REPORT BY THE

Comptroller General

OF THE UNITED STATES

Congress Should Clarify The Speedy Trial Act To Resolve Differing Interpretations

Compliance with the Speedy Trial Act has increased steadily over the past 4 years. Ninety-six percent of the criminal cases handled by all Federal district courts during the last 6 months of 1979 were processed within the act's 100-day time limit.

Problems still exist, however, in interpreting and applying some sections of the act. As a result of some of these differing interpretations, future criminal cases might be inappropriately dismissed.

...nds that the Congress amend ... Act to clarify those sections

GGD-81-1

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

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The Honorable John Conyers
Chairman, Subcommittee on Crime
Committee on the Judiciary
House of Representatives

The Honorable Joseph R. Biden
Chairman, Subcommittee on
Criminal Justice
Committee on the Judiciary
United States Senate

After discussing with us the Federal district courts' efforts to implement the Speedy Trial Act, your offices requested this followup report. On May 2, 1979, we reported to the Congress on the implementation problems associated with the requirements of the Speedy Trial Act of 1974. This report addresses additional improvements which need to be made. The report also provides information on the District of Columbia District Court's compliance with the act.

As arranged with your offices, 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 United States Courts. This report is also being sent today to the Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives. We will also make copies available to others upon request.

Comptroller General
of the United States

REPORT BY THE COMPTROLLER GENERAL OF THE UNITED STATES

CONGRESS SHOULD CLARIFY THE SPEEDY TRIAL ACT TO RESOLVE DIFFERING INTERPRETATIONS

D I G E S T

The intent of the Speedy Trial Act of 1974 is to speed the prosecution of accused persons in order to isolate those found guilty and prevent additional crimes by setting uniform time limits within which U.S. district courts have to process criminal cases.

Following a gradual 4-year phase-in period, the act established a permanent 100-day time limit during which criminal cases must be processed. GAO's review found that compliance with the act's requirements has increased steadily over the past 4 years. However, because the executive and judicial branches interpret some provisions of the act differently, future criminal cases might be inappropriately dismissed. Congress should act to clarify those issues in question.

HOW THE ACT WORKS

As of July 1, 1980, the Speedy Trial Act provides for the dismissal of Federal criminal cases not processed within established time limits. The first time limit, 30-days (Interval I), includes the period from arrest to indictment. The second time limit, 70 days (Interval II), includes the period from either indictment or the defendant's first appearance before the court to the start of trial, plea of guilty, or dismissal.

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While the time frames are fixed, the running of time can be stopped on an interim basis by events specified in the law. The events and consumed days are referred to as excludables and excludable periods of delay, respectively. (See pp. 1 and 2.)

THE ACT HAS BEEN EFFECTIVE

The act's objective of speedily prosecuting accused persons within the established time limits was accomplished in 96 percent of the criminal cases processed during the period July 1, 1979, to December 31, 1979. During Interval I, 2,615 defendants were arrested and all but 108 were processed within the time limit. Out of 7,753 cases processed during Interval II, 316 cases exceeded the time limit. (See p. 4.)

In the District of Columbia District Court, compliance with the act's time limits for the 6-month period was 95 percent for Interval I and 92 percent for Interval II. However, the incidence of recording errors was high, averaging one error per criminal case. Correcting the errors would raise the district's compliance rates above the national average. (See pp. 16 to 21.)

PROBLEMS IN INTERPRETING THE ACT EXIST

Several studies, including GAO's, have identified problems in interpreting and applying sections of the act. GAO believes that the varying interpretations and applications need to be corrected to insure that criminal cases are not dismissed inappropriately. (See pp. 4 to 15.)

Some prosecutable cases are dismissed before indictment

After the start of Interval I, cases are sometimes dismissed because U.S. attorneys are unable or choose not to move the cases within the 30-day limit. With the case dismissed and the time limit removed, prosecutors gain more time to prepare their case and then indict at a later date. This practice, however, has the effect of slowing down the processing of criminal cases.

The Judicial Conference and the Executive Office for U.S. Attorneys believe that the act does not prohibit this practice, and that it is often necessary to enable further investigation of criminal activities. However, the Justice Department has told United States attorneys to keep such dismissals to a minimum.

The frequency of this practice is not known because the Administrative Office of the U.S. Courts does not collect data on all Interval I cases as required. Lacking such information, no one is able to determine whether dismissals prompted by the act's time limits are a significant problem that may be undermining the act's objective. (See pp. 4 to 8.)

Starting date for Interval II not clear

The Executive Office of U.S. Attorneys believes that the act is not clear as to the starting date of Interval II. The Judicial Conference, however, maintains the act is clear. Courtroom deputy clerks in the D.C. District Court used different dates to start the interval. Using the wrong starting date could inadvertently cause the time limits to be exceeded. This could

lead to the possible dismissal of criminal cases.

Interval II starts on the date of indictment or date of a defendant's first appearance on the criminal charge, whichever event occurs later. The clarification needed is whether the act, in referring to the defendant's first appearance on the criminal charge, means (1) the defendant's pre-indictment appearance or (2) the defendant's post-indictment appearance. (See pp. 8 and 9.)

Problems in applying the minimum 30-day period provisions

To insure adequate time to prepare a defense, the Speedy Trial Act provides a minimum period of 30 days after the defendant's first appearance. Three issues have arisen in implementing this provision--whether excludable periods of delay apply, what constitutes a defendant's first appearance, and whether the minimum period is applicable to superseding charges.

