.

Three districts (eastern Michigan, Arizona, and central California) accounted for 87.0 percent of the defendants who were not brought to trial within 60 days of arraignment. Of these districts, only Arizona was working under a 60-day time frame during this period.

APPENDIX II

Defendants Processed Within the Permanent

Interval III Time Frame for District Courts Reviewed

July 1, 1976, to June 30, 1978

District	Year ending June 30, 1977			Year ending June 30, 1978 (note a)		
	Total defendants processed	Total defendants meeting 60-day time frame	Total defendants exceeding net 60-day time frame (note b)	Total defendants processed	Total defendants meeting 60-day time frame	Total defendants exceeding net 60-day time frame (note b)
Middle North Carolina	334	321	13	276	276	0
Eastern Virginia	966	929	37	916	895	21
Eastern Michigan	1,337	707	630	697	392	305
Western Michigan	229	152	77	145	104	41
Southern Iowa	97	85	12	85	83	2
Western Missouri	642	568	74	514	487	27
Arizona	1,445	1,073	372	718	619	99
Central California	2,273	1,833	440	1,396	1,200	196
Total	7,323	5,668	1,655	4,747	4,056	691
Total for 94 districts	45,815	34,393	11,422	29,400	23,931	5,469

a/Statistics do not reflect 15,847 pending cases, of which 2,436 were pending over 6 months without fugitive defendants. Thus, statistics for the period are subject to change.

b/Defendants exceeding interval after excludable time allowed by 18 U.S.C. 3161 had been deducted, as reported by district court.

Court officials in eastern Michigan and Arizona districts said that the plea bargaining process caused delays in processing defendants within the interval in 14 of 50 cases. Prosecutors elected not to bring the defendants to trial within 60 days of arraignment in these cases because plea negotiations were expected to result in a guilty plea shortly after the 60-day limit expired. Because of congested court dockets and limited judicial and prosecutive manpower, U.S. attorneys have encouraged defendants to plead guilty to a lesser charge to avoid going to trial. U.S. attorneys said they may have to accept more lenient plea bargains in the future to meet the 60-day interval and avoid case dismissal.

According to court officials interviewed, 12 of 50 defendants missed the 60-day interval in these districts because the cases were complex or involved multiple defendants. Judges said that time-consuming complex or multi-defendant cases could have a devastating effect on their dockets and their ability to meet the time frame after July 1, 1979.

Judges and clerks in these two districts claim to have congested dockets which already prevent them from meeting the 60-day time frame during the interim period. The districts' officials said that 17 of the 50 defendants exceeding the 60-day interval did so because the congested docket prevented scheduling their cases within the allotted time frame. Judges in these districts claim that only additional judgeships can solve the problems caused by congested dockets and complex cases.

Court officials in the central district of California said that defendants were not disposed of within 60 days of arraignment in 20 of 23 cases reviewed because the district was working under a 180-day time frame. Central California's final implementation plan does not anticipate problems meeting the 60-day interval after July 1, 1979, if the nature and volume of criminal cases do not change substantially.

Has the number of cases that are declined, reduced, or transferred increased because the 60-day limit is too short?

We were unable to determine whether the 60-day time frame resulted in more cases being declined, reduced, or transferred because the U.S. attorneys from the eight

districts reviewed could not provide us with historical statistics to make such a comparison. The Administrative Office of the U.S. Courts, however, had statistics for the year ending December 31, 1977, on the total number of matters declined or transferred to other Federal court districts or State courts. (See p. 53.)

U.S. attorneys from the eight districts reviewed believed that generally the number of cases declined, reduced, or transferred had not changed because of the act's requirements. However, court officials in Arizona and the eastern and western districts of Michigan said that if they are faced with congested court dockets, limited staff, or the possibility of a case dismissal after July 1, 1979, they may be forced to

--offer plea bargains which they believe are too lenient,

--decline more cases, or

--refer a greater number of cases to State and local authorities.

Criminal Matters Declined or Transferred for the Year Ending December 31, 1977

District	Matters received	Matters not prosecuted	Matters transferred: Other Federal districts	Matters transferred: State courts
Middle North Carolina (note a)	729	497	15	0
Eastern Virginia	1,121	255	44	0
Eastern Michigan	2,624	1,151	48	81
Western Michigan	454	127	10	0
Southern Iowa	414	312	7	3
Western Missouri	1,377	570	16	24
Arizona	2,338	831	44	24
Central California	3,878	2,109	56	0
Total	12,935	5,852	240	132
Total for 94 districts	91,141	49,931	1,622	3,105

a/January 7, 1976, to January 7, 1977.

How often do judges empanel juries and weeks later begin the actual trial, simply because the 60-day time limit is too short?

The 60-day time frame begins at arraignment and ordinarily ends at the start of trial--usually when the jury selection process starts.

Neither the district courts nor the Administrative Office could provide statistics on the length of time between jury empanelment or selection and the actual start of a trial. One judge said that he empaneled a jury solely to meet the act's time limits and then delayed the trial. Another judge said that after July 1, 1979, he might empanel a jury and then delay start of the trial in order to avoid case dismissal.

What are the problems that prevent the district courts from complying with the 60-day limit for retrials?

Court officials said they had not experienced problems meeting the 60-day time limit for retrials because retrials occurred infrequently. Officials in eastern and western Michigan, eastern Virginia, middle North Carolina, and central California districts, however, anticipate isolated problems meeting the 60-day time limit in the future when

--cases several years old have to be reconstructed without the benefit of the original prosecutor and witnesses and

--the volume of cases previously scheduled prevents the timely scheduling of the retrial.

What aspects of section 3161(h) provisions for excludable time are presenting problems in the district courts, and why have these difficulties arisen?

District courts appear to be having difficulty understanding and using the section 3161(h) exclusions; as a result, they report many defendants as exceeding intervals when in fact they are not. Case analysis of sampled defendants showed that 86, or 22 percent, of the 393 defendants actually met the permanent time frames but had been reported as exceeding those time frames because allowable excludable time had not been computed or had been computed improperly.

