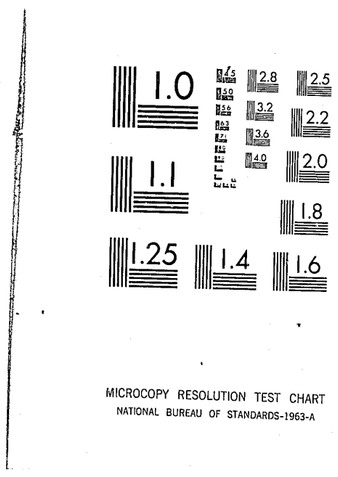

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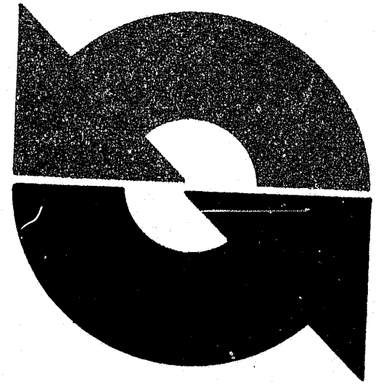
U.S. Department of Justice
Office for Improvements in the Administration of Justice
Federal Justice Research Program

The Processing of Federal Criminal Cases Under the Speedy Trial Act of 1974 (as Amended 1979)

FJRP-80/002

by Nancy L. Ames
Kenneth E. Carlson
Theodore M. Hammett
Gregory Kennington



July 1980

ABT ASSOCIATES INC.
55 WHEELER STREET, CAMBRIDGE, MASSACHUSETTS 02138
TELEPHONE • AREA 617-492-7100
TWX: 710-3201382

THE PROCESSING OF FEDERAL CRIMINAL CASES UNDER THE SPEEDY TRIAL ACT OF 1974 (AS AMENDED 1979)

Levels and Patterns of Compliance Prior to the Imposition of Sanctions

Nancy L. Ames
Kenneth E. Carlson
Theodore M. Hammett
Gregory Kennington

July, 1980

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TABLE OF CONTENTS

LIST OF TABLES AND FIGURES

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This report represents the combined efforts of a number of staff who have devoted long hours and considerable thought to answering the important policy questions posed by the Congressional mandate for this study. In particular, I would like to express my appreciation to the three co-authors for their contribution not only to this report but also to the project as a whole.

In addition to the co-authors, credit must be given to those persons who built the foundation on which this report rests. Nancy Grimes, Lindsey Stellwagen, and Tim Burns were instrumental in monitoring the data collection effort and the forms received from the 18 United States attorneys' offices participating in our Records Study component and ensuring that all potentially noncompliant cases were followed up. They were aided in these efforts by: Isabel Alva, Susan Brighton, Deborah Day, Vicki Garvin, Gail Goolkasian, Janice Knight, Mary Riess, Mitchell Rosenfeld, and Marilyn Tabor.

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Nancy Ames
July 1980

EXECUTIVE SUMMARY

INTRODUCTION

The Speedy Trial Act (Pub. L. 93-619) was passed by Congress in 1974. It embodies several important and innovative concepts, one of which is its recognition of the public's right to have defendants speedily tried. It is often thought that the defendant is the primary beneficiary of a rapid trial process, but the public also benefits from timely case processing which keeps criminals from extended release on bail while awaiting trial. Thus, the time limits established by the Act are triggered independently of requests by the defendant.

The law, which governs all Federal criminal cases, specifies time limits within which certain key events must occur. These time limits were progressively shortened during a four-year phase-in period.[1] As amended in 1979, the Act establishes two basic time limits:

- Arrested defendants must be indicted within 30 days of their arrest; and
- Trials of all defendants must commence within 70 days of their indictment.[2]

For purposes of this report, these are referred to as Interval I and Interval II time limits, respectively. These time limits are not hard and fast, however. The Act enumerates "excludable delays," which are intended to afford flexibility. Some are "automatically" invoked when certain delays occur. In addition, the judge may order a continuance if, in his or her view, it would serve the "ends of justice."

Finally, the Speedy Trial Act provides that cases which exceed the time limits may be dismissed with or without prejudice. While the dismissal sanction was to become effective on July 1, 1979, the amended Act postponed implementation of sanctions until July 1, 1980.[3]

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[1] This phase-in period incorporated research and planning activities which culminated in passage of the Speedy Trial Act Amendments Act of 1979 (Pub. L. 96-43).

[2] The intervals may be triggered and terminated by a number of other key events as described in Chapter 3.

[3] For a more detailed discussion of the Speedy Trial Act, as amended, see Chapter 1.

This summary highlights the results of the Speedy Trial Act Study conducted by Abt Associates Inc. under the sponsorship of the Federal Justice Research Program of the Office for Improvements in the Administration of Justice. The purpose of this Congressionally mandated study was to examine the "impact of the implementation of [the Speedy Trial Act of 1974 (as amended in 1979)] upon the office[s] of the United States attorney[s]."[1] More specifically, the Department of Justice was charged with informing Congress regarding:

(1) the reasons why, in those cases not in compliance, the excludable time provisions of the Act, enumerated in § 3161(h), have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States attorneys in districts with low compliance records and the practices and procedures which have been successful in those with high compliance records;

(3) the additional resources which would be necessary for the offices of the United States attorneys to achieve compliance with the time limits;

(4) suggested statutory and procedural changes which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of the Act; and

(5) the impact of compliance with the time limits upon the litigation of civil cases by the offices of the United States attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with the Act.[2]

In addition to addressing the five topics listed above, the study focuses on a sixth issue which is implied in § 9(e)(4) of the Speedy Trial Act Amendments Act of 1979: the impact and unintended consequences of compliance with the Speedy Trial Act of 1974, as amended, on the administration of criminal justice.[3]

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[1]The Speedy Trial Act Amendments Act of 1979, Pub. L. 96-43, § 9(e).

[2]This study, coupled with U. S. Department of Justice, "Department of Justice Implementation of the Speedy Trial Act of 1974 (as amended 1979)," Report to the United States Congress: No. 1, Washington, D.C., January 1980, was intended to fulfill the reporting requirements of Pub. L. 96-43, § 9(e).

[3]The Speedy Trial Act of 1974, as amended, is hereinafter referred to as "the Speedy Trial Act" or "the Act.

The report includes findings from three study components:

- Records Study--a survey of 1,351 cases in 18 United States attorneys' offices;
- District Approaches Study--an analysis of district approaches to compliance based on on-site interviews with approximately 90 respondents in six United States districts; and
- Civil Backlog Component--an analysis of the impact of speedy trial constraints on civil backlog, using historical data supplied by the Administrative Office of the United States Courts (AOUSC).

Below we summarize the results of the study and discuss the policy implications of our findings. It should be noted that, with the exception of the analysis of civil backlog, all of our results are based on a relatively small sample of districts and respondents. While these districts were chosen to reflect the range of United States attorneys' offices and constituencies affected by the Act, we cannot generalize fully to the entire set of offices in the Federal system or to all groups involved in speedy trial implementation.

FINDINGS

Patterns of Compliance

When a uniform standard of excludable time (based on detailed knowledge and understanding of the Judicial Conference Guidelines) was applied to a sample of cases,[2] the estimated level of compliance was 94 percent for Interval I, 92 percent for Interval II, and 91 percent for the combined compliance in both Intervals I and II. (See Chapter 2.) Actual compliance levels may change, however, as the courts rule on interpretation of specific sections of the Speedy Trial Act, as United States attorneys' offices and courts modify their administrative practices in response to the imposition of sanctions, and as defense counsel seek to use the speedy trial dismissal sanction on behalf of their clients.

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[1]The Speedy Trial Act of 1974, as amended, is hereinafter referred to as "the Speedy Trial Act" or the "Act."

[2]All cases initiated during November and December, 1979 in a representative sample of United States attorneys' offices.

The most frequently cited reason for noncompliance in Interval I was the failure to complete a deferred prosecution agreement within the speedy trial time limits. Court congestion was most frequently cited in Interval II. A number of other reasons were also offered. With the exception of protracted plea negotiations, however, many of these problems could have been averted through full use of relevant excludable time provisions and careful monitoring of the time limits.

The level of compliance--even using a uniform policy on exclusion of time--varied greatly among both sample districts and all United States district courts. In general, large districts had a lower rate of compliance for both intervals than did smaller districts.

In addition to speed in case processing, compliance with the Speedy Trial Act depends upon using the excludable time provisions specified in the Act. During the post-indictment interval, slow districts making more frequent use of continuances in the "ends of justice" had a higher rate of compliance than slow districts using such exclusions rarely (94 percent vs. 86 percent compliance).

Measures Designed to Reduce Case Processing Time: Strengths and Weaknesses

While the United States attorneys' offices and courts in the six District Approaches sites face a number of common problems that suggest a need for administrative--if not statutory--change, all have adopted affirmative policies and procedures designed to achieve compliance with the time limits of the Act, as described in Chapter 4 of this report. At least one, and in some cases a combination, of the procedures listed below were used by these districts to speed case processing. The weaknesses discovered in each procedure are noted where appropriate:

- Monitoring and Reporting. All districts have developed monitoring and reporting systems of varying sophistication to remind assistant United States attorneys (AUSAs) and/or judges of impending deadlines. Monitoring by United States attorneys' offices is concentrated in the arrest-to-indictment interval, while court monitoring is focused in the indictment-to-trial interval. The two largest courts have implemented computerized management information systems designed to produce regular status reports to judges and prosecutors on all or selected defendants. An automated case tracking system is being implemented in one of the United States attorney's offices we visited. Given the intricacy of the Act and the pressures faced by AUSAs in fulfilling their responsibilities for case preparation, a major weakness is the lack of centralized and automated monitoring of intervals--particularly Interval II--in the United States attorneys' offices.

- Coordination with Investigative Agencies. In all six districts, United States attorneys' offices have increased coordination with investigative agencies, including expedited handling of cases facing speedy trial limits, joint determination of law enforcement priorities, and coordination of arrest policies and practices. However, in some districts there continue to be problems obtaining investigative reports in timely fashion.

- Planning and Coordination. All six districts have made some effort to develop a coordinated approach to compliance with the Act. None has given its Speedy Trial Planning Group an ongoing role in planning and coordinating the compliance effort, however; nor is there an adequate flow of speedy trial information from prosecutor to court and vice versa. Some respondents felt that serious separation of powers and due process issues would be raised by increased court-to-prosecutor information flow.

- Allocation of Resources. All districts have attempted to make more efficient use of existing staff, including flexible assigment and reassignment of judges and AUSAs. However, no district visited yet makes full use of United States magistrates to ease the pressure on judges' calendars, nor has any United States attorney's office assigned coordination of speedy trial compliance to a single individual.

- Scheduling Case Events. All courts have attempted to expedite scheduling of arraignments, discovery, motions practice, and trials with varying effectiveness. Some United States attorneys' offices have scheduled more grand jury sessions to meet the pressures of the Act.

- Training and Dissemination. Although some of the United States attorneys' offices visited have distributed the Act and related administrative materials, none has instituted formal training on the provisions of the Act and only a few have produced local instructional materials. This fact helps to explain the relatively low level of familiarity with specific provisions of the Act displayed by AUSAs in some study districts. While training and dissemination efforts in the courts have been more widespread, there continues to be variability in interpretation of various provisions among all respondent groups.

In summary, it appears that in most districts, most of the principal actors are making efforts to comply with the Act. As one might expect, however, the level of commitment to carrying out the mandate of the Act is not uniform across districts nor across individuals within any one district. Moreover, there are general areas in which substantial improvement might help bring about full compliance.

Impact on Civil Backlog

When the Speedy Trial Act of 1974 was first passed it was feared that speedy processing of criminal cases might adversely affect civil litigation, unless substantial resources were added to the judicial system, and this concern continues to be widespread. Nevertheless, empirical analysis of historical data collected by the AOUSC has failed to support those fears. Based on this analysis, it appears that the increase in civil backlog is largely a function of the recent increase in civil filings; it does not appear to be associated with accelerated criminal case processing. In general we found that current district speed is largely due to pre-existing district characteristics. Simply stated, the fastest civil courts have always been the fastest civil courts. Moreover, the fastest criminal courts are also the fastest civil courts. This relationship appears not to be an effect of speedy trial but the consequence of long-standing mechanisms which condition the generally fast or slow handling of cases--mechanisms that compose what has been described as the "local legal culture." See Chapter 6 for a detailed discussion of this topic.)

Use of Excludable Time Provisions and Determination of Compliance

The excludable time provisions were designed, at least in part, to balance the interest of the public in speedy trials with the right of the defendant to due process. In actuality, these provisions pose a number of administrative problems, as described in Chapter 3 of this report.

In general, we found that many prosecutors fail to rely on the excludable time provisions to achieve compliance with the arrest-to-indictment interval due to the following:

- lack of explicit exclusions for delays which prosecutors feel are unavoidable in this interval;
- lack of familiarity with or disagreement over proper interpretation of the provision governing excludable time in complex cases [§ 3161(h)(8)(B)(iii)];
- avoidance of pre-indictment exclusions by prosecutors who fear that since their requests for exclusions may be denied by the court, the time required to request exclusions could be better spent in other ways;
- administrative burden associated with monitoring the use of excludable time and requesting exclusions from the court; and
- lack of clear guidance as to the means of identifying, recording, and notifying the court of excludable time occurring during this interval.

Given the above problems, many ASUAs simply treat the arrest-to-indictment period as a fixed 30-day interval. This, in turn, occasionally leads to one of two practices which may be viewed as unintended consequences of the Act. One is premature indictment before the full facts of the case are known or before the entire case (involving all counts and all defendants) has been developed. The second is dismissal of the complaint prior to indictment, which may be followed by reopening the case as a grand jury original. The extent to which this practice occurs cannot be determined at this time.

With respect to the indictment-to-trial period, judges, prosecutors, and defense attorneys alike expressed concern over continued judge variability in the use of exclusions. All parties cited narrow construction of the "ends of justice" provision as the major reason for continuing difficulties in securing continuity of counsel and adequate time for effective case preparation. On the other hand, some respondents expressed the opinion that excessive use of continuances may also violate the spirit, if not the letter, of the statute.

Finally, monitoring of excludable time poses a serious administrative burden on both the United States district courts and United States attorneys' offices. Moreover, determination of compliance (i.e., calculating total calendar time for an interval less all non-overlapping excludable time) is not a trivial task. Particularly in cases involving overlapping pre-trial motions, documentation of excludable time and determination of speedy trial time limits may require a great deal of effort.

Unintended Consequences

A number of prosecutorial policies and practices are discussed in Chapter 5 of this report, all of which mitigate the pressures of the Speedy Trial Act. To the extent that these are direct responses to the Act, they may be viewed as its unintended consequences.

There is anecdotal evidence that speedy trial requirements have played a role in the following:

- increased declination and deferral;
- reduction in the number and percentage of cases initiated by arrest;
- premature indictment;
- pre-indictment dismissals, followed by indictment at a later date; and

- downgrading of offenses and liberalization of plea negotiation practices.

The perceptions of prosecutors and other respondents are partially supported by analyses of secondary data and data from our Records Study component. Clearly, however, many factors other than the Speedy Trial Act--including local conditions and national law enforcement priorities--are exerting strong influence on these prosecutorial decisions.

Finally, it should be pointed out that several districts continue to use waivers of speedy trial limits in the belief that they are a proper exercise of defendants' constitutional rights. Generally, there is disagreement among those whom we interviewed as to the legality of this practice.

POLICY IMPLICATIONS

Local Measures

We did not find a clearcut relationship between any single measure designed to achieve compliance with the Act and actual compliance in the six site-visited districts in our study. Nevertheless, we believe that the intricacy of the Act and the additional demands it places on prosecutors, court personnel, and investigative agents, require that current measures be strengthened and that additional measures be adopted in order to achieve full compliance. Continued and expanded efforts are needed in order to avoid not only the risk of court-ordered dismissals once sanctions are in effect, but also policies and practices which may be counter to the spirit, if not the letter, of the law.

Local implementation effects might be strengthened by the following:

- Improved coordination between the United States attorney's office and the court through:
  - use of planning groups as ongoing coordinating committees; and
  - increased information sharing, particularly with respect to excludable time and action deadlines on individual cases.
- The development of more specific dissemination and training materials on the Act's provisions in order to increase uniformity in the interpretation of the Act.
  - For judges, these materials would focus on the use of "ends of justice" provisions.

  - For AUSAs, the emphasis would be on the interpretation and use of pre-indictment exclusions.
- Centralized and, where feasible, automated systems within both the courts and United States attorneys' offices for monitoring compliance.
- Designation of individuals within both the courts and United States attorneys' offices to perform speedy trial coordination functions.
- Careful assessment of local staffing policies and practices, particularly with respect to the use of magistrates.

Department of Justice Initiatives

Obviously, our findings also have implications for the Department of Justice. Clearly, increased dissemination of materials covering both interpretation of the Act's provisions and application of these provisions would be helpful. In particular, such materials might highlight the allowable exclusions in the arrest-to-indictment interval and mechanisms for entering them in the record of the case, thus clarifying the Department's policy on these matters.[1] Respondents have requested examples illustrating how to deal with common problems pertaining to various types of exclusions. In addition, development of monitoring forms, dissemination of information on successful management strategies, and local or nationally focused training activities might be helpful. Finally, continued technical assistance in the form of computerized tracking systems and other case management techniques might assist the United States attorneys' offices in managing the recordkeeping burden of the Act.

Changes in the Statute and/or Implementing Guidelines

In order to reduce some of the problems pertaining to the excludable time provisions, we would suggest the following:

- Congress consider incorporating in the Act specific exclusions for the pre-indictment interval to provide prosecutors additional flexibility and obviate the "dismiss-reopen" practice. These might include:

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[1] As this report went to press, a new version of that section of the United States Attorneys' Manual dealing with the Speedy Trial Act was disseminated. This section addresses some of the concerns raised here.

- reasonable delays in obtaining investigative and laboratory reports in certain circumstances, e.g., translations of statements, transcripts of wiretaps, handwriting and fingerprint analyses;

- reasonable delays in obtaining records subject to the Financial Privacy Act;

- reasonable periods of time necessary to develop evidence of conspiracies or continuing criminal activity through cultivation of cooperating defendants; and

- reasonable periods of time necessary to negotiate deferred prosecution or pre-trial diversion arrangements.

- Clarification of excludable time provisions through:

  - continuing refinement of implementing guidelines, possibly by a panel representative of all affected constituencies; or

  - designation of and provision of authority to an agency to promulgate binding regulations.

Although the Act is extremely intricate, we found little evidence that argues for major structural change at this time. However, the need to consider structural revisions may become significantly more compelling once sanctions are in effect and the defense bar has had the opportunity to move for dismissals. Under these circumstances, an inordinate amount of time may be spent not only in identifying and recording exclusions and calculating net time, but also in litigating motions for dismissal. This may provide stronger justification for legislative action to simplify the excludable delay provisions of the Act.

In addition to providing additional pre-indictment exclusions, other statutory refinements might include:

- clarification of provisions relating to the practice of pre-indictment dismissal followed by indictment at a later date;

- clarification of the way in which § 3161(d)(2) and § 3161(h)(6) apply to superseding indictments, including clarification of the distinction between "old" and "new" charges and its implications for speedy trial intervals; and

- reconciliation of Department policy with respect to court approval of deferred prosecution agreements and the wording of the § 3161(h)(2) exclusion intended to cover these agreements.

Chapter 7 of this report amplifies these policy implications.

1.0 INTRODUCTION

This report presents the results of the Speedy Trial Act Impact Study conducted by Abt Associates Inc. under the sponsorship of the Federal Justice Research Program of the Office for Improvements in the Administration of Justice. The purpose of the study was to examine the "impact of the implementation of [the Speedy Trial Act of 1974 (as amended in 1979)] upon the office[s] of the United States attorney[s]."[1] The report includes findings from three study components: a survey of cases recently processed in 18 United States attorneys' offices; intensive site visits to six districts; and a secondary analysis of data gathered by the Administrative Office of the United States Courts (AOUSC).

1.1 Background

The Speedy Trial Act of 1974 was intended to address the related problems of delay in the handling of federal criminal cases and of commission of crime by persons released pending trial of those cases.[2] As stated in the preamble, the purpose of the legislation was "to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial."[3] To achieve the speedy trial goal, the statute codified "two extremely important and innovative concepts: an enforceable public right to speedy trial, independent of the defendant's rights and wishes...[and]...an extensive program for research and planning" during a four-year phase-in period.[4]

The public right to a speedy trial was embodied in time limits (to be progressively narrowed over the four-year period) within which arrested persons must

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[1] Pub. L. 96-43, § 9(e).

[2] Title I of the Act addressed the speedy trial issue; the question of release pending trial was the subject of Title II of the Act. This study addresses Part I of the Act only.

[3] Preamble, Pub. L. 93-619.

[4] Richard S. Frase, "The Speedy Trial Act of 1974," The University of Chicago Law Review 43 (Summer 1976): 669.

be indicted and all defendants indicted must be arraigned and brought to trial.[1] The final time limits were to be 30, 10, and 60 days, respectively. These time limits were to be triggered automatically without any demand for trial by the defendant. The Act specified a number of "excludable delays" which could be taken into account to extend these time limits. It also provided courts with the authority to grant continuances which were found to be "in the ends of justice." Finally, the Act provided for dismissal of charges on motion of the defense should any time limit be exceeded. The dismissal sanction was to be effective June 30, 1979.

The research and planning program was to be carried out during the phase-in period. The courts were to study the problem of delay, compile comprehensive statistics on case processing, make recommendations for statutory and procedural changes, and submit requests for additional resources required to achieve compliance with the final time limits.

In August 1979, shortly after the sanctions went into effect but before any dismissals had occurred, Congress amended the Act with passage of the Speedy Trial Act Amendments Act of 1979 (Pub. L. 96-43). Among the major amendments were the following:

- suspension of the dismissal sanction until July 1, 1980;
- merger of the 10-day indictment-to-arraignment and the 60-day arraignment-to-trial limits into a single 70-day indictment-to-trial period;
- establishment of a 30-day minimum from the defendant's first appearance through counsel to trial;
- clarification and broadening of certain excludable delay provisions, notably those for filing and consideration of pre-trial motions and "ends of justice continuances" in both the pre-indictment and post-indictment intervals; and
- amendments to the provisions relating to the extension of time limits due to judicial emergency.[2]

[1]The intervals may be triggered and terminated by a number of other events. For a full discussion, see Chapter 3.

[2]For a detailed discussion of the amendments and the rationale for these changes, see U.S. Congress, House, Speedy Trial Act Amendments Act of 1979, H. Rept. No. 96-390 to accompany S. 961, 96th Cong., lst sess. (Washington, D.C.: Government Printing Office, 1979).

In addition to these substantive modifications, the Amendments added a number of reporting requirements. Among them was a report to be submitted by the Department of Justice to include:

(1) the reasons why, in those cases not in compliance, the excludable time provisions of the Act, enumerated in § 3161(h) have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States attorneys in districts with low compliance records and the practices and procedures which have been successful in those with high compliance records;

(3) the additional resources which would be necessary for the offices of the United States attorneys to achieve compliance with the time limits;

(4) suggested statutory and procedural changes which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of the Act; and

(5) the impact of compliance with the time limits upon the litigation of civil cases by the offices of the United States attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with the Act.

The Speedy Trial Act Impact Study was designed in response to this Congressional mandate.[1] In addition to addressing the five topics listed above, it focuses on a sixth issue which is implied in § 9(e)(4) of the Amendments Act: the impact and unintended consequences of compliance with the Speedy Trial Act of 1974, as amended, on the administration of criminal justice.[2]

1.2 Study Components

Three distinct but interrelated approaches were used to address these objectives. Each of these study components is described briefly below. For a

[1]This study, coupled with U.S. Department of Justice, "Department of Justice Implementation of the Speedy Trial Act of 1974 (as amended 1979)," Report to the United States Congress: No. 1, Washington, D.C., January 1980, is intended to fulfill these reporting requirements.

[2]The Speedy Trial Act of 1974, as amended, is hereinafter referred to as "the Speedy Trial Act" or "the Act."

more detailed discussion of study methodology, we refer the reader to the technical appendices.

1.2.1 Survey of Case Records (Records Study)

The Records Study component was designed to provide detailed information on the processing of criminal cases within a representative sample of United States attorneys' offices. More specifically, the Records Study, apart from identifying offices which might be experiencing serious compliance problems, was to provide empirical answers to the following questions:

- What is the incidence of compliance since passage of the 1979 Amendments?
- What characteristics distinguish cases which fail to comply from those which comply with the limits? For example, does the type of offense charged or the number of defendants involved affect compliance?
- What types of exclusions are utilized in order to achieve compliance?
- What characteristics distinguish high compliance from low compliance offices?
- What activities or events that are currently non-excludable cause delay in case processing?

In order to address these questions, assistant United States attorneys (AUSAs) in 18 offices were asked to complete record forms for all defendants whose cases were initiated between November 1, 1979 and December 31, 1979. The offices were selected to be representative of all offices relative to the volume of criminal cases, level of compliance with the Act, and magnitude of civil backlog. Table 1.1 displays the list of participating offices.