With regard to these three issues, the Judicial Conference (1) holds that excludable periods of delay do not apply to the minimum period, contrary to the intent as expressed in the Senate report on the 1979 amendments, (2) has stated in its guidelines that the 30-day period starts on the indictment date rather than the defendant's first appearance date as specified by the act, and (3) has interpreted in its guidelines that the minimum period does not start over when prosecution resumes. (See pp. 9 to 12.)

Can the act's time limits be waived?

Studies by GAO and others have found that defendants were waiving their rights to dismissal before the case was subject to dismissal for exceeding the act's time

limits. Such waivers had the effect of delaying the start of trials, which the Senate clearly did not intend.

The United States Attorneys' Manual strongly recommends that Government attorneys attempt to discourage district courts from allowing waivers. The Judicial Conference has not provided guidance to district courts and because the act is silent, the judiciary continues to debate whether such waivers should be allowed. (See pp. 12 and 13.)

RECOMMENDATIONS TO THE CONGRESS

GAO recommends that the Congress amend the Speedy Trial Act to clarify

--how and under what circumstances pre-indictment dismissals followed by an indictment affect the Interval I time limit,

--the starting date for Interval II,

--the 30-day minimum period before trial, and

--whether dismissal waivers in advance of the expiration of the time limits are allowable and, if not, their effect on other provisions of the act. (See pp. 13 and 14.)

AGENCY COMMENTS

GAO obtained oral comments from officials of the Executive Office for U.S. Attorneys, and the Administrative Office of the U.S. Courts. They expressed the view that their positions on the issues discussed in this report were accurately presented. On two issues--the minimum period before trial can begin and defendants' rights to waive the act's time limits--Executive Office and/or Administrative Office officials

expressed the view that the issues would be resolved through the courts' appellate processes. (See p. 14.)

While GAO does not disagree, this approach will be lengthy and does not guarantee that the issues will be addressed. Thus, GAO's recommendation that the Congress act to resolve the differing interpretations discussed in this report remains the quickest and most certain resolution.

Contents

ABBREVIATIONS

D.C.	District of Columbia
GAO	General Accounting Office

CHAPTER 1

INTRODUCTION

Title I of the Speedy Trial Act of 1974 (P.L. 93-619), passed by the Congress in an effort to prosecute accused persons speedily in order to isolate guilty persons and prevent additional crimes, entered its final implementation stage on July 1, 1980. The year before, in August 1979, the Congress amended the act to deal with problems which had arisen during the act's 4-year phase-in period. At that time, the Congress delayed the dismissal sanction until July 1, 1980, and adopted two intervals instead of three for processing criminal cases. Our study of and report on the act before amendment 1/, the extensive congressional interest in the act, and the substantial impact the act may have on the criminal justice system prompted this followup study of how the act and its permanent time limit were being implemented.

The Speedy Trial Act's primary feature is the establishment of uniform time limits within which U.S. district courts have to process criminal cases. Starting with the act's second year (July 1, 1976, to June 30, 1977) 2/, criminal cases had to be processed within 250 days. This time limit was shortened each succeeding year until July 1, 1979, when the time limit of 100 days was reached.

The 100-day time limit is divided into two intervals: Interval I is from arrest or service of a summons to indictment or information 3/ and covers 30 days. Interval II is from the date of indictment or information or the defendant's first appearance before a judicial officer of the court in which such charge is pending, whichever event occurs later, to disposition 4/ and covers 70 days. While

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1/"Speedy Trial Act--Its Impact on the Judicial System Still Unknown," (GGD-79-55, May 2, 1979).

2/No time limits were imposed during the act's first year (July 1, 1975, to June 30, 1976).

3/An information is a formal statement of charges against the defendant listing the offenses for which the defendant is to stand trial. Unlike an indictment, grand jury proceedings are not involved.

4/Disposition is defined as occurring at the time of a guilty plea, dismissal, or start of trial.

the time intervals are fixed, on an interim basis the time can be stopped from running by certain statutorily established events. For example, if a defendant or witness is unavailable or if motions are made before disposition, the days consumed by these events are not counted in determining whether a criminal case is processed within the interval time limits. These events and the days consumed are commonly referred to as excludables and excludable periods of delay, respectively. (See pp. 21 and 22 for a list of excludables.)

In addition to authorizing excludable periods of delay, the act permits the courts to grant continuances. This suspends the time limits when, in the courts' judgment, the ends of justice served by granting a continuance outweigh the best interests of the public and the defendant for a speedy trial. If Interval I, minus excludable periods of delay, is exceeded, the court must dismiss the case. If Interval II, minus excludable periods of delay, is exceeded, the court can dismiss the case but only if requested by the defendant. Reprosecution depends upon whether the case is dismissed "with prejudice" (no reprosecution for the same alleged offense is allowed) or "without prejudice" (reprosecution can be instituted). The act requires the court to consider the type and severity of the charges when deciding whether to dismiss with or without prejudice.

In December 1979 the Committee on the Administration of Criminal Law of the Judicial Conference of the United States issued guidelines interpreting the act. 1/ The guidelines offer advisory interpretations so that the courts may have, among other things, a uniform approach in gathering statistics and measuring time intervals. The guidelines are not binding interpretations of the act but are rather the consensus of the Conference designed to help each district court formulate its own program.