Court officials said that these excludable delays were not deducted for a variety of reasons. For example, in the southern district of Iowa, a clerk said that he failed to deduct the correct time because he did not understand the Administrative Office guidelines on time deductions. In the western district of Missouri, a clerk said that judges, attorneys, and magistrates did not provide the information needed to determine whether an excludable delay occurred and for what length of time. Several clerks in the districts simply made errors in deducting excludable time.

An Administrative Office official said that these problems are widespread among the districts. However, he is uncertain about corrective actions needed and further questions the Administrative Office's responsibility, authority, and manpower to take corrective action.

How often do judges grant severances (separate trials) in multidefendant cases rather than granting an excludable delay as provided in section 3161(h)(7)?

An Administrative Office official said that statistics are not available to determine the effect the act has had on the practice of granting severances.

Judges in the eight districts reviewed said that the act had not affected their practice of granting severances. They said that they are generally reluctant to grant severances unless it is necessary to assure each defendant a speedy and fair trial. To do otherwise would create additional cases necessitating more trials.

Why do the district courts request discretion in granting a continuance as provided in section 3161(h)(8) when discretion is already included in the act? How often do judges restrict the granting of a continuance solely for exceptional cases? Why do some judges refuse to grant a continuance for complex cases as provided in the act?

The act permits a judge to grant a continuance and extend the time limits on a case-by-case basis where the judge rules it is in the best interests of justice. Judges differ, however, in their interpretation of what circumstances the law allows for granting a continuance. Several judges said that they would grant continuances in exceptional cases, such as multidefendant cases involving voluminous evidence, inadequate time for counsel to prepare for

trial, or when an attorney is involved with another case. Others believe complex cases do not warrant continuances. They would limit continuances to situations in which a defendant or defense attorney gets ill or a key witness is unable to appear. Several judges said that, fearing reversal by the Court of Appeals, they do not plan to grant continuances until litigation has set a precedent on their use.

Judges in the eight districts granted only a few continuances during the year ending June 30, 1978, as shown by the statistics on below.

Continuances Granted to Defendants

for the Year Ending June 30, 1978

District	Year ending June 30, 1978 (note a) Total defendants processed	Total continuances granted	Percent of defendants granted a continuance
Middle North Carolina	316	7	2.2
Eastern Virginia	1,303	7	0.5
Eastern Michigan	1,314	28	2.1
Western Michigan	218	0	0
Southern Iowa	100	3	3.0
Western Missouri	612	2	0.3
Arizona	1,089	54	5.0
Central California	1,863	3	0.2
Total	6,815	104	1.5
Total for 94 districts	41,419	2,316	5.6

a/Statistics do not reflect 15,847 pending cases, of which 2,436 were pending over 6 months without fugitive defendants.

As the statistics show, only 5.6 percent of the 41,419 defendants processed were granted a continuance. In addition, court statistics show that 10 district courts did not use the provision at all. The number of continuances granted because of exceptional circumstances could not be determined, however, because court statistics for such an analysis were not available.

One district judge, however, questioned whether granting a continuance for the period between arrest and indictment was an appropriate judicial function. In his opinion, for a judge to grant a continuance, the U.S. attorney would have to explain the facts of the case to the judge, causing possible prejudice to future handling of the case.

DETAILED INFORMATION ON THE IMPLEMENTATION EXPERIENCE OF THE EIGHT DISTRICTS REVIEWED

This appendix provides information on the implementation experiences of the eight districts reviewed. A profile is provided for each district which highlights

--characteristics of the districts;

--implementation of the time frames;

--problems anticipated in complying with the time frames after July 1, 1979;

--recommended changes in the permanent time-frames; and

--the effect of the time frames on the civil case backlog.

EASTERN DISTRICT OF VIRGINIA

District characteristics

The eastern district of Virginia has an above average criminal caseload per judge and holds court in four geographical divisions--Norfolk, Richmond, Alexandria, and Newport News. There are 6 full-time judges, 2 senior judges, and a prosecutive staff of 22. For the year ending June 30, 1977, each judge terminated an average of 287 criminal and 441 civil cases and had pending an average of 58 criminal and 253 civil cases.

Implementation of time frames

The district used interim time frames of 60-10-180 days during the period July 1, 1976, to June 30, 1977. Statistics show that for this period, 87, 97, and 96 percent of the district's defendants were processed within the permanent 30-10-60 day time frames respectively. For the year ending June 30, 1978, the district used interim time frames of 45-10-120 days. Statistics show that for this period, 71, 98, and 98 percent of the district's defendants were processed within the three permanent time frames respectively.

Problems anticipated with time frames

District court officials anticipate little difficulty complying with the permanent timeframes. The district's final plan does cite, however, possible problems with complex cases where defendants are indicted within 30 days of arrest. Yet, the 25 sampled cases reviewed, only 3 exceeded the interval for this reason.

Recommended time frames

The district's final implementation plan endorsed the Judicial Conference's position that the intervals be extended to 60-20 and 100 days to allow the district more flexibility in complying with the time frames.

Effect on civil case backlog

Judges and U.S. attorneys generally agree that the act has not caused the civil docket to become backlogged. While pending civil cases increased from 1,364 on July 1, 1975, to 1,519 on July 1, 1977, the median time from filing to disposition decreased from 7 to 6 months, and the number of cases pending over 3 years decreased from 45 to 37.

MIDDLE DISTRICT OF NORTH CAROLINA

District characteristics

The middle district of North Carolina has an above average criminal caseload per judge and holds court primarily in two locations, Greensboro and Winston-Salem. The district has 2 full-time judges and a prosecutive staff of 6. For the year ending June 30, 1977, each judge terminated an average of 198 criminal and 271 civil cases and had pending an average of 38 criminal and 410 civil cases.