Extensive on-site monitoring was conducted in order to insure that the record forms were completed in a timely manner.[1] In addition, each form was checked against court-supplied docket sheets to validate the accuracy of key information. Finally, a variety of analytic methods were employed to answer the

[1] It should be noted that AUSAs did not necessarily complete all the forms personally. In some offices, forms were completed by on-site clerks or legal assistants in the United States attorney's office; in other sites Abt Associates staff members were instrumental in gathering necessary data from available records and personal interviews.

Table 1.1

UNITED STATES ATTORNEYS' OFFICES PARTICIPATING IN THE RECORDS STUDY

Volume of Criminal Cases[a]	Low Compliance[b]		Medium Compliance		High Compliance	
	Low Civil Backlog[c]	High Civil Backlog	Low Civil Backlog	High Civil Backlog	Low Civil Backlog	High Civil Backlog
Fewer than 20 AUSAs	Indiana N.	North Carolina E.	Texas E.	Arkansas W.	New Mexico	Wisconsin W.
20-50 AUSAs	Florida S.	Massachusetts	Ohio S.	Colorado	South Carolina	Missouri W.
More than 50 AUSAs[d]		Illinois N. New York E. New York S. Washington, D.C.	New Jersey	California C.		

[a] The number of AUSAs is taken to reflect the volume of criminal cases within the office.

[b] Level of compliance was measured in terms of average overall compliance with respect to the final speedy trial time limits for the period beginning July 1, 1978 and ending June 30, 1979.

[c] Civil backlog was estimated from the percentage of civil cases pending for three years or more in each district as of July 1, 1979.

[d] All six of these offices were included in the study.

above questions. A full description of the sampling design, instrumentation, data collection and analytic techniques utilized for the component may be found in Appendix A.

1.2.2 District Approaches to Achieving Compliance

The District Approaches component of the study was based on intensive interviews carried out by senior Abt Associates' staff members with selected respondents in six districts. The districts were chosen on the basis of three variables: volume of criminal cases; level of compliance with the Act; and magnitude of civil backlog. For each of three district sizes, one district was selected from among those high in compliance and low in civil backlog, while another was chosen from among those low in compliance and high in civil backlog. Within strata, districts were selected to be representative of the range of types of cases processed.

The six districts are displayed in Table 1.2. As can be seen, two of these districts--Northern Illinois and New Jersey--participated in both the Records Study and District Approaches components. It should be pointed out that given the high levels of compliance nationally, the difference between high and low compliance districts is not dramatic. For example, while 99.6 percent of the defendants in Middle Georgia were processed within final speedy trial limits, 85.6 percent of the defendants in the Western District of New York were also processed within those limits according to the AOUSC figures for the year ending June 30, 1979. While the gap for the medium-sized and large districts was somewhat wider, one still might not expect marked differences among these districts in their approaches to achieving compliance. In fact, we reach that conclusion in Chapter 4.

The purpose of this component was to describe the implementation of the Act fully and from multiple perspectives in order to identify either statutory or procedural changes which might facilitate compliance and further the ends of justice. Interviews were conducted with respondents in the United States attorneys' offices, district courts, investigative agencies, and defense bars. In all, approximately 90 interviews were conducted. Table 1.3 lists the key respondents for the District Approaches analysis and identifies the issues that were addressed by each.

Interviews were guided by topic agendas keyed to the major research questions. Site teams were responsible for obtaining adequate information on each topic, but because of variations among the respondents and specific information required from each, team members determined the specific questions to be asked. Appendix B contains a more detailed description of the methodology used for this study component, including a summary of the topic agendas utilized.

Table 1.2

CHARACTERISTICS OF THE SIX DISTRICTS INCLUDED IN THE DISTRICT APPROACHES STUDY

District[a]	City	Compliance	Backlog
Small			
Georgia (Middle)	Macon	High	Low
New York (Western)	Buffalo[b]	Low	High
	Rochester		
Medium			
Missouri (Eastern)	St. Louis	High	Low
Pennsylvania (Western)	Pittsburgh	Low	High
	Erie		
Large			
New Jersey	Newark	Medium[c]	Low
	Trenton		
	Camden		
Illinois (Northern)	Chicago	Low	High

[a] High compliance districts are listed first within size strata.

[b] The central office is listed first.

[c] No large district was high in compliance.

Both compliance and civil backlog measures were based on AOUSC data for the year ending June 30, 1979.

Table 1.3

ISSUES TO BE ADDRESSED BY KEY RESPONDENTS
IN THE DISTRICT APPROACHES STUDY

	Reasons for Non-Compliance	Remedial Measures	Resources Needed	Recommended Changes	Impact of Speedy Trial Compliance on Civil Case Backlog	Impact and Consequences on Administration of Criminal Justice
U.S. Attorney's Office						
U.S. Attorney	X	X	X	X	X	X
Assistant U.S. Attorneys						
-Chief, Criminal Division	X	X	X	X		X
-Chief, Civil Division			X	X	X	
-Chief, Other Criminal Divisions	X	X	X	X		X
-Other AUSAs within Criminal Division	X	X	X	X		X
Coordinator of Records/ Dockets	X	X	X	X		
Speedy Trial Coordinator	X	X	X	X		X
U.S. District Court						
Chief Judge and Other Judges	X	X	X	X		X
Magistrate(s)		X	X	X	X	X
Clerk of Court	X	X	X	X	X	X
Chief Federal Probation Officer	X	X	X	X		X
Federal Public Defender	X			X		X
Speedy Trial Coordinator	X	X	X	X		X
Pre-trial Service Agency Ch.[a]	X	X	X	X		X
U.S. Marshall	X	X	X	X		X
Others						
Special Agent in Charge[b]	X	X	X	X		X
Reporter for the Planning Group	X	X	X	X	X	X
Private Attorney-Criminal	X			X		X
Private Attorney-Civil				X	X	
Public Defender (CJA)	X			X		X

[a] Only in Northern Illinois

[b] FBI, DEA, others as identified by district

1.2.3 Impact of Speedy Trial Compliance on Civil Backlog (Civil Backlog Study)

One of the goals of the study was to examine the possibility that the resources required to accelerate criminal case processing have been withdrawn from civil cases, causing increased delay in their processing. To measure the impact of speedy trial compliance on the age of cases in the civil backlog, a model was constructed which described the relationship between each district's civil processing time and the changes which had occurred in its handling of criminal cases in the preceding year. The model incorporated information about the types of civil and criminal litigation, the history of district differences in civil case processing prior to the Speedy Trial Act of 1974, the size of the jurisdiction, and the parties to the case.

Data were analyzed for each civil case pending in the United States district courts from June 30, 1974 to June 30, 1979, and on each criminal case from June 30, 1972 to June 30, 1979. Several measures of the speed of criminal processing were computed in each district and year. These measures were statistically adjusted to account for differences in the composition of criminal caseloads in the districts, and changes in composition over time. With the implementation of the Speedy Trial Act, some districts moved to accelerate their criminal case processing. In others, where processing was already rapid before the Act, there was less difference. A regression analysis was used to measure the effect on the age of pending civil cases of the criminal acceleration experienced by the districts under the Speedy Trial Act. The statistical models of case length were then used to estimate actual changes in civil delay which would be associated with varying degrees of criminal acceleration in an "average" district.

1.2.4 Summary of Study Components

Table 1.4 below summarizes the manner in which each component of the study was designed to address the six study issues. As can be seen, the District Approaches component was the broadest in scope; the Civil Backlog component was the narrowest.

1.3 Organization of this Report

In the chapters which follow, we summarize findings from all three study components.[1] Chapter 2 describes current levels of compliance and the

[1] In some instances we also use secondary data to supplement the discussion.

Table 1.4

ISSUES ADDRESSED BY THREE SUB-STUDIES

Issues	Records Study	Civil Backlog Study	District Approaches
(1) Reasons for non-compliance	X		X
(2) Remedial measures	X		X
(3) Resources needed to achieve compliance		X	X
(4) Recommended changes in guidelines/statutory amendments			X
(5) Impact of Speedy Trial Compliance on civil backlog		X	X
(6) Impact and unintended consequences on the administration of criminal justice	X		X

characteristics of districts and cases which affect compliance with speedy trial time limits. Chapter 3 describes the use of excludable time provisions designed to tailor the time limits to the particular circumstances of cases, as well as the problems associated with the interpretation and use of these provisions. Together these chapters, which draw upon Records Study and District Approaches data, address the first objective of the legislative mandate: to describe the reasons why, in those cases not in compliance, the excludable time provisions of § 3161(h) have not been adequate to accommodate reasonable periods of delay.

The fourth and fifth chapters describe district responses to the requirements of the Act. Chapter 4 describes direct, affirmative actions designed to reduce case processing time. These include planning, coordination, monitoring, and effective resource utilization. Chapter 5 describes a number of prosecutorial policies and practices which may mitigate speedy trial pressures and thus help to achieve compliance. Among these are changes in case priorities, arrest and indictment policies and practices, and disposition strategies. To the extent that these are adopted in order to achieve compliance, such mechanisms may be described as unintended consequences of the Act. These chapters, which are based primarily on the District Approaches component, address the second and sixth objectives of the study: to describe the nature of the remedial measures used in the offices of the United States attorneys to achieve compliance as well as the unintended consequences of the Act.

Chapter 6 explores the fifth study objective: an examination of the impact of speedy trial compliance on civil litigation. Based on data from the Civil Backlog component, this chapter attempts to identify the reasons for the recent increase in civil backlog.

Finally, Chapter 7 draws upon all the information presented in the preceding chapters in discussing the policy implications of the study. Thus, Chapter 7 addresses the third and fourth objectives: to describe the changes required in the statute or implementing guidelines necessary to achieve compliance together with resource implications.

We have included a copy of the Speedy Trial Act of 1974 (as Amended 1979) in Appendix E.

2.0 COMPLIANCE WITH SPEEDY TRIAL TIME LIMITS

The Speedy Trial Act of 1974 established time limits within which major phases of criminal case processing must be completed. Broadly speaking, the Act set time limits for two major stages of criminal case processing: the period between arrest of an individual and filing of an indictment against that person (defined as Interval I); and the period between indictment of the defendant and commencement of trial (defined as Interval II). This chapter reports levels of compliance with the Interval I and Interval II time limits of the Speedy Trial Act based on analysis of the data from our Records Study.

The Records Study had two primary goals:

(1) To estimate the number and proportion of current cases that would be dismissed if sanctions were imposed; and

(2) To describe those cases that would be dismissed, in order to assist in forming recommendations for further statutory amendments and procedural modifications.

The Records Study was unique in several ways. It was the first systematic study of cases processed in their entirety under the Act as most recently amended. Moreover, the study furnished several types of information not available from such sources as the Speedy Trial Act Reports published by the Administrative Office of the United States Courts (AOUSC). It examined all cases covered by the Act, including arrest cases dismissed pre-indictment which are not reported to the AOUSC. The study also attempted to identify those activities not now excluded by the Act which consume significant amounts of processing time. Finally, the study applied a uniform standard for compliance, as described below.

As discussed in Chapter 1, the Records Study assembled data on all cases initiated between November 1 and December 31, 1979 in 18 United States attorneys' offices.[1] The figures reported here are based on case records updated through May 1, 1980.[2]

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[1] The analyses reported here incorporate data from follow-up activities conducted after an earlier report, dated April 15th, 1980.

[2] In the remainder of this chapter, we define the term "case" to mean a single defendant even when more than one defendant is named in an indictment.

Before compliance can be measured, the Act must be interpreted so as to define compliance. As we shall describe in subsequent chapters, there is considerable disagreement within and among districts on a number of provisions of the Act. Given this disagreement, it is almost impossible to predict how an individual judge will rule when confronted for the first time with a motion for dismissal pursuant to the sanctions of the Act. However, we do believe that once sanctions go into effect and case law emerges, the disparity in interpretation now apparent will be reduced. The Guidelines and Model Plan prepared by the Judicial Conference of the United States[1] appear to us to be the best available prediction as to the ultimate consensus on the meaning of the Act. In addition, they constitute the only comprehensive interpretation of the Act with nationwide legitimacy. Therefore, we have chosen to define compliance as adherence to the time limits of the Act as interpreted by the Judicial Conference Guidelines.

It should be pointed out that in order to determine compliance for each case exceeding the applicable speedy trial time limits, Abt Associates staff members attempted to identify any period of time which would be "automatically" excluded under the Judicial Conference Guidelines.[2] All such time periods were credited, whether or not there was a written record of the event in the case file or the relevant exclusion had been credited by the court.[3] Thus, the compliance estimates reported reflect what would happen if personnel in both the courts and United States attorneys' offices were thoroughly familiar with the intricacies of the excludable time provisions when dealing with motions for dismissal. We believe that this approach is valid since it represents what is most likely to happen when assistant United States attorneys (AUSAs) are actually confronted with the possibility of case dismissals on speedy trial grounds. Under these circumstances, we expect that every effort will be made by the prosecution (and the court) to identify excludable periods of time available in the record of the case. Many of these will be automatically excludable whether or not the AUSA was aware of them at the time they occurred.

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[1] Judicial Conference of the United States, Committee on the Administration of the Criminal Law, "Guidelines to the Administration of the Speedy Trial Act of 1974, As Amended," December 1979 revision; and Judicial Conference of the United States, Committee on the Administration of the Criminal Law, "Model Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases," December 1979.

[2] All court ordered "ends of justice" continuances were also used in determining compliance, although we were not able to ascertain whether the court had set forth in the record of the case its reasons for finding that the ends of justice outweigh the best interest of the public and the defendant in a speedy trial as required by the Act.

[3] Some of these exclusions were in fact recorded. Others were recognized in open court, but not readily available from court dockets and case files.

On the other hand, our estimates are based on what would happen if current case processing procedures were employed. It is impossible to predict how United States attorneys' offices, district courts, and defense counsel will modify case processing methods in response to the imposition of sanctions. Given improved case management techniques, compliance levels may not only reach but exceed these estimates. Compliance levels may also be adversely affected, depending on how defense counsel react to the opportunity for speedy trial dismissals.

Appendix A provides a detailed discussion of the collection and analysis of these data. Briefly, AUSAs were asked to complete forms on all of their cases initiated during the sampling period. Relevant dates were validated from court docket sheets collected by mail and through site visits during February and May, 1980. Excludable time was identified through telephone calls to court docket clerks and AUSAs for all cases where sufficient excludable time to make the case compliant did not appear on the docket sheet. The calculation of all relevant time periods for each case was carried out by computer and was checked by manual calculation.

In the sections which follow, we estimate the probability of compliance of those cases that were still pending when data collection ceased, and we compute national estimates of the numbers of compliant cases based on our sample of 18 districts. We also describe the probable reasons for noncompliance of those cases which were known to have exceeded the Interval I or Interval II time limits. Finally, we explore district level variation in compliance with the Interval I and Interval II limits.

2.1 National Estimates of Compliance

During November and December of 1979, the 18 United States attorneys' offices which participated in our Records Study initiated cases against 1351 defendants. Nineteen of these defendants no longer belong in the study. Most of these 19 cases have been transferred out of a study district under Rule 20 of the Federal Rules of Criminal Procedure. We were unable to obtain full information on another 27 defendants. This left a total of 1305 defendants for whom compliance estimates could be computed. Seven-hundred-and-fourteen of these defendants were in cases initiated by arrest and these defendants were included in our analysis of Interval I compliance. A large percentage of the arrested defendants were later indicted;[1] other defendants were indicted without having been arrested first. In all, a total of 1103 defendants entered Interval II and were included in our analysis of the 70-day time limit.

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[1] We use this term broadly to cover all cases entering the indictment-to-trial period through indictment, information, or other means.

Some cases were still pending when data collection ceased. Since some of the pending cases had expended less time than the Speedy Trial Act specified, the actual number of cases which would finally comply with the time limits could not be determined directly. To arrive at an estimate of the compliance rate which would eventually be attained when the last case was terminated, we employed a statistical model similar to that used by actuaries to estimate life expectancies,[1] based on death rates in populations some of whose members are still living.

The national estimates of compliance reported in this section are a weighted average of compliance rates computed in each of the 18 sample districts by the actuarial method. When constructing the sample, large districts (those with more than 50 AUSAs) were automatically included. Smaller districts were randomly selected from strata composed of districts with similar levels of past compliance, similar civil backlogs, and similar numbers of AUSAs. This meant that our sample had a disproportionate share of defendants from some types of districts, particularly large districts. The standard statistical correction for disproportionate representation is to apply weights to the sample defendants in such a way that the weighted sample totals become proportional to the national number of defendants. The national compliance rates for Intervals I and II were, therefore, computed by weighting the data from each sample district in proportion to the total number of defendants contributed by[2] that district and others like it to the national total number of defendants.

2.1.1 Compliance in Interval I

Table 2.1 shows the numbers of defendants disposed within and outside the 30-day time limit invoked by arrest. Only 36 of the 714 cases in the Interval I sample were still pending when data collection ended, and over a third of these (13 of the 36) were known to be noncompliant. Thus the compliance

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[1] For more detail on this procedure, see Appendix A.

[2] The formula used was:

$$W_s = \frac{n_s}{N_S}$$

where W_s = the weight for District s,

n_s = the number of Interval I (or II) defendants in the stratum that district s comes from, and

N_S = the total number of Interval I (or II) defendants in the United States.

estimates for this interval were based on 691 defendants with known outcomes (678 terminated and 13 pending but known noncompliant) and 23 pending cases for which compliance was unknown. When the statistical model was applied to these cases and the results were weighted according to the stratification of the national sample, an estimated six percent of the defendants who experienced Interval I were not processed in compliance with its limits.

Table 2.1

SAMPLE SIZE FOR COMPLIANCE ESTIMATES, INTERVAL I[a]

	Net Age of Case		
	1-30 days	Over 30 days	Total
Number of Defendants in Terminated Cases	641	37	678
Number of Defendants in Pending Cases	23	13	36
TOTAL	664	50	714

[a] Insufficient data: 21 defendants (3 percent of total)

2.1.2 Compliance with Interval II

Under the amended Speedy Trial Act, 70 days are allowed between the filing of an information or indictment and the beginning of trial. Since most cases are terminated by guilty pleas rather than trials, the interval actually measures time to disposition of the case in district court, by trial, plea, or dismissal. Table 2.2 shows the numbers of cases in our sample which were terminated or pending at the end of our data collection period. Of the 1126 defendants in our sample who experienced an Interval II, 1103 provided sufficient usable data to permit an estimation of whether their cases would comply with the 70-day limit. Nine-hundred-and-forty-seven of these cases had in fact been disposed by the end of data collection. Another 28 were still pending, but had already exceeded the 70-day limit, and were presumably noncompliant. The national estimates of compliance with Interval II were thus based on 975 defendants whose compliance status was known (947 terminated and 28 pending but known noncompliant) and 128 whose cases were still pending and might possibly be completed within the 70-day limit. When the statistical model was applied to these cases and the results were weighted in proportion to the sizes of their strata, we estimated that eight percent of all cases experiencing an Interval II would fail to comply with the 70-day limit.

Table 2.2

SAMPLE SIZE FOR COMPLIANCE ESTIMATES, INTERVAL II[a]

	Net Age of Case		
	1-70 days	Over 70 days	Total
Number of Defendants in Terminated Cases	900	47	947
Number of Defendants in Pending Cases	128	28	156
TOTAL	1028	75	1103

[a]Insufficient data: 23 defendants (2 percent of total)

2.1.3 Total Compliance

The total number of cases which failed to comply with either the Interval I or Interval II time limit is slightly smaller than the sum of the respective noncompliance rates because a few cases exceeded both limits. According to our weighted data, approximately one-third (35 percent) of all defendants nationally experience an Interval I.[1] As calculated above, approximately 6 percent of these take longer than the 30-day period allowed by the Act. Multiplying 6 percent by 35 percent gives 2 percent of all defendants who can be expected to fail at this juncture. Prosecutors are expected to dismiss 16 percent of the compliant Interval I defendants voluntarily, leaving a total of 28 percent of all defendants to start Interval II after having completed Interval I. Multiplying the 8 percent noncompliance rate for this group by the 28 percent of all defendants who are in the group, we find another 2 percent of defendants who will have complied with Interval I but not with Interval II. Finally, a similar calculation gives 5 percent of all defendants who skip Interval I and fail to comply with Interval II. Altogether, 9 percent of all defendants are estimated to fail at some point in their path through the system.

[1]This estimate was made by applying the sampling weights to the percentage of all cases initiated by arrest in the 18 Records Study districts. According to AOUSC data for the year ending June 30, 1979, 32 percent of the cases filed were initiated by arrest. The fact that our estimate is slightly higher is probably due to the fact that cases dismissed pre-indictment are typically not reported to AOUSC and thus not included in AOUSC counts.

2.1.4 Comparison with Earlier Estimates

In summary, compliance levels for Intervals I and II were found to be approximately 94 percent and 92 percent, respectively, while overall compliance was found to be 91 percent. In an earlier edition of the present report, estimates based on 689 defendants completing Interval I (plus 55 whose cases were still pending) indicated that as many as 11 percent might ultimately fail to comply in that interval. At the time that report was prepared, fewer than 60 percent of the defendants who had begun Interval II had finished it. On the basis of those cases it was estimated that as many as 15 percent of the defendants might ultimately fail to comply with the 70-day limit.

The main difference between the earlier estimates and those reported here may be attributed to the procedures applied to the large number of pending cases in the earlier analysis. Given the time constraints of the earlier report, it was not possible to pursue excludable time for pending cases beyond what was reported by our respondents and what was available on docket sheets. As discussed in the earlier report, it was clear that our respondents and the docket sheets tended to underreport excludable time. For the current report, a great deal of effort was devoted to identifying excludable periods of time which could be used to bring defendants into compliance. We attempted to include all exclusions permitted by the Judicial Conference Guidelines in the calculation of compliance. Our staff sought out every permissible event on the docket or elsewhere in the case record on which a legitimate exclusion of time could be based.[1] As a result, a large number of cases which initially appeared noncompliant were actually found to be completed within the time limits specified by the Act. In Interval II, for example, 70 percent of the defendants whose cases lasted more than 70 calendar days were found to comply through the use of excluded time.

In interpreting these results, it is important to recall once again that practices for recording and computing excluded time are not now uniform among districts. The rules we have used reflect our prediction of the interpretation of the Act most likely to be used in the future; however, as more case law accumulates in response to dismissal motions, some of the assumptions on which we based our estimates may be invalidated. Our calculations are also based on a detailed knowledge and understanding of these rules, assuming that heightened familiarity with the Act will be achieved with further experience under the dismissal sanction.

On the other hand, with the imposition of sanctions, prosecutors, defense counsel, and the courts may change their policies and practices. For example, United States attorneys' offices may institute improved case monitoring

[1]We also disallowed those exclusions reported by our respondents which were based on a misunderstanding of the Act.

techniques, while defense council may find it to their clients' advantage to change motion and plea strategies in ways which increase the probability of a dismissal on speedy trial grounds. Our data do not allow us to speculate about how such administrative and strategic shifts may affect either the outcome of cases or their degree of compliance with the Speedy Trial Act.

2.2 Reported Reasons for Noncompliance

Table 2.3 displays the reported reasons for Records Study cases failing to meet speedy trial limits.[1] These reasons were supplied by AUSAs and/or staff in the court clerk's office in response to probes by Abt Associates staff members. As can be seen, for a large number of noncompliant cases (18 or 36 percent in Interval I and 17 or 23 percent in Interval II), no reason was available. In a small number of these cases, the relevant AUSA was no longer on staff or the records were no longer available. Thus, even though there may have been a reason, it could not be ascertained. In the majority of these cases, however, respondents simply could not pinpoint the reasons for delay. Without the threat of sanctions, several of these cases simply exceeded the time limits due to lack of monitoring and timely scheduling. We do not know if any of these cases exceeded the time limits due to lack of sufficient resources.

For Interval I, the most common reason cited involved delay in arranging for deferred prosecution (pre-trial diversion). During the course of our follow-up efforts, deferred prosecution agreements appeared to pose a number of problems. Under § 3161(h)(2), the Act provides for the exclusion of "any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct." Some believe that this provision refers to general court-wide approval of an established pre-trial diversion program which makes use of the probation services of the court. On the other hand, others interpret the provision to mean that the court must approve access of specific individuals to a pre-trial program. The Department of Justice opposes the latter interpretation as a matter of policy, since it is viewed as an intrusion on prosecutorial discretion and a violation of the separation of powers doctrine.[2] Instead, the Department recommends that prosecutors request "ends of justice" continuances in such cases. If it is Congress' intent that deferred prosecution agreements be automatically excluded, rather than

[1] A related group of cases, those dismissed in Interval I for speedy trial reasons, is discussed in Section 5.4.

[2] United States Attorneys' Manual, Title 9, Criminal Division, Chapter 17, p. 16, April 1, 1980.

