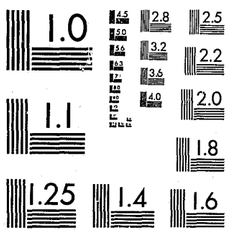

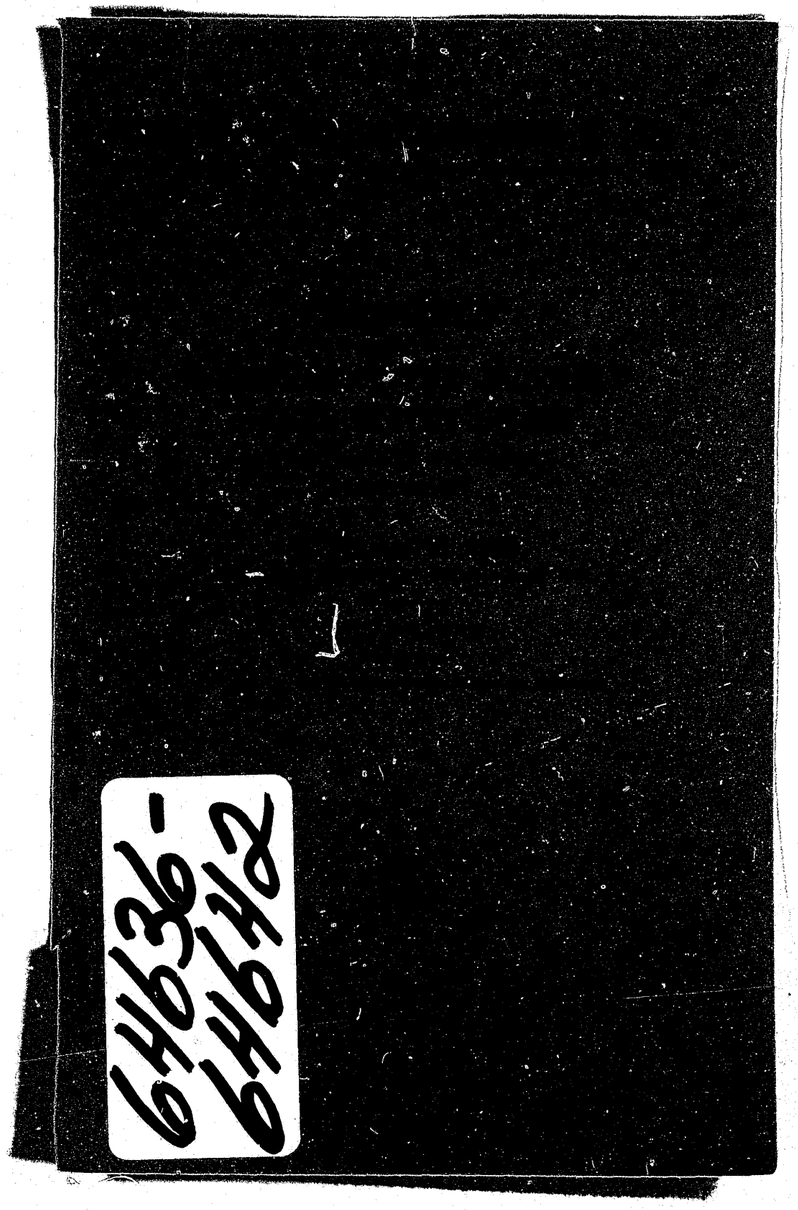

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THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

REPORT EVALUATING THE IMPLEMENTATION OF THE SPEEDY TRIAL ACT IN THE SOUTHERN DISTRICT OF NEW YORK

By the Committee on The Federal Courts

I

INTRODUCTION

For members of the bar engaged in practice before the nation's federal courts the Speedy Trial Act, 18 U.S.C. § 3161 et seq., is the most important legislation enacted by Congress in recent years. The Act, passed in 1974, imposes on judges, prosecutors and defense counsel new, stringent requirements aimed at bringing virtually all federal criminal cases to trial within one hundred days of the date of arrest. While it constitutes a zealous commitment to prompt administration of criminal justice[1], it also poses serious problems, both administrative and substantive.