In April 1980, the Executive Office for U.S. Attorneys issued guidelines interpreting the act to assist U.S. attorneys in adhering to the act's provisions. For the most

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1/The Judicial Conference consists of 25 members: the Chief Justice of the U.S., 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.

part, the Executive Office's guidelines agree with those of the Judicial Conference. However, some different interpretations exist. The guidelines also discuss the lack of clarity in several sections of the act.

OBJECTIVES, SCOPE, AND METHODOLOGY

To ascertain compliance with the act on a nationwide basis, we reviewed the following.

--The Speedy Trial Act's statistics for all district courts as reported to the Administrative Office of the U.S. Courts for the period July 1, 1979, to December 31, 1979.

--The Department of Justice's January 1980 Speedy Trial Act report to the Congress. We analyzed the responses that constituted the basis for the report.

--The April 1980 Speedy Trial Act report prepared for the Justice Department by a private contractor. The contracted study included, among other things, a review of 1,351 cases in 18 U.S. attorneys' offices.

--The act and its legislative history, the Judicial Conference's, the Administrative Office's, and the Executive Office's guidelines.

To determine how a district court implemented the act, we performed detailed review work at the U.S. District Court for the District of Columbia (D.C.). We also performed detailed work at the Office of the U.S. Attorney for the District of Columbia, the Administrative Office of the U.S. Courts, and the Executive Office for U.S. Attorneys in the Department of Justice.

Our review involved (1) examining district court and U.S. attorney records, (2) interviewing the U.S. attorney; assistant U.S. attorneys; the clerk of the court; docket clerks; and courtroom deputy clerks assigned to individual judges, and (3) reviewing the D.C. District Court's Speedy Trial Act plan.

The records we examined included all the manual and automated criminal case docket sheets and criminal case closing reports of the district court and selected criminal case file jackets for the 6-month period ending December 31, 1979.

CHAPTER 2

PROBLEMS IN INTERPRETING THE SPEEDY TRIAL ACT EXIST

Several studies, including ours, have been made since the Speedy Trial Act was amended by the Congress in August 1979. These studies discussed the different interpretations being made concerning several sections of the act. These differing interpretations relate to the (1) dismissal of complaints against an accused during Interval I and the subsequent indictment of the accused on the same charge, (2) starting date for Interval II, (3) minimum 30-day period allowed for defense preparations, and (4) waiving of the Speedy Trial Act's time limits by defendants.

The resolution of these issues through the court system is one way to deal with the problems. This long, drawn-out process, however, can be avoided and consistency of application can be obtained if the Congress would resolve these issues through any necessary ammendments to the act. We believe that the issues discussed in this chapter need to be corrected because they could affect the dismissal of criminal cases.

Compliance with the act's objective of speedily prosecuting accused persons within the permanent interval time limits increased from 80 percent in 1977 to 96 percent for the 6-month period ending December 31, 1979. During the 6-month period, 2,615 defendants were arrested and all but 108 were processed within the Interval I time limit. Out of 7,753 cases processed during Interval II, 316 cases exceeded the time limit.

SOME PROSECUTABLE CASES ARE DISMISSED BEFORE INDICTMENT

In situations involving the arrest of a defendant, U.S. attorneys sometimes dismiss cases before indictments are filed because they are unable or choose not to move them from arrest to indictment within the 30-day time limit. With the case dismissed, the Government attorney can continue preparing the case for a later indictment without fear that the case will be dismissed by a judge, with or without prejudice, for exceeding the time limit. The practical effect of this procedure is a slowdown in processing criminal cases and contrary to one of the objectives of the Speedy Trial Act.

The Speedy Trial Act provides that if a complaint is dismissed before indictment, and thereafter a related complaint or indictment is filed, the act's time frames apply to the subsequent complaint or indictment. The Judicial Conference guidelines and the U.S. Attorneys' Manual state that upon such dismissal, the Speedy Trial Act Interval I ends. If the defendant is again arrested, a new 30-day time limit starts.

The U.S. Attorneys' Manual, however, points out that the allowance of this practice in Interval I is incongruent with the treatment of Interval II involving post-indictment dismissals, granted upon a motion of the Government, followed by reindictment. For dismissals granted during Interval I or granted upon the defendant's motion during Interval II, the act specifically states that the time frames apply to the subsequent complaint or indictment, i.e., a new interval begins. However, the act does not contain a similar provision for dismissals during Interval II that are granted on the motion of the Government. Rather, the act clearly provides that the period of delay, from the date the original indictment or information was dismissed to the date the subsequent indictment or information is filed, is excluded. The effect is that the time that the defendant was under the original indictment is counted in determining whether the subsequent case was processed within the 70-day time limit. The U.S. Attorneys' Manual states that the filing of superseding charges is entirely within the control of the Government and the Government is not permitted to obtain additional time simply by dismissing the indictment or information and filing a superseding one. On the other hand, the manual states that the Government is allowed to dismiss cases in Interval I and gain additional time for case preparation.

Executive Office officials said that U.S. attorneys elect to dismiss complaints because certain cases or factors necessitate a more extended period between arrest and indictment than Interval I allows. As examples, they cited cases such as (1) a defendant engaged in a significantly larger criminal activity than was apparent at the time of arrest and a lengthy investigation would be necessary before the case was ready for indictment and (2) a defendant agreed after arrest to testify for the Government and it may be important not to move to indictment in order to avoid revealing the defendant's cooperation to other potential defendants.