Table 2.3

REPORTED REASONS FOR NONCOMPLIANCE WITH INTERVALS I AND II

Reason	Number of Noncompliant Defendants Interval I	Number of Noncompliant Defendants Interval II
Deferred prosecution agreement not completed in time	17	3
Failure of court to rule on requested "ends of justice" continuances or to rule on other motions within 30 days		5
Low priority case/case overlooked	2	4
Court calendar/court congestion/judicial emergency		16
Unavailability of counsel/change in counsel or prosecutor	2	8
General case complexity		5
Cooperating witness	2	
Protracted plea negotiation	2	6
No reported reasons	18	17
Other	7	10
Total noncompliant cases	50	74

being subject to judicial discretion, some clarification of the wording of § 3161(h)(2) is needed.[1]

There may be an additional problem in establishing such agreements. While time necessary to set up a deferred prosecution under the Narcotic Addict Rehabilitation Act (NARA)[2] is excludable under § 3161(h)(1)(B), there is no comparable exclusion for the more common deferred prosecution cases which do not involve NARA. Districts handle this issue in different ways. Several cases known to be noncompliant with the Interval I clock in one district were dismissed after delays in establishing deferred prosecution agreements caused the case to exceed the Interval I time limits. In another district we found that instead of dismissing such cases, a waiver of speedy trial rights was signed by several of the deferred prosecution defendants. In a third district we found extensive use of § 3161(h)(8) continuances to make such cases compliant.

It is not clear to us whether there are inherent problems in setting up deferred prosecution agreements, or whether AUSAs simply give very low priority to deferred prosecution cases. One might conceivably argue that such cases are not significant cases, in that they frequently involve less serious offenses. On the other hand, assuming deferred prosecution represents a useful alternative to full-scale prosecution or outright dismissal, it might be desirable to provide an automatic exclusion for some period to cover the negotiation of deferred prosecution agreements.

The other reasons included: (1) unavailability of counsel or change in counsel requiring additional preparation time for which no "ends of justice" continuance was requested; (2) delay involved in developing a cooperative witness; (3) protracted plea negotiations; and (4) low priority. The fourth reason is generally supported by our on-site interviews. According to respondents in our six District Approaches sites, the Speedy Trial Act encourages increased selectivity; borderline cases may be dropped if they cannot be developed quickly or if resources must be diverted away from more important cases to meet the statutory deadline for indictment.

The first reason for delay would seem to be what was intended by Congress in § 3161(h)(8)(B)(iv) which allows continuances in the "ends of justice" if failure to grant such a continuance would "deny the defendant reasonable time to obtain counsel [or] would unreasonably deny the defendant or Government

[1] In a relatively small number of cases where written notification of a deferred prosecution agreement was given to the court without asking for court approval and where no "ends of justice" continuance was requested, we treated the relevant time period as excludable in anticipation that some accommodation between these two positions would occur.

[2] 23 U.S.C. 2902.

continuity of counsel...." Delay involved in developing a cooperative witness is not as clearly covered under §3161(h)(8).[1] Finally, plea negotiations are not covered by the Act, with the exception of delay resulting from consideration by the court of a proposed plea agreement [§ 3161(h)(1)(I)]. Plea negotiations pose special problems for the prosecutor because negotiations are often lengthy and may fall through unexpectedly. For example, the prosecutor may be caught unprepared if the defense rejects a plea offer on the last day of an interval. Such delays may cause the prosecution to resort to a last minute grand jury presentation. Therefore, to prepare in advance, the prosecutor must either seek a § 3161(h)(8) exclusion to cover negotiation delays, or adhere strictly to the speedy trial limits (e.g., indict during negotiations).

With respect to Interval II, respondents reported approximately 22 percent of the noncompliant cases exceeded the time limits due to court congestion and/or Judicial Emergency status. Respondents in several Judicial Emergency sites anticipate that such congestion will decline through the filling of authorized but vacant judgeships, increased use of visiting or senior judges, and/or the more efficient use of current court personnel.

Another 24 percent of the cases exceeded Interval II limits due to unavailability of counsel, change in defense counsel or prosecuting attorney, failure to rule on requested continuances or to rule on other motions within 30 days, or general case complexity. In many of these instances, utilization of "ends of justice" continuances might have made the case compliant. Again in Interval II protracted plea negotiations, low case priority, and delay in completing a deferred prosecution agreement appear as reasons for noncompliance. Finally, among the "other" reasons is the use of waivers, which is discussed in Section 5.5 below.

As mentioned above, occasionally non-excludable delay will result from court inaction and will be beyond the control of the prosecutor. Typically this problem arises where the court takes a motion under advisement for more than thirty days, and the excess time results in non-excludable delay. A related dilemma, which may compound this problem, occurred in one case where the court failed to file an order formalizing its decision on a pretrial motion and thereby precluded the filing of an interlocutory appeal which would have triggered a § 3161(h)(1)(E) exclusion. Non-excludable court delays are potentially serious because they may penalize the prosecution by giving the defense legitimate grounds for a motion to dismiss.

[1] See Chapter 3 for a discussion of this and other sources of pre-indictment delay which might be explicitly incorporated in the Act as "automatic" exclusions or recognized as proper reasons for continuances in the ends of justice.

In summary, of all the reasons offered for noncompliance, many could be handled through aggressive exercise of relevant excludable time provisions and careful monitoring of cases. The exceptions may be delay in arranging deferred prosecution agreements and in negotiating plea agreements. While court congestion was cited as a reason for noncompliance, heavy caseload in the United States attorney's office was not. As will be discussed in Chapter 5, it may be that United States attorneys' offices handle their excess caseloads in one of two ways: (1) increased declinations and deferrals or (2) dismissal of cases pre-indictment.

2.3 District Variation in Compliance

2.3.1 Variation Among the 18 Records Study Districts: Interval I

Table 2.4 shows the estimated percentage of defendants in each of the 18 Records Study districts covered by Interval I whose cases were terminated within 30 net days. Two of the 18 Records Study districts (the Western District of Arkansas and the Eastern District of North Carolina) reported no pre-indictment arrests during the entire two-month period of our study, and so are not displayed in the table. Of the remaining 16 districts, nine show 100 percent compliance. These nine districts, however, include the eight smallest districts in the sample (in terms of Interval I cases). Only one-fifth of the arrested defendants are found in the fully compliant districts.

The list of compliance levels shows one atypical district: Massachusetts. Excluding Massachusetts and the nine fully compliant sites, levels of Interval I compliance for the remaining six sites range from 87 percent to 98 percent. For purposes of discussion there appear to be three clusters of districts:

- Eleven fully compliant districts with no Interval I cases or no cases exceeding Interval I time limits;
- Six districts with about 90 percent compliance or better; and
- One atypical district.

These clusters are consistent with qualititative information derived from our study of district approaches to compliance. Avoiding arrest is clearly perceived, by respondents in at least some districts, as one means to achieve Interval I compliance. The districts exhibiting 100 percent compliance are able to achieve that level at least in part because they have so few arrest cases to process. Five of the six districts in the middle cluster are large districts with more than 50 AUSAs. As will be discussed in Chapter 4, large districts may face particular problems in achieving compliance generally, irrespective of the numbers of cases initiated by arrest. The only other district in this cluster is Southern Florida which had more cases initiated

Table 2.4

ESTIMATED DISTRICT COMPLIANCE WITH INTERVAL I

District	Estimated % of defendants whose cases were terminated within 30 net days	Estimated Mean Net Time (days)	Number of Defendants
California-C	100%	11	78
Colorado	100	12	15
District of Columbia	96	25	49
Florida-S	95	18	132
Illinois-N	98	23	45
Indiana-N	100	3	1
Massachusetts	61	36	38
Missouri-W	100	21	2
New Jersey	91	17	53
New Mexico	100	19	7
New York-E	87	28	113
New York-S	92	25	139
Ohio-S	100	12	16
South Carolina	100	17	22
Texas-E	100	4	2
Wisconsin-W	100	4	2

by arrest during the sampling period than any other district in our study. Finally, the low compliance level in Massachusetts is not fully explained by the number of cases covered by Interval I. Nor is it explained fully by size: Massachusetts is a middle-sized district. The fact that Massachusetts is currently under Judicial Emergency status may be indicative of resource or other problems faced by the district in achieving compliance with this interval.[1] It should be noted that on the basis of available data, it appears that the compliance rate in Interval II for this district is substantially better than the rate for most other districts.

Column three of Table 2.4 displays the estimated mean net time spent in Interval I for cases in the Records Study districts. As can be seen, the high compliance districts are generally faster, although the estimated mean net time for the fully compliant districts varies considerably, ranging from 3 to 21 days. For the one atypical district, Massachusetts, the mean net time exceeds 36 days.

2.3.2 Variation Among the 18 Records Study Districts: Interval II

Table 2.5 displays for each of the 18 Records Study districts the percentage of defendants whose cases terminated Interval II within 70 net days. Six of the districts achieved full compliance in Interval II. Three of these are small districts (fewer than 20 AUSAs); three are medium-sized districts. Another six districts, including four of the six largest jurisdictions, processed 90 percent or more of their defendants within 70 net days. Six districts had somewhat more difficulty in achieving compliance, processing between 74 percent and 84 percent of their defendants within the applicable time limits. Of these, two are among the six largest districts nationwide and three were under Judicial Emergency status during this time period.

As displayed in column three, the estimated average net time in which Interval II cases were processed also varied widely. For example, East Texas, a small, fully compliant district, processed its average case in 15 net days, disposing of virtually all cases through plea negotiation or dismissal. At the other extreme, cases in the Southern Florida district, which handled a large volume of cases during the data collection period, took an average of 60 net days for case completion. In this district, approximately 37 percent of the completed cases ended in trial. The Eastern District of North Carolina also had an extremely long average time to disposition--67 net days.

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[1] Note that Judicial Emergency status does not apply to Interval I. Even in district courts requesting and receiving such status, the 30-day limit to indictment is not extended.

Table 2.5

ESTIMATED DISTRICT COMPLIANCE WITH INTERVAL II

District	Estimated % of defendants whose cases were terminated within 70 net days	Estimated Mean Net Time (days)	Number of Defentants
Arkansas-W	94%	24	16
California-C	96	40	165
Colorado	100	38	51
District of Columbia	95	26	91
Florida-S	83	60	169
Illinois-N[a]	74	55	52
Indiana-N[a]	100	37	17
Massachusetts[a]	100	38	48
Missouri-W	100	18	13
New Jersey[a]	84	41	77
New Mexico	100	31	15
New York-E[a]	95	36	116
New York-S	95	37	117
North Carolina-E[a]	74	67	35
Ohio-S	77	39	38
South Carolina	90	31	51
Texas-E	100	15	15
Wisconsin-W	80	36	17

[a]These districts were under Judicial Emergency Status during the time period under study.

2.3.3 Variation Among All United States District Courts

In the preceding sections, we pointed out that there was considerable variation among the 18 Records Study districts in compliance levels. Unfortunately, the limited number of districts in our sample precluded statistical analysis of the district factors affecting compliance. Data available from AOUSC, however, did allow us to examine variation in compliance among all United States districts courts.

Data utilized were for the year ending June 30, 1979. It should be noted that in the data collected by AOUSC for this period, the indictment-to-trial interval was monitored in two separate intervals in accordance with the Act as it read at that time: indictment-to-arraignment (Interval II) and arraignment-to-trial (Interval III). The later interval was analyzed here in place of the present indictment-to-trial interval since it most nearly approximates the applicable time period. Compliance was defined according to the applicable time limits for that year: 35 days for Interval I and 80 days for Interval III.

Table 2.6 displays the relationship betwen compliance and district size.[1] Large districts have the lowest rate of compliance in both intervals. For the pre-trial interval small districts have higher levels of compliance than do medium-sized districts, while both small and medium-sized districts seem to do about equally well in the pre-indictment interval.

The simple calendar speed with which criminal cases are processed during the same period bears an obvious relationship to compliance as shown in Table 2.7. Averaging across all districts, fast districts are more likely to have a high level of compliance than slow districts in both the pre-indictment and post-indictment intervals. Moreover, this pattern is fairly consistent within each category of district size.

Simple calendar speed is not the only factor affecting compliance, however. Use of exclusions may also enhance a district's compliance level. Since few exclusions of any kind are reported in Interval I, it is not surprising that use of exclusions has little impact on compliance levels in the pre-indictment period. As displayed in Table 2.8, however, use of § 3161(h)(8) exclusions, commonly referred to as "ends of justice" continuances, does affect compliance in the post-indictment interval.

[1] For tabular presentations in this section, size was measured in terms of the number of authorized judgeships in the district court.

Table 2.6

AVERAGE PERCENT OF CASES COMPLYING WITH SPEEDY TRIAL LIMITS BY SIZE OF DISTRICT (ALL U. S. DISTRICTS)

Number of Authorized Judgeships	Percent Compliance with Interval I	Interval III
Fewer than 3 (n = 25)	94.3%	95.9%
3 to 7 (n = 43)	95.5%	93.0%
Over 7 (n = 24)	89.4%	91.2%

Table 2.7

PERCENT OF CASES COMPLYING WITH SPEEDY TRIAL LIMITS BY SIZE AND SPEED OF DISTRICT[a] (ALL U. S. DISTRICTS)

District Size \ Speed	Interval I		Interval III	
	Fast	Slow	Fast	Slow
Small	95.2	92.2	95.8	96.0
Medium	96.5	92.8	95.2	86.5
Large	93.8	84.2	94.2	87.7
TOTAL	95.6	89.5	95.1	89.5

[a] Fast districts are defined as those with median criminal processing time under four calendar months.

Table 2.8

PERCENT OF CASES COMPLYING WITH SPEEDY TRIAL LIMITS BY USE OF EXCLUSIONS AND PROCESSING SPEED[a] (ALL U. S. DISTRICTS)

Use of Exclusions \ District Speed	Interval III	
	Fast	Slow
3161(h)(8) rarely used	94.5 (n = 43)	86.0 (n = 17)
3161(h)(8) frequently used[b]	96.6 (n = 19)	94.1 (n = 13)

[a]Fast districts are defined as those with median criminal processing time under four calendar months.

[b]Those districts using § 3161(h)(8) exclusions in over 6 percent of their cases.

For the faster districts, the use of "ends of justice" continuances seems to have little effect on ability to comply with the post-indictment limit. The average compliance level for fast districts making infrequent use of such exclusions is 95 percent; for those making frequent use, it is 97 percent. In the 30 slow districts, however, those which frequently invoke § 3161 (h)(8) have dramatically higher rates of compliance with the post-indictment limit (94 percent vs. 86 percent). We were able to find little or no relationship between reporting of "automatic" exclusions and the level of compliance with the post-indictment interval, however. When district speed and use of § 3161 (h)(8) continuances were taken into account, we found no remaining correlation between "automatic" exclusions and compliance.

2.4 Summary and Conclusions

When a uniform standard of excludable time (based on detailed knowledge and understanding of the Judicial Conference Guidelines) was applied to a sample

of cases,[1] the estimated level of compliance was 94 percent for Interval I, 92 percent for Interval II, and 91 percent for the combined compliance in both Intervals I and II. Actual compliance levels may change, however, as the courts rule on interpretation of specific sections of the Speedy Trial Act, as United States attorneys' offices and courts modify their administrative practices in response to the imposition of sanctions, and as defense counsel seek to use the speedy trial dismissal sanction on behalf of their clients.

The most frequently cited reason for noncompliance in Interval I was the failure to complete a deferred prosecution agreement within the speedy trial time limits. Court congestion was most frequently cited in Interval II. A number of other reasons were also offered. With the exception of protracted plea negotiations, however, many of these problems could have been averted through full use of relevant excludable time provisions and careful monitoring of the time limits.

The level of compliance--even using a uniform policy on exclusion of time--varied greatly among both sample districts and all United States district courts. In general, large districts had a lower rate of compliance for both intervals than did smaller districts.

In addition to speed in case processing, compliance with the Speedy Trial Act depends upon using the excludable time provisions specified in the Act. During the post-indictment interval, slow districts making more frequent use of continuances in the "ends of justice" had a higher rate of compliance than slow districts using such exclusions rarely (94 percent vs. 86 percent compliance).

[1]All cases initiated during November and December, 1979 in a representative sample of United States attorneys' offices.

3.0 USE OF EXCLUDED TIME AND DETERMINATION OF COMPLIANCE WITH SPEEDY TRIAL TIME LIMITS

Since cases passing through the Federal criminal justice system are extremely diverse, all cases cannot be made to fit a single set of procedural requirements. Realizing this, Congress built flexibility into the time limits established in the Act. In order to accommodate unavoidable delays, Congress provided for certain periods of time to be excluded from the mandated time limits. There are two basic categories of excludable time. The first comprises "automatic" exclusions: that is, periods of delay which "shall be excluded in computing the time within which an information or indictment must be filed, or in computing the time within which the trial of any such offense must commence."[1] The 1974 Act included here delays resulting from other proceedings concerning the defendant--e.g., mental or physical competency examinations, trials with respect to other charges, and hearings on pre-trial motions, as well as the absence or unavailability of the defendant or an essential witness,[2] the inability to stand trial, and a number of other specified events. The second type of exclusion allowed judges flexibility in granting continuances, as long as they entered in the record of the case their reasons for believing that a continuance was in the "ends of justice" and that the need for it outweighed the interests of the public and the defendant in a speedy trial.[3]

This combination of time limits and exclusions was designed to ensure speedy processing of criminal cases while maintaining the flexibility needed to process the range of cases handled by the United States attorneys' offices and district courts. In the Speedy Trial Act Amendments Act of 1979 (Pub. L. 96-43) Congress clarified and reinforced this flexibility. Impetus for these amendments was provided when the Department of Justice and the Judicial Conference of the United States, concerned over the feasibility of existing limits, submitted proposed amendments to increase the time limits of the Act. In the Senate Judiciary Committee hearings preceding enactment, Professor Daniel Freed and Judge Robert J. Ward both argued strongly that the Act was workable if judges, clerks, and attorneys would take advantage of its

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[1] 18 U.S.C. § 3161(h).

[2] 18 U.S.C. §§ 3161(h)(1)-(7).

[3] 18 U.S.C. § 3161(h)(8).

flexibility.[1] Judge Ward described the formulation of the Second Circuit Guidelines which he asserted incorporated the necessary flexibility. The Judge recommended a two-pronged approach to the use of exclusions: greater attention to the "automatic" exclusions in §§ 3161(h)(1-7) and a liberal construction of the "ends of justice" exclusion in § 3161(h)(8). By full and proper use of automatic exclusions, abuse of the "ends of justice" continuance was to be prevented. Judge Ward criticized the Judicial Conference Guidelines promulgated in response to the 1974 Act for presenting an overly restrictive interpretation of § 3161(h)(8) and several of the automatic exclusions as well.

Relying heavily on the testimony of Professor Freed and Judge Ward, Congress rejected the proposals of the Department of Justice and the Judicial Conference that the basic time limits be enlarged.[2] The Amendments did include expansion and liberalization of the exclusions, however, incorporating specific recommendations from the Justice Department and the Judicial Conference. The exclusions for pre-trial motions were expanded to cover the entire period from filing through disposition, provided that the judge did not keep the motion under advisement in excess of 30 days. Congress also broadened the exclusion for examinations and hearings as to the defendant's mental or physical condition and added several types of other "proceedings concerning the defendant" to the list qualifying for exclusions. Among these were transfers from other districts, removal proceedings, deferral of prosecution under the Narcotic Addict Rehabilitation Act, and consideration by the court of proposed plea agreements.

In addition, the "ends of justice" provision was expanded and clarified with respect to both pre-indictment and post-indictment intervals. Under the amended Act, a continuance is now authorized if a defendant is arrested in the final days of a grand jury session, indictment cannot reasonably be obtained before the end of the session, and another grand jury will not be convened within 30 days. This Amendment was directed to the problems faced by rural districts in which grand juries are not in continuous session. The Amendments also broadened the language as to the granting of continuances in unusual or complex cases. Now such continuances may be granted to cover

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[1] Testimony of Professor Daniel J. Freed and Testimony of Judge Robert J. Ward, in U.S. Congress, Senate, Hearings Before the Committee of the Judiciary, United States Senate on § 961 and § 1028 to Amend the Speedy Trial Act of 1974, 96th Cong., 1st Sess. (Washington, D.C.: Government Printing Office, 1979): 72-92; 135-145; 147-148.

[2] Congress did suspend for one year the effective date of the dismissal sanction and adopted the Judicial Conference's recommendation that the ten-day indictment-to-arraignment interval be eliminated in favor of one 70-day indictment-to-trial period.

delay in all phases of a case including, for example, the preparation of complex pre-trial motions. In addition, continuances are now possible to cover delay in obtaining an indictment if "the facts upon which the grand jury must base its determination are unusual or complex."[1]

Finally, a new subsection was added to § 3161(h)(8) to allow continuances in cases not deemed unusual or complex, but in which a continuance may be necessary to allow adequate time to obtain counsel, to guarantee the defendant or the Government continuity of counsel, and to permit either party reasonable time for effective preparation of the case, due diligence having been exercised. This subsection was intended to address many of the remaining problems cited by prosecutors and defense counsel in balancing the interests of justice with the public right to a speedy trial.[2]

The Judicial Conference revised its implementing guidelines subsequent to the passage of the Amendments. Reflecting the changes in the Act, these guidelines considerably broadened the interpretation of the excludable time provisions. However, the guidelines acknowledge continued uncertainty as to the meaning of certain parts of the Act.[3]

In the following sections, we discuss the problems which continue to hamper full and effective application of these provisions. We also discuss the difficulties associated with calculating net time[4] under the speedy trial limits and thus defining compliance with the Act. We draw here primarily upon interview data collected in our six District Approaches sites, supplemented by information gleaned from the Records Study component.

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[1] 18 U.S.C. § 3161(h)(8)(B)(iii).

[2] For a full discussion of these changes, see U.S. Congress, House, Speedy Trial Act Amendments Act of 1979, H. Rept. 96-390 to accompany S. 961, 96th Cong., 1st sess. (Washington, D.C.: Government Printing Office 1979): 12.

[3] See, for example, the discussion of "other proceedings concerning the defendant" in Judicial Conference of the United States, Committee on the Administration of the Criminal Law, "Guidelines to the Administration of the Speedy Trial Act of 1974, As Amended," December 1979 revision, p. 25.

[4] Net time may be defined roughly as the total calendar time from beginning to end of a speedy trial interval less the number of non-overlapping excludable days.

3.1 Problems in Use of Exclusions in the Arrest-to-Indictment Interval (Interval I)

Among the districts participating in our study, exclusions are sometimes relied on to achieve compliance with the arrest-to-indictment time limit. However, in many districts the alternatives to use of exclusions may include pre-indictment dismissal, premature indictment, or other policies and practices presumably unintended by Congress.[1] That is, all too often, prosecutors use other means to achieve compliance with the letter, if not the spirit, of the law.

There are a number of explanations for prosecutors' infrequent use of exclusions to meet Interval I time limits. First, few of the "automatic" exclusions are relevant to this phase of case processing. In particular, the most commonly used exclusions--those covering pre-trial motions--are rarely applicable to the pre-indictment period. Indeed, respondents in several of the District Approaches sites recommended adding explicit exclusions of particular usefulness in Interval I. Among these were exclusions to cover:

- delays in obtaining investigative and laboratory reports in certain circumstances, e.g., translations of statements, transcripts of wiretaps, handwriting and fingerprint analyses;
- delays in obtaining records subject to the Financial Privacy Act;
- time necessary to develop evidence of conspiracies or continuing criminal activity through cultivation of cooperating defendants; and
- time necessary to arrange for deferred prosecution or pre-trial diversion.

Data from our United States attorneys' Records Study show that pre-indictment dismissals are often attributed to these types of delay, particularly those in obtaining reports and records, developing cooperating defendants, and arranging pre-trial diversion.[2]

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[1] These will be discussed in Chapter 5.

[2] See section 5.5 below.

[3] See section 2.1.2 above for a more detailed discussion of problems pertaining to deferred prosecution exclusions.

A second problem is that due to lack of familiarity with the Act among prosecutors and lack of clarity in the Act itself, exclusions presently applicable to Interval I are not being fully utilized in most of the study districts. Few AUSAs in site-visited districts were aware that the 1979 Amendments to § 3161(h)(8) were intended to encourage wider use of exclusions in the arrest-to-indictment interval. As noted above, several respondents recommended adding an exclusion for delay in obtaining investigative and laboratory reports. During the course of the hearings on the 1979 Amendments it was suggested, as do the Judicial Conference Guidelines, that a reasonable interpretation of § 3161(h) (8)(B)(iii) might include "reasonable periods" of time required to obtain investigative and laboratory reports.[1] Indeed, the Second Circuit Guidelines state that the "ends of justice" provision in its pre-amendment language could have been considered to cover time for completion of laboratory reports, time during which the defendant was cooperating with the Government, and reasonable periods (not to exceed 60 days) for the prosecutor to consider pre-trial diversion and obtain necessary reports.[2] Nevertheless, these exclusions were not explicitly incorporated in the legislation or the Senate Committee Report and the fact that they continue to be recommended as additional exclusions indicates a belief that they are not presently covered by the Act.