Implementation of time frames

The district has been using the permanent 30-10-60-day time frame since July 1, 1976. Statistics show that 91, 92, and 96 percent of the district's defendants were processed within these intervals for the year ending June 30, 1977. For the year ending June 30, 1978, the district processed 100 percent of its defendants within each of the intervals.

Problems anticipated with time frames

Court officials are not anticipating problems which would prevent the district from complying with the time frames, but they claim that certain trade-offs will occur. For example, arrests may be avoided prior to indictment, additional pro forma not guilty pleas may occur, and defense attorneys have repeatedly complained of inadequate time to prepare their cases. Statistics were not available to substantiate these claims or to determine the extent to which they are currently occurring.

Recommended time frames

Despite the district's performance and the opinions of court officials that they would not have difficulty meeting the time frames, the district's final implementation plan recommended that the Speedy Trial Act be repealed because the required 30-10-60 day time frame imposes unreasonable burdens on the courts. The district recommended instead that the rigid time frames be replaced by one time period fixed at 180 days from arrest to trial. Each court then would necessarily establish within that period its own schedule for indictment and arraignment reasonably spaced to insure fairness to the defendants whose recourse against abuse would be appeal. Thus, all the districts would not be required to meet the same rigid time constraints in handling the interim steps. Each court would be able to handle the exceptional cases according to its own plan.

Effect on civil case backlog

Court officials said that meeting the act's requirements has caused the civil docket to suffer. The backlog of civil cases increased from 492 on July 1, 1975, to 820 on July 1, 1977. During the same period, the median time from filing to disposition decreased from 9 to 8 months, but the number of cases pending over 3 years increased from 19 to 43.

EASTERN DISTRICT OF MICHIGAN

District characteristics

The eastern district of Michigan, a metropolitan district, has an above average criminal caseload per

judge. The district holds court in three locations, Detroit, Flint, and Bay City. There are 10 full time judges, 4 senior judges, and a prosecutive staff of 32. For the year ended June 30, 1977, each judge terminated an average of 197 criminal and 295 civil cases and had pending an average of 100 criminal and 392 civil cases.

Implementation of time frames

During the period July 1, 1976, to June 30, 1977, the district used interim time frames of 60-10-180 days. Statistics show that 62, 85, and 53 percent of the district's defendants were processed within the permanent 30-10-60-day time limits respectively. For the year ending June 30, 1978, the district used interim time frames of 45-10-120 days. Statistics show that for this period, 75, 84, and 56 percent of the district's defendants were processed within the three permanent time frames respectively.

Problems anticipated with time frames

The chief of the U.S. attorney's office, Criminal Division, does not anticipate significant problems with the interval I time frame after July 1, 1979, except in complex, multidefendant cases where arrest precedes indictment. Our analysis of 25 cases that exceeded interval I showed that only 2 defendants exceeded the interval for this reason. The division chief also said that other current problems such as late investigative reports and plea bargaining negotiations, would be resolved by July 1, 1979.

Court officials also do not anticipate significant problems complying with the 10-day arraignment interval. The Speedy Trial Act final implementation plan notes, however, that completing plea bargaining negotiations and notifying defendants of their scheduled arraignment dates may be difficult within such a short time frame. Plea negotiations accounted for 7 of 25 defendants exceeding the interval II time frame while another 6 defendants could not be notified of the arraignment in sufficient time to meet the interval. The implementation plan notes, that to overcome these problems, the plea bargaining negotiations will be extended to interval III and a U.S. marshal may be be required to serve a summons to the defendant in person rather than by mail or to issue an arrest warrant.

The district's implementation plan states that problems will occur when attempting to bring defendants to trial within 60 days of arraignment. Specific problems cited include responding to pretrial motions and overcoming delays resulting from competency examinations and plea bargain negotiations. In the 25 cases reviewed, pretrial motions prevented 7 defendants from meeting interval III and plea bargaining prevented 5 defendants from meeting the interval. The district's plan lists amending the excludable provisions of the act, increasing the time frame, or receiving additional court personnel, including judges and attorneys, as possible solutions to these problems.

Recommended time frames

In its final implementation plan, the district recommended that the Congress seriously consider repealing the act's time limitations or replacing the limits with a 60-20-100-day time frame to allow the district more flexibility in complying with the intervals.

Effect on civil case backlog

Court officials said that meeting the act's requirements has resulted in the civil docket being virtually ignored. Our review showed that the civil case backlog increased from 2,756 on July 1, 1975, to 3,924 on July 1, 1977. During this same period, the median time from filing to disposition increased from 9 to 11 months, and the number of cases pending over 3 years increased from 176 to 252.

WESTERN DISTRICT OF MICHIGAN

District characteristics

The western district of Michigan has an above average caseload per judge and holds court primarily in two locations, Grand Rapids and Marquette. The district has 2 full-time judges and a prosecutive staff of 5. For the year ending June 30, 1977, each judge terminated an average of 188 criminal and 293 civil cases. Each judge had pending, at the end of the period, an average of 71 criminal and 729 civil cases.

Implementation of time frames

During the period July 1, 1976, to June 30, 1977, the district used interim time frames of 45-10-120 days. Statistics show that, for this time period, 83, 82, and 66 percent of the district's defendants were processed within the 30-10-60 day permanent time limit respectively. For the year ending June 30, 1978, the district used interim time frames of 35-10-80 days. Statistics show that for this period, 86, 87, and 72 percent of the district's defendants were processed within the three permanent time frames respectively.

Problems anticipated with time frames

The U.S. attorney does not anticipate significant problems complying with the permanent time frames for intervals I and II except in complex, multidefendant cases, some of which involve arrest prior to indictment. Our analysis of cases that exceeded interval I during a 6-month period showed that no defendants exceeded the interval for this reason.