Executive Office officials said that a factor that encourages U.S. attorneys to dismiss and later indict, even

when the interim period could be covered by exclusions, is the difficulty encountered in obtaining rulings on exclusions during Interval I. These officials said that many district courts have not delegated authority to magistrates to rule on these matters. As a result, U.S. attorneys may be compelled to rely more heavily on the practice of dismissal and later indictment because they will not want to take the chance that an excludable period will not be allowed.

Nonetheless, the Department of Justice has moved to control excessive use of dismissals and later indictments. The U.S. Attorneys' Manual was amended in June 1980 by a provision which states

> "* * * it is advisable to invoke exclusions when possible where additional time is needed during the first interval. The dismissal-indictment procedure should be employed only where other recourse is not reasonably available."

The frequency of pre-indictment dismissals, the reasons for them, and the time that elapsed between arrest and dismissal are not known at the national level even though the act requires the reporting of information on all cases affected by the act. Lacking such information, no one is able to determine whether the practice of pre-indictment dismissals prompted by the act's time constraints is a significant problem that may be undermining the act's objective--the speedy prosecution of accused persons to isolate guilty persons and prevent additional crimes.

The reason why information on all Interval I criminal cases is not available is that the Administrative Office requires reports only on open cases. Administrative Office officials consider a case "opened" at such time that an indictment or information is filed or the defendant agrees to a trial before a magistrate. If a defendant is arrested and dismissed before indictment, the case is never considered "opened" and therefore no reporting is required.

Administrative Office officials told us that, traditionally, criminal cases are statistically opened at the time of indictment or information filing and, upon opening of a case, an opening report is required to be completed and submitted. With the advent of the Speedy Trial Act, no changes were made in reporting procedures to begin counting those criminal cases commencing with arrest. As a result,

the Administrative Office does not gather information on the number of arrest cases subsequently dismissed, the reason for the dismissal, or the time elapsed during the interval before dismissal.

In an effort to determine how U.S. attorneys recorded speedy trial data, we randomly selected 12 out of 166 cases for which the D.C. District Court's records showed no proceedings during Interval I. With the assistance of the U.S. Attorney's office, we reviewed the case files and noted that 7 of the 12 cases involved defendants who were arrested, dismissed before indictment, and subsequently indicted for the same crime at a later date, as shown in the table below.

Case	Date arrested	Date dismissed	Arrest to dismissal (days)	Date indicted	Arrest to indictment (days)
1	6/28/79	7/19/79	21	8/28/79	61
2	6/28/79	7/19/79	21	8/28/79	61
3	6/28/79	7/31/79	33	8/29/79	62
4	6/28/79	8/ 3/79	36	8/29/79	62
5	6/28/79	8/ 3/79	36	8/29/79	62
6	6/28/79	No date given	-	8/29/79	62
7	11/28/78	No date given	-	9/18/79	294

According to information in the U.S. attorney's file, five cases were dismissed by assistant U.S. attorneys because the laboratory reports and exhibits could not be completed in time. One case involved discussions of immunity for a potential witness and more time was needed to discuss the case. Another case was dismissed to allow a full investigation of a larger criminal activity. For those cases whose elapsed days exceeded 30, no excludables or excludable periods were recorded in the files.

The Chief of the Grand Jury Division in the D.C. District Court estimated that up to 30 percent of the arrest cases are dismissed and brought in later as grand jury original indictments. Exact figures, he said, could be obtained only through a detailed study of all criminal cases.

The contracted-out Speedy Trial Act study of 18 district courts showed that 9 districts dismissed defendants during

Interval I. Nearly one-third of the dismissals were related to the Speedy Trial Act's time constraints. The study was unable to document the number of dismissed cases which were later indicted.

Because information is lacking, the extent of the practice in Interval I of using pre-indictment dismissals in cases that are later reopened by a subsequent complaint or an indictment cannot be determined. We believe the Congress should clarify how and under what circumstances pre-indictment dismissals followed by an indictment affect the Interval I time limit. Depending on the action taken by the Congress, additional information may have to be collected to insure that Interval I time limits are being adhered to.

STARTING DATE FOR INTERVAL II NOT CLEAR

The amended act provides that in any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment shall begin within 70 days from the date the information or indictment is publicly filed or from the date the defendant appeared before a judicial officer of the court in which such charge is pending, whichever date is later. The Judicial Conference believes the act is clear as to which event starts the interval. However, the Executive Office believes the act is not clear as to which event starts the interval. Courtroom deputy clerks in the D.C. District Court, unsure of which event starts the interval, were inconsistent in recording the starting date for Interval II.

The Judicial Conference guidelines state that the act is clear. If the criminal case originates with the public filing of an indictment, Interval II starts when the defendant makes a post-indictment appearance before a judicial officer of the court, because the appearance is later than the date of indictment. If the criminal case originates with an arrest or service of a summons before indictment or information, Interval II starts with the public filing of the indictment or information because the defendant has already made a pre-indictment appearance in Interval I on the complaint. In this case, the indictment would be later than the appearance.

The U.S. Attorneys' Manual, however, raised the issue of whether the pre-indictment appearance of a defendant arrested before indictment was the appearance to which the

act was referring. Another issue is whether the complaint charge was the charge to which the act was referring. To some people then, the act is unclear as to which appearance (pre-indictment or post-indictment) or which charge (complaint or indictment) the act was referring. Using the wrong start date could cause the time limits to be inadvertently exceeded.