Because of the evident importance of the Speedy Trial Act to the functioning of New York's busy federal courts, this Committee has been conducting a study of the implementation of the Act's provisions in New York. To date our review has focused primarily on the Southern District of New York and its unique pilot project aimed at

developing effective methods for administering the Act.[2] Although the Speedy Trial Act's provisions have not yet been fully implemented -- with the Courts still in the phase-in period provided for in the Act[3] -- we believe that this is an appropriate time for an interim report on administration of the Act to date. We also consider that recommendations for improvement are in order.

II

WHAT THE SPEEDY TRIAL ACT PROVIDES

A. The Deadlines

The Speedy Trial Act requires that by July 1, 1979 the time between arrest and indictment in criminal cases in all federal district courts will not exceed 30 days, the time between the filing of the indictment and arraignment will not exceed 10 days and the time between arraignment and trial will not exceed 60 days.[4] The Act further provides that if the foregoing deadlines are not met, the charges against the criminal defendant are to be dismissed.[5] Exemptions from the deadlines are permitted under certain specified conditions where there is good reason for delay. Subject to the trial judge's discretion, limited exemptions are permitted for reasonable delays caused by examination of the accused for mental competency or physical capacity. Limited delay is also permitted for interlocutory appeals, hearings or pretrial motions, inability to locate an

essential witness or those instances where the court determines that the "ends of justice" would be served by delay.[6]

To ease the burden on the courts and the Bar, the Act provided for a phase-in period beginning in 1976 and ending in 1979 during which time the deadlines for various steps in the criminal process would be gradually reduced. The following table lists the deadlines applicable during each year of the phase-in period for those defendants who are not held in custody pending trial and not designated by the Government as "high risk", that is, defendants posing a danger of harm to themselves or the community or a substantial risk of flight.[7]

Date	Arrest to Indictment	Indictment to Arraignment	Arraignment to Trial	Retrial
7/1/76 to 6/30/77	60 days	10 days	180 days	60 days from declaration of mistrial
7/1/77 to 6/30/78	45 days	10 days	120 days	60 days from declaration of mistrial
7/1/78 to 6/30/79	35 days	10 days	80 days	60 days from declaration of mistrial
7/1/79	30 days	10 days	60 days	60 days from declaration of mistrial

Those defendants who are held in custody or designated "high risk" must be tried on a priority basis until the final deadlines take effect on July 1, 1979. The trial of an in-custody or "high risk" defendant must begin within 90 days of the date custody began or the designation of high risk status was made.[8]

As of the date of this report the Southern District is still functioning under the deadlines for the period 7/1/77 to 6/30/78 and is faced with court-wide implementation of the significantly more stringent 7/1/78 deadlines within a few months.

B. Planning

In addition to setting out the foregoing deadlines, the Act calls for careful planning by each district court in advance of full implementation of the Act's permanent deadlines in July 1979.[9] This effort to develop plans for expediting criminal matters in each district court follows upon an earlier effort begun by the United States Supreme Court in 1973 with the adoption of Rule of Criminal Procedure 50(b). Rule 50(b) contemplated that plans for speedy administration of criminal justice would be developed in each district. Under Rule 50(b), however, the particular needs of the respective districts were to be considered in setting deadlines. The Speedy Trial Act, by contrast contemplates uniform time limits applicable in

all district courts and permits flexibility only to the extent that different courts may wish to work out varying plans for meeting the Act's nationwide deadlines.[10]

C. The Pilot Program of the Southern District of New York

Pursuant to the Act's mandate that each district develop a plan, the District Judges in the Southern District of New York have taken a number of important steps. To assist the Court in evaluating the impact of the Act, they have appointed a Reporter, Professor Michael Martin of Fordham University Law School. In addition they have undertaken to develop new methods for obtaining and retrieving statistics so that they might better measure the Court's performance under the Act. Also they have encouraged a frequent exchange of views among those most directly affected by the Act by the formation of a planning group consisting of Judges of the District, the United States Attorney, Robert B. Fiske, and members of the criminal defense bar. And possibly most important, they have inaugurated a pilot project in which, as of October 1976, six judges became bound by the accelerated time limits that would be required for the Court as a whole in July 1979. For the cases assigned to those judges in the pilot project, the Court sought to bring the time between arrest and indictment to no more than 30 days, the time between indictment and arraignment to no more than 10 days and the time from arraignment to trial to no more than 60 days, just as if the Act were

fully in effect. The cases assigned to the pilot judges are chosen at random in the same fashion as for the other judges of the Court.