Court officials do anticipate difficulties, however, complying with the 60-day arraignment-to-trial interval because of problems in processing complex cases and in completing plea bargaining negotiations in such a short time. Our case analysis of 31 cases showed that for a 6-month period, 17 defendants were not brought to trial within the permanent time frame because plea bargaining negotiations were in process, and 6 defendants did not meet the permanent time frame because of the complexity of the cases.

Recommended time frames

The district's final implementation plan recommended that Congress seriously consider repealing the act's time limitations or replacing the limits with a 60-20-100-day time frame to allow the district more flexibility in complying with the intervals.

Effect on civil case backlog

Court officials also said that meeting the act's requirements has caused the civil docket to be virtually ignored. The civil case backlog increased from 1,009 on July 1, 1975, to 1,457 on July 1, 1977. During this same period, the median time from filing to disposition

decreased from 17 to 16 months, but the number of cases pending over 3 years increased from 55 to 144.

SOUTHERN DISTRICT OF IOWA

District characteristics

The southern district of Iowa has a relatively small criminal caseload per judge and holds court primarily in Des Moines with two satellite locations in Council Bluffs and Davenport. The district has 1 full-time judge, 1 senior judge, and a prosecutive staff of 5. For the year ending June 30, 1977, on a per judge basis, an average of 88 criminal and 313 civil cases were terminated. Pending criminal and civil cases, at the end of the period, numbered 27 and 418 respectively, on a per judge basis.

Implementation of time frames

The district used the permanent 30-10-60-day time frames since July 1, 1976. Statistics show that 95, 90, and 88 percent of defendants were processed to meet intervals I, II, and III, respectively, for the year ended June 30, 1977. For the year ending June 30, 1978, the district processed 96, 93, and 98 percent of its defendants within the three permanent time frames respectively.

Problems anticipated with time frames

Court officials do not anticipate difficulty in meeting the time limits for intervals I and III, but they do expect difficulties meeting the 10-day limit for arraignment because of problems in returning defendants to the district following out-of-State psychiatric evaluations. Our analysis of cases exceeding the interval II time frame for a 6-month period did not show this to be a problem since no defendants exceeded the time frame for this reason.

Recommended time frames

The district's final implementation plan endorsed the Judicial Conference's position that the intervals be extended to 60-20 and 100 days.

Effect on civil case backlog

Court officials said that meeting the act's requirements has caused the backlog of civil cases to increase. Pending civil cases have increased from 446 on July 1, 1975, to 627 on July 1, 1977. During this same period, the median time from filing to disposition decreased from 13 to 11 months, but the number of cases pending over 3 years increased from 15 to 25.

WESTERN DISTRICT OF MISSOURI

District characteristics

The western district of Missouri has a below average caseload per judge. Although court is held in five locations, only three--Kansas City, Springfield, and Jefferson City--reported more than 10 trial days for the year ended June 30, 1977. The district has 4 full-time judges, 1 senior judge, and a prosecutive staff of 17. Each judge terminated an average of 200 criminal and 386 civil cases for the year ending June 30, 1977, and had pending an average of 46 criminal and 418 civil cases.

Implementation of time frames

The district used interim time frames of 60-10-180 days during the period July 1, 1976, to June 30, 1977. Statistics show that the district had implemented the permanent 30-10-60-day limits for 100, 99, and 89 percent of the defendants disposed of during this period respectively. For the year ending June 30, 1978, the district used interim time frames of 45-10-120 days. Statistics show that for this period, 93, 98, and 95 percent of the district's defendants were processed within the three permanent time frames respectively.

Problems anticipated with time frames

District court officials anticipate that for the most part they will be able to comply with the permanent time limits for all three intervals. District court officials said, however, that they are apprehensive about being able to process complex or multidefendant cases within the permanent 60-day arraignment-to-trial interval. Our analysis of cases that exceeded the interval III time frame for a 6-month period showed that 4 of 20 defendants exceeded the interval for this reason.

Recommended time frames

The district's final implementation plan endorsed the Judicial Conference's position that intervals I and II be extended to 60 and 20 and interval III to 100 days.

Effect on civil case backlog

Court officials said that meeting the act's requirements, among other things, has caused the backlog of civil cases to increase. Civil case backlog had increased from 1,354 on July 1, 1975, to 1,673 on July 1, 1977. During this same period, the median time from filing to disposition increased from 8 to 9 months, and the number of cases pending over 3 years increased from 27 to 84.

DISTRICT OF ARIZONA

District characteristics

The district of Arizona has a relatively high criminal caseload per judge and holds court primarily in two locations, Phoenix and Tucson. The district's caseload has numerous drug conspiracy and white-collar crime cases involving multiple defendants. There are 5 full-time judges, 1 senior judge, and a prosecutive staff of 30. For the year ended June 30, 1977, each judge terminated an average of 338 criminal and 209 civil cases and had pending an average of 255 criminal and 307 civil cases.

Implementation of time frames

The district has been using the permanent 30-10-60 day time frames since July 1, 1976. Statistics show that 87, 94, and 74 percent of the defendants were processed to meet these intervals for the year ending June 30, 1977, respectively. For the year ending June 30, 1978, the district processed 95, 97, and 86 percent of its defendants within the three permanent time frames respectively.

Problems anticipated with time frames

Court officials do not anticipate difficulties meeting interval I after July 1, 1979. Compliance with interval II may be more difficult because of defendants who are arrested, released on bond, and cannot be notified of the arraignment date within the 10-day time frame. These compliance problems

occurred in 5 of 24 sample defendants' cases reviewed. Court officials also anticipate that compliance with interval III will be difficult because of congested dockets and the large number of complex, multidefendant cases that are received. Seven of 25 defendants reviewed were not brought to trial within 60 days of arraignment because of congested court dockets, and 5 defendants did not meet the time frame because of the complexity of the cases.