Our study in the D.C. District Court showed that courtroom deputy clerks did not consistently follow the Judicial Conference guidelines as to the date used to start Interval II. As discussed in the next chapter, the clerks used the indictment date rather than the post-indictment appearance date as the starting date in 20 cases which did not involve any pre-indictment appearance. On the other hand, the post-indictment appearance date rather than the indictment date was used in nine cases to start Interval II even though the cases involved pre-indictment appearances.

While the records showed that all cases would have 70 days before trial, the interval for 20 defendants started earlier than what the Judicial Conference guidelines suggested. If the records were not corrected, the defendants would have less days to prepare for trial than if properly counted from the dates when they made their first appearances after indictment. Nine defendants started the interval later than suggested by the Conference's guidelines and would have had more days than if properly counted from when the indictment was filed. If these latter records were later corrected, however, the possibility exists that the trial date, while set within 70 days from the erroneous date, could inadvertently be set beyond 70 days from the correct date (as happened in the D.C. Court), thus raising the possibility of dismissal.

PROBLEMS IN APPLYING THE MINIMUM 30-DAY PERIOD PROVISIONS

The amended Speedy Trial Act provides a minimum period of 30 days before trial can commence. The defendant can waive the 30-day minimum period but he must do so in writing. If the defendant does not sign a waiver, the 30-day period begins after the defendant first appears through counsel or after the defendant waives his right to counsel and elects to represent himself. The Congress enacted this section to insure protection of the defendant's constitutional rights to due process for adequate defense preparation. Problems have arisen, however, in interpreting and applying this section and

these problems need to be resolved before the full benefits of the section can be realized.

The problems stem from a lack of clarity in the act and deal with the following issues:

--whether or not excludable periods of delay are to be applied to the minimum 30-day period;

--the lack of a definition as to what constitutes a defendant's first appearance through counsel to start the minimum 30-day period; and

--whether and when the minimum 30-day period is applicable to superseding charges.

The Speedy Trial Act is silent as to the application of excludables to the 30-day period. The Senate Report 1/ took the position that the excludables provided in the act apply to the minimum 30-day period. Therefore, if an event such as a pretrial mental examination occurs, the time would not only be excluded from computing the Interval II time frame, but would also be automatically excluded in computing the minimum 30-day period.

The Judicial Conference guidelines, while recognizing the Senate's position, took the opposite position, saying that excludables do not apply to the 30-day period. The guidelines point out that excludables are used to compute the time within which a trial must commence, and not the time within which a trial may not commence, that is, the 30-day minimum period. The guidelines further state that some defendants may not succeed in obtaining counsel in the first 40 days. Adding to that the 30-day minimum period, the defendants cannot be brought to trial within 70 days.

The D.C. District Court followed the Judicial Conference guidelines and did not apply the excludables to the minimum 30-day period. If the court had elected to follow the guidance of the Senate report and apply the excludables to the

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1/Senate Report 96-212 on the 1979 Speedy Trial Act Amendments.

30-day minimum period, then 23 of the 33 cases that went to trial would have commenced before the minimum 30-day period had expired. In six of these cases, trial commenced before 30 days gross time had elapsed and without obtaining the necessary written waiver of the defendant. While the act does not specifically apply the dismissal sanction to violations of the minimum 30-day period, how a court would rule on a defendant's claim that his rights had been violated is not known.

The act gives the starting date for computing the 30-day period "from the date on which the defendant first appears through counsel or expressly waives counsel * * *." The act does not, however, define the word "appear" nor does it establish the timing (pre-indictment or post-indictment) of the appearance.

The Judicial Conference guidelines state that a literal reading of the act's provision could be that if the defendant first appeared through counsel before an indictment or information was filed, the 30-day minimum period would begin at that time. The guidelines further state that this interpretation would be inconsistent with the act's intent in that the 30-day minimum period was established to provide adequate time for defense preparation. The Judicial Conference guidelines stated that if first appearance is interpreted to occur before the indictment or information is filed, a defense may be difficult to prepare because all charges which ultimately may be in the indictment are not known at that time. The Judicial Conference guidelines therefore interpret the 30-day period to begin from the latter of first appearance through counsel or the public filing of the indictment or information. Starting the 30-day period on the date the indictment or information is publicly filed, however, conflicts with the act's provision that the period starts with the defendant's first appearance through counsel though the relevant section of the act makes no reference to the timing of the indictment or information.

With regard to new charges filed after dropping prior similar charges, the Speedy Trial Act provides that the time frames of the act include the 30-day minimum period and shall be applicable to the new charges. The Judicial Conference guidelines, in interpreting this section, state that the 30-day minimum period does not start over when prosecution resumes on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea. Nor does a new 30-day minimum period begin to run when superseding

indictments are filed in cases where the 70-day time limit is determined by the original indictment or information.

On these three minimum 30-day period issues, the Judicial Conference has provided interpretations and guidance that either clarify the act's provisions or conflict with the language of the Senate report. Authoritative interpretations of the act's provision are needed to allow consistent application of the act, but whether or not the Judicial Conference's interpretations are in keeping with the act's intent will be decided as the issues are raised in the judicial review and decisionmaking process. This long, drawnout process, however, could be avoided and consistency of application could be obtained if the Congress would clarify the act.