The pilot project was undertaken so that the Court might use the experience of the six judges selected to better plan full implementation of the Act. The project paralleled the similar, very successful pilot program which preceded the Court's earlier shift to the individual assignment system.

Primarily, the judges in the Speedy Trial Act pilot project sought answers to four questions:

(1) Under the permanent deadlines imposed by the Act, how long would it take to eliminate the backlog of cases pending more than 60 days and thus comply with the Act's permanent time limits?

(2) What case-management techniques would be required in order to achieve compliance?

(3) What were the implications for the civil docket when the Court fully expedited criminal cases?

(4) How would full implementation of the Act affect prosecutors, defense attorneys and court personnel?

The six judges in the pilot project are Judge Lloyd F. MacMahon, who heads the project, and Judges Charles

L. Brieant, Jr., Robert L. Carter, Marvin E. Frankel, Milton Pollack and Robert J. Ward. As a group these are known for disposing of cases more rapidly than the average district judge. Accordingly, their experience may by no means be representative of what will occur if the entire court is subjected to the permanent deadlines.

Once the pilot program began, the planning aspect of the project called for periodic meetings to assess the group's progress. During these sessions, suggestions were made as to how the project could be modified to deal with problems which arose. The United States Attorney attended the meetings to discuss issues which concerned his office, including difficulties involving multiple count indictments and the amount of his Assistants' time necessary to serve the pilot group.

In addition to the four major questions listed above, as time went along information was sought in other areas. For example, efforts were made to uncover the causes of non-compliance with the Act's deadlines in individual cases, to gauge the impact of the pilot program on the practices followed by prosecutors and defense attorneys, to measure any changes in the judges' utilization of magistrates and deputy clerks, and to detect any differences in disposition rates among different types of cases and the possible need for changes in reassignment procedures or rules.

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III

THE SPEEDY TRIAL ACT PROJECT OF THE FEDERAL COURTS COMMITTEE

As a supplement to the work of the Court in planning for full implementation of the Act, this Committee began its study of the Speedy Trial Act in the fall of 1976. From the outset the Committee's work was welcomed by the members of the Court, the Court's Reporter and the United States Attorney. All recognized the importance of participation of the Bar in trying to solve the problems posed by the Act. All have been forthcoming with information and generous with their time.

From the outset virtually everyone we spoke with expressed concern and cited numerous likely ill effects from the Act in its present form. The principal concerns expressed were the following:

(1) the Court would become so encumbered by its trial of criminal cases that it would not be able to function efficiently and would soon be confronted with serious backlogs in both its criminal and civil docket; there was concern that in this way the time savings realized from the successful shift to the Individual Assignment System would be lost;

(2) the greater emphasis on prompt trial of criminal cases and the increased burdens on the

United States Attorney's Office would result in fewer indictments for serious crimes; this, it was said, would mean that commission of such major crimes would go unredressed;

(3) criminal defendants and their counsel would have insufficient time to prepare their defense, and this would result in a denial of due process; it was emphasized that in many cases the United States Attorney would have more time to prepare because he could investigate extensively prior to formal indictment which triggers the time limits of the Act, whereas the criminal defendant (particularly if he was not informed early that he was under investigation) would have much less time to prepare a defense;

(4) the shortness of time would also substantially increase the number of instances in which defense counsel would have to refer a case to another lawyer due to a conflict with another criminal or civil proceeding;

(5) administration of the Court system would deteriorate unless additional personnel were added;

(6) judges would be unable to take time off because of the rigid timetables created by the

Act; a vacation of a few weeks would put a judge too far behind and lead to unwarranted dismissal of cases against justly accused persons; and

(7) the United States Attorney would have to devote so much staff time to cases before pilot program judges that there would be insufficient resources for other matters.

Following the initial interviews in which these concerns were expressed, we conducted a telephone survey of defense counsel who had appeared for criminal defendants in the Southern District throughout 1976 and 1977.[11] In addition, we arranged personal interviews with the judges sitting in the Southern District to compile a record of their actual experience with the Act. Committee members also met periodically with the United States Attorney and his staff to assess that office's progress, talked with the head of the Federal Defender Services Unit of the Legal Aid Society and reviewed statistics made available by the United States Attorney, the Speedy Trial Act Reporter, the Program Analyst of the Office of the Circuit Executive and the Administrative Office.