Recommended time frames

The district's final implementation plan recommended extending interval II to 20 days and requested additional judges to relieve the court congestion. These two measures along with anticipated full use of excludable time was expected to be sufficient for full compliance. The plan warns, however, that if the section 3161(h) exclusions are interpreted narrowly, intervals I and III may have to be increased to 60 and up to 100 days, respectively.

Effect on civil case backlog

Court officials said that meeting the act's requirements has caused the backlog of civil cases to increase. Pending civil cases increased from 1,149 on July 1, 1975 to 1,536 on July 1, 1977. During this same period, the median time from filing to disposition decreased from 8 to 7 months, but the number of cases pending over 3 years increased from 99 to 200.

CENTRAL DISTRICT OF CALIFORNIA

District characteristics

The central district of California, a metropolitan district, has an above average criminal caseload per judge and holds court in Los Angeles. The district has 16 full-time judges, 4 senior judges, and a prosecutive staff of 93. For the year ending June 30, 1977, each judge terminated an average of 166 criminal and 265 civil cases and had pending an average of 70 criminal and 275 civil cases.

Implementation of time frames

The district used interim time frames of 60-10-180 days during the period July 1, 1976, to June 30, 1977. Statistics show that for this period 94, 94, and 81 percent of the district's defendants were processed within the permanent 30-10-60 day time frames respectively. For the year ending June 30, 1978, the district used interim time frames of 45-10-120 days. Statistics show that for this period 95, 94, and 86 percent of the district's defendants were processed within the three permanent time frames respectively.

Problems anticipated with time frames

District court officials anticipate having little trouble complying with the permanent time frames after July 1, 1979, if the volume and nature of criminal cases remain substantially the same. Our case analysis showed that difficulties occurred in processing cases within the 10-day indictment-to-arraignment interval because defendants were not notified in sufficient time of their arraignment. Court officials said, however, that procedures instituted in July 1976 to overcome this problem should permit compliance with the permanent time frames in the majority of cases after July 1, 1979.

Recommended timeframes

The district's final plan made no recommendation to extend the time frames.

Effect on civil case backlog

Court officials said that meeting the act's requirements has made it difficult to process civil cases in a timely manner. The civil case backlog increased from 3,692 cases on July 1, 1975, to 4,399 on July 1, 1977. During this same period, the median time from filing to disposition increased from 7 to 8 months, and the number of cases pending over 3 years increased from 256 to 417.

CONSTITUTIONAL QUESTIONS RAISED BY THE COURTS

The Sixth Amendment to the Constitution guarantees each criminal defendant the right to a speedy trial. Judges consider essentially four factors in determining whether a defendant was denied his constitutional right to a speedy trial: length of delay, reason for delay, the defendant's assertion of his constitutional right, and the prejudice resulting to the defendant as a result of the delay. (Barker v. Wingo, 407 U.S. 514 (1972).) Any inquiry into a constitutional speedy trial claim involves a functional analysis of the right in the particular context and circumstances of each case. (Beavers v. Haubert, 198 U.S. 77 (1905).) The constitutional right to a speedy trial simply cannot be quantified into or defined by a specified number of days or months. (Barker v. Wingo, above, at 523.)

The constitutional right to a speedy trial was supplemented by the Speedy Trial Act, which requires that trials of criminal cases begin within a specified number of days, as extended by certain statutorily prescribed periods of excludable delay. The Speedy Trial Act, however, neither defines nor attempts to define what constitutes a "speedy trial" in the constitutional sense. The act's fixed time frames may in the context of a particular case call for trial at a time earlier than that required by the Constitution. Conversely, the act's waiver of dismissal provisions operate to waive a defendant's right to dismissal under the Speedy Trial Act; they do not necessarily waive the defendant's right to claim that his constitutional right to a speedy trial was denied.

Although the Supreme Court has recognized that the States remain free to prescribe a reasonable period, consistent with constitutional standards, within which trial must begin, the constitutionality of the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174 (1976), has not been litigated before the Supreme Court. The act's legislatively imposed time limits have been held unconstitutional, however, by one district court in the Fourth Circuit, (see United States v. Howard, Crim. No. Y-77-0387 (D. Md., filed Nov. 7, 1977)), and have been recognized as presenting "constitutional" questions by the Second Circuit Court of Appeals. (See United States v. Martinez, 538 F. 2d 921, 923 (2d Cir. 1976).) The decison in Howard is not binding on other district courts in the Fourth Circuit or elsewhere and the holding in Martinez left the question of constitutionality unresolved. We are aware of no other cases that

specifically challenge or even question the Speedy Trial Act's constitutionality. Summarized briefly below are the constitutional concerns raised by the district court in Howard and the Second Circuit in Martinez.

Both courts seemed to express concern whether, once having established the district courts, Congress could constitutionally establish a statutory timetable for judicial action. In Howard, the Speedy Trial Act's timetables were said to violate the constitutional doctrine of separation of powers in that the timetables unduly interfered with purely internal judicial functions and with the power inherent in individual courts to control their dockets. The court concluded that the Speedy Trial Act's "* * * commands cannot be given effect because they are an unconstitutional legislative encroachment on the judiciary." In Martinez, Mr. Justice Clark, sitting by designation, observed that "* * * there is a question under the doctrine of separation of powers that the Congress can exercise judicial authority to the extent indulged here."

The district court in Howard also noted a number of constitutionally related subsidiary ramifications that in that court's view could result from Congress' mandate that criminal trials begin within statutorily prescribed time frames. First, meeting the act's criminal trial timetables might cause congestion on a court's trial calendar. To dispose of criminal cases in a manner consistent with these timetables, criminal cases might be heard to the exclusion of civil cases involving prisoner rights petitions, habeas corpus applications, civil rights cases in which the United States is a party, and private civil rights cases to be litigated under title 7, United States Code. Second, rushing criminal cases to trial could affect the ability of prosecutors and defense counsel to thoroughly investigate and prepare for trial. Public confidence in the effectiveness of the criminal justice system and the ability of defendants to receive a fair trial could be affected in turn. Finally, counsel of defendant's choice might be unavailable during the period in which trial must begin.