Third, there are powerful disincentives which discourage prosecutors from using exclusions in the arrest-to-indictment period. Because it is a short interval, prosecutors may face considerable pressure in preparing cases for the grand jury. In view of their other responsibilities, many prosecutors do not feel that they can take the time to apply for § 3161(h)(8) continuances or perform the recordkeeping and monitoring necessary for automatic exclusions. They are uncertain that such exclusions will be authorized and believe that it is better to take a safe approach: either obtain an indictment within 30 days or dismiss the complaint. Of more than 100 cases in our Records Study that were dismissed pre-indictment, only six had exclusions recorded by the AUSAs on the record forms. As will be discussed in Chapter 5, many of the cases dismissed pre-indictment may be, and often are, reopened later as grand jury originals.

A fourth problem is that, even assuming that AUSAs have knowledge of and desire to rely on excludable time provisions to meet speedy trial time limits, there are few established mechanisms for them to do so. Among the six site-visited districts there was a lack of knowledge concerning procedures for

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[1] Testimony of Allen Voss, in U.S. Congress, Senate, Hearings to Amend the Speedy Trial Act of 1974, p. 23; and Judicial Conference, "Guidelines," p. 56.

[2] U.S. Courts, Judicial Council of the Second Circuit, Judicial Council Speedy Trial Act Coordinating Committee, Second Circuit Speedy Trial Act Guidelines, January 16, 1979," in U.S. Congress, Senate, Hearings to Amend the Speedy Trial Act of 1974, pp 428-429.

obtaining approval of pre-indictment exclusions. Does the court clerk record "automatic" exclusions when information is received from the United States attorney's office or is a court order required? How are § 3161(h)(8) exclusions granted in this interval? Without clear guidance, monitoring of these intervals by the United States attorney's office may be problematic, reinforcing the adoption of a fixed, but safe approach. In order to assist the monitoring effort, the Judicial Conference's Model Speedy Trial Plan, as amended, provides that the United States attorney should file motions for determination of excludable time due to "automatic" exclusions. It also suggests the same procedure for granting of § 3161(h)(8) continuances in the pre-indictment period.[1] However, these proceudres were not widely known to staff in the six site-visited United States attorneys' offices.

Court recordkeeping, in turn, is problematic. Court clerks are supposed to record Interval I exclusions on docket sheets. However, since they do not receive cases until an indictment or information is filed, clerks must rely on the United States attorney's office to supply information on excluded time prior to such filing. Given the lack of widely known mechanisms for securing pre-indictment exclusions, it is not surprising that systems for conveying information on pre-indictment exclusions from United States attorneys' offices to clerks' offices have been largely unsuccessful, and that the information supplied has been fairly minimal.

Among the District Approaches sites, the United States attorneys' offices in the two large districts had developed cover sheets to be submitted by the United States attorney to the court on each defendant processed. These sheets were supposed to include a listing of pre-indictment excluded time, but this section was rarely filled out. The clerk in one of the small districts stated that he had great difficulty obtaining information on the pre-indictment interval from the United States attorney's office.

In summary, despite the 1979 Amendments, many AUSAs continue to treat the arrest-to-indictment interval as fixed. Due to a lack of specific automatic exclusions, coupled with a desire to avoid uncertainty and administrative burden, prosecutors have generally chosen not to rely on excludable time, even where possible and necessary, to achieve compliance in the arrest-to-indictment interval. This situation could be reversed by providing more aggressive training of AUSAs on the relevant provisions of the Act and on the recordkeeping system proposed by the AOUSC. There should also be clear policy guidance from the Department of Justice on the use of exclusions

[1] Judicial Conference of the United States, Committee on the Administration of the Criminal Law, "Revised Model Plan - 1979: Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases," December 1979.

in Interval I[1]. Finally, if Congress wishes to provide additional flexibility to accommodate the problems cited by our respondents, it may wish to make explicit the exclusions which are intended to be covered under § 3161 (h)(8)(B)(iii).

3.2 Problems in Use of Exclusions in the Indictment-to-Trial Interval (Interval II)

Exclusions are employed much more frequently in the indictment-to-trial interval than in Interval I. However, many of the same general problems affect their use in both periods. The major difficulties with indictment-to-trial exclusions appear to be lack of specific knowledge and variable interpretation of the excludable time provisions, as well as problematic recordkeeping. These difficulties exist in both the courts and the United States attorneys' offices.

3.2.1 Problems of Knowledge and Interpretation

It is clear that many prosecutors lack specific knowledge of the excludable time provisions of the Act and lack understanding of the flexibility they were designed to provide. In at least 42 percent of the 531 cases in our Records Study sample with pre-trial motions recorded on the questionnaire, the AUSA responded "no" to a question asking "if consideration of this motion resulted in time ordered or recognized as excluded by the court." It seems quite clear that Congress intended that the filing of any pre-trial motion should result in the recognition of excluded time.

Conversely, in 49 (or 21 percent) of the 230 cases for which AUSAs recorded exclusions other than those covering pre-trial motions, it was determined by project staff that at least one of these exclusions was not allowable under the Judicial Conference Guidelines. In 20 of these 49 cases, the AUSA reported an exclusion type never mentioned in the Act. In one case involving three defendants moving in lockstep fashion through the system, the AUSA reported an identical excludable event for all three but used three different exclusion types. Moreover, this group of 49 cases with impermissible exclusions does not include cases in which a valid excludable period had occurred and the AUSA recorded it under the wrong category.

[1] Policy guidance might include information on the circumstances under which exclusions can and should be exercised.

There is also evidence that not only prosecutors, but also the courts, are having some difficulty understanding and applying the excludable time provisions of the Act. The latest implementation report of the Administrative Office of the United States Courts (AOUSC) covering defendants terminated from July 1, 1978 to June 30, 1979 reveals some uses of excluded time which appear to be questionable.[1] For example, 40 percent of the 128 reported exclusions for superseding indictments--that is, covering time between dismissal of an indictment on motion of the Government and filing a superseding indictment [§ 3161(h)(6)]--are reported to have occurred in the arrest-to-indictment interval. This does not appear to be an appropriate use of this exclusion.

Of 540 reported exclusions for periods of deferred prosecution [§ 3161 (h)(2)], 46 percent were for less than 43 days. Typically, periods of deferred prosecution are six months to one year. While it is possible that some agreements might have aborted within 43 days, 46 percent seems a very high percentage.

Many of the examples just cited may reflect unfamiliarity with the Act's provisions or simple errors in application of the Act. However, some of the apparent lack of knowledge may actually reflect the fact that many of the excludable time provisions are open to differing interpretations. This is true of both "automatic" exclusions and "ends of justice" continuances.

Despite legislative intent that the exclusions in §§ 3161(h)(1-7) be "automatic," there continue to be conflicting applications of these provisions. In many districts, the exclusions are "automatic" in that the clerk's office independently identifies excludable events, determines their duration, and records them on the docket sheet. However, there is some question whether the judgment of a court deputy or docket clerk is reliable enough to predict with confidence how a court will rule on a dismissal motion when examining the full record of a case. Thus, some courts have moved to take greater control of these exclusions. The Northern District of Illinois requires a minute order from the judge for all exclusions except interlocutory appeals. Other districts--such as the Central District of California and Massachusetts--require a court order for every exclusion.

Provisions concerning "ends of justice" continuances are open to even wider variations in interpretation. Procedurally there is uncertainty whether such exclusions are valid merely because the judge invokes § 3161(h)(8) generally or whether the judge must cite the specific reasons that the need for a

[1] Administrative Office of the United States Courts, Fifth Report on the Implementation of Title I of the Speedy Trial Act of 1974, Washington, D.C., February 1980, p. 26.

continuance outweighs the interests of the public and the defendant in a speedy trial. The Act requires such explanation but many judges continue to justify continuances by a general invocation of § 3161(h)(8). Another procedural issue is whether "ends of justice continuances" may be granted retroactively, after a case is determined to be in trouble with speedy trial limits.

The "ends of justice" provision may also be subject to problems of substantive interpretation. Currently, there is wide variability among judges and districts in interpreting exactly what circumstances warrant § 3161(h)(8) continuances. In part, this variation may stem from a lack of guidance or information. Several judges reported confusion over the interpretation of these provisions; others expressed the desire for additional guidance on the specific circumstances under which an "ends of justice" continuance could be applied.

The variation may also result not from a lack of information but from actual differences in perception concerning the meaning of these provisions. Thus, in interpreting the provisions of § 3161(h)(8), many judges have concluded that the "ends of justice" provision offers a broad source of justification for delay. Some judges, in fact, have argued that the amended provision is so sweeping and so full of "loopholes" that it has essentially "gutted the Act." Such observations stem from the position that granting "ends of justice" continuances represents an evasion of the Act's spirit rather than a legitimate method of exercising the full flexibility allowable under the law. Nevertheless, these judges' fears have been supported in some instances. For example, in some districts and courtrooms, § 3161(h)(8) is used to justify almost any delay, including many which are covered by "automatic" exclusions.

On the opposite end of the spectrum, some judges felt that Congress intended "ends of justice" continuances to be granted only in exceptional cases, that Congress had in mind a "tight construction." Thus, in some districts the provision for such continuances is almost never used. In general, despite indications that "ends of justice" continuances are becoming more common, there are still many judges and attorneys who view the provision in a very restrictive fashion.

For example, in Middle Georgia, judges will grant continuances only in the most unusual circumstances. The tradition of speedy processing in the Eastern District of Missouri has led some of the judges there to be very reluctant to postpone trials, particularly after the seven-day period allotted by local rules for requesting continuances has elapsed. One judge stated that more attention should be given to the spirit of the Act than to its exact language. His general rule was thus: "Speedy trial unless it

causes harm to the defendant or the Government." Another judge in this district agreed that the premium placed on speed might well have an unfortunate "chilling effect" on motions for continuances. That is, some defense and Government attorneys may decline to seek continuances even though they may be entitled to them and the continuance may be necessary for effective case preparation. In general, respondents representing both parties agreed that the reluctance of some judges to grant continuances is the primary reason that current exclusions do not allow adequate time for preparation in complex cases.

In conclusion, the interpretation and administration of the "ends of justice" continuance is extremely variable. As a result, both prosecutors and defense counsel are uncertain what to expect. Here, as with the "automatic" exclusions, there is a need for further clarification, dissemination, and training.

3.2.2 Problems of Recording

Apart from the issue of interpretation, there are problems in identifying and recording exclusions which hamper monitoring of the time limits. In the indictment-to-trial interval, the burden of responsibility for monitoring excludable time shifts from the United States attorney's office to the court. This responsibility is virtually total with respect to the "automatic" exclusions. Moreover, while the prosecuting and defense attorneys may initiate requests for "ends of justice" continuances, the court must rule on those requests.

This leads to problems of information flow. Prosecutors view the identification and recording of exclusions as a court function, and see little need to perform these tasks themselves or monitor court performance of them. At the same time, despite the fact that regular notification of excluded time and net time remaining in the interval might be useful to prosecutors, few courts we visited routinely notified the parties. An exception was Massachusetts, where the speedy trial coordinator has initiated a practice of regularly informing both parties of all court-ordered excludable time.

Some respondents in the court were uncertain as to the propriety of such communication, fearing that the provision of this information to the prosecutor alone might violate the separation of powers between the judicial and executive branches and put the defense at a disadvantage. Many of the prosecutors interviewed felt that such information would be useless since they have very little control over the scheduling of trial dates. Few appeared to be aware that, through active monitoring of excluded time, they might obtain the full flexibility envisioned by the Act.

Assuming that complete information is collected, it may not always be faithfully recorded on the docket sheets. The Judicial Conference's Model Plan[1] proposes a thorough procedure for recording excluded time. The clerk of court is to enter the starting and ending dates of all excludable periods on the docket sheet in the manner prescribed by the AOUSC. Furthermore, both prosecutor and defense counsel are to check the clerk's records at each court appearance and bring any problems to the attention of the court.

Our examination of court dockets in the Records Study reveals that while some districts are recording exclusions properly in some cases, none of the 18 Records Study districts is following the prescribed procedure in all cases and for all exclusions. Indeed, some districts appear not to be using the procedure at all. It should be pointed out that most of the docket sheets we examined were for pending cases. It is possible that exclusions will be added to the docket retroactively, perhaps at the time the JS-3 card[2] is completed. In some districts the file containing the complete record of the case may reflect exclusions not posted to the docket sheet.

According to respondents in some of our Records Study districts, exclusions are occasionally added retroactively in cases with speedy trial problems. This may be difficult, however, when the information on which exclusions are based is "perishable" in nature and not clearly entered in the record of the case. This problem underscores the point that proper use of exclusions involves both identifying and recording excludable periods. Given that many excludable periods are not posted to the docket as they occur, it appears improbable that AUSAs and defense counsel are checking the records as the Model Plan envisions.

These problems may help account for the GAO finding that 22 percent of the "noncompliant" cases followed up could have been compliant if excludable time had been properly identified and recorded.[3] We had a similar experience in our Records Study. Of 117 completed cases with gross times greater than 30 days in Interval I or greater than 70 days in Interval II, 49 cases did not have enough excludable time recorded on our forms to make the cases compliant. However, by identifying excludable time periods from court docket sheets and through telephone calls to docket clerks and AUSAs, we determined that half of these cases were compliant.

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[1] Judicial Conference, "Revised Model Plan - 1979," p. 29.

[2] The case termination report submitted to AOUSC.

[3] General Accounting Office, Report to the Congress of the United States, by the Comptroller General, entitled, "Speedy Trial Act--Its Impact on the Judicial System Still Unknown, May 2, 1979, GGD-79-55."

There are good reasons why the identification and recording of exclusions have posed problems. The procedures envisioned by the Model Plan are cumbersome and time consuming particularly with respect to pre-trial motions. The major portion of the recordkeeping task appears to be produced by the need to keep track of filing and disposition dates for all pre-trial motions. The problems are compounded when there are overlapping motions. Since most cases will routinely comply with the time limits, there is a real temptation to forego the continuous recording of excludable periods. Several respondents suggested that a simpler approach would avoid many of the problems currently associated with the use of excluded time. One possibility would be to allow a fixed time period for filing and disposition of pre-trial motions and to do away with the "automatic" exclusions for pre-trial motions. Presumably unusual cases would be made compliant through the use of § 3161 (h)(8) continuances.

In summary, the use of exclusions in the indictment-to-trial interval is problematic due to lack of knowledge, conflicting interpretation of statutory provisions, and unreliable identification and recording of excludable periods. These problems might be addressed by improved education and training programs and by improved and uniform guidelines for implementation of the excludable time provisions. In addition, as noted above, some of the recordkeeping difficulties might be alleviated by simplifying the exclusions, particularly those covering pre-trial motions.

3.3 Calculation of Net Time and Determination of Compliance

The diversity of Federal criminal cases dictated the need for a fairly complex Act; however, the authors of the legislation may not have anticipated all the ramifications of this diversity. One indication of the intricate nature of the process is simply the number of ways the speedy trial clock can be triggered. Although commonly referred to as the arrest-to-indictment interval, Interval I can actually be initiated by:

- arrest;
- service of summons;
- first appearance following an informal notice of charges; or
- transfer of defendant from state to Federal custody.

This interval may end in the following ways:

- dismissal of complaint;
- filing of indictment in arresting or other district;
- filing of information in arresting or other district; or
- consent by defendant to be tried on the complaint before a magistrate.

Although usually referred to as the indictment-to-trial interval, Interval II may begin with a variety of events, including:

- filing of indictment;
- filing of information;
- making public of a sealed indictment;
- first appearance of the defendant before a judicial officer in the charging district;
- consent by defendant to be tried on the complaint before a magistrate;
- receipt of Rule 20 papers;
- declaration of mistrial;
- reinstatement following appeal or collateral attack;
- filing of superseding indictment if the original indictment was dismissed on motion of the defense; and
- filing of new charges contained in a superseding indictment.

Thus, due to the variety of initiating and closing events, cases within the same interval may follow a wide variety of paths. Moreover, these paths are often intricate; cases may enter and leave a particular interval any number of times, depending on the sequence of initiating and closing events which occur in their progress. This poses a challenging problem in the determination of net time: courts face the simultaneous responsibility of correctly noting the initiating and closing events for each case and recording the dates associated with these events.

During the course of our speedy trial impact study, it became apparent that precise specification of these paths would be necessary for the determination of total case processing time. Thus, to assist in conceptualizing the timing and use of different intervals and the various initiating and terminating events for these periods, project staff prepared elaborate flow diagrams. After project staff developed substantial familiarity with the provisions of the Act, reference to these diagrams still proved to be essential for the

determination of total calendar time in some cases. Responses on our Records Study forms demonstrated that our respondents also found such calculations to be a challenging task: there were numerous cases with incorrect case initiating events and dates for these events.

A particularly telling example of the intricate nature of these determinations is provided by cases in which there is a superseding indictment. These cases present special problems for the determination of net time. One key question is whether the superseding indictment contains "old" or "new" charges or both. § 3161(h)(6) defines what is referred to here as "old" charges as "the same offense or any offense required to be joined with that offense." Anthony Partridge of the Federal Judicial Center has suggested that the latter be interpreted to mean any offense whose prosecution would be barred by double jeopardy considerations. Correspondingly, "new" charges would be any charges which would not be barred by the double jeopardy clause.

§ 3161(h)(6) implies that whenever "new" charges are filed, these charges are governed by a "new" speedy trial clock and must be treated under the Act as if they constituted a separate case. Thus, if a superseding indictment is filed naming new charges while the original indictment is still pending, the "new" charges must be treated as if they represented a separate case. Two separate sets of time limits must be calculated and satisfied. Moreover, these clocks may conflict with one another so that, barring an "ends of justice" continuance, all of the charges could not be tried simultaneously without violating the Act.[1]

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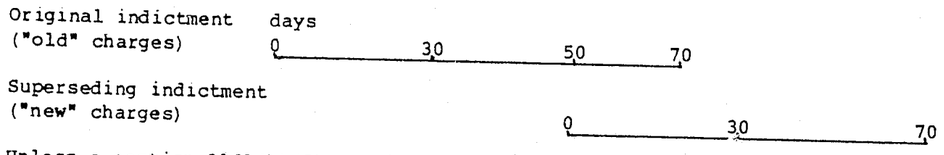
[1]For example, trial on the superseding indictment containing the "new" charges must begin no earlier than 30 days after filing and no later than 70 net days after filing. By implication, under § 3161(h)(6) the "old" charges contained in the superseding indictment must be tried within 70 net days of the original indictment. Consider the example depicted below in which the superceding indictment is filed 50 days after the original indictment:



Unless a section 3161(h)(8) continuance were granted with respect to the "old" charges the 70-day maximum on them would expire before the 30-day minimum on the "new" charges had been satisfied.

The distinction between "old" and "new" charges is also important when an indictment against an individual has been dismissed on motion of the Government and later that individual is indicted again. Clearly, if the charges contained in the second indictment are all "new" charges, the two indictments are entirely unrelated under the Act. If the charges contained in the second indictment are "old" charges, however, the second indictment is considered a superseding indictment and the excludable time provisions of § 3161(h)(6) apply. That is, the two indictments constitute a single continuous case with the time between the original dismissal and second indictment being excludable.

Thus, it is clear that the accurate reporting of starting dates for speedy trial intervals requires that an accurate decision as to whether the second indictment contains "new" or "old" charges be made. In practice, however, it is not clear to us that the reporting mechanisms presently employed by AOUSC are sufficiently refined to capture the intricacy of cases with superseding indictments. Nor is it clear how much attention is devoted to the distinction between "old" and "new" charges and to the decisions on this matter in particular cases. In one of our Records Study districts we were told that all indictments of individuals not under charges are treated as if they contained only "new" charges. According to this source, in this district the term "superseding indictment" is reserved for indictments filed while previous indictments on the same charges are still pending. The effect of this practice when permitted by the courts is to allow the prosecution to obtain a brand new 70-day period in Interval II by dismissal and reindictment, just as it does in Interval I by dismissing the complaint and reopening the case later as a grand jury original. This latter practice will be discussed in Chapter 5.

In addition to the basic intervals, there is also a 90-day maximum from beginning of continuous detention to commencement of trial and a 30-day minimum from defendent's first "appearance through counsel" to commencement of trial. This minimum interval has presented various problems. For example, there is uncertainty in determining when it actually begins--that is, the meaning of "first appearance through counsel."[1] Moreover, there is disagreement as to whether the exclusions apply to the 30-day minimum. In arguing against their applicability, the Judicial Conference Guidelines point to the anomalous possibility that there may be "no permissible trial date because the 70-day limit, as extended by exclusions, would expire before expiration of the 30-day maximum period, similarly extended."[2]

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[1]Judicial Conference, "Guidelines," pp. 10-11.

[2]Senate Report 96-212 on the 1979 Amendments states that exclusions should apply (p. 32). This interpretation is followed by the Northern District of Illinois' Speedy Trial Memorandum for United States Attorneys, p. 3, which was written before the Judicial Conference issued its revised Guidelines.

In the larger districts, calculations of net time have been automated. The clerk of court in the Northern District of Illinois feels that such automation is essential to accurate computation of speedy trial intervals. When he compared computer generated and manually produced compliance figures in his district, he found that the latter method produced consistent underestimates of net time. Unfortunately, in the medium-sized and smaller districts most calculations of calendar and net case processing time are produced by hand. It should be pointed out that given the complexity of the task, the accuracy of all calculations--whether manual or automated--may be questionable. In short, without some simplification or at least clarification of many of the provisions, it will remain difficult to monitor compliance in many cases and dismissals may result once the sanctions take effect.

3.4 Summary and Conclusions

In summary, based on interview data in our six site-visited districts and analysis of Records Study data from 18 districts, there appear to be continuing problems associated with the use of exclusions and determination of compliance. In Interval I, exclusions are not utilized fully to achieve compliance; in Interval II, exclusions are employed with considerable variability across judges and districts. Finally, monitoring of excludable time and determination of compliance pose severe administrative burdens on both the courts and the United States attorneys' offices. Thus, although the Act was designed as a comprehensive mechanism for ensuring speedy processing while still providing flexibility necessary to accommodate the variety of cases in the Federal system, its implementation is not without both problems and costs.

There are five major reasons for the problems cited above:

- the tendency of United States attorneys' offices to treat the intervals as fixed;
- lack of specific knowledge of the excludable time provisions on the part of prosecutors and court personnel;
- difficulties in interpreting the excludable time provisions;
- difficulties faced by both prosecutors and courts in recording exclusions; and
- the overall intricacy of the Act and the resultant difficulty of calculating net time.

United States attorneys' staff generally view the speedy trial time limits--particularly in the arrest-to-indictment period--as rigid deadlines. In

Interval I, a limited number of applicable exclusions, coupled with a lack of familiarity with those that are applicable, have led prosecutors in some districts to take a simple and safe approach--either indict within 30 days or dismiss the complaint. Interval II is considered by United States attorneys' offices to be under the courts' control. They feel that they have little to say about automatic exclusions or trial dates and believe that judges will rarely if ever grant them an "ends of justice" continuance.

Both our District Approaches interviews and our Records Study data evidence a poor state of knowledge of the Act's specific provisions. This is particularly acute in the United States attorneys' offices but it is also evident on the court side. The courts' problems in interpreting § 3161(h) affect the use of both "automatic" and "ends of justice" exclusions. As to the former, there are different views of just how automatic these exclusions should be. Identifying excludable periods also presents problems. The "ends of justice" provisions pose additional concerns, involving lack of consensus over Congressional intent and disagreement over the degree of judicial discretion. Presently there is wide variation in interpretation of § 3161(h)(8), with some judges taking a very restrictive view of its application. Overly narrow interpretations, in turn, may preclude continuances which are allowable under the Act and necessitated by the interests of justice.

All of the problems discussed so far could be addressed by the development of clearer and more complete guidelines as to the use of exclusions. In particular, the use of "ends of justice" continuances in the arrest-to-indictment interval needs clarification. Additional exclusions might also be considered with particular attention given to the arrest-to-indictment interval. The focus of effort should be on establishment of clear, complete, and uniform standards of interpretation. If possible, an administrative body should be designated by Congress to promulgate rules that have the force of law. Otherwise, no matter how clear and complete the guidelines,[1] diversity of interpretaton will remain a problem. There is also an urgent need for improved training and dissemination. (Several respondents called for a manual providing numerous examples of the proper application of each excludable time provision.) The Department of Justice should formulate clear policy on the use of exclusions (particularly in Interval I) and disseminate this policy to the United States attorneys' offices. In addition to national guidelines and manuals, local publications and training programs should be developed in order to ensure that this information reaches all AUSAs.

A fourth major problem concerns recording exclusions. Obviously, some of the difficulties in recordkeeping arise from the problems of knowledge and

[1] An alternative might be to convene a panel representing all of the involved constituencies to develop uniform guidelines.

interpretation already discussed. But there are administrative issues as well. For example, mechanisms for requesting and recording exclusions in Interval I are not well understood by AUSAs. In Interval II, courts have not always been able to capture all information relating to excludable time and ensure that it is docketed on an ongoing basis. This poses problems in detecting cases about to exceed time limits. In both intervals, there is inadequate information flow between clerk and prosecutor. These deficiencies suggest a need for more reliable and better coordinated recordkeeping systems if the separation of powers issues can be resolved. Uniform manuals and training programs would also be of help in this area.