IV

ADMINISTRATION OF THE ACT TO DATE IN THE SOUTHERN DISTRICT

We have concluded from our review, that although to date the Southern District's judges and the members of

the bar have worked extremely hard and have managed to cope with the Speedy Trial Act's phase-in deadlines, it is the concensus of virtually all concerned -- judges, prosecutors and defense counsel -- that the permanent deadlines to be adopted as of July 1, 1979 are unnecessarily restrictive.

While the Court's capacity for administration of justice has not yet deteriorated (the statistics suggest that the Court is holding its own), most of those whom we canvassed predict that when the full court is on the significantly more stringent permanent deadlines there will be serious problems. A number of judges and lawyers specifically questioned the premise of the Act to the extent that it requires speed for speed's sake and leaves little flexibility to assure that justice is done in a given case.

Similarly, while available information indicates that to date defendants' rights have not generally been impaired and the redress of serious crimes has not been seriously hampered, there is continuing concern that, with implementation of the Act by the full court, defendants may be placed in serious jeopardy. There is also concern that a few judges may be imposing excessively strict requirements on counsel in order to meet the Act's deadlines.

A. Status of the Civil and Criminal Dockets for the Court as a Whole

As indicated, available data suggest that to date

the Court has been able to cope with the interim deadlines. In the Southern District there was no significant reduction in the termination of criminal and civil trials or cases per judgeship in either 1976 or 1977 as the Act began to take effect. The record for the Court as a whole shows that the number of criminal and civil trials completed was down by 10.3% for the twelve months ending June 30, 1976 as compared with the same period in 1975, but was up by 20.7% in 1977 as compared with 1976. Total civil and criminal case terminations were down by 6.1% in 1976 as compared with 1975 but were up in 1977 by 1% as compared to 1975 and 7.6% as compared to 1976. This level of trial and case terminations continued notwithstanding the fact that civil filings increased in 1976 by 2.5% over 1975, and were 1.1% higher in 1977 than they had been in 1975. During the same two-year period criminal filings declined significantly, by 2.3% in 1976 over the previous year and 11.4% in 1977 as compared with 1976.[12]

Also significant in measuring the Court's performance is the record of median times from indictment or filing to disposition. In 1976 the median time for criminal cases declined slightly from 5.8 months in 1975 to 5.6 months. In 1977 it declined again to 5.1 months. In civil cases the median time declined from 15 months to 11 months in 1976 and increased slightly in 1977 to 12 months.[13]

Consistent with these statistics, individual judges not involved in the pilot program confirmed in personal interviews that they have been able so far to work under the gradually reduced time limits. Each indicated that his or her civil case backlog had either not increased appreciably or had in fact decreased, though many expressed concern as to their ability to schedule civil trials. For the most part they saw no indication in criminal cases that lawyers were not as well prepared as they had been in the past. A number also noted, however, that there appeared to be an increase in guilty pleas and there is growing concern that this may in part be the result of added pressures placed on counsel by the Act.

Some of the judges mentioned that they had granted time exclusions to serve the "ends of justice" and stressed the value of this particular exemption for avoiding unfairness in complex cases. There was no indication, however, that the "interest of justice" exemption in the Act had been used frequently to avoid the stringent requirements of the Act.

While the non-pilot judges thus have had relatively few unfavorable experiences with the Act to date, virtually all of them predicted that when the Court as a whole became subject to the permanent deadlines on July 1, 1979, there would be substantial difficulty. Several stressed that they

considered the time limits presently applicable, and particularly the 120 day period from arraignment to trial, to be reasonable and sufficient to achieve the general purposes of the Act. By contrast they believed that the deadlines to be imposed at July 1, 1978 and July 1, 1979 were unnecessarily stringent. It appeared that they were generally concerned that an excessive commitment to speed would impair the quality of justice.

B. Status of the Dockets of Pilot Project Judges

As to the pilot project, the statistics suggest that in general the judges have been able to cope, notwithstanding the fact that they have had to work under the projected permanent deadlines. Such statistics must be viewed in context, however, with due recognition of the fact that the judges involved are known for their expeditious handling of cases and are accordingly among those most likely to succeed in assuring that Speedy Trial Act deadlines are met. It is important too that their relative success has been achieved while the other judges of the court have been able to operate under the less stringent requirements of the Act imposed to date. This has permitted both defense counsel and the United States Attorney to devote a greater percentage of their resources to the pilot project judges.