CAN THE ACT'S TIME LIMITS BE WAIVED?

While the Speedy Trial Act allows a defendant to waive his or her rights to dismissal if the interval time limits are exceeded, it does not specifically allow nor does it specifically prohibit the defendant to waive his or her rights to dismissal prior to the expiration of the time limits. However, studies have shown and we confirmed in the D.C. District Court, widespread waiving of the act's time frames before their expiration amidst uncertainties as to whether they could be waived. The effect of waiving the time limits in the D.C. District Court was a slowdown in disposing of criminal cases.

Our review of the D.C. District Court's criminal cases showed that out of 168 cases brought to trial or other post arraignment conclusion, 22 cases or 13 percent involved waiving the act's time limits before expiration. These 22 cases, on the average, spent 86 gross days in Interval II compared to the average of 46 gross days for all cases. In the April 1980 Speedy Trial Act report, 11 of the 18 districts courts studied allowed early waiving.

Because the legislation is silent on allowing or disallowing waivers, some courts have accepted the defendants' waiving the time limits prior to expiration. While the legislation makes no reference to waiving the act, the Senate Report (96-212) on the 1979 amendment does. The report states:

> "The Committee wishes to state, in the strongest possible terms, that any construction which holds that any of the provisions of the Speedy Trial

> Act is waivable by the defendant, other than his statutorily conferred right to move for dismissal as cited above, is contrary to legislative intent and subversive of its primary objective: protection of the societal interest in speedy disposition of criminal cases by preventing undue delay in bringing such cases to trial."

Clearly, the Senate did not intend for the defendant to waive society's right in demanding a speedy trial. Furthermore, the Senate maintained that the excludable and continuance sections were sufficiently broad as not to jeopardize a defendant's defense preparation by too speedy a trial. By structuring the act to include both the automatic excludable delays and the "ends of justice" continuance provision, the Senate contended that the defendant's right under the Sixth amendment 1/ is protected.

However, by not amplifying on the Senate's intent in the language of the statute, the Congress allowed for interpretation and debate on waivers. The Judicial Conference did not address the issue. The Executive Office strongly recommended that Government attorneys attempt to discourage the courts from allowing waivers by bringing to the courts' attention the position of the Senate report. An Executive Office official stated that his office is opposed to the waiving of the act. He added that the allowability or nonallowability of waiving the act would have to be ruled upon by appellate courts. Interviews with courtroom deputy clerks at the D.C. District Court revealed that some district judges allow the defendant to waive the act. Subsequently, the court's planning group agreed not to allow waiver of the act.

If the Speedy Trial Act's time limits can be waived by the defendant before expiration, then society's right to a speedy trial is jeopardized. The Congress can resolve the waiver issue by amending the statute.

1/The Sixth Amendment of the Constitution entitles persons to a speedy trial.

AGENCY COMMENTS

We obtained oral comments from officials of the Executive Office for U.S. Attorneys and the Administrative Office of the U.S. Courts. They expressed the view that their positions on the issues discussed in this report were accurately presented. On two issues--the minimum period before trial can begin and defendants' right to waive the act's time limits--Executive Office and/or Administrative Office officials expressed the view that the issues would be resolved through the courts' appellate processes.

CONCLUSIONS AND RECOMMENDATIONS TO THE CONGRESS

The resolution of the above issues through the court system is one way to deal with the problems. This long, drawnout process, however, can be avoided and consistency of application can be obtained if the Congress would amend the act to clarify its intent on these issues.

The Congress should be aware that the Judicial Conference and the Executive Office believe that the dismissal of complaints and subsequent indictments for the same crimes start a new Interval I. It should also be aware that the practice is employed with some frequency but the full extent is unknown because information is not being collected. The Executive Office, while contending that the practice often serves the investigative needs of the Government, is nevertheless trying to minimize the practice. We believe that those pre-indictment dismissals prompted by the act's time constraints may be delaying the speedy disposition of criminal cases. We therefore recommend that the Congress clarify how and under what circumstances pre-indictment dismissals followed by an indictment affect the Interval I time limit.

The Executive Office for U.S. Attorneys has raised the question as to which appearance starts Interval II. The Judicial Conference guidelines say the act is clear. We believe the use of different events to start the interval is cause for concern. Accordingly, we recommend that the Congress amend the act to clarify the starting date of Interval II.

The Judicial Conference has provided interpretations of the act that raise substantive issues with regard to the

30-day minimum period before trial can commence. We recommend that the Congress (1) clarify whether or not excludable periods of delay are to apply to the minimum 30-day period before trial can commence, (2) define a defendant's first appearance through counsel to start the 30-day period, and (3) clarify whether and when the 30-day period is applicable to superseding charges.

The Speedy Trial Act's time limits are being waived before their expiration resulting in a slowdown in the disposition of cases. Because of the varying opinions on whether the time limits can be waived, we recommend that the Congress amend the act to specify whether dismissal waivers in advance of the expiration of the time limits are allowable and, if so, their effect on other provisions of the act.

CHAPTER 3

THE SPEEDY TRIAL ACT AS OPERATING IN THE DISTRICT OF COLUMBIA DISTRICT COURT

According to information provided to the Administrative Office, compliance in the D.C. District Court with the Speedy Trial Act time limits for the 6-month period ending December 31, 1979, was 95 percent for Interval I and 92 percent for Interval II. This compares to the national average of 96 percent for both intervals. However, the incidence of recording errors was high, averaging one error per criminal case. Correcting the errors would raise the district's compliance to 96 and 98 percent for Intervals I and II, respectively.