Finally, the intricacy of the Act poses difficulties in the calculation of net time and the ultimate determination of compliance. Speedy trial intervals may start and end with a variety of events. When a superseding indictment includes "new" charges, this may require two separate 70-day clocks for the same case. Identifying and recording exclusions and calculating net time intervals represent a tremendous administrative burden. This led a number of respondents in our study to wonder whether the legislative goal--speedy case processing--could not be achieved by simpler means.

4.0 MEASURES DESIGNED TO REDUCE CASE PROCESSING TIME

In this chapter, we describe the local planning process and the measures adopted in the six District Approaches sites to achieve compliance with the Act. Where appropriate, we have also drawn on the experiences of our Records Study districts as well as examples cited in Congressional hearings. We focus particularly on affirmative measures designed to reduce the overall time required for case processing. These include monitoring and record-keeping systems, coordination mechanisms, case scheduling procedures, training and information dissemination efforts, and resource allocation policies. Other policies and practices may serve to circumvent or mitigate speedy trial pressures--particularly those that are discussed in Chapter 5.

Included here are measures developed by United States attorneys' offices, United States district courts, and federal investigative agencies. While the Congressional mandate for the Speedy Trial Act Impact Study called for examination of United States attorneys' offices, a full understanding of compliance efforts requires a broader approach. One reason for this is the differential locus of control over case processing: The United States attorney's office is in charge in the arrest-to-indictment interval, and indeed in all pre-indictment proceedings, while the court takes control in the indictment-to-trial period. Another reason is the fact that local implementation efforts require cooperation from all these constituencies.

The Speedy Trial Act of 1974 provided for the gradual adoption of final time limits, to be accompanied by local planning efforts designed to ease the implementation process. Each district was required to convene a Speedy Trial Planning Group and to produce speedy trial plans specifying policies and procedures developed to achieve compliance. Congress specified the composition of the planning groups in an effort to ensure coordination among the various constituencies affected by the Act. Furthermore, Congress intended that each district have the option to implement the final time limits earlier than the Act required. Each district was also to develop and adopt procedural techniques to expedite the disposition of cases, report progress in achieving compliance with the applicable time limits of the Act, and identify remaining problems in implementation. Coupled with federal reporting requirements, these provisions served two basic objectives. They encouraged districts to plan for, monitor, and improve local implementation efforts. They were also designed to provide feedback to both federal administrators and to Congress, so that statutory and procedural changes could be adopted if necessary. Indeed, many of the amendments which were included in the Speedy Trial Act Amendments Act of 1979 (Pub. L. 96-43) emerged as a direct result of this planning process.

It should be pointed out that, in general, we could not discern a clear connection in the six study districts between the nature and scope of the administrative mechanisms designed to achieve compliance and the degree of success in meeting that objective. In part, this may reflect the fact that even "low compliance" districts are disposing of the bulk of their cases within the time limits established by law. Thus, one might not expect to discover dramatic contrasts in procedures.

There are two other factors which do help to explain the extent and character of procedures established by the districts in response to the Speedy Trial Act. The first is prior history. It has been argued that speed of case processing is closely related to "local legal culture"--a concept defined as the "established expectations, practices, and informal rules of behavior of judges and attorneys" in a jurisdiction.[1] Local legal culture and the associated record of processing speed, have, in turn, affected the extent of procedural change necessitated by the Speedy Trial Act. For example, two of the three "high compliance" districts visited--Middle Georgia and Eastern Missouri--had a history of expeditious case processing which predated the Speedy Trial Act.[2] This was cited by respondents in both districts as a major advantage in meeting the requirements of the legislation. One AUSA in St. Louis, for example, characterized the Act as "a codification of what the district had always done." In short, few new procedures had to be developed in these districts in response to the Act. Moreover, the established norms were not easily documented within the scope of this study.

In contrast, Western New York, Western Pennsylvania, and Northern Illinois had a history of slow criminal case processing.[3] The first two districts were slow in the disposition of both civil and criminal cases, whereas Northern Illinois traditionally processed its civil cases rapidly. Prior to the Speedy Trial Act this court scheduled its criminal cases around its civil calendar. Since the latter represented the bulk of its caseload, the district achieved a high level of efficiency overall. Thus, in Northern Illinois, the Act disrupted long-standing case scheduling patterns and caused severe dislocations. It should be pointed out that this district currently

[1] Thomas Church, Jr. et al., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA: National Center for State Courts, 1979): 54.

[2] In FY 1975, the median criminal case processing time from filing to disposition in all United States district courts was 3.6 months. The median times in Middle Georgia and Eastern Missouri were 2.6 and 2.9 months, respectively. These median times placed both districts in the top third of all United States district courts. AOUSC, Management Statistics for United States Courts, 1975.

[3] All three were in the bottom third of United States district courts in median criminal case processing time. Their median times were 8.4, 6.0, and 5.1 months, respectively. Ibid.

appears to be making intensive efforts to comply with the final time limits of the Act.[1]

A second factor which helps to explain variations in administrative procedures, if not compliance levels, is district size. In general, large districts have devoted more effort to developing centralized, formal compliance mechanisms than their medium-sized and small counterparts. It may be that the former, with large and relatively complex caseloads, face additional difficulties in bringing about reductions in case processing time--difficulties which require additional management tools and resources.

4.1 Planning

Each of the six study districts convened a planning group in response to the requirements of the Act. As displayed in Table 4.1, the number of participants varied, partly as a function of district size. Each of these planning groups met early in the phase-in period to respond to the Congressional mandate for definition of local time tables governing speedy trial implementation.

There was also national level planning and guidance. In order to aid in compliance and standardize interpretation of the Act, the Judicial Conference of the United States not only developed and disseminated a set of guidelines but also distributed a model Speedy Trial Plan for possible adoption by planning groups.[2] These steps were of great value to the districts in the preparation of local plans. They may have also had an unintended consequence, however. A number of districts simply used the Model Plan to produce "boiler plate" district plans. This procedure required little if any close examination of the Act's provisions or development of guidelines tailored to local conditions. Thus, in many districts, the early planning process failed to consider the need for local adaptations designed to accommodate district-specific circumstances and conditions.

[1] Northern Illinois is presently operating under a Judicial Emergency; the district has decided not to request an extension and is readying for the implementation of sanctions in July.

[2] The latest versions of these materials are: Judicial Conference of the United States, Committee on the Administration of the Criminal Law, "Guidelines to the Administration of the Speedy Trial Act of 1974, as Amended," December 1979; and "Revised Model Plan - 1979: Model Statement of Time Limits and Procedures for Achieving Prompt Disposition of Criminal Cases," December 1979.

Table 4.1

COMPOSITION OF THE PLANNING GROUP IN SIX SAMPLE DISTRICTS
1978

	Middle Georgia	Western New York	Eastern Missouri	Western Pennsylvania	New Jersey	Northern Illinois
A. U.S. Attorney's Office						
U.S. Attorney	•	•	•	•	•	•
Assistant U.S. Attorneys	•[a]					
B. U.S. District Court						
Chief Judge	•	•	•	•	•	•
Other Judge(s)				•[b]	•	•[c]
Magistrate(s)		•	•	•	•	•
Clerk of Court	•	•	•	•	•	•
Chief Federal Probation Officer	•	•	•	•	•	•[d]
Federal Public Defender					•	•
Pretrial Service Agency Chief						•[d]
U.S. Marshal	•	•	•		•	•
C. Others						
Reporter for Planning Group		•		•	•	•
Private Attorney - Criminal		•	•	•	•	•[e]
Private Attorney - Civil			•			

[a] Serves as Reporter for Planning Group

[b] Judges = 3, including 1 Bankruptcy Judge

[c] Judges = 2, including 1 from U.S. Court of Appeals

[d] Same individual

[e] Private Attorneys = 3

Two of the districts in our sample--New Jersey and Northern Illinois--wrote extensive coordinating and monitoring procedures into their speedy trial plans. Indeed, as discussed in later site reports, these early plans were extremely ambitious, requiring manually generated record forms from virtually every actor in the system. With the introduction of computerized recordkeeping systems, both districts have streamlined their procedures.

The district plans have generally provided high quality data on the progress of the compliance effort, as well as on caseload and other factors affecting compliance. In some plans, however, these data were used mainly to demonstrate continuing problems in complying with the Act, while little was said of procedures developed to improve the district's performance.

The schedule mandated for the planning process suggests that the planning groups were not intended to be ongoing advisory bodies. By requiring that plans be submitted once every two years, the Act fostered a limited view of the planning groups' functions. In some districts, the group has not met officially since submission of the last plan in June 1978. In New Jersey and Northern Illinois, the group has met only once since then to decide whether to request a judicial emergency. There is other evidence that the planning groups have not played an active, continuing role in local implementation efforts. Some respondents in both the courts and the United States attorneys' offices were unaware of the planning group's existence or were unfamiliar with its composition. Moreover, locally produced plans have not been widely disseminated in some districts.

Since the planning group was designed as the primary mechanism for coordination among involved agencies, offices, and individuals, its limited role in speedy trial implementation has a number of consequences. Many individuals within the United States attorneys' office, for example, are simply unaware of the district's compliance record and, thus, of the need for increased efforts in meeting the time limits. As will be described below, lack of coordination may also result in inadequate training and dissemination concerning the Act's provisions and their local application. This, in turn, may lead to unnecessarily restrictive use of the excluded time provisions and policies and practices designed to avoid what are perceived to be the "fixed" time limits of the Act.

In summary, there is a clear need for the role of the planning group to be enlarged and continued. This committee has potential for developing, coordinating, and overseeing district compliance programs--but as yet it is largely untapped.

4.2 Monitoring and Reporting

Much of the activity undertaken to achieve compliance in both the United States attorneys' offices and the courts has been devoted to the design of monitoring and recordkeeping systems. New Jersey's speedy trial plan, for example, refers to recordkeeping as the "cornerstone" of speedy trial compliance. As noted earlier, we did not find levels of compliance to be directly related to the quantity or nature of the procedures designed to achieve compliance. Yet there is a strong argument to be made for monitoring and recordkeeping systems. As discussed in Chapter 3, the Act is intricate. In order to achieve and determine compliance, AUSAs should carefully and continuously monitor speedy trial time limits, taking into account allowable excludable time periods.

Furthermore, if the United States attorneys' offices fail to monitor the speedy trial intervals, there is no check on the court's administration of the Act. Ultimately, the prosecutor may pay the price for a clerk's error of omission or commission in identifying, recording and calculating excludable time. This point is emphasized in a manual prepared for AUSAs in the Northern District of Illinois:

> Because of the severe sanction provided for under the Act...it is essential that every government attorney keep careful track of the elapsed time on his or her cases. This includes all periods of excludable delay. You cannot rely on the district court to do this for you.[1]

Lack of monitoring may also deprive the United States attorney's office of the benefits of the Act's flexibility. For example, if an AUSA is not aware of the excludable time in a case, he or she is not in a position to ask for a postponement of the trial date to reflect such exclusions.

In general, the extent of monitoring and recordkeeping is closely related to the size of the district. Larger districts tend to have more elaborate procedures; smaller districts may have few if any formal procedures. Monitoring activities also differ by speedy trial interval. Primary responsibility for the arrest-to-indictment interval rests with the United States attorney's office, while responsibility for post-indictment monitoring lies largely with the court.

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[1] Northern District of Illinois, United States Attorney Memorandum Related to the Speedy Trial Act, 1979 Revision.

4.2.1 Pre-Indictment Monitoring Systems

In cases initiated by arrest, the United States attorney's office must see that the 30-day limit to indictment is met. We found that each of the United States attorneys' offices has established procedures for monitoring this interval, but that these procedures vary widely.

In three of the sample districts, responsibility for complying with the arrest-to-indictment limit rests primarily with the AUSA handling the case and his or her immediate supervisor. For example, in New Jersey, despite a relatively large caseload, there is presently no other case tracking or monitoring procedure.[1] In the Middle District of Georgia, which has a small caseload, no formal monitoring system is used, nor does there appear to be a need for one. The AUSAs simply keep track of their own cases. In the Eastern District of Missouri, a medium-sized office, there is no centralized tracking system, but cases in speedy trial difficulty are discussed at weekly staff meetings and corrective action is taken.

The other three offices we visited currently employ formal monitoring systems for the 30-day clock. In general, these systems are not highly sophisticated, relying primarily on manually generated records and "tickler systems." In the Western District of Pennsylvania, the United States attorney's docket clerk advises the AUSA by memorandom of the last scheduled grand jury session before expiration of the 30-day limit. A follow-up memorandum is also sent within two weeks of the arrest date.[2] In the Northern District of Illinois, the office affixes red tags to case jackets noting the expiration of the 30-day limit. It also distributes 14 and 20-day reminders to AUSAs and their supervisors to alert them of dates by which indictments must be filed. Finally, in the Western District of New York, a card file system is employed. Cards are filed by date of arrest and reviewed a few days prior to expiration of the 30-day clock. If an indictment has not yet been returned, the AUSA is reminded of the upcoming deadline.

The courts have thus far exercised little control over cases prior to indictment. In the past, the major task of the court clerk in the arrest-to-indictment interval has been to obtain and record information on arrests and

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[1] It should be pointed out, however, that this office has been chosen as a pilot district for the Prosecutor Management Information System (PROMIS) being developed for the Department of Justice by the Institute for Law and Social Research. When the system is in full operation, it will permit much more comprehensive tracking of all cases during both speedy trial intervals.

[2] This district also has a computerized tracking system in the planning stage.

excluded time. In many districts, however, even this task poses serious problems. Accurate arrest dates are often difficult to obtain from magistrates, whose recordkeeping activities are frequently decentralized and informal. As was discussed in Chapter 3, court clerks also have difficulty obtaining information from United States attorneys' offices on pre-indictment excluded time.

There is evidence that as the date for implementing sanctions approaches, the courts are becoming more involved in monitoring the arrest-to-indictment interval. For example in both New Jersey and Illinois, the court clerk now gathers and summarizes case information for this interval, distributing monthly status reports to magistrates on all cases initiated by arrest. Some magistrates have requested status hearings on these cases; others have informally notified the appropriate AUSA that time is about to or has expired.

In general, however, there is a need for more reliable and better coordinated monitoring systems in the arrest-to-indictment interval. Particularly in large districts, centralized and automated tracking systems would be very helpful to the United States attorneys' offices. Moreover, the courts and the prosecutors need to improve the flow of information between them on case events and excluded time during the pre-indictment period.

4.2.2 Post-Indictment Monitoring Systems

In the indictment-to-trial interval, the burden of responsibility for speedy trial compliance shifts dramatically to the court. The United States attorney's office in Eastern Missouri is the only one in our study sample to take an active role in monitoring the indictment-to-trial interval. The key to monitoring in this district is a coordinated approach to setting trial dates which will be discussed in section 4.4 below. Elsewhere, recordkeeping and monitoring activites are the province of the court.

In New Jersey, all speedy trial information--starting dates and deadlines of intervals and excludable periods--is currently contained in a rolodex file in the court clerk's office with a card for each defendant. This file is used to prepare monthly status reports for each magistrate and judge, copies of which are sent to the United States attorney's office. New Jersey is in the process of implementing the computerized Speedy Trial Act Reporting System (STARS) which will permit the court clerk's office to track all cases in the district more effectively. The system will contain up-to-date information on the status of each defendant; it will also be used to generate "speedy trial defendant inventories" for each magistrate and judge, and for the United States attorney's office. With minor modification, it could provide each AUSA with up-to-date reports on the status of all of his or her cases.

In the Northern District of Illinois, the court clerk monitors cases through the automated COURTRAN system installed in 1977. This system contains full docket sheet information on all defendants, as well as calendar and net time[1] for each interval, pending exclusions, and current action deadlines. COURTRAN is used to produce regular status reports for the judges on all of their assigned cases. Moreover, the Chief Judge frequently requests status reports on all cases approaching speedy trial time limits. The court clerk's office provides no reports or status updates to the United States attorney's office. This idea was abandoned due to the volume of paperwork required.

Monitoring of the post-indictment interval in small and medium-sized districts is less centralized and formal than in large districts. In the Western District of Pennsylvania, for example, each courtroom deputy collects and records excludable time information, monitors the time limits of the Act, and keeps the judge informed of deadlines. In the Middle District of Georgia, the caseload is so small that the clerk's policy is to examine each pending case on a weekly basis to make decisions on excludable periods and ensure that these are entered on the docket sheets. However, in view of the impending dismissal sanction, the clerk plans to institute a "tickler" system and regular speedy trial reports to the judges and the United States attorney's office.

With the exception of Eastern Missouri, the United States attorneys' offices have few, if any, formal procedures for monitoring the indictment-to-trial interval. In Middle Georgia, Western Pennsylvania, and New Jersey, monitoring of cases post-indictment is the responsibility of individual AUSAs. In the Western District of New York, the clerk in the United States attorney's office keeps a card file which is supposed to permit monitoring of the 70-day clock. The system, however, has not been implemented fully. In Northern Illinois, AUSAs are reviewed by their supervisory attorney every 60 days. This review has many purposes, one of which is to monitor speedy trial compliance.

In summary, where they have been installed, automated case tracking systems are enhancing the court's monitoring efforts. Such systems would be helpful in all large and medium-sized districts. In the large and medium-sized United States attorneys' offices, there is also a need for centralized monitoring of the indictment-to-trial interval. Moreover, in districts of all sizes, AUSAs must take a more active role in tracking cases during the post-indictment period. Bearing in mind possible separation of power problems, increased court-prosecutor coordination and information exchange should

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[1] Net time is defined roughly as the total number of calendar days for a given speedy trial interval minus all non-overlapping excludable days.

also be considered. The complexity of the Act and the attendant computational difficulties make the introduction of more systematic case tracking and monitoring systems extremely important.

4.2.3 Reporting

The court clerks in New Jersey and Northern Illinois devote a great deal of effort to producing annual (and regularly updated) progress reports. These reports describe overall case processing in the court, as well as the performance of individual judges (and vicinages in the case of New Jersey). In fact, these reports have been used to refine local court procedures and to reallocate resources. They also serve as "report cards" for individual judges, creating an incentive for increased efficiency. Such reports have potential as management tools and all districts should be encouraged to develop them.

Several United States attorneys' offices also produce annual reports; however, these do not typically report case processing data or speedy trial performance. Rather, they are narrative reports highlighting achievements of the past year. United States attorneys should consider incorporating into their annual reports information on speedy trial performance as a way of keeping their staffs aware of compliance records and remaining problems.

4.3 Coordination With Investigative Agencies

Smooth working relationships with investigative agencies are crucial to the effective functioning of United States attorneys' offices, influencing not only speedy trial matters but also the proper administration of federal criminal justice. Substantial effort has been devoted to improving such coordination in order to achieve compliance with speedy trial limits. In general, coordination between investigative agencies and prosecutors is focused on the period before formal case initiation. Investigative agencies are intimately involved in the development of declination, case selection, and arrest policies. These will be discussed fully in Chapter 6.

Among the six District Approaches offices, New Jersey perhaps best exemplifies such early coordination. Investigative agents and prosecutorial staff in this district serve together on a Federal Law Enforcement Council. In addition, investigative agency staff are ex officio members of the Federal-State Law Enforcement Committee which is designed to develop inter-level coordination of goals and resources. This coordination helps channel investigative resources into priority areas. It also provides early warning to the

United States attorney's office about impending matters, thus aiding in case assignment and grand jury scheduling. Such initial coordination can often prevent subsequent delay in case processing.

The aspect of coordination which most directly affects processing time of cases already in the system is the effort to expedite investigative and laboratory reports, particularly in cases facing impending speedy trial limits. Several districts have established time limits within which the United States attorney's office must receive all investigative and laboratory reports. Other districts report making priority requests for cases in speedy trial difficulty. Generally, agencies have responded to such requests by reassigning staff in order to complete investigations and prepare necessary reports within the required limits. Such cooperation is particularly good in New Jersey, according to the Chief of the Criminal Division. In the Middle District of Georgia, on the other hand, agency staff reductions have made availability of sufficient resources in crisis situations somewhat more uncertain.

Despite the level of effort and willingness to reassign staff, however, there are continuing difficulties in some districts in obtaining necessary reports quickly enough to comply with speedy trial deadlines. Predictably, there are disagreements between investigative agents and prosecutors as to the extent and source of this problem. Prosecutors often cite failure to receive needed laboratory or investigative reports as the reason for noncompliance with the arrest-to-indictment limits or for pre-indictment dismissals, as will be discussed in Chapter 5 below. Reports which must be obtained from Washington D.C.--e.g., handwriting and fingerprint analyses--are a particular cause for concern. On the other hand, investigative agents report that the United States attorney's office does not always notify them of priorities among cases or how to deal with conflicts among priority cases.

Most investigative agents interviewed agreed that given adequate information on priorities, they could meet required deadlines in the vast majority of cases. As will be discussed in Chapter 7, additional exclusions to cover unusual delays in obtaining investigative and laboratory reports would help to ease remaining difficulties.

4.4 Scheduling Case Events

The court has tremendous impact on the speed with which criminal cases are processed due to its power to schedule key case events: arraignments, discovery, filing of motions, hearings, and trials. In the pre-indictment period, the United States attorney's office may use its control of grand jury scheduling to achieve improved compliance with the Act.

4.4.1 Scheduling Grand Juries

In response to speedy trial pressures--particularly in arrest cases--many districts have had to impanel more grand juries and schedule more grand jury sessions. For the most part, these changes have been less dramatic in urban districts where continuous grand jury sessions have been the rule for some time. However, arranging for grand jury time on short notice remains a difficulty in such large districts as New Jersey. There is a shortage of grand jury rooms in some districts, as well.

The problems with grand juries are perhaps more severe in geographically large rural districts. Grand jurors are typically drawn from the entire district, so repeated sessions called on short notice are disruptive and expensive. Some districts with multiple far-flung court divisions have regular schedules of grand jury sessions coordinated with the regular terms of court in the division. This was the practice in the Middle District of Georgia long before the Speedy Trial Act, while in South Carolina such a schedule was instituted in response to the Act. In the latter district, grand juries meet in each division on a rotating basis and arraignments and trial periods are scheduled for seven and 60 days later, respectively, so as to comply with the limits of the Act.

Such scheduling practices should be considered in rural multi-division districts, while large districts should consider convening more grand juries or using grand juries more efficiently so as to ensure that cases can be handled within speedy trial time limits even during unexpectedly busy periods. Of course, any increase in grand jury scheduling will have cost implications, particularly if additional space or travel is required.

4.4.2 Scheduling Arraignments

Prior to the 1979 Amendments, the Speedy Trial Act required that arraignments be held within ten days of indictment. Despite the elimination of this time limit from the Act, a number of districts continue to hold timely arraignments. In Eastern Missouri, for example, magistrates continue to set arraignments within ten days of indictment. In Northern Illinois, the court clerk has recently taken over the responsibility for setting arraignments from the United States attorney. Arraignments are now automatically set upon filing of an indictment or information, substantially speeding case processing. Since many districts set trial dates at arraignment, timely arraignments tend to produce timely trial dates.

4.4.3 Setting Trial Dates

As required by the Act, many judges currently set trial dates early in the case--usuallly at arraignment. Others, however, follow the traditional practice of not setting the trial date until after the disposition of pre-trial motions.

Eastern Missouri has perhaps the most innovative approach of the six study districts to setting trial dates. This is influenced by the district's tradition of rapid case processing and involves a unique coordination effort between the United States attorney's office and the court. As noted earlier, this is the only district in our sample in which the prosecutor takes an active role in monitoring the indictment-to-trial interval. As each case enters this interval, the United States attorney sends the assigned judge a notification of the starting date of the interval and the deadline for commencement of trial. The judge sets the trial date at the arraignment, using the United States attorney's letter as a reference in making the decision. Defense counsel is present at arraignment and can inform the judge of any scheduling conflicts or other matters bearing on trial scheduling. After arraignment, the court in Eastern Missouri sends an "Order of Court Relating to Trial" to the defense counsel and the AUSA responsible for the case. This order notifies the parties of the trial date and requires any motions for continuance to be made within seven days. Requests for continuance made after this seven-day period are considered only in extreme circumstances. Thus, in almost all cases, the court is aware of any requests for postponement within a week of arraignment.

The Eastern District of Missouri's Order of Court Relating to Trial makes clear the court's expectation that both parties will be prepared for trial on the scheduled date, barring automatic exclusions. Here an important balancing of priorities must take place. Speedy case processing and compliance with the Act are important, to be sure, but these goals must be mediated by need for adequate case preparation, accommodation of case complexities, and consideration of other exigencies which frequently affect the processing of criminal cases.

4.4.4 Discovery

Early, and in some districts automatic, discovery policies have been either ordered by the court or initiated by the United States attorney's office in order to accelerate case processing and obviate numerous pre-trial motions. Furthermore, some districts have expanded discovery to cover more material than required by Rule 16 of the Federal Rules of Criminal Procedure. In one court with expanded discovery the parties are expected to resolve independently any disputes concerning discoverable materials. The court makes it

clear that if matters are not settled in this fashion, it will be to the detriment of the recalcitrant party.