Statistics as to the pilot program indicate that between October 1976 and October 1977 the pilot judges were

able to increase their dispositions of criminal cases by 17.4% over the preceding year. They also managed to dispose of 4.8% more civil cases than in the prior year. In trying to reduce their backlog of criminal cases, the pilot judges devoted 62% of their trial days to criminal cases, while the remaining judges on the Court spent only 40% of their trial time on criminal cases. This resulted in the pilot group contributing 36% of the total criminal case trial days in the Southern District as compared with 18% for civil cases.[14] Because the group has been able to dispose of more criminal cases than were filed with it, there has been a steady decline on a per judge basis in the criminal caseload of each judge. The heavy emphasis on criminal as opposed to civil cases at the outset resulted from the pilot judges' efforts to bring their backlog down. There is indication that as the year progressed, there was somewhat less time devoted to criminal cases as compared with civil cases.

It also appears that the judges were able to eliminate cases over the 60-day limit fairly quickly. After six months of operation, the pilot judges had very few cases which had not been disposed of within the 60-day time limit. As of December 1977, three judges on the pilot group reported that they had no cases on their calendars reflecting non-compliance with the arraignment to trial time limit, while the

other three judges had a total of only eight cases involving ten defendants (approximately 7% of the pending caseload) over 60 days.[15]

Consistent with these statistics, the pilot project judges indicated in individual interviews that they each felt that for the most part they had been able to move their dockets successfully and that they should be able to continue to do so. Notwithstanding this, a number of the pilot judges expressed serious reservations as to the reasonableness of the permanent deadlines to be in effect court wide at July 1, 1979 and particularly as to the need to be so rigid in requiring that a defendant be tried quickly, even when all parties agreed it was not necessary. Each judge seemed to feel that, irrespective of whether he could survive, it was not clear that the severity of the permanent deadlines was necessary to assure reasonable expedition. As a group, they also had doubts as to whether the Court as a whole could function effectively on the permanent deadlines.

Each of the judges cited a range of different reasons for their ability to keep up with the requirements of the Act, including their use of particular case management techniques. For example, a number of judges stressed that to keep their dockets moving they regularly scheduled pretrial conferences as soon as a case was filed and established deadlines and a date for trial as soon as practicable.

Virtually every judge stressed that it was important to have motions heard as soon as possible and to avoid formal submissions on motions and discovery matters where possible.

It appears that a number of pilot judges have also adopted the procedure of placing counsel in civil cases on short telephone notice for trial after pretrial orders and other preliminary matters are resolved. This has permitted the judges to take such trials when they have openings in their calendars due to disposition of criminal cases, usually by plea. In this way the judges have given the criminal docket preference while still continuing their ongoing effort to dispose of civil cases. The impression conveyed by each of the judges was that, except in the one case of a judge who had had an extraordinarily long civil trial, it was possible for each to keep his own civil and criminal docket moving using these techniques.

Moreover, even in the instance where a long trial made it impossible for the assigned member of the Court to keep up, the other pilot project judges were able to help dispose of his cases, so that deadlines were complied with and the civil docket continued to move. It was stressed that the general spirit of cooperation and collegiality of the project judges made it possible for other judges to take on cases and deal with emergencies.

It was also emphasized by the judges that there was greater difficulty meeting the deadlines at the very

beginning of the project than there came to be after several months' experience. At the start a significant backlog existed since cases had previously not been tried within the sixty-day arraignment to trial deadline. Once those cases that had remained on the calendar longer than sixty days were terminated, the judges found that they could operate on a fairly consistent basis within the deadlines.

The pilot judges all acknowledged the value of the new triple wheel selection process that was adopted late in 1976. Before the implementation of the new selection process, criminal cases were randomly assigned to District Judges according to the type of offense charged. This method of case selection occasionally resulted in the assignment of a single judge to several long and difficult criminal cases at once. Such a situation could obviously present serious problems under the new time requirements. A judge who devoted his time to one trial of several weeks duration could not try any other criminal cases in the same period and might therefore fail to meet the deadlines imposed by the Act.

Under the new system developed in recognition of the new deadlines, the type of charge no longer controls the selection process. Instead, the estimated time for trial governs. Under this new approach each criminal case is classified by the assigned Assistant United States Attorney.