With respect to these concerns, it should be recognized that the running of the act's time limits can be tolled and a continuance granted (see 18 U.S.C. § 3161(h)(8)) upon a judicial finding that the "ends of justice" would be served by the requisite delay. Although this provision does not specifically address the more fundamental question of

separation of powers, it does seem to afford considerable latitude and flexibility to the judicial branch to determine, on a case by case basis, what contingencies warrant delay in a criminal proceeding.

EXCLUDABLE DELAYS ALLOWED BY THE SPEEDY TRIAL ACT

18 U.S.C. § 3161(h) (1976)

Section 3161 of the Speedy Trial Act authorizes the following periods of delay be excluded in computing the time needed to process a defendant from arrest to start of trial.

1. Examination and hearing for mental competency or physical incapacity.

2. Narcotic Addict and Rehabilitation Act examination.

3. State or Federal trials on other charges.

4. Interlocutory appeals.

5. Hearings on pretrial motions.

6. Proceedings related to transfers from other districts under the Federal Rules of Criminal Procedure.

7. Motion actually under advisement (not to exceed 30 days).

8. Miscellaneous proceedings such as probation or parole revocation, deportation, or extradition.

9. Prosecution deferred by mutual agreement and approval of the court for the purpose of allowing the defendant to demonstrate his good conduct.

10. Unavailability (includes fugitives) of defendant or essential witness.

11. Period of mental incompetence or physical inability of defendant to stand trial.

12. Period of treatment under the Narcotic Addict and Rehabilitation Act.

13. Superseding indictment and/or new charges (covers period of time between dismissal of charges and filing of new charges).

14. Defendant awaiting trial of codefendant when no severance has been granted.

15. Continuance granted by the court upon a finding that the ends of justice would be better served by a delay.

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

WILLIAM E. FOLEY
DIRECTOR

JOSEPH F. SPANIOL, JR.
DEPUTY DIRECTOR

March 23, 1979

Mr. Allen R. Voss
Director, General Government Division
U. S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

Thank you for providing copies of your proposed report to Congress on Title I of the Speedy Trial Act for our review and comment. Let me also thank you for extending the period of time available to us for comment.

Having carefully reviewed the proposed report, and carefully considered the nature of our response, we have reluctantly decided that we must fully disagree with the report's recommendations. We do so because we cannot agree with the conclusions upon which those recommendations are based, and because we cannot acquiesce to the inevitable consequences which would follow acceptance of those recommendations. Congress needs answers to the questions the report poses in presenting those conclusions now, not at a future date; and we believe the information now available provides a substantial enough basis for formulating answers, with a reasonable enough degree of certainty, to support recommendations for remedial action by Congress before July 1 of this year. We are convinced that any further delay of remedial action will inevitably result in consequences completely inapposite to the Speedy Trial Act's fundamental objectives.

We believe the draft report's basic error consists of its characterization of existing data as too uncertain, too imprecise, to support recommendations for reform. In the first paragraph of the report's chapter on the Speedy Trial Act's impact on the Judicial System, a premise is established which immediately precludes all conclusions or recommendations other than those presented twelve pages later. At page 9, the draft report states that:

> Data essential for identifying and documenting the extent and impact of the problems that *will* hinder compliance is almost nonexistent. Court officials and U. S. attorneys have placed reliance on what *they foresee* as problems rather than systematically evaluating the *actual implementation problems* experienced during the Act's phase-in period (emphasis added).

We believe that comment is not only inaccurate, but also prejudicially misleading.

We find the comment inaccurate because we believe that the data assembled during the past four years does *adequately* reflect *actual implementation problems* to date. The information assembled by the Administrative Office, and filed with the Congress in three successive "Reports" in September of 1976, 1977 and 1978, has been independently verified within the last two weeks in a special report prepared by the Justice Department. See Appendix H of *Delays in the Processing of Criminal Cases under the Speedy Trial Act of 1974, March 1979,* a report from the Office for Improvements in the Administration of Justice. The Judicial Conference of the United States and the United States Attorneys, in their comments to the Conference, *have* systematically evaluated, and relied upon, that data in assessing problems and formulating recommendations. We do not argue that more precise data would not be valuable; we do not, however, believe it is *essential* to the immediate task before the Congress.

We find the comment to be misleading because it *implies* that the *only* data of real value for formulating remedial action is data not only not yet obtained, but data literally unattainable until too late. At page 10, the report states that:

> The district courts' inability to identify and document the extent and impact of problems that will cause timeframe overruns when the permanent timeframes take effect negates a sound basis for deciding the modifications needed in the act or the administrative or procedural changes necessary to allow for full compliance and minimize the potential adverse trade-offs.

Apparently, the district courts are being implicitly criticized for not predicting *future* events with substantial enough accuracy, as well as not having documented past events with enough precision. As we noted above, there is no doubt that more precise information would be helpful. Logically, the "soundest basis" for an assessment would be *actual* experience under full implementation of the Act's permanent timeframes. In essence, the report's recommendations, without expressly stating as much, contemplate obtaining just that "basis". Given the initial premise quoted above, that result is inevitable.

In a summary context, we must view the report's recommendations that more data be developed, and that remedial action be delayed until it has been developed, as really advocating "trial by fire". While that result, as noted above, is preordained by the report's basic premise, we would note that parts of the report itself refute the validity of that premise. The report acknowledges the district courts' efforts to identify those problems which have impeded compliance to date and logically can be expected to impede compliance in the future. By questioning those efforts,

and the value of the Judicial Conference's recommendations which have resulted from them, because they are "based upon perceptions rather than hard data", the report again prejudicially restates the error of its original premise. Some of the information deemed necessary by the report cannot be quantified as "hard data"; it can only be obtained by a subjective, not an objective, analysis of information already known.