COMPLIANCE WITH THE ACT'S REQUIREMENTS

During the 6-month period ending December 31, 1979, 359 felony indictments or informations were filed, of which 246 cases were closed. Pleas of not guilty accounted for 168 of the closed cases.

Of the 246 cases reviewed, 80 cases (33 percent) involved an arrest before indictment or information was filed. As discussed in chapter 2, the number of arrests is understated because of the pre-indictment dismissal practice employed by the U.S. Attorney's office.

The average time consumed in processing cases through the court is shown below. 1/

	Interval I	Interval II
Gross days	28.8	46.3
Less excludable days	2.5	18.8
Total days	26.3	27.5

1/These data are averages based on 79 Interval I and 186 Interval II cases which consumed one or more days in the intervals. One Interval I case and 60 Interval II cases started and stopped the interval time on the same day. For these cases, the Administrative Office counts zero days elapsing. Including these cases in the computation would reduce the averages of Interval II cases to 35 gross, 14 excludable, and 21 net days.

Of the 246 cases, 84 cases (34 percent) used excludable periods of delay. Five Interval I cases and 42 Interval II cases had gross days exceeding the time limits. However, by using the excludables, two Interval I cases and 31 Interval II cases were brought within the time limits. The remaining 14 cases were reported as exceeding the time limits.

Our analysis of the 14 cases, using the Judicial Conference guidelines, showed that 11 cases could have been kept within the time limits if the excludables had been properly recorded. On the other hand, our analysis of all the cases reported as being within the time limits identified six cases where errors had been made but when these errors were corrected, the cases actually exceeded the time limits. The number of cases exceeding the time limits, after correcting for all errors, was 9, or 4 percent, of all cases reviewed.

RECORDING ERRORS

The errors noted in the manually prepared case closing reports occurred mainly because the district court personnel (1) waited until after the defendant was sentenced to complete the forms and (2) referred to their notes rather than to the more accurate automated court records. The recent shift in the district from manually prepared reporting forms to automated reporting will decrease the district's error rate substantially, enabling the district to report more accurately on its performance.

We classified the recording errors into errors of omission and commission. Errors of omission included the non-recording of excludables. Errors of commission included use of incorrect excludables, arithmetical errors, and use of wrong dates to start the intervals.

Errors of omission included those instances in which allowable excludables were not used on reports. One out of every four criminal case reports in our study failed to record excludables, and these errors represented one-third of all recorded errors. Such errors are crucial in that non-recording of excludables could result in cases exceeding the intervals and may cause the dismissal of cases.

Presented below are the excludables that were not reported, the incidence of non-recording, and their percent of the total incidences for each and the combined intervals.

Type of excludable	Incidence of non-recording			Percent of total incidence
	Interval I	Interval II	Total	
Pretrial motions	0	54	54	68
Proceedings under advisement	0	9	9	11
Unavailability of defendant or witness	1	4	5	6
Exam or hearing for mental or physical incapacity	1	1	2	3
Defendant awaiting trial of co-defendant	0	1	1	1
"Ends of Justice" continuance	3	6	9	11
Total	5	75	80	100

The clerks failed to record the excludables for pretrial motions, citing as their reason that generally the excludables for pretrial motions and, for that matter, other excludables were not recorded if it appeared that they were not needed to keep cases within time limits. But in the process of employing this philosophy and the resulting practice of recording excludables as the exception rather than the rule, 11 cases were erroneously reported as exceeding the time limits. For the 6-month period ending December 31, 1979, two cases in Interval I and nine cases in Interval II were reported as exceeding the time limits but could have been reported within the time limits if the excludables were properly recorded.

Three types of errors of commission were noted--incorrect use of excludables including use of non-allowable excludables, arithmetic errors in counting days, and use of wrong dates to start the intervals. Out of the 246 closed cases, 134 cases had 167 incidences of errors. In six cases, the errors were crucial in that the six cases, reported as being within the time limits, actually exceeded them. The table below shows the three types of errors, the incidence of errors, and the percentage relationship of the different types of errors.

Error	Interval I	Interval II	Total	Percent of total errors
Arithmetic errors	6	104	110	66
Wrong starting date	6	32	38	23
Incorrect use of excludables	1	18	19	11
Total	13	154	167	100

Arithmetic errors in counting days were the most frequent type of error. In one case, a defendant's case was reported within the time limit but because of an arithmetic error of 31 days, the defendant's case actually exceeded the Interval II time limit. The arithmetic errors made in counting calendar days and excludable days ranged as follows.

Error range (days)	Incidence of errors
1	52
2-5	22
6-10	13
over 10	23

For the most part, the persons responsible for the recording errors could not remember or explain how they counted the days in a particular case. The few explanations given for arithmetic errors made in the excludable day counts related to (1) the practice of using only those excludable days necessary to keep the case within the time limits or (2) a lack of awareness of the legislated changes in counting excludable days for pretrial motions.

The next most frequent error involved using the wrong date to start the intervals. As discussed on p. 8, confusion exists as to the starting date of Interval II. In cases involving arrest before indictment, recording

personnel in most cases used the indictment date to start Interval II (as prescribed by the Judicial Conference guidelines) but in other cases, they used the first appearance date (arraignment date) after indictment. Different start dates for Interval II were also used in cases where no arrests were made prior to indictment.