Cases for which the likely trial time is 5 or fewer days are designated as "A" cases, cases for which 6-15 trial days are expected are given a "B" designation, and those which are likely to last more than 15 days are denoted "C" cases. Each judge's name goes into the "A" wheel three times, into the "B" wheel twice and the "C" wheel once. The wheels are not refilled until all cards are drawn. The system has increased the likelihood that long and difficult cases will be spread more evenly among the judges. Generally speaking, the system appears to have worked well and is in full use by the Court as a whole.

C. Administration at the United States Attorney's Office

The comments of the pilot project judges and the judges of the Court as a whole were mirrored in the comments of the United States Attorney and his staff. In the fall of 1976 when we began our study the United States Attorney had expressed substantial concern as to the possible impact of the Act on the administration of his office, and there continues to be a feeling that the Act has been disruptive and that changes in the final deadlines should be adopted. However, it is also the opinion of the United States Attorney that administrative alterations have made it possible for his office to exist under the mandates of the Act up to now.

Early in the phase-in period additional resources were committed to the Special Project judges and, as already

noted, this made it easier to reduce the backlogs created by the new deadlines. In addition the United States Attorney filed fewer indictments throughout the year. The crimes for which indictments were not filed consisted principally of those involving small sums of money or individuals who had special equitable considerations in their favor. In statistical terms this has meant 20.4% fewer indictments in 1977 as compared with 1976, and it is beyond doubt that this heightened selectivity by the United States Attorney has been a material factor in the Court's ability to administer the Act to date.

It is the opinion of the United States Attorney that all serious crimes have been prosecuted. He also believes that increased selectivity has contributed to a much higher percentage of guilty pleas per persons indicted, 81.9% in 1977 as compared with 71.5% in 1976.

It should be noted that virtually all the judges of the Court considered the selectivity of the United States Attorney's Office to be helpful and many praised the United States Attorney for his care in seeking indictments. They were enthusiastic not only because of the greater efficiency his selectivity appeared to promote but also because many felt that in the past it was often unreasonable to demand the time of the Court for trial of certain cases.

The United States Attorney is concerned that the accelerated deadlines have meant that guilty pleas are

more frequently entered only on the last day prior to trial or on the day of trial itself. This has resulted in substantial waste of the time of Assistant United States Attornies in preparing cases that do not actually go to trial.[16] He believes that if some fair method could be found to encourage pleas in advance of trial, it would substantially reduce the burden on his office. He also notes that there is an increasing need for reassignment of cases to Assistants due to the pressures of the Act.

D. Defendants' Rights

The Committee's interviews with judges and defense lawyers indicate that defendants' rights have not been significantly impaired to date, but that there are concerns as to rules imposed by some judges and a widespread feeling that there will be serious problems once the Act is fully implemented.

Of those defense counsel surveyed, somewhat more than half indicated that they had been able to prepare adequately for trial notwithstanding the new deadlines and of those surveyed who had appeared before pilot project judges, approximately one-half said they had been able to prepare adequately for trial. The majority of the remaining defense counsel asserted that they had experienced difficulty preparing but did not suggest that there had been a widespread denial of due process to date. They did, however, predict

that serious problems were likely to arise as the deadlines tightened. Particular concern was expressed by the head of Legal Aid's Federal Defender's Unit, who believes that the deadlines will become administratively intolerable. His office has seven lawyers handling approximately one thousand cases per annum and even under the more relaxed phase-in deadlines it has had to decline representation in cases of more than two or three weeks due to the potential administrative dislocations such assignments would entail.

Also, we found significant complaints from defense counsel that judges were imposing deadlines that were much shorter than those mandated by the Act (e.g. twelve days from arraignment to trial) and that such an approach caused grave and unnecessary problems for counsel and their clients. In addition they complained that many of the judges had proven to be inflexible at all stages of pretrial preparation. These expressions of concern cause us to wonder whether in some instances too much attention is being given to just meeting deadlines, with insufficient concern for the legitimate problems of responsible counsel.

V

THE COMMITTEE'S RECOMMENDATIONS

We believe that on the record to date a number of recommendations for change or improvement are in order.