Liberal discovery policies answer a major criticism of defense counsel. In hearings before the Senate Judiciary Committee, the Federal Defender for the Southern District of California testified that perhaps the defense bar's most serious problem with the Speedy Trial Act was the limited discovery allowed by Rule 16.[1]

4.4.5 Motions Practice

In addition to requiring early and full discovery, many districts have expedited case processing by establishing and enforcing local time limits for filing and responding to pre-trial motions. Rule 12(c) of the Federal Rules of Criminal Procedure allows either such local rules or case-by-case scheduling by judges.

In order to minimize hearings on pre-trial motions, the Middle District of Georgia and many other districts require written motions, responses, and briefs to be filed before any hearing is held. Even then, hearings are held only if evidence must be taken to dispose of the motion. The requirement that everything be submitted in writing is designed to discourage the filing of frivolous and purely dilatory motions and thus to speed case processing.

It is interesting to note that in some other districts it is felt that requiring everything in writing produces delay, while encouraging oral motions and following more informal procedures tends to speed case processing. This is dramatic evidence of the heterogeneity of policies and practices in United States district courts.

Although omnibus hearings on pre-trial motions have been mentioned as a device for expediting cases, we did not find them in use in any of the six districts surveyed. Several respondents argued that such hearings are impractical, given the sequential manner in which cases normally develop.

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[1] Testimony of John Cleary in United States Congress, Senate, Hearings to Amend the Speedy Trial Act of 1974, p. 97.

4.5 Training and Dissemination

We found some evidence of training and dissemination efforts related to implementation of the Speedy Trial Act in all six study districts. However, this is an area in need of substantial improvement, particularly in the United States attorneys' offices. As noted above, the Judicial Conference of the United States has developed and disseminated Guidelines designed to assist courts in implementing the provisions of the Speedy Trial Act. The latest Guidelines incorporating the 1979 Amendments were distributed in February 1980. The other major dissemination effort undertaken by the Federal Judiciary is the ongoing series of "Speedy Trial Advisories" produced by the AOUSC.

At the local level, efforts at training and dissemination within the court have been spotty. The Second Circuit developed a pioneering set of guidelines for the implementation of the Act. However, no other circuit or district has followed the example. In the Northern District of Illinois, the Chief Judge has conducted informal training sessions for the other judges on the interpretation of excludable time provisions and has attempted to bring about increased use of applicable exclusions. Elsewhere we found little in the way of coordinated training programs. Most courts simply distribute the materials they receive from Washington. Particularly in view of the narrow interpretation held by many judges of the "ends of justice" exclusion (see Chapter 3) and the diverse interpretation of many other provisions of the Act, there seems to be a clear need for further clarification and training.

It should be pointed out that guidelines and advisories--whether local or national--have no force of law. Only the statute per se, case law, or binding rules can provide such force. As we shall discuss in Chapter 7, a possible solution to the problem of diverse interpretation lies in the promulgation of binding rules by a duly authorized body.

In the United States attorneys' offices that we visited, training on the Speedy Trial Act consists essentially of distributing materials sent out by the Department of Justice: the amended Act, the legislative history, and the Judicial Conference Guidelines, together with the comments of the Criminal Division. Significant case law on the Act has been reported in the United States Attorneys' Bulletin. Finally, the United States Attorneys' Manual is currently being revised to reflect the 1979 Amendments, and this revision will be distributed in the near future. In general there is a need for more and clearer policy guidance on the Act from the Department of Justice to the United States attorneys' offices.

Some offices reported that speedy trial issues were discussed at regular staff meetings and that new AUSAs received information on the Act as part of

their orientation program. However, we found no formal, ongoing training programs in any of the offices we visited. Moreover, there is very little locally generated instructional material on the Act. The United States attorneys' office in the Northern District of Illinois, alone in our study sample, has a manual on the Act. This manual is an extensively annotated set of guidelines which follows the Judicial Conference Guidelines in most respects. As noted earlier, this manual places the burden of responsibility for monitoring speedy trial intervals on the AUSAs.

Certainly the Act has high visibility within both the United States attorneys' offices and the investigative agencies. Virtually everyone interviewed in the six District Approaches sites was familiar with the basic time limits. However, there was a surprisingly low level of familiarity with the specific provisions of the Act. Many attorneys were unfamiliar with the 1979 Amendments. Some were even unaware that the 10-day indictment-to-arraignment time limit had been eliminated. In general, there appears to be a need for additional training and dissemination of information to make attorneys aware of the provisions of the Act and the flexibility intended by Congress to be a cornerstone of it. Such training, together with uniform binding standards of interpretation, may help to eliminate the rigid view of the time limits which appears to guide current compliance efforts.

4.6 Allocation of Resources

The increase in judgeships provided by the Omnibus Judgeship Act, and the associated increase in United States attorneys' office staff, were designed in part to improve compliance with speedy trial limits and to accommodate the recent rise in civil filings. Respondents in both New Jersey and the Northern District of Illinois felt that the increase in judgeships would substantially improve compliance levels. (However, of the three judgeships authorized in Northern Illinois, none has yet been filled.) Vacancies existed in all four medium-sized and large districts in the last year. Table 4.2 summarizes 1979 judge strength in the six study districts.

Apart from requesting additional staff, the courts, United States attorneys' offices, and investigative agencies have taken a number of steps to maximize use of existing resources. Such measures are particularly important because of the need to meet unforeseen difficulties such as occur when a judge or AUSA is tied up with a particularly complex trial or case and cannot attend to other assignments.

Table 4.2

JUDGE STRENGTH IN STUDY DISTRICTS
YEAR ENDED JUNE 30, 1979

District by Size and Level of Compliance[a]	Number of Authorized Judgeships Prior to Omnibus Judgeship Act	Number of Additional Judgeships Authorized by Omnibus Judgeships Act	Vacant Judgeship, Months[b]
Small			
Georgia-M	2	0	0
New York-W	3	0	0
Medium			
Missouri-E	4	1	7.7
Pennsylvania-W	10	0	12.0
Large			
New Jersey	9	2	29.3
Illinois-N	13	3	27.3

Source: AOUSC, Management Statistics for U.S. Courts, 1979.

[a]High compliance districts are listed first within size strata.

[b]Calculated on the basis of authorized judgeships after Omnibus Judgeship Act.

4.6.1 Assignment and Reassignment of Staff

A flexible personnel structure is useful in meeting unexpected speedy trial problems. Cases may have to be reassigned or additional staff may have to be put on a case to see it through a crisis. All United States attorneys' offices and investigative agencies visited engaged in this kind of juggling as necessary.

The New Jersey office seems to have a particularly flexible organization. AUSAs are frequently "loaned" to other sections or divisions. This may be done at the division chief level, thus avoiding the red tape of executive staff clearance. Furthermore, although one AUSA is assigned to a case, AUSAs may fill in for each other as required for particular court appearances.

Although it was not included in the District Approaches sample, the Central District of California employs a noteworthy caseload monitoring device. The Chief of the Criminal Division maintains a wall-length board which displays AUSA assignments and key action dates for all cases. This board allows quick and continuous assessment of caseload and monitoring of trial dates and other key events to avoid conflicts. It also has great potential for tracking cases through speedy trial intervals.

All six United States district courts in our study esentially employ an individual calendar system. That is, each judge is assigned an equal number of cases which he or she is personally responsible for handling. Cases are assigned either by rotation or by some other randomization technique. In many districts, the complexity of the case is taken into account; that is, judges are assigned equal numbers of cases of varying degrees of complexity.

Within the basic framework of the individual calendar system, a number of additional assignment and reassignment policies have been adopted by the courts to speed case processing. In New Jersey, for example, one-third of the criminal cases originating in Newark are systematically assigned to judges in the Camden and Trenton vicinages in an effort to equalize caseload throughout the district. The clerk makes further reassignments as necessary to move the criminal calendar. In the Western District of Pennsylvania, reassignments are made on an ad hoc basis. The Northern District of Illinois has developed a task force of volunteer judges from the district, circuit court of appeals, and other districts in the circuit. These judges are called upon in the event of conflict between two cases approaching speedy trial deadlines.

The Eastern District of Missouri has developed a way of easing the pressure on judges involved in lengthy criminal trials. Any judge presiding at a criminal trial expected to last more than seven days receives no new civil cases for a period of time. Such measures should be considered for use in other districts so they may be better able to accommodate unforeseen scheduling conflicts, comply with speedy trial limits, and control civil backlog.

4.6.2 Use of Speedy Trial Coordinators

Both large districts in our sample--Northern Illinois and New Jersey--have full time speedy trial coordinators in the court clerk's office. These coordinators play a key role in keeping the records and monitoring systems up-to-date, preparing status reports, assisting in coordination of the planning group, and preparing the district plan. An equally important figure in both districts, however, is the clerk of court. These officials have primary responsibility for court management, and have been instrumental in the design of management information systems and procedures for recording exclusions. In general, they have overall supervision of the monitoring and reporting system. Both clerks also play key roles in writing the district plans and in preparing local and Federal reports. It is clear that in these large districts, speedy trial compliance would be most difficult to achieve without the involvement of these clerks.

In the four medium-sized and small districts there are no full time speedy trial coordinators. In the Western District of Pennsylvania, courtroom deputies monitor and record speedy trial information for each judge. In Middle Georgia, the court clerk currently handles coordinating functions; however, the district intends to hire a chief deputy to serve as speedy trial coordinator.

Within the United States attorneys' offices, there is typically no one person designated as speedy trial coordinator. Rather, a number of individuals perform discrete speedy trial functions. Generally, docket clerks keep office-wide records and secretaries prepare reports within the criminal division. Training and follow-up activities are the function of the chief of the criminal division or other supervising AUSAs. Finally, planning and coordination between the office, various agencies, and the court may be handled either by division chiefs or staff in the executive office.

In general, this fragmentation of responsibilities within the United States attorney's office poses problems, particularly in the larger districts. It inhibits coordination between the United States attorney's office and the court and helps create an environment in which implementation becomes

reactive rather than creative. More attention should be given to this coordinating function in the United States attorneys' offices, particularly those in large districts. Moreover, it would be very useful to have staff at the district level who have detailed knowledge of the Act and who know where to obtain additional guidance when necessary. Indeed, given the intricacy of the Act, much of the current weakness of United States attorneys' compliance efforts may be traced to the lack of a coordinated approach to its management and monitoring.

4.6.3 Use of Magistrates

Full use of magistrates is a potentially important device for improving speedy trial compliance. Table 4.3 shows the number of United States magistrates in each of the six study districts. The Federal Magistrates Act of 1979 significantly expanded the power of United States magistrates in both civil and criminal cases. They may now hear and enter judgment on any civil case, jury or non-jury, if both parties consent. On the criminal side magistrates may now hear jury and non-jury misdemeanor trials upon written consent of the defendant. In order to exercise their newly authorized powers in civil or criminal cases, magistrates must be formally "designated" by the district courts.

Admittedly, the statutory expansion of magistrates' powers is very recent. However, none of the districts we visited had taken full advantage of the new legislation. According to some respondents, the "designation" process is not clear; thus its application has been limited. There are other problems as well. Some judges are loathe to relinquish any of their jurisdiction to magistrates. This may be evidenced by reluctance to turn misdemeanor cases over to magistrates or by unwillingness to allow magistrates to handle certain appearances in a case. Many judges prefer to maintain control of a case from assignment to disposition. Several judges argued that only with such continuous control could they "know" a defendant properly and be in a position to impose a fair sentence in the event of conviction. As a result of these factors, no district in our study sample is currently utilizing magistrates to the extent possible.

In general, there appears to be wide variation among both districts and judges in the use of magistrates. Generally, larger districts tend to give magistrates more responsibilities than do smaller districts, but it is noteworthy that the large high-compliance district in our study (New Jersey) makes somewhat more use of magistrates than does the large low-compliance district (Northern Illinois). The most striking difference between the two is the contrast in numbers of minor offenses handled--a great many in New Jersey and very few in Northern Illinois. It should be pointed out that increased use of magistrates for disposing of minor offense and misdemeanor cases requires a

Table 4.3

UNITED STATES MAGISTRATES IN STUDY DISTRICTS IN 1980

District by Size and Level of Compliance[a]	Full-Time Magistrates	Part-Time Magistrates
Small		
Georgia-M	0	5
New York-W	1	1
Medium		
Missouri-E	2	0
Pennsylvania-W	2	2
Large		
New Jersey	5	2
Illinois-N	4	1

Source: Information collected on site visits.

[a]High compliance districts are listed first within size strata.

convergence of court and prosecutorial policy. The courts must move to empower magistrates to handle these cases and the United States attorneys must be willing to downgrade offenses to categories triable by magistrates. The latter decision, in turn, requires a balancing of speedy processing concerns with concerns for the ends of justice. It would be unfortunate to see wholesale downgrading of offenses simply to improve compliance with the Speedy Trial Act. With all of these considerations in mind, courts and prosecutors should make the maximum use of magistrates that is consistent with the proper administration of Federal criminal justice.

4.6.4 Use of Senior and Visiting Judges

Utilization of senior and visiting judges should be encouraged as an aid in the compliance effort. Table 4.4 shows the number of senior judges in the six study districts. Utilization of senior judges varies across disricts. Eastern Missouri and Middle Georgia have very active senior judges, while Northern Illinois has recently expanded their involvement in criminal cases.

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As already noted, Northern Illinois makes use of visiting judges in its task force. By contrast, New Jersey rarely employs visiting judges. Visiting judges are sometimes assigned by the Second Circuit to the Western District of New York in the event of calendar congestion.

Table 4.4

SENIOR JUDGES IN STUDY DISTRICTS
1980

District by Size and Level of Compliance[a]	Number of Senior Judges
Small	
Georgia-M	1
New York-W	0
Medium	
Missouri-E	4
Pennsylvania-W	3
Large	
New Jersey	5
Illinois-N	3

Source: Information collected on site visits.

[a]High compliance districts are listed first within size stratum.

4.7 Summary and Conclusions

In this chapter we have described a broad array of procedures developed in six sample districts to improve compliance with the Speedy Trial Act. It is clear that the compliance effort is taken seriously in the districts visited. It is just as clear that the scope, formality, and sophistication of procedures varies widely. While we did not find levels of compliance to be directly related to the quantity or nature of the procedures used to achieve compliance, there is a strong argument for additional measures to be adopted and current approaches strengthened. As discussed in Chapter 3, the Act is intricate; full compliance requires concerted efforts to improve district performance.

The procedural areas which have thus far received the most effort and attention are coordination with investigative agencies, case monitoring, scheduling

case events, and resource allocation. All United States attorneys' offices visited have worked hard to achieve relationships with federal investigative agents, particularly with respect to obtaining laboratory and investigative reports. As will be discussed in Chapter 5, there has also been substantial coordination in the development of declination and arrest policies. In some districts, however, additional coordination is still necessary to expedite completion of investigations and reports. Additional exclusions might also be provided to cover delays in this process.

While most districts have developed some form of monitoring scheme, the complexity of the Act and the computations required by it suggest a need for more systematic monitoring of speedy trial intervals. United States attorneys' offices have developed either formal or informal monitoring systems for the arrest-to-indictment interval. Where there are no centralized "tickler" systems, AUSAs and their immediate supervisors assume responsibility for meeting the 30-day clock. More centralized monitoring systems might be implemented, particularly in larger districts. Improved coordination and information exchange with court clerks should also be developed, particularly with respect to recording of excluded time.

United States attorneys' offices currently pay little attention to monitoring the post-indictment interval, primarily because they consider this a court function. However, prosecutors must actively monitor this time period if they wish to have a check on the court's administration of the Act and fully avail themselves of the flexibility envisioned by Congress. In large and medium-sized districts, automated case tracking systems might be considered. The courts have developed mechanisms for monitoring the indictment-to-trial period, some of which involve sophisticated management information systems and some of which are decentralized and less formal. Automated systems should be implemented to the extent possible. There is also a need in this interval for more effective information flow between the offices of the clerk and the United States attorney and for clarification of separation of powers issues. That is, courts need some guidance as to whether provision of information to the United States attorney's offices on case status erodes the independence of the court. To ensure fairness, defense attorneys should also have full access to information on speedy trial events.

The courts--and, to a lesser extent, the United States attorneys' offices--have adopted or improved pre-existing methods of scheduling and controlling case events. These include expanded and/or rotating grand jury sessions, early arraignments, early and expanded discovery, firm time limits for filing motions and responses, and timely scheduling of trials. Such practices are necessary to some degree in all districts, according to their particular character and circumstances. However, close attention must be paid to the proper balance between the need for speedy processing and the importance of flexibility to accommodate the range of cases in the system.

In the area of resource allocation, most districts have used flexible assignment and reassignment policies to maximize utilization of available district court judges and AUSAs. There is substantial variability in the use of magistrates, senior judges, and visiting judges, however. Although recent legislation has broadened the responsibilities of the magistrates, few courts appear to be taking active steps to increase their role in criminal case processing. Districts should make full use of magistrates, as well as senior and visiting judges. Furthermore, while many United States attorneys' offices may not need a full-time speedy trial coordinator, it is recommended that individuals be designated to carry out necessary monitoring, training, dissemination, and coordination functions.

The planning effort needs improvement. The speedy trial planning groups appear to have been helpful in initial implementation efforts, drafting local speedy trial plans and designing initial administrative procedures. They have not generally served as ongoing coordinating committees, however, nor have they provided continuing feedback to those involved in the compliance effort. In general, their activities have been largely directed to meeting Federal reporting obligations. The role of these groups should be expanded and made ongoing.

Perhaps the weakest areas in implementation of the Act are training and dissemination. Many AUSAs are unfamiliar with the specifics of the Act. All districts visited would benefit from more systematic programs to produce and disseminate speedy trial information and to train personnel at all levels in the use of that information. Moreover, to accommodate local circumstances and conditions, districts should not simply distribute materials received from Washington; they should develop local manuals of procedure to guide their own staff. Finally, as will be discussed in Chapter 7, there is a need for uniform binding rules interpreting the Act and setting standards for its implementation.

5.0 PROSECUTORIAL POLICIES AND PRACTICES

The preceding chapter described the management strategies adopted by the United States district courts and United States attorneys' offices in response to the speedy trial mandate. For the most part, these measures can be described as direct, affirmative actions to administer the provisions of the Act. This chapter reviews a number of prosecutorial policies and practices which may also facilitate speedy trial compliance.

Some of these procedural tactics have been developed explicitly to mitigate the pressures of the Act. In some cases, these tactics may also vitiate the intent of the legislation and may be viewed as its unintended consequences. Others are partly the result of broader changes in Federal law enforcement policies.

A definitive analysis of the magnitude of these changes, their origins, and their consequences for the administration of justice, was beyond the informational resources available for this report. Rather, we use the results of our field observations and interviews, supported where possible by analyses of secondary data, to draw inferences about the extent to which speedy trial considerations have affected prosecutorial behavior. Case data from the 18 site Records Study have also been included, wherever they bear on the discussion.

Many of the issues examined in this chapter were raised during the legislative debate that preceded enactment of the 1979 Amendments. Where appropriate, we reference that debate in the discussions that follow.

5.1 Filings

There has been a dramatic reduction in the number of criminal cases filed in the United States district courts over the last several years. According to Administrative Office of the United States Courts (AOUSC) statistics, the number of cases filed declined from 41,020 in the year ending June 30, 1976 to 32,688 in the year ending June 30, 1979, a drop of 20 percent.[1] Part of this drop is due to change in the way superseding indictments are counted

[1] AOUSC, 1979 Annual Report of the Director, p. 7.

but, excluding those cases, there was still a 15 percent reduction in the number of cases filed. It is virtually impossible to associate this decline with available indices of criminal activity.[1]

A compelling explanation for the reduction in case filings is the recent shift in Federal law enforcement priorities. In 1977, the Attorney General announced that the Department of Justice would concentrate its resources on the investigation and prosecution of white collar crime, narcotics violations, organized crime, and official corruption. These cases are more complex than those handled previously and require longer periods of investigation and case preparation. According to AOUSC, this policy change has contributed to a substantial decline in the criminal caseload through:

- deferral to state or local authorities of auto theft violators when the theft is not connected to organized criminal activity;
- deferral to state and local authorities of other offenses--such as narcotics violations, larceny and theft--that are committed by persons under 21;
- deferral to state and local authorities of first time offenders accused of weapons and firearms violations;
- deferral to state and local authorities of bank robbery cases; and
- efforts to reach the main manufacturer and distributor of illicit drugs, with somewhat less emphasis on the small street operator.[2]

In one respect implementation of the Speedy Trial Act has led to a measurable reduction in the number of cases filed, albeit through a technical change in enumeration procedures. In accordance with § 3161(h)(6) of the Speedy Trial Act, superseding indictments and informations are no longer included in the count of new filings, except when the original indictment was dismissed

[1] While Index Offenses (e.g., robbery, homicide) remained stable over this period, these are not wholly comparable to Federal crimes. Moreover, for many classes of Federal offenses, where incidents are revealed by investigation (and victims may be unaware of their victimization), it is difficult to generate reliable estimates of criminal activity.

[2] AOUSC, 1979 Annual Report of the Director.

pursuant to the defendant's request. This change has resulted in a substantial drop in the reported number of indictments and informations filed. Had these superseding indictments and informations been counted as before, the number of filings for 1979 would have been 35,056, rather than 32,688.

Whether the speedy trial limits have had an impact on the number of case filings beyond this recordkeeping change is difficult to assess. Clearly, a reduction in filings would facilitate overall speedy trial compliance. With resources concentrated on a smaller number of cases, cases could be expected to proceed more quickly. Moreover, a shift away from routine offenses typically initiated by arrest would eliminate some of the pressures in the arrest-to-indictment interval. Thus, speedy trial requirements may actually reinforce changing law enforcement priorities in shaping prosecutorial behavior. On the other hand, pursuit of more complex cases might increase difficulties in the indictment-to-trial period, since these cases often require lengthy trial preparation. In the sections which follow we attempt to examine the impact of speedy trial requirements on filings by examining declination and deferral policies and practices in the six site-visited districts.

5.1.1 Declination

Interviews conducted at the six site-visited districts explored whether the respondents felt the Act had influenced the number of declinations. Assessments of this influence were quite varied. The Middle District of Georgia cited only two causes for their reduction in case filings: (1) the Department of Justice directives on prosecutorial priorities; and (2) a reduction in the local office staffs of various investigative agencies. Furthermore, the Western District of New York's formal declination policy, which is in line with the national priorities, does not seem to have been affected by speedy trial considerations. On the other hand, respondents in the Western District of Pennsylvania, the District of New Jersey, and the Northern District of Illinois reported that speedy trial constraints had at least partially reduced their rate of filings. Supervising attorneys at the last site believed that greater flexibility in case processing time would permit additional small cases to be pursued without impeding the prosecution of high priority cases. Faced with stringent time limits, they argued, assistant United States attorneys (AUSAs) were forced to be more selective in prosecuting cases than they would have been if work on small cases could have been scheduled around complex ones.

It must be noted that if the Act does have this effect on the declination rate, it is difficult to verify from available records. Declination reports cite case characteristics more often than speedy trial constraints per se as justifications for failure to prosecute. Thus, the extent to which speedy trial

concerns are actually affecting declinations can only be assessed through anecdotal reports such as those discussed above. For example, while respondents in the Northern District of Illinois reported an inhibiting effect on filings, declination reports in that district generally attributed declinations to "insufficient evidence" and "severity of the offense," not to speedy trial constraints. This corroborates results cited in a recent Department of Justice survey of United States attorneys' offices, which found the most frequently cited justifications for case declination to be: (1) availability of alternatives to Federal prosecution, including prosecution at the state or local level; (2) the severity of the offense, usually measured by the extent of injury or property loss involved; (3) the defendant's history and personal circumstances; and (4) the strength of the evidence.[1]

5.1.2 Deferral

In general, declination and deferral policy work together. Only cases involving less serious offenses are declined entirely; the others are deferred to local authorities for prosecution. Successful deferral strategies require close coordination between Federal and state and local prosecutors. If this is not present, cases may "fall through the cracks," local and Federal investigators may target the same subjects without being aware of each other's work, unanticipated arrest may occur, and the already overburdened local prosecutors' offices and state courts may become the dumping ground for large numbers of cases the United States attorney's office does not wish to handle.

Among the District Approaches sites, deferral strategies were variable in nature. Some respondents reported that cases deferred to local prosecutors were a burden to the state court. Others reported that coordination with local prosecutors was not entirely satisfactory.

At least one of the six site-visited districts, New Jersey, has achieved a high level of coordination among Federal, state, and county authorities. New Jersey has a history of joint Federal-state investigation and prosecution. In January 1978, the pattern of informal cooperation was formalized through the establishment of a Federal-state law enforcement committee. This committee is composed of the State Attorney General, the Director of the Division of Criminal Justice, the President of the County Prosecutors Association and the

[1] U.S. Department of Justice, "United States Attorneys' Written Guidelines for the Declination of Alleged Violations of Federal Criminal Laws: A Report to the United States Congress," Washington, D.C., November 1979.