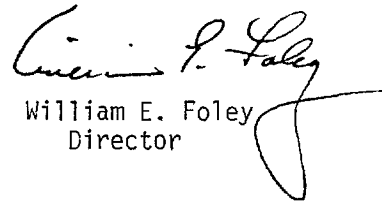
The spectrum of *identifiable problems* and *probable consequences* presented in the report is substantially identical to the findings presented in past Administrative Office reports and the Justice Department's special report issued earlier this month. We know today, and have known for some time, with a *reasonable* degree of certainty, those problems which will arise if the Act is fully implemented on July 1, 1979. We know today, again with a *reasonable* degree of certainty, *why* those problems will arise. While we do not know the *precise* degree to which individual problems will impact specific districts, or the entire justice system in general, that precise knowledge can only be obtained by forcing the justice system to confront an experience which all existing evidence indicates "beyond reasonable doubt" will be at best disruptive and at worst irreparably damaging to the system. Forcing that confrontation may well provide more detailed empirical data; yet it will also certainly prove violative of the Speedy Trial Act's most fundamental objective: a strengthening of public confidence in the criminal justice system's ability to function fairly and justly, as well as rapidly.

All information to date confirms our district courts' ability to achieve an 80-90% compliance with the Act's requirements. The draft report acknowledges that record, as well as the spectrum of problems impeding full compliance to date. All the existing evidence supports one conclusion, which the draft report does not dispute: individual criminal cases do raise special problems which, in fact, do preclude processing within the required 100-day period, many of which can not be resolved by the courts under 18 U.S.C. 3161(h)(8).

We know enough now to remedy the damage which inflexible timeframes will cause in that minority percentage of cases. The Judicial Conference's recommendations to Congress in September of 1977 were expressly reaffirmed, only two weeks ago, because the Conference is convinced that the information obtained since 1977 has substantially reinforced their value. The Justice Department's recent independent study, while not expressly adopting the Conference's recommendations, certainly does not repudiate them. We believe that remedial action is needed now. We believe the Judicial Conference's recommendations provide the Congress with a basic proposal which can be appropriately refined through the legislative process to achieve a successful remedy. We must regrettably view the Government Accounting Office's draft report's recommendations as a prescription which can only result in consequences unacceptable to the courts, the Congress, and the general public.

Once again, let me thank you for the opportunity to file our comments.

Sincerely,



William E. Foley
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A. LEO LEVIN
DIRECTOR

TELEPHONE
202/633-6311

April 2, 1979

Allen R. Voss, Director
General Government Division
United States General Accounting
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Washington, D. C. 20548

Dear Mr. Voss:

Thank you for the opportunity to comment on the proposed report to Congress on the implementation of Title I of the Speedy Trial Act.

As your proposed report makes clear, albeit with limitations I shall discuss below, there is considerable difficulty in predicting what the impact will be if the permanent time limits and the dismissal sanctions are both permitted to take effect as scheduled on July 1, 1979. In one sense, it will never be possible to study the impact of Speedy Trial Act requirements until they are put into effect. However, the transition schedule, generous as it seems to be at first blush, has left us with two types of major changes to become effective simultaneously on next July 1. We are now trying to make judgments about the impact of 30-10-60 time limits _with_ sanctions, but our most recent data are for a year in which the time limits were 45-10-120 _without_ sanctions, and the second round of the district court planning activity was completed even before there was a full year's experience under those relatively generous limits. It is in the nature of things extraordinarily difficult, on the basis of the information available, to forecast what the impact of the Act will be when the time limit to trial becomes half of 120 days and when the "teeth" of the dismissal sanction begin to bite. That difficulty, particularly in light of the data problems discussed below, suggests the need for legislative relief prior to July 1, either by way of a permanent change in the time limits, or, at the very least, by way of change in the implementation schedule.

Mr. Allen R. Voss April 2, 1979

Although I agree that predicting the impact of full implementation is difficult, I believe the report overstates the extent of the difficulty because it overemphasizes the contribution to such prediction of "hard data," as emphasized, for example, at pp. 13, 47, and 57. In turn, the proposed report underemphasizes the contribution of what might be termed "soft data," such as the impressions and judgments of those who work daily with the Act.

Analyzing the factors that affect the criminal justice process--and separating out the impact of a single variable such as the Speedy Trial Act--are exceedingly complex tasks. The behavior of those in the criminal j[illegible]e process reflects the interaction of a great number of variables, and statistics about that behavior are extremely difficult to interpret. Rates of declination by prosecutors, rates of guilty pleas, rates of pre-indictment arrests, and similar measures are the products of a great many forces. All of these rates, for example, would appear to be heavily dependent on the criteria used by prosecutors for determining the kinds of cases they will pursue. Each of the rates is also highly dependent on screening practices in prosecutors' offices. Given the fact that such a rate is the product of many determinants, it becomes extremely difficult to measure the effect of the Speedy Trial Act as a single determinant.

Thus, for all of their difficulties, "soft data"--in the form of perceptions of those within the system about what changes the Speedy Trial Act is causing--may in many cases be the best data available. This illustrates the importance of relying on the informed views of those who have been working with the Act on a daily basis, and I mean to include prosecutors and defense counsel as well as judges.

The position of the Judicial Conference of the United States in support of a change in the time limits to 60 days to indictment and 120 days from indictment to trial is before you. This recommendation, and the comment thereon in the letter to you of the Honorable William E. Foley, Director of the Administrative Office of the United States Courts, deserve the most serious consideration of the Congress. Among the factors that militate

Mr. Allen R. Voss April 2, 1979

in favor of such consideration are the following: the progress which the courts have made to date in implementing the policy of the Act and its specific provisions, the serious public detriment in allowing the sanction of dismissal to free defendants charged with serious crime, and perhaps most significantly, the manner in which prosecutorial techniques designed to meet the shortened period to trial are said by knowledgeable observers to be operating unfairly to the disadvantage of defendants. Specifically, it is said that prosecutors find it necessary to postpone initiation of prosecution until they have built their case; this results in reducing the period available for the preparation of an adequate defense in certain classes of cases.