A. Expanding the Deadlines

First, we endorse the view that the permanent deadlines to be adopted as of July 1, 1979 will be unnecessarily restrictive. We believe that such deadlines represent an unwarranted commitment to speed for the sake of speed at the expense of quality of justice. This view was shared by virtually everyone interviewed who had significant experience with the Act. While it appears that some judges and litigants can survive under the existing deadlines and possibly even under the permanent deadlines, it is our impression that the requirements of the Act go beyond what is necessary to assure reasonable expedition. When neither the prosecutor, nor the defendant, nor the judge believes a strict mandate as to time is warranted or necessary, there must be serious doubt as to wisdom of imposing such a stricture. Accordingly, we strongly urge that for cases not involving incarcerated defendants or violent crimes where the defendant constitutes a danger, the final deadlines which provide for 100 days to trial be modified to permit at least 175 days for the period between arrest and trial. For incarcerated defendants and those designated as dangerous, we suggest that the period continue to be 90 days. This would, in effect, make the deadlines that the Court has been able to manage under to date the permanent deadlines.

We believe that such modifications in the proposed permanent deadlines would lessen the possibility that de-

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fense lawyers and defendants may be inequitably affected by the disparity of preparation time between themselves and the prosecutor. We also believe that such modification of the existing proscribed time periods would make it easier for judges to manage their dockets and yet still permit reasonable expedition of criminal cases as intended by the Act. Since the current deadlines have not proved unmanageable and yet do encourage expedition, we believe that something akin to those deadlines would best balance the need for expedition and the practical problems posed for everyone by the commitment to fixed deadlines. Such an approach would also appear to preserve the first objective of the Act: to assure swift justice for both the incarcerated defendant and the defendant deemed dangerous to society. At the same time it would not require an arbitrary commitment to expedition in cases where delay presents no danger to either a defendant's right to a speedy trial or society's interest in safety.

We also suggest that whatever final deadlines are imposed, the time not used under such deadlines for arraignment or arrest be then available as additional time added to the time from arraignment to trial. We believe there are many instances when the full time assigned by the Act for arrest to indictment and indictment to arraignment is not needed. Given the overall purpose of the Act, to

bring defendants to trial within a proscribed overall time limit, we think that it is entirely appropriate to assure that the result of expeditious handling at an early stage is not to shorten the overall time for defendants to prepare for trial or the time within which courts may work in managing their dockets.

B. Case-Management Techniques

A further recommendation is that (with some notable exemptions) the judges of the Court as a whole utilize the experience of the pilot judges and the case management techniques that those judges have found useful. We recognize and applaud the fact that many of the judges of the Court are already using many of those techniques. Specifically, we believe that disposing of motions early and taking hold of a case promptly tend to help all concerned prepare for trial more efficiently. It may also increase the likelihood that defense counsel and their clients will be brought more quickly (but not unfairly) to a point where they can decide whether a plea of guilty should be entered. Similarly, we consider the practice of holding non-jury civil cases in a state of readiness to be a sensible approach to the difficult problem of keeping both civil and criminal dockets moving, so long as the Court permits a reasonable delay between final notice and trial where the needs of counsel make such a lag time reasonable. We note that in some instances counsel have been asked to remain ready for many

weeks if not months. In such cases we believe that the time allowed between final notice and trial should allow realistically for the inability of counsel to remain in a constant state of readiness for so long a period.

While we acknowledge the value of the foregoing techniques, we object to the practice of imposing unreasonably short deadlines for trial immediately following arraignment. We think that defendants and counsel alike deserve a reasonable period of time to prepare for trial and that such practices as imposing twelve-days notice are unwarranted. We would also strongly urge that the judges of the Court be flexible in permitting delays where justice requires it. We cannot state that failure to grant delays has worked a severe hardship in many cases to date. But if and when the Court as a whole begins operation under the permanent deadlines, there is substantial reason to expect that cases will arise which require more time than the Act provides. We are concerned that in such cases judges may be so inclined to favor the need to comply with the Act's mandate that they will be excessively strict in refusing exemptions. While the Act does not encourage liberality in granting extensions, it does contemplate that the provisions permitting delays will be used under the appropriate circumstances.

C. Collegiality

We are also of the view that as the Court as a whole moves toward the time when the permanent deadlines

are imposed, it is important that cooperation and collegiality permit the shifting of cases to assure that Speedy Trial Act deadlines are met. This is particularly necessary because some members of the Court take more time than others to dispose of matters. If shifting of workloads created by such differences in approach does not occur, we are concerned that the Court will encounter serious problems.