United States Attorney. Investigative agency staff are ex officio members. The committee has improved coordination among jurisdictions, particularly with respect to the sharing of resources, the identification of problem areas, and the establishment of law enforcement priorities. The result of these improvements is an effective deferral program which has eased speedy trial pressures on the United States attorney's office.

The fact that the current United States Attorney in the District of New Jersey was formerly First Assistant State Attorney General in charge of criminal prosecution and that there is a high degree of centralization of criminal prosecution in the State Attorney General's office help account for this degree of cooperation. That is, the Speedy Trial Act per se did not bring about coordination in this district. However, joint law enforcement efforts have in fact facilitated compliance, and coordination is mentioned by respondents as a cornerstone of this district's efficiency in case processing.

5.1.3 Conclusion

In conclusion, while criminal filings have, in fact, declined over the past several years, this reduction can be attributed in large part to changes in Federal law enforcement policy. It is possible that in some districts, particularly those having difficulty achieving compliance, speedy trial considerations may limit prosecution of "borderline" cases that might otherwise be pursued. Evidence on this point is difficult to collect, however. The impact of the reduction in filings on the public interest depends on the causes of the decrease. Future policy should be sensitive to the possibility that speedy trial compliance is causing some "significant" cases to be dropped or diverted to already overburdened state and local courts.

5.2 Arrest Policies and Practices

5.2.1 Reduction in Use of Arrest

During the Senate Judiciary hearings preceding enactment of the 1979 Amendments, a great deal of debate centered on the issue of declining arrests. Essentially the debate focused on three questions:

- How large a reduction in the number or percentage of cases initiated by arrest has there been since implementation of the Speedy Trial Act of 1974?
- Can this reduction be attributed to speedy trial limits?

- Has this reduction had a negative effect on the administration of justice?

With respect to the first question, DOJ cited AOUSC data showing a decline in arrests from 18,849 in the 12-month period ending June 30, 1977 to 9,169 the following year.[1] In subsequent testimony, Professor Daniel Freed argued that these figures did not take into account two factors: (1) the overall decline in total filings; and (2) the fact that the 1978 AOUSC figures, which were based on counts of terminated cases, did not at that time contain all cases terminated during fiscal year 1978. Professor Freed estimated that a final tally would show that 16,300 arrests were made in fiscal year 1978, or a drop of about 2,600.[2]

With respect to the second and third issues, a number of witnesses testified that the decline in arrests could be attributed to speedy trial constraints and that this reduction represented a severe handicap to effective law enforcement. It was pointed out that without an arrest, the speedy trial clock does not run during investigation and presentation of preliminary evidence to the grand jury. Others contradicted this testimony, stating that there was no causal relationship between speedy trial pressures and the reduction in arrests. Furthermore, even if such a relationship existed, it was argued, the decline in arrests might actually be in the public interest. Professor Freed was the chief proponent of the latter position, arguing that the Speedy Trial Act had "enabled, and in many cases compelled, the United States attorneys to take earlier control of cases which they traditionally did not see until after an arrest had been made by the FBI or other agency."[3] Professor Freed testified that by declining arrests except in dire emergencies, United States attorneys' offices might reduce the number of cases initiated and later declined. He also argued that all too many cases were initiated by arrests which were not necessary to protect the public interest or carry out essential investigations.

Respondents in all six site-visited districts reported a substantial decline in the percentage of defendants whose cases were initiated by arrest. Table 5.1 supports their perceptions. Some reduction was found in all six site-visited districts, although the observed changes are smaller than the reported ones. Most attributed this reduction primarily to speedy trial constraints; indeed, changes in arrest policy were viewed as one of the primary mechanisms used in achieving compliance. Secondary analysis of AOUSC data also reveals that the percentage of defendants in cases initiated by arrest has declined over the

[1] Testimony of Philip B. Heymann, in Hearings to Amend the Speedy Trial Act of 1974, p. 51.

[2] Testimony of Daniel Freed, in Hearings to Amend the Speedy Trial Act of 1974, p. 76.

[3] Ibid., p. 35.

Table 5.1

PERCENTAGE OF DEFENDANTS IN TERMINATED CASES ARRESTED PRIOR TO INDICTMENT BY DISTRICT APPROACHES SITES FOR THE PERIODS JULY 1, 1976 THROUGH JUNE 30, 1977 AND JULY 1, 1978 THROUGH JUNE 30, 1979

Districts	July 1, 1976 through June 30, 1977			July 1, 1978 through June 30, 1979		
	(1)	(2)	(2)/(1)	(1)	(2)	(2)/(1)
Total	49,224	18,633	38%	38,896	12,279	32%
Western New York	418	131	31	399	93	23
New Jersey	1,345	380	28	769	155	20
Western Pennsylvania	502	110	22	446	74	17
Central Georgia	855	32	4	1,061	9	1
Northern Illinois	1,201	544	45	919	308	34
Eastern Missouri	388	147	38	222	79	36
Remaining Districts	44,515	17,289	39	35,080	11,561	33

Source: Speedy Trial file created from the INFOREX file provided by the Administrative Office of the United States Courts. See Table C-1 in Appendix C.

(1) Defendants in terminated cases

(2) Defendants arrested prior to indictment

last few years. The percentage of defendants arrested prior to indictment was 38 percent nationally for the year ending June 30, 1977, whereas for the year ending June 30, 1979, the comparable figure was 32 percent.

As with declinations, it may be difficult for prosecutors to distinguish between those changes attributable to changing case priorities (emphasizing white collar crime and related cases that may rely more heavily on investigation and indictment) and those attributable to speedy trial considerations. As displayed in Table 5.2, however, this reduction was fairly uniform across offense types. With the exception of immigration cases, arrest rates declined slightly in all categories of offenses displayed in the table.

Examining the actual numbers of defendants in cases initiated by arrest, one sees a slightly different picture. For the year ending June 30, 1977, this number was 18,633; for the year ending June 30, 1979, it is 12,279. In absolute terms, then, the reduction in the number of cases initiated by arrest was 34 percent.

Table 5.3 presents changes in filings and arrest rates by type of offense for the periods July 1, 1976 through June 30, 1977, and July 1, 1978 through June 3, 1979. Taken together, these figures may be summarized as follows:

- Overall, there has been a 21 percent reduction in filings from the first time period to the next.
- The percentage reduction is somewhat larger for those cases which are non-priority offenses.
- The percentage reduction in cases initiated by arrest is larger than the percentage reduction in filings.
- The percentage reduction in arrests is greatest in cases involving priority offenses. In particular, there are large percentage changes in cases involving United States Government fraud, forgery, and racketeering.

One possible interpretation of these findings is that the Speedy Trial Act has had an impact on arrest policies and practices over and above changing national law enforcement priorities. Unfortunately, these data still do not rule out the possibility that changing priorities have focused prosecutorial resources on a smaller number of important cases not typically initiated by arrest.

Regardless of the motivation, interviews conducted with our respondents indicate that this reduction in arrests has been brought about in two ways. First, all

Table 5.2

PERCENTAGE OF DEFENDANTS IN TERMINATED CASES ARRESTED PRIOR TO INDICTMENT BY OFFENSE TYPE FOR THE PERIODS JULY 1, 1976 THROUGH JUNE 30, 1977 AND JULY 1, 1978 THROUGH JUNE 30, 1979

Offense Type	July 1, 1976 through June 30, 1977			July 1, 1978 through June 30, 1979		
	(1)	(2)	(2)/(1)	(1)	(2)	(2)/(1)
Total	49,224	18,633	38%	38,896	12,279	32%
Theft	5,592	1,954	35%	4,610	1,500	32%
Embezzlement	2,116	445	21	1,859	324	17
Defraud United States	3,616	427	12	3,664	242	7
Other Fraud	2,138	517	24	2,521	570	23
Forgery	4,632	1,986	43	3,186	1,070	34
Drugs	9,548	5,416	57	6,494	3,555	55
Racketeering	10,498	2,756	26	8,857	1,118	13
Immigration	1,535	1,295	84	2,140	1,877	88
Remaining Offenses	9,549	3,837	40	5,565	2,023	36

Source: Speedy Trial File created from the INTOREX file provided by the Administrative Office of the United States Courts. See Table C-1 in Appendix C.

(1) Defendants in terminated cases

(2) Defendants arrested prior to indictment

Table 5.3

PERCENTAGE CHANGE IN THE NUMBER OF DEFENDANTS IN TERMINATED CASES AND ARRESTED PRIOR TO INDICTMENT BY OFFENSE TYPE FOR THE PERIODS JULY 1, 1976 THROUGH JUNE 30, 1977 AND JULY 1, 1978 THROUGH JUNE 1, 1979

Offense Type	Defendants in Terminated Cases			Defendants Arrested Prior to Indictment		
	July 1, 1976 through June 30, 1977	July 1, 1978 through June 30, 1979	Percent Change	July 1, 1976 through June 30, 1977	July 1, 1978 through June 30, 1979	Percent Change
Total	49,224	38,896	-21%	18,633	12,279	-34%
Priority Offenses	32,548	26,581	-18	11,547	6,879	-40
Embezzlement	2,116	1,859	-12	445	324	-27
Defraud United States	3,616	3,664	1	427	242	-43
Other Fraud	2,138	2,521	18	517	570	-10
Forgery	4,632	3,186	-31	1,986	1,070	-46
Drugs	9,548	6,494	-32	5,416	3,555	-34
Racketeering	10,498	8,857	-16	2,756	1,118	-59
Remaining Offenses	16,676	12,315	-26	7,086	5,400	-24

Source: Speedy Trial File created from the INFOREX file provided by the Administrative Office of the United States Courts. See Table C-1 in Appendix C.

six site-visited United States attorneys' offices have issued directives to local investigative agencies asking them to refrain from making all but essential arrests. If an arrest must be made, agents are strongly encouraged to postpone it until after an indictment has been returned, or at least until investigative reports have been completed. Secondly, in cases where arrest is deemed essential, investigative agents have been instructed to notify the United States attorney's office either prior to making the arrest or immediately thereafter, and to follow any oral communication with written confirmation. In several of the sample districts visited, this directive goes even further: agents may not arrest anyone without authorization from the United States attorney's office. To strengthen channels of communication, several United States attorneys' offices have designated liaison personnel to deal with the investigative agencies.

5.2.2 Consequences of Change in Arrest Policy

Whether a reduction in the percentage of cases initiated by arrest is counter to the public interest depends partly on the magnitude and reasons for that reduction. Certainly, a number of respondents in the six sample districts, like Professor Freed, viewed the increased coordination between the United States attorneys' offices and the FBI and other investigative agencies as a positive outcome of controlled arrest policy. Moreover, given the prevalence of relatively liberal pre-trial release policies, some respondents claim that a decline in arrests has virtually no impact on pre-trial crime.

On the other hand, some prosecutors and investigative agents reported that a restrictive approach to the use of arrests posed serious problems, including the increased likelihood of flight to avoid prosecution and continued criminal activity. It also may pose problems for effective investigation and case preparation. For example, by having to obtain prior approval in making an arrest, agents may lose the immediate opportunity to seize evidence or capture a suspect. In addition, in certain cases, arrest may lead to the uncovering of a conspiracy or a pattern of continuing criminal enterprise. In these instances, law enforcement officials must sometimes make tradeoffs: either arrest and prosecute the immediate offense in the face of speedy trial limits, or defer arrest until the larger case can be developed more fully. One final concern was expressed by FBI agents in one district who felt that without the publicity generated by arrests, witnesses were less likely to come forward.

5.2.3 Summary

In summary, there seems to be general agreement among respondents in the six site-visited districts that there has been a decline in arrests and analysis of

AOUSC data provides some support for this perception. According to respondents, this decline is directly traceable to speedy trial constraints. Certainly, increased cooperation between investigative agencies, coupled with increased restraint on the part of agents, is in the public interest. However, to the extent that the Act, as currently implemented, inhibits the use of arrest as a necessary evidentiary and investigative tool, as well as a preventive device, the interests of justice may not be served.

5.3 Indictment Policies and Practices

5.3.1 "Premature" Indictment of Cases Initiated by Arrest

While some districts may respond to speedy trial pressures by avoiding arrest unless absolutely necessary, those that do arrest may be forced by time pressures to indict without the benefit of full evidence. At issue is: (1) the extent to which such "premature" indictments occur; and (2) the extent to which such indictments adversely affect criminal justice.

Districts vary greatly in their indictment policies. Some require that all evidence be in hand--laboratory and investigative reports, handwriting and fingerprint exemplars, results of lineups--and that all witnesses be thoroughly interrogated prior to grand jury proceedings. Others have less rigorous requirements.

A number of respondents reported that speedy trial limits were forcing prosecutors to make a difficult choice: either dismiss the case or go to the grand jury without a critical piece of evidence or without having interviewed witnesses fully. Some cases were submitted to the grand jury with only field tests of drugs and other controlled substances or without benefit of fingerprint analysis. Other cases were brought on lesser charges than they might have been were there additional time for investigation. Two examples illustrate this dilemma.

First, respondents in both the United States attorneys' offices and DEA offices in our districts reported that speedy trial limits have had an adverse effect on prosecution of certain classes of drug offenders. According to respondents, arrest is an essential tool in the development of many drug cases, particularly those involving continuing criminal enterprise or conspiracy. Undercover agents often must seize the opportunity to obtain the evidence at hand by arresting individuals in the process of "making a buy" or delivering a shipment. Often it is the "little guy" who is caught in the act; greater difficulty is encountered in trying to identify and develop a case against those involved higher up. In the past, investigators would attempt to enlist the cooperation of the arrested defendant as an informer

in a continuing investigation. Respondents believe that now, faced with the certainty of indictment or dismissal within 30 days, the defendant has little incentive to cooperate. Thus, cases initiated by arrest may be terminated "speedily" at the expense of continuing case development.

A second example involves the arrest of persons accused of mail fraud. Often such cases can only be broken by arresting the offender at a post office box, as they pick up their mail. Once the arrest is made, however, the speedy trial clock starts running. Developing the full case may involve extensive interviewing of potential victims or tracing bank deposits and other financial records that are subject to the Financial Privacy Act. Given speedy trial time constraints, the prosecutor may be forced to indict the individual on lesser charges.

Respondents have a number of concerns with respect to these practices. First, lack of proper evidence plus pressure to produce an indictment may increase the tendency for the grand jury to become a "rubber stamp" for the prosecutor, negating its important screening and investigative functons. If a case passes through this screen, only to be dismissed upon receipt of additional evidence, it represents a costly error both in terms of due process concerns and the waste of prosecutorial resources.

Second, failure to obtain sufficient evidence during the arrest-to-indictment period can pose problems during the indictment-to-trial interval. Premature indictments may lead to the filing of superseding indictments as new evidence is uncovered or additional defendants are identified. If a superseding indictment involving original charges is filed on, say, the 65th day following indictment, the defense has only five days to respond to these charges unless additional exclusions are invoked. Thus, defense attorneys may have little time to develop a new trial strategy in response to the amended charges.

With respect to the Records Study districts, superseding indictments were filed in 97 cases or 8.5 percent of the 1145 cases where an indictment or information had been filed.[1] Of these, 31 were filed while the original indictment was still pending for the sole purpose of carrying out plea negotiations. The remaining 66 were filed for the following reasons as reported by our respondents:

- Fourteen were filed to add new counts that appeared to be "... offenses required to be joined with ..." the

[1] Superseding indictment was defined for purposes of analysis as any indictment or information charging a defendant with an offense that had previously been charged in an indictment or information.

original offenses and so did not require new speedy trial clocks.

- Five were filed to add new offenses that did require new speedy trial clocks.
- Eight were filed to add some counts and drop other counts.
- Six were filed to add new defendants to the case.
- Seven were filed to make minor changes in the wording of the original indictment.
- Nine were filed for miscellaneous other reasons, while 17 reported no reason at all.

Thus, summing the first six categories, one-half of the 66 superseding indictments which did not reflect plea negotiations involved major changes in the offenses charged.

In conclusion, given the tremendous variability in prosecutorial policy and practice, it is almost impossible to ascribe "premature" indictment practices to speedy trial pressures. There is some anecdotal evidence that such considerations do enter into prosecutors' decisions. Further, the Records Study data suggest that the use of superseding indictments is not uncommon, although nearly one-third of such indictments reflect the outcome of plea negotiations rather than any change in the charges facing the defendant. On the other hand, the Records Study data neither refute nor support the hypothesis that speedy trial pressures result in early indictments and amended charges and that these may pose problems for the defense.

5.3.2 Delayed Indictment in Cases Not Initiated by Arrest

While some argue that speedy trial limits force premature indictment in cases initiated by arrest, others are concerned that prosecutors are delaying indictment in non-arrest cases until they are virtually ready for trial. Furthermore, if a court is particularly congested and there is little likelihood that a defendant will flee, fully prepared cases are sometimes withheld from the grand jury until the congestion is reduced. For example, in the face of impending Speedy Trial Act sanctions and a court recess in the summer of 1979, an informal arrangement was worked out in one district between the court and the United States attorney's office to delay the filing of certain indictments.

Such practices can be viewed critically for a number of reasons. First, they may give the prosecutor an unfair advantage during the indictment-to-trial interval. While the prosecutor may have virtually unlimited time in preparing the case, constrained only by the statute of limitations, the defense counsel has only 70 net days.

Second, there are those who argue that preparing all cases fully for trial before going to the grand jury, leads to wasted effort because many of these cases ultimately result in guilty pleas. On the other hand, some respondents view this extra preparation in a more favorable light. By laying out all the facts early in the case, some prosecutors believe they increase the likelihood of a plea of guilty or nolo contendere that is fair to both parties. Moreover, early and thorough preparation of witnesses and collection and documentation of evidence may reduce some of the costs associated with the pre-trial period. Thus, these respondents view the increased costs of filing indictments as being partially offset by savings in the indictment-to-trial interval.

A third criticism is that by encouraging delayed indictments, the Act may defeat its own avowed purposes. Perhaps the strongest statement of this point came from the Middle District of Georgia where the Speedy Trial Act was seen as producing no real change in the timing of prosecution or, worse, "delayed justice." Respondents argued that the Act changed the milestones used to measure case processing time. Instead of being measured from the commission of the offense to the disposition of the case, time is now measured from the date of indictment to the commencement of trial. In order to comply with the indictment-to-trial time limit, prosecutors simply "tie the bow knot later," to use the Chief Judge's phrase.

Prosecutors have always had discretion in deciding when to file an indictment, however. Furthermore, given the increased focus on organized crime, official corruption, and white collar crime, which require substantial investigative activity, pre-indictment time can only be expected to increase. In short, there seems to be little evidence that the Act alone has caused increasing pre-indictment delays in cases not initiated by arrest. Even if the Act clearly had this effect, the nature of the impact on the costs of prosecution are debatable. While pre-indictment delay and extensive preparation for the grand jury may result in increased costs to the prosecutor, they may also lead to savings of time in the post-indictment interval. While delayed indictments may result in an initial disadvantage to the defense they may also lead to fairer resolutions through plea.

5.4 Pre-Indictment Dismissal

One simple way for prosecutors to avoid exceeding the 30-day arrest-to-indictment limit is to dismiss the complaint and, if desired, to indict at some later time. § 3161(d)(1) provides that should a complaint be dismissed by the Government and an indictment be filed later charging the same offense, a new 70-day interval is to commence with the filing of such indictment. Case law and scholarly interpretation confirm the permissability of this "dismiss-reopen" procedure.[1]

We were unable to document the number of cases dismissed and later reopened within the period of our data collection effort. However, even if pre-indictment dismissals are not later reopened as new cases, they may reflect speedy trial pressures. That is, prosecutors may be forced to dismiss marginal cases in danger of exceeding the speedy trial limits. Therefore, we attempted to examine the number of, and justification offered for, all Records Study cases dismissed pre-indictment, irrespective of whether they were reinitiated at a later date.

Table 5.4 reports the incidence of pre-indictment dismissals among our Records Study cases. Two of the urban districts--Northern Illinois and Eastern New York--reveal substantial percentages of such dismissals, while others, such as Central California, do not.

About one-third of the pre-indictment dismissals in our sample were attributed by our respondents to the pressures of the Speedy Trial Act. Table 5.5 depicts the reported reasons for such dismissals. If one focuses on those cases dismissed after 18 and before 30 net days had elapsed in Interval I, the reported connection becomes even stronger. Of 16 such cases in Northern Illinois, 14 were said to be dismissed for reasons related to the Speedy Trial Act.

It is uncertain as to how many of the cases dismissed pre-indictment for speedy trial reasons either have been or will be reopened as grand jury originals. Our respondents in the District of Columbia and Northern Illinois reported that this procedure is common in those districts. Indeed, one respondent in the latter site asserted that this practice is the only

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[1] United States v. Hillegas, 578 F. 2d 453 (2d Cir. 1978); Richard S. Frase, "The Speedy Trial Act of 1974," The University of Chicago Law Review 43 (Summer 1979), p. 669; a Speedy Trial memorandum prepared for AUSAs in the Northern District of Illinois--a district with a high rate of pre-indictment dismissals--also discusses the validity of this procedure.

Table 5.4

PRE-INDICTMENT DISMISSALS IN RECORDS STUDY CASES

District	Defendants Entering Interval I	Defendants Dismissed Interval I	% Dismissed
Arkansas - W	0	-	-
California - C	78	3	3.8
Colorado	15	1	6.7
District of Columbia	48	6	12.5
Florida - S	157	15	9.6
Illinois - N	47	25	53.2
Indiana - N	1	0	0
Massachusetts	38	6	15.8
Missouri - W	2	0	0
New Jersey	54	6	11.1
New Mexico	7	0	0
New York - E	115	28	24.3
New York - S	137	19	13.9
North Carolina	0	-	-
Ohio - S	16	0	0
South Carolina	23	0	0
Texas - E	2	0	0
Wisconsin - W	2	0	0
TOTAL	742	109	14.7

Table 5.3

REPORTED JUSTIFICATIONS FOR PRE-INDICTMENT DISMISSALS
RECORDS STUDY SAMPLE

Justifications	No. Defendants	% of All Pre-Indictment Dismissals
Related to Speedy Trial Act:		
Reports/Investigation	16	
Pre-trial Diversion Arrangements	5	
Major Clerical Tasks	4	
Plea Negotiations	2	
Development of Cooperating Defendant	5	
Case Complexity	2	
Sub-total	34	31.2
Unrelated to Speedy Trial Act:		
Magistrate finds no probable cause	3	
Insufficient Evidence	7	
Other	32	
Sub-total	42	38.5
Unknown	33[a]	30.3
TOTAL	109	100.0

[a]The unknowns represent cases dismissed early in the interval or well after the 30 days had expired. Such dismissals are less likely to be speedy trial related.

thing that keeps the Act from being totally unworkable in the pre-indictment period.

We were told by most respondents that the "dismiss-reopen" practice was employed only if there was reason to believe that the defendant would not flee while not actually under charges. This points to a danger resulting from this procedure. It may not be in the public interest to dismiss charges against a defendant for a period of time if there is a danger of flight or continued criminal activity.[1]

Indeed, some respondents perceive this practice as an unfortunate--albeit sometimes necessary--consequence of speedy trial limits. They would rather have the accused under charges as a deterrent to additional criminal activity and flight to avoid prosecution. The "dismiss-reopen" procedure has been challenged by defendants in the Southern District of Indiana on the grounds that it is merely a plan to circumvent the Speedy Trial Act. In one of the Indiana cases, the judge indicated that were it not for a technicality, he would have granted the motion for dismissal.[2] Increasingly, prosecutors are experiencing informal pressure from judges to stop this practice. Some report that a case reopened as a grand jury original is likely to be met with hostility by the judges in their district.

A possible alternative to the "dismiss-reopen" option would be to use additional exclusions particularly designed to ease some of the difficulties experienced in the arrest-to-indictment interval. By keeping the defendant continuously under charges, the public interest and Congressional intent might be better served.

5.5 Other Practices

Offense classification, plea negotiation, and the use of waivers are other procedures available to prosecutors to speed case processing. These are discussed below.

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[1]One of the original objectives of the Act was to process accused persons speedily in order to isolate guilty persons quickly and prevent additional crimes.

[2]Virginia Dill McCarty, U.S. Attorney, Southern District of Indiana, Memorandum to Patricia Wald, Assistant Attorney General for Litigation, January 30, 1978, in Hearings to Amend the Speedy Trial Act of 1974, p. 38.

5.5.1 Offense Classification

New Jersey appears to be the most active user of offense reclassification practices. The United States attorney's office has downgraded certain offenses which were previously treated as felonies--forgery of Treasury checks, postal theft, small bank embezzlement--to minor offenses triable by magistrates with the consent of the defendant. Roughly 30 percent of all filings in New Jersey are classified as minor offenses, far more than the national average. This policy is cited in the district's Speedy Trial Plan as a mechanism for achieving compliance. Since minor offenses may be tried before magistrates, with the written consent of the defendant, this strategy may eliminate long waits for district court time.