We have also found some minor errors in the draft, which are listed in the attachment.

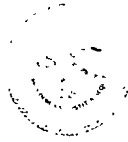
Sincerely,

A. Leo Levin

ALL:gwf

Attachment

GAO NOTE: Attachment deleted; however, the deleted comments have been considered in the report.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

APR 12 1979

Mr. Allen R. Voss
Director
General Government Division
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Voss:

The Department of Justice is pleased to respond to your request for comments on the draft report entitled "Speedy Trial Act--Impact on the Judicial System Still Unknown." Our comments address two aspects of the report: first, suggested changes in wording or emphasis in the report, and second, comments on the report's conclusion in light of a recent Department of Justice study on the Speedy Trial Act.

As to the first of these points, we recommend that you consider the following comments on the draft report. Chapter 4 of the draft report, entitled "Scope of Review," summarizes the methodology employed in the study. We believe that it would be helpful to expand the methodological discussion, particularly by discussing the criteria for selection of the districts visited and the cases reviewed. Also, we believe that the report could be improved by a more complete discussion of the operations of the justice system--both criminal and civil--related to compliance with the Act. For example, one factor that has affected the implementation of the Act is the substantial reduction in the number of indictments filed, which is a consistent measure of prosecutorial activity. We also wish to note a discrepancy in the report concerning pre-indictment arrests (compare statements on pages 42 and 43). It is our experience that deferral of arrests before indictment has

been one method used by the U.S. Attorneys to allow more complete investigation while meeting the time limits imposed by the Act; this does represent an arrest policy change in part attributable to the Act.

The draft report also could benefit from greater attention to the increased delay in civil case processing which has occurred since 1974. Similarly, the overall congestion of the Federal courts--which is not a ground for excludable delay under the Act--has been a major Federal justice system problem affecting the implementation of the Act. While it is difficult to ascertain specifically the causes of increased civil backlogs and overall congestion, it is clear that these are major factors relevant to an understanding of the environment in which the Act has been implemented. These problems should be given greater attention in the draft report.

Several technical changes also should be made in the draft report. For example, we believe that the word "decreasing" on line 4, paragraph 2, page 15, should read "increasing." Also, the footnote definition of plea bargaining on page 16 is misleading, and should be recast more accurately as a negotiation between the prosecutor and the defense to obtain a guilty plea from the defendant in exchange for a reduction in charges or a favorable recommendation at sentencing.

As a final comment on the language of the draft report, we believe that the reference on page 14 to the recent Department of Justice study on the Act is inaccurate. This may be due, in part, to the fact that the Department's report was not completed until after the GAO draft report was prepared. The GAO staff since have been provided with copies of the report, and copies also have been given to Judiciary Committee staff in the House and Senate. We recommend that the following description of the Department's study be considered.

> The Department of Justice has recognized the importance of compliance problem data and recently has completed a study in nine representative judicial districts to obtain such data. Staff members of the Department's Office for Improvements in the Administration of Justice, working with a sample of 460 cases, have reviewed the relevant files of the United States Attorneys and district court clerks, summary records from the Administrative

> Office of the United States Courts, and conducted interviews with prosecutors, defense counsel, and court personnel to reconstruct the reasons why defendants were not processed within the permanent time limits of the Act. The sources and extent of delays in these cases were identified from dated correspondence and memoranda of prosecutors, in addition to information included in the court dockets.

While the preceding paragraphs indicate recommended changes in emphasis or wording, our second point is that the Department disagrees with the draft report's conclusion that insufficient data are available to consider, in a meaningful fashion, proposed amendments of the Act. The Department's disagreement is based on several grounds.

First, the Administrative Office of the United States Courts (AOUSC), pursuant to its responsibilities under the Act, has collected a substantial amount of data on the operation of the Act to date. These data have been provided to the Congress by the AOUSC in three successive reports, filed in 1976, 1977, and 1978. It is our understanding that the AOUSC also has responded to the draft GAO report, and that response contains an assessment of the data that the AOUSC has collected and analyzed. We also noted that the Judicial Conference of the United States has submitted a legislative proposal to amend the Act based upon the AOUSC data.

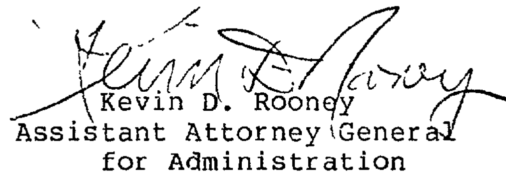
Independently, as described above, the Department of Justice recently has completed an intensive study of Speedy Trial Act implementation. The data collected in the Department's study affirms the validity of the data reported by the AOUSC. In addition, the Department of Justice has relied upon its own study, and the AOUSC data, to develop proposed amendments to the Act. These amendments, which soon will be submitted to the Congress, will enlarge the interval from arrest to the filing of an indictment or information from 30 to 60 days, and enlarge the interval between filing of charges and commencement of trial from 70 to 120 days. The bill also will include provisions dealing with reinstated indictments, setting time limits for trials

before magistrates, revising the exclusions for competency and Narcotic Addict and Rehabilitation Act examinations and motion practice, requiring accelerated trials for pre-trial detainees and high risk designees, and providing a more effective procedure in judicial emergencies.

In summary, the Department of Justice believes that there are sufficiently reliable data available to allow the Congress to consider, in an effective fashion, much-needed amendments to the Speedy Trial Act.

We appreciate the opportunity to comment on the draft report. Should you desire additional information, please feel free to contact us.

Sincerely,



Kevin D. Rooney
Assistant Attorney General
for Administration

GAO NOTE: The page references contained in the agencies' comments have been revised to agree with the page numbers in this report.

(18843)

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