Recording personnel generally could not recall why they used a particular starting date for a particular case. One reason given for using the arraignment date to start Interval II in a pre-indictment arrest case was the continued application of the original act's requirement for starting the trial interval with the arraignment date.

Two cases reported as being within the Interval I time limit actually exceeded the limit because of errors in using the wrong starting date. In both cases, the defendants were arrested before indictment but the recording personnel overlooked the arrest date and reported zero days elapsing in Interval I. In fact, one defendant was in Interval I for 75 days and another for 90 days. Court records disclosed no excludable delays.

The last type of error involved the incorrect use of excludables, including the use of excludables not germane to the case. Seven of the 19 errors involved the use of the "under advisement" excludable instead of the "pretrial motion" excludable because of uncertainty about when one excludable ended and the other began. Furthermore, in three cases, excludables not germane to the case were used and kept the cases within the Interval II time limit. Otherwise, the cases would have exceeded the time limit and, had the dismissal sanction been in effect, could have been dismissed on motion of the defendants.

Uncertainty existed in the D.C. District Court about when to stop the "pretrial motion" excludable and if necessary, start the "under advisement" excludable. The Judicial Conference guidelines attempt to pinpoint the ending date of the pretrial motion excludable, but the triggering events--the filing of all anticipated briefs and the completion of any necessary hearing--are fleeting and hard to pin down on a day-to-day basis. Since the recording of the pretrial motions proceedings may not always be complete or up-to-date, the pretrial motion excludable could run on unchecked until trial begins.

To deal with this problem, the D.C. District Court's current speedy trial plan adopted a provision, similar to that proposed by the Senate and the Judicial Conference, whereby a time limit was established within which pretrial motions and oppositions must be filed. This, coupled with the court's plan for a status hearing within three weeks of arraignment, at which time all motions are to be resolved, will help to clarify when one excludable stops and the other one begins.

Three of the 19 errors involved the use of excludables which were not applicable to the specific cases; thus, the cases exceeded the time limits. In one case a district court official agreed that the record of pretrial motions was in error. The other two cases were kept within the time frames by using an ends of justice continuance, but neither we nor the district court personnel could find any records indicating that such continuances had been granted.

Some problems exist in using and recording ends of justice continuances. Such continuances suspend the time intervals and are granted by the court when the continuances outweigh the best interests of the public and the defendant for a speedy trial. Ends of justice continuances were granted in 18 cases. In 16 of these, the reporting forms did not cite the reasons for the continuances as required by the Administrative Office of the U.S. Courts. In 13 of the 16 cases, the official court records did not cite the reasons for the continuances as required by the act, thus the use of the continuances as excludables would not be allowed. Ten of these 13 cases exceeded the time limits in gross days and might have been dismissed if the dismissal sanction had been in effect.

Ends of justice continuances were also erroneously recorded in that the reasons given for the continuances were those for which automatic excludables exist. For example, an ends of justice continuance was granted based on the U.S. attorney's "Motion for Continuance" because a witness was unavailable. The problem was that the U.S. attorney's motion was headed "Motion for Continuance" and buried within the motion was the reason for the continuance. D.C. District Court clerks stated that they do not have time to read the motions.

EXCLUDABLE

DELAY CATEGORIES

18 U.S.C. 3161	Delay category
(b)	Grand jury indictment time extended 30 more days
(h)(1)(A)	Exam or hearing for mental or physical incapacity (18 U.S.C. 4244)
(h)(1)(B)	Narcotic Addict Rehabilitation Act Exam (28 U.S.C. 2902)
(h)(1)(D)	State or Federal trials or other charges
(h)(1)(E)	Interlocutory appeals
(h)(1)(F)	Pretrial Motions (from filing to hearing or other prompt disposition)
(h)(1)(G)	Transfers from other districts (Per Federal Rules of Criminal Procedure 20, 21, & 40)
(h)(1)(J)	Proceeding under advisement not to exceed 30 days
(h)(1)	Miscellaneous proceedings: Parole or probation revocation, deportation, extradition
(h)(1)(C)	Deferral of prosecution under 28 U.S.C. 2902
(h)(1)(H)	Transportation from another district or to/from examination or hospitalization in 10 days or less
(h)(1)(I)	Consideration by court of proposed plea agreement
(h)(2)	Prosecution deferred by mutual agreement
(h)(3)(A)(B)	Unavailability of defendant or essential witness

Section 3161	Delay category
(h)(4)	Period of mental or physical incompetence of defendant to stand trial
(h)(5)	Period of Narcotic Addict Rehabilitation Act commitment or treatment
(h)(6)	Superseding indictment and/or new charges
(h)(7)	Defendant awaiting trial of co-defendant when no severance has been granted
(h)(8)(A)(B)	Continuances granted for ends of justice
(h)(8)(B)(i)	(1) Failure to continue would stop further proceedings or result in miscarriage of justice
(h)(8)(B)(ii)	(2) Case unusual or complex
(h)(8)(B)(iii)	(3) Indictment following arrest cannot be filed in 30 days
(h)(8)(B)(iv)	(4) Continuance granted in order to obtain or substitute counsel, or give reasonable time to prepare
(i)	Time up to withdrawal of guilty plea

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