The Magistrates Act of 1979 allows magistrates "designated" by the district court to hear and dispose of misdemeanor cases as well, as discussed in Chapter 4. However, the study districts have thus far not taken full advantage of the expanded magistrates' jurisdiction. Clearly, adjustments in offense classification by United States attorneys' offices would allow greater use of magistrates. Such a policy, in turn, would ease the pressure on the district court calendar, allow judges to devote more time to priority cases, and aid in the effort to comply with speedy trial time limits. However, as with discouragement of arrest, there are serious questions as to whether downgrading of felonies to minor offenses always serves the public interest.

5.5.2 Plea Negotiation

The same caution is due in considering the use of plea negotiation as a device for expediting case disposition and easing calendar congestion. Some respondents are concerned that the pressure to meet speedy trial deadlines will lead prosecutors to offer and judges to accept more and increasingly lenient plea bargains--a pervasive problem in state courts which Federal courts have prided themselves on avoiding.

An analysis of historical data from AOUSC reveals little change in the overall percentage of cases in the United States district courts going to trial, although there is some variability among the site-visited districts. (See Table 5.6)

Thus, although there may be a change in practice when sanctions are in effect, there is little evidence to date to support these fears.[1]

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[1] Indeed, there are some who expect that the opposite outcome may take place, i.e., that more cases will go to trial once sanctions are in effect. These persons argue that defense counsel will be reluctant to negotiate plea settlements when there is a possibility of dismissal should the case exceed speedy trial limits.

Table 5.6

PERCENTAGE OF DEFENDANTS IN TERMINATED CASES BY DISPOSITION AND DISTRICT APPROACHES SITES FOR THE PERIODS JULY 1, 1976 THROUGH JUNE 30, 1977 AND JULY 1, 1978 THROUGH JUNE 30, 1979

Period	Dispositions	Total	District Courts: Western New York	New Jersey	Western Pennsylvania	Central Georgia	Northern Illinois	Eastern Missouri	Remaining Districts
	Total	100% (49,224)	99% (418)	100% (1,345)	100% (502)	100% (855)	100% (1,201)	99% (388)	100% (44,515)
July 1, 1976 through June 30, 1977	Dismissed	12%	20%	10%	23%	1%	6%	6%	12%
	Plea	72	63	78	53	87	70	73	72
	Trial	16	17	11	24	12	24	20	16
	Total	100% (38,896)	100% (399)	100% (769)	100% (466)	100% (1,061)	100% (919)	99% (222)	100% (35,080)
July 1, 1978 through June 30, 1979	Dismissed	13%	10%	6%	12%	1%	5%	6%	14%
	Plea	69	79	82	66	89	70	73	68
	Trial	18	11	12	22	10	25	20	18

Source: Speedy Trial File created from the INFOREX file provided by the Administrative Office of the United States Courts. See Table C-1 in Appendix C.

5.5.3 Waivers

The Speedy Trial Act explicitly permits defendants to waive their right to have a minimum of 30 days from "first appearance through counsel" to commencement of trial.[1] Defendants may also effectively waive the dismissal sanction in Interval II by failing to move for dismissal of the case should the time limits be exceeded.[2]

It seems apparent from the legislative history that waivers of other provisions of the Act are not permitted. In its report on the 1979 Amendments, the Senate Judiciary Committee stated that waivers of the time limits are "contrary to legislative intent and subversive of [the Act's] primary objective."[3] The key to the argument that waivers are not valid lies in the reasoning behind passage of the Act, which was designed to protect the rights of both the defendant and the public to speedy trials. Delay frequently works to the defendant's advantage and can figure prominently in defense strategy. Thus, to allow defendants to waive the time limits would allow them to pursue this strategy with impunity while affording no protection to the public right to expeditious disposition of criminal cases. In United States v. Beberfield the court stated that:

> "Congress in enacting the Speedy Trial Act...has determined that the immediate participants cannot be relied upon to further the public interest in prompt disposition. It would be antithetical to this entire design if the parties were permitted to free themselves from the constraints imposed by the Plan through the simple expedient of...signing a waiver."[4]

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[1] 18 U.S.C. § 3161(c)(2).

[2] 18 U.S.C. § 3162(a)(2).

[3] Senate Report 96-212, p. 29.

[4] 408 F. Supp. 1119 (S.D.N.Y. 1976). Cited in the Northern District of Illinois' Memorandum for AUSAs on the Speedy Trial Act, 21-22. This memo notifies the AUSAs that "The defendant cannot waive all rights under the Act." See also Robert L. Misner, "Delay, Documentation, and the Speedy Trial Act," Journal of Criminal Law and Criminology 70 (1979), pp. 214, 229, which points to stipulated continuances as a likely tactic for subverting the Act. However, Misner cites cases that have prohibited stipulated continuances. United States v. LaCruz, 441 F. Supp. 1261, 1264 (S.D.N.Y. 1977); United States v. Rothman, 567 F. 2d. 744, 749 (7th Cir. 1977).

Notwithstanding this opposition to waivers, some of our respondents believe that they represent a legitimate exercise of defendants' constitutional rights and serve to nullify the time limits of the Act. Examination of court docket sheets for our Records Study revealed that at least 11 of the 18 districts employed waivers. At least two of our six District Approaches sites also allowed waivers.

It should be pointed out that despite the widespread use of waivers, few were found in those cases deemed to be noncompliant with the Act. Indeed, some judges require both parties to sign a waiver before they will grant an "ends of justice" continuance, suggesting that the use of waivers does not necessarily preclude use of excludable time provisions to achieve compliance.

5.6 Summary and Conclusions

It is clear from the study's respondents that the time pressures created by the Act have been mitigated by a variety of means not explicity envisioned by the framers of the legislation. Controlled arrest policies, more active declination strategies, premature and delayed indictment practices, and more frequent use of dispositional alternatives including pre-indictment dismissals, offense reclassification and plea negotiation, all have been cited as aids to speedy trial compliance.

In many cases, it is not entirely clear whether the use of these pratices has accelerated in response to the Act, or whether they reflect more generally on local conditions and national law enforcement priorities. Nor is it clear that the effects of some of these policies are necessarily counterproductive. In the following paragraphs, the presumed advantages and disadvantages of each policy are summarized.

5.6.1 Case Filings

A minority of study respondents attributed the decline in cases filed, at least in part, to speedy trial pressures. That view is far from unanimous, however, and it is more likely that the reduction may be attributed largely to changing Federal law enforcement priorities. Regardless of its source, two commonly cited advantages of pressures to reduce or change the mix of cases filed are:

- the development of more effective criminal case screening mechanisms, including explicit declination policies, coordinated with investigative agencies; and

- the development of deferral mechanisms that foster inter-jurisdictional cooperation and resource sharing.

Countering these arguments are two concerns:

- the potential for increased deferral of cases to already overburdened state courts; and
- the opportunity for coordination failures and the loss of significant cases.

5.6.2 Arrest Policy

Changes in arrest policy were reported as one of the primary mechanisms used to achieve compliance. Again, however, some portion of the declining arrests may be attributed to changes in case mix. The postulated benefits of a restricted arrest policy include:

- the reduction of unnecessary street arrests through restraints placed on investigative agents; and
- earlier control of cases by prosecutors and improved cooperation between agents and prosecutors.

According to our field respondents, the costs of these policies include:

- increased likelihood of flight to avoid prosecution and danger of recidivism; and
- constraints on investigation and case preparation efforts where arrest is an essential tool in continuing case development.

5.6.3 Delayed Indictments

While increasing tendencies to delay indictments in non-arrest cases were ascribed to speedy trial pressures, it is likely that these pressures have merely enhanced the visibility of the prosecutor's traditional strategic choices. Those who view this tactic as a liability note:

- excessive preparations for the grand jury; and
- the needless expense for cases which end in pleas.

Others view this preparation time more favorably, noting:

- the increased likelihood of plea negotiations which are fair to both parties; and
- savings in the post-indictment period through early and thorough preparation of witnesses and collection of evidence.

5.6.4 Pre-indictment Dismissals

Our interview results suggest that pre-indictment dismissals and the "dismiss-reopen" practice are fairly common as tools for achieving compliance. Proponents note the advantages of the latter as:

- a remedy for handling unavoidable street arrests which cannot be prosecuted effectively within the 30-day limit; and
- a mechanism for saving court time that might otherwise be devoted to status hearings and filing motions.

Critics express concern for:

- the loss of the leverage presumably exerted by the threat of pending charges; and
- the emerging judicial hostility towards the practice.[1]

5.6.5 Other Concerns

Respondents also expressed concern that the speedy trial mandate might adversely influence case progress through premature indictments and increased pressure to negotiate pleas or reclassify charges. Use of waivers--a practice of unclear proportions--was also found to be prevalent among study districts.

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[1] It should be noted that subsequent to publication of the earlier edition of this report, the Department of Justice issued a policy statement discouraging the use of dismiss-reopen practice unless all other options have been explored. (See the revision to Title 9, Chapter 17 of the United States Attorneys' Manual, dated June 20, 1980.)

6.0 IMPACT OF SPEEDY TRIAL COMPLIANCE ON CIVIL BACKLOG

6.1 Introduction and Overview of Findings

The Speedy Trial Act of 1974, in enumerating the conditions under which criminal prosecutions could exceed the time limits set for indictment and trial, specified that:

> No continuance under paragraph (8)(A) of this subsection [18 U.S.C. § 3161(h)] shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the government.[1]

In view of this provision, neither the courts nor the United States attorneys could allow pressures of civil business to interfere with the prompt disposition of criminal cases. If there were conflicts, civil cases were to take second place to criminal. Congress was aware that such absolute prority might increase the difficulties of civil litigation, and included the issue of civil backlog as a concern to be addressed by each district court in its plans for implementing the act.

Further evidence of Congressional concern with the issue of civil backlog is provided in the 1979 Amendments to the Speedy Trial Act. As part of the mandate for this study, it was ordered that the Department of Justice address in its report to Congress "...the impact of compliance with the time limits of subsections (b) and (c) of § 3161 upon the litigation of civil cases by the offices of the United States attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with [the Act]."[2]

Even the most cursory examination of the comparative amount of resources necessary to process civil and criminal cases lends support to the Congressional concern over civil delay. Civil cases, while more numerous, consume far fewer court resources than criminal cases, on the average. The following statistics illustrate this point: Four out of five of the cases disposed in

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[1] 18 U.S.C. § 3161(h)(8)(C).

[2] 18 U.S.C. § 3167(C)(5).

Federal district courts are civil cases.[1] Criminal trials, however, take an average of 30 percent longer than civil trials.[2] Moreover, criminal cases are more likely to go to trial than are civil cases: One-fifth of criminal cases end in trial, while only one civil case in twelve is tried. Thus, when we multiply the probability of trial by the average length of trial, we find that each criminal case requires on the average more than three times as much trial time as an average civil case.

The Civil Backlog component of the Speedy Trial Act Impact Study was designed in response to this Congressional concern. Briefly, the results of this component suggest that these fears have been largely unfounded to date, as demonstrated in the following highlights:

(1) While the total backlog of civil cases has grown at an average rate of 8.25 percent per year since the first speedy trial time limits became effective on July 1, 1976, the three years preceding these limits showed an even faster growth rate. Moreover, there were proportional increases in the rate of civil filings both before and after implementation of the Act.

(2) The median time required for civil case processing has not significantly increased from 1974 (8.9 months) through 1979 (10.3 months), indicating that the majority of civil cases faced no greater delays following the implementation of the Act.

(3) For the minority of cases pending the longest times, there was a sustained increase in processing time from 29.7 months in 1975 to 37.9 months in 1979, despite the fact that caseload composition appears to have changed in the direction of reducing the number of long civil cases. In attempting to explain this increase, we found that:

- together, district and case type bear only a small relationship[3] to the age of civil cases; and

[1] In FY 1979 there were 143,323 civil and 33,411 criminal cases terminated. Annual Report of the Director (Washington, D.C.: Administrative Office of the United States Courts, 1979).

[2] Ibid., Table C-8. Average time for civil trials was approximately 2.27 days in 1979, compared to 2.97 days for criminal trials.

[3] Sixteen percent of the total variance in the age of civil cases is accounted for by these two factors.

- most of the variation among districts in current case processing speed is due to pre-existing district characteristics.[1] Simply stated, the fastest civil courts have always been the fastest civil courts; and, the fastest criminal courts are the fastest civil courts. This relationship is not an effect of speedy trial but simply the consequence of long-standing mechanisms which condition the generally fast or slow handling of cases--mechanisms that compose what has been described as the "local legal culture."

(4) Once we control for all of the above, there is only a slight tendency for accelerated criminal processing to be associated with longer civil processing. In considering this finding, it should be noted that:

- the size of the effect is such that a large change in criminal speed (25 percent acceleration) is required to produce even a small change (2 percent increase) in civil delay;

- the effect appears only in 1979; no earlier years show any speedy trial effect, probably because of the longer time limits specified by the Act; and

- the effect applies only to non-Government cases; there is no indication that either United States plaintiff or United States defendant cases are delayed at all.

In the remainder of this chapter we describe the methods used to estimate levels of civil and criminal speed and to test the relation between the two. We also present a more detailed discussion of the findings highlighted above. The reader who wishes to bypass the methodology may skip directly to section 6.3.

6.2 Methodology

Many factors besides compliance with the Speedy Trial Act influence the litigation of civil cases. To distinguish the effects of these extraneous factors from speedy trial impact required that we ask:

> Does accelerating criminal processing in a district cause civil cases in that district to wait longer for disposition?

[1] Eighty-one percent of the variance in current district speed is accounted for by past district speed.

Specifically, there were three distinct components to this question: (1) assessing the precise changes in gross criminal case processing time which have occurred since 1974 in all United States districts; (2) assessing changes in civil processing time; and (3) testing the association between civil and criminal changes.

Finding such an association does not constitute a rigorous proof that compliance with the Speedy Trial Act has caused increased civil delay. In any analysis of historical data, some ambiguity remains because an unmeasured causal factor might have been at work producing the same effect at the same time. The evidence of causality is strongest, however, when it can be shown that:

- changes in the cause occur in the same places as changes in the effect;
- changes in the cause precede changes in the effect; and
- the changes are not due to known extraneous variables.

Our analysis of district variation in case processing speed sought over time sought to test these three conditions to the extent permitted by the historical record.

In investigating the relationship of accelerated criminal processing and civil disposition time, there were a number of subsidiary questions which were of interest. These are enumerated below:

- If there is an effect of accelerating criminal processing, what is the size of that effect?
- If there is an effect, does it apply uniformly to all cases or do cases involving different parties (e.g., private cases versus cases processed by United States attorneys) experience difference levels of delay?
- If there is an effect, is it consistently replicated for every year in which the Speedy Trial Act was in effect, or are the effects larger for those years in which the Act's time constraints are more restrictive?

In the sections which follow, we explore the data sources used for our analysis and the measures employed to characterize these data.[1]

[1]The basic analytic method is a cross-sectional repeated measures analysis of covariance.

6.2.1 Data Sources

The analysis covered every civil and criminal case in the United States district courts from 1974 to 1979. Records on cases filed, pending, and terminated in each year are maintained by AOUSC on the basis of information reported by the districts. A limited number of variables are available on each case. For pending civil cases our analysis included: (1) district; (2) date of filing; (3) basis of jurisdiction; and (4) nature of suit. For criminal cases the data used were: (1) district; (2) number of months from filing to termination; and (3) nature of offense.

The limited content of these records substantially restricted the kinds of analyses that could be performed. The variables which AOUSC provided probably were the most informative choices possible, but we could do no exploratory analyses to confirm that assumption.

6.2.2 Measures

If criminal and civil case processing are related to one another, the relationship must exist at the district, rather than the case, level. All the measures discussed above refer to individual cases. Thus, the first task was to develop district level measures which would characterize the processing of all civil or criminal cases within a district. In the process of developing such measures it was important to take into account potential differences in the complexity of cases due to case type, as well as the fact that even within any given type of case the length of time required for adjudication varies widely.

Civil Delay

The Speedy Trial Act specifically requires that the district plans report on:

> The increase or decrease in the number of civil cases pending at the close of [the year before filing the plan], compared to the number pending at the close of the previous twelve calendar month period, and the length of time each such case has been pending.[1]

[1]18 U.S.C. § 3166(c)(7)(C).

Thus, to accomplish our assessment of civil delay we were required to develop measures of two features: (1) the number of cases delayed; and (2) the amount of civil delay experienced by each case.

While the number of cases delayed--i.e., pending in the backlog--can be measured by a simple count, this approach is of doubtful utility in assessing the effect of speedy trial limits because the volume of pending cases is directly related to the volume of cases filed. The workload of the courts has been steadily increasing, and growth in the backlog reflects this increase in addition to any effects of greater processing time.

Furthermore, whether a case is counted as pending is sometimes a rather arbitrary decision. Most civil cases are settled out of court, and court records may not reflect the fact that a settlement takes place until some time after the event. Some of the cases nominally counted as pending in the data have therefore actually been adjudicated. Others which are listed as pending are waiting not for access to the courts, but for completion of some preliminary stage (usually discovery or motion preparation) by one of the parties. In both instances the number of cases reported as pending overstates the number of cases actually delayed by the condition of the court docket.

We were also required to find a measure which reflects the delay suffered by each case, rather than the total volume of cases. The actual length of time each case spends in the backlog (i.e., from filing to disposition) provides such an independent measure.[1] Two slightly different measures of the age of cases are available:

- For cases terminated in a year, one may count elapsed time from filing to disposition.
- For cases pending at the end of a year, one can measure the length of time pending so far.

To maximize the comparability of data in this report with that which is required from the district courts, we chose the latter. Thus, most analytic results pertain to the year-end age of pending cases, although in general the same patterns could be reproduced for the age of terminated cases.

As noted in the above highlights, changes in the median age of pending civil cases were relatively minor from year to year for most cases. Those changes which did occur were evident among the older cases. Since much of the

[1] Length of time may not be completely independent of volume effects if filings are so numerous as to saturate the capacity of the courts. This appears not to have been the case.

concern in the current analysis was with the age and number of these older cases, it was particularly important that the statistic chosen to measure average case age for each year deal appropriately with them.

Two of the most common statistics--the median age and the mean age--both suffer from limitations which rendered them inappropriate for the analysis. As noted above, median processing times did not adequately characterize changes in the slower half of the cases under consideration. Mean ages, which did respond to changes in all parts of the distribution, were unsuitable for a different reason. Given the particular distributions of our data, means were too responsive to changes of a few extreme cases. For example, four cases on the files date to the early part of the twentieth century, and at least one was reportedly filed in the 1890s. These few cases may well have been simple keypunch errors. Whether real or erroneous, however, their effect on the average age of cases was sizeable, since each one contributed about 50 times as much to the mean as did the more typical cases lasting approximately one year. A third statistic was therefore chosen, one which adjusted for the particular distribution described here.[1] Since the mean of this adjusted measure is approximately equal to the median, this statistic may be used as a measure of the typical experience of cases.

Compliance with the Speedy Trial Act

We were also forced to specify the characteristic of criminal processing which would represent compliance with the Speedy Trial Act in the analysis. One might hope to use as a direct measure the percent of cases in literal compliance with the provisions of the Act. Both theoretical and practical considerations, however, prevented such an approach. Adequate data collection systems to record the precise time spent by criminal defendants in each phase of adjudication, and the amount of time excluded due to special circumstances, were not in place until 1977, so that historical analysis was virtually precluded. Moreover, the meaning of compliance changed during the early years of the Act as the time limits contracted from 250 days for cases initiated on or after July 1, 1976, to 100 days for cases initiated on or after July 1, 1979.

With this gradual change in the definition of compliance, districts could maintain a constant level of compliance with the Act only by accelerating the processing of criminal cases or by increasing the use of excluded time. It was this acceleration, rather than legal compliance per se, which was feared to exert an adverse effect on the resolution of civil cases. Furthermore, the first interval (arrest-to-indictment) was not expected to bear much relationship to the processing of civil cases--at least by the courts--since

[1] A normalization transformation (square root of age) was used.

cases did not enter the court docket until filing of an indictment or information, and thus were unlikely to compete for resources until the second interval. In view of these considerations, the analyses described here used the calendar time from filing to disposition as the measure of criminal processing changes associated with implementation of the Speedy Trial Act. For all analyses, the same adjustment used for the civil measure was applied.

Case Types

It was necessary to establish one final measure before beginning the analysis of civil case delay. Different types of cases will require varying amounts of time to resolve. Since the caseload composition differs among districts, reflecting their local environments and economics, some of the differences in the speed with which districts process their cases may be attributable to differences in district caseloads. The composition of caseloads has also been changing over the years. The volumes of cases with the United States as plaintiff or defendant have both grown, the former even more rapidly than the latter. Since the different types of cases take differing lengths of time to resolve, these shifts in caseload composition could influence the distributions of ages of pending case overall. Thus, we used a measure of the observed calendar time required for various case types to be processed so that caseload differences among districts could be equalized.

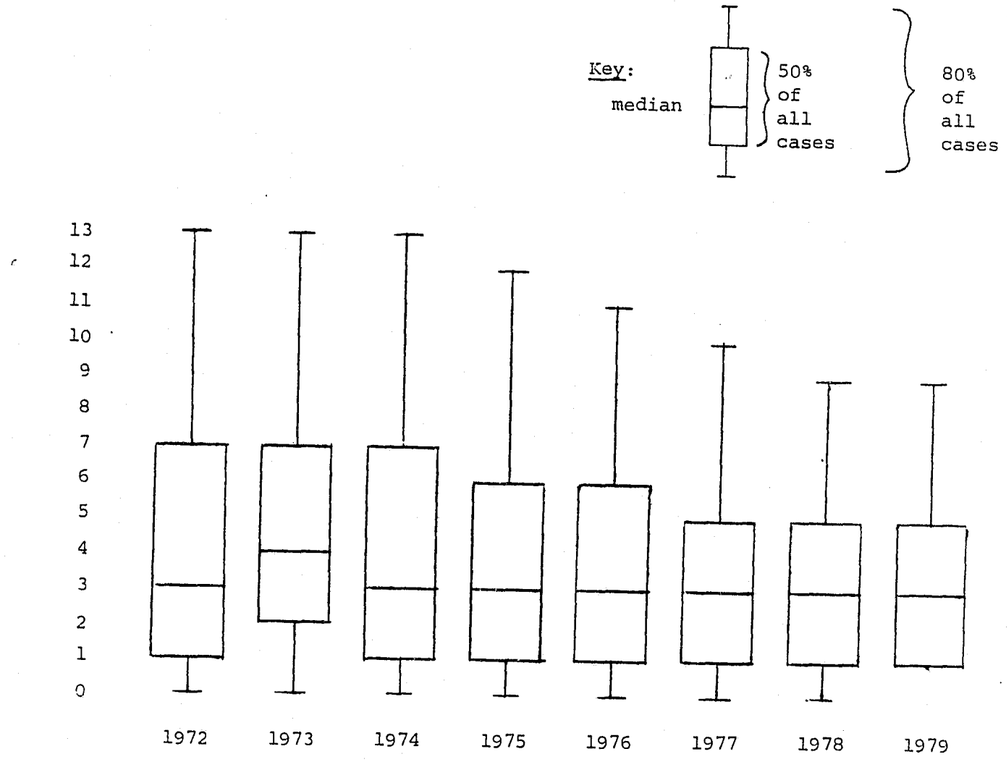
6.3 Findings

6.3.1 Change in Criminal Processing Time

Figure 6.1 shows how the distribution of time from filing to adjudication of criminal cases has changed since implementation of the Speedy Trial Act. As can be seen, while most cases fall within the lower to middle ranges of speed, a minority take very long times. The Act sets an upper limit on the time which may be taken, rather than mandating goals for the average time for all cases. As the figure clearly shows, the upper portions of the distribution have fallen significantly, indicating that there has been a reduction in the percentage of cases taking very long times to complete. In 1972, 1973, and 1974, ten percent of the cases took longer than 13 months. By 1978 and 1979, nine months sufficed for all but ten percent of the cases. Similarly, where over seven months were needed for the longest quarter of cases in 1972-74, only five months were needed by 1977-79. The median number of months (three) and the lower quartile point (one month) were virtually unchanged throughout the period. It is even possible that there was an increase in the time required for the fastest tenth of the cases in 1979. Such an effect would be entirely consistent with the present structure of the Speedy Trial Act, which treats compliance as a yes/no variable. United

Figure 6.1

MONTHS FROM FILING TO DISPOSITION
CRIMINAL CASES
1972 - 1979



States attorneys might be able to increase their formal level of compliance by diverting attention away from cases safely within the limits to accelerate the termination of those just above the limits.

6.3.2 Number of Civil Cases Pending Over Time

Figure 6.2 shows the number of pending civil cases on June 30 of each year from 1966 to 1979. During those years the total number of pending cases rose by 125 percent, from 79,117 to 177,805 cases. The yearly average increase over the whole period was 6.4 percent per annum. Since the first interim speedy trial limits took effect on July 1, 1976, the number of pending cases has been growing at an average rate of 8.25 percent per annum.

However, attribution of this growth solely to the influence of the Speedy