D. Staging the Phase-in

We know there is expectation in the Court of having another group of five or six judges work under the permanent deadlines promptly rather than waiting for 1979. At present we understand that a new pilot group may begin on the permanent deadlines at July 1, 1978. We strongly support such an approach. Since any judge going to the permanent deadlines will have some backlog of cases, permitting immediate commitment of the United States Attorney and the Court to reduce those backlogs at various times over the next year would seem to make much sense. The six present pilot program judges took about two months to reduce significantly their backlogs. Surely, if five or six additional judges are put on the permanent deadlines at July 1 and another six at January 1, 1979, it would be more efficient than having all remaining judges face the imposition of the advanced deadlines at once.

The pilot judges could not all bring their cases within the sixty-day limit within a year; it may, therefore, be expected that the Court as a whole will have severe problems if a phase-in approach is not followed.

E. Use of Magistrates

We also believe that in the event that serious disruption occurs as the Court goes on its permanent deadlines, the Court and the United States Attorney should seriously consider committing misdemeanor cases to magistrates for trial. The practice is not followed presently in the Southern District, but there is legislation in Congress that could give the power to hear misdemeanors to magistrates, and the United States Attorney has recently endorsed magistrate trials of misdemeanors on consent of both parties.[17]

In raising this point, we recognize that the work of the magistrates in relieving civil case problems at the pre-trial stage is very valuable and in managing dockets overall may be more valuable than trying misdemeanor cases. Notwithstanding that, we consider that assuring greater flexibility to use the magistrates for misdemeanor trials is worth serious consideration.

CONCLUSION

It is the Committee's overall view that the time is ripe for the bench and bar to petition Congress for changes in the Speedy Trial Act so that a balance may be preserved between speedy justice and the quality of justice. Noble as the Speedy Trial Act experiment may be and much as we admire the effort of many in the Southern District who have labored to cope with the Act, we consider the Act to be legislation fraught with danger for our judicial process. If steps are not taken swiftly to modify the Act, we fear that the consequences will be serious in the Southern District and in other courts.

June 13, 1978

Respectfully submitted,

COMMITTEE ON THE FEDERAL COURTS

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Footnotes

1. The legislative history suggests a wide range of motivations for the Act's passage, depending upon whether a particular legislator was concerned with crime prevention or defendant's rights. But all seem to have agreed on the laudable common purpose of accelerating the criminal trial process. E.g., H.R. 93-1508, 93d Cong., 2d Sess. 8, reprinted in [1974] U.S. Code Cong. & Ad. News 7401, 7402.

2. The Committee contemplates a subsequent report covering implementation of the Speedy Trial Act in the United States District Court for the Eastern District of New York.

3. 18 U.S.C. § 3161(f)-(g) (1976).

4. Id. § 3161(b)-(c). Where an individual has been charged with a felony in a district in which no grand jury has been in session for the specified thirty days, the time for filing the indictment shall be extended an additional 30 days. Id. § 3161(b).

5. Id. § 3162(a).

6. Id. § 3161(h).

7. Id. § 3161(f)-(g).

8. Id. §§ 3164(a)-(b)

9. Id. §§ 3165, 3166.

10. Id. §§ 3165, 3166.

11. Attorneys contacted in the Committee's survey of criminal defense counsel were chosen at random from a list of those appearing on behalf of criminal defendants in the Southern District during a period of approximately nine months. No effort was made to weight the survey. For example, an attorney appearing for five or six defendants was questioned in the same manner as an attorney appearing on behalf of one defendant. However, an attempt was made to determine if the responses from attorneys who had appeared before pilot program judges under the most stringent time limits differed from those of other counsel.

Contd.

Answers from a total of 163 attorneys who had all represented defendants during the phase-in stage were recorded and considered in the survey. Seventy-seven lawyers from that group had appeared in at least one case before pilot program judges.

12. Director of the Administrative Office of the United States Courts, Management Statistics for United States Courts for the years 1975-77.

13. Director of the Administrative Office of the United States Courts, Management Statistics for United States Courts for the years 1975-77.

14. Martin & Durbin, Statistical Report on the Experience of the Speedy Trial Pilot Group Southern District of New York 2 (Jan. 19, 1978).

15. Id. at 5.

16. United States Attorney for the Southern District of New York, Report for 1977, 4-5 (1978).

17. Id. at 9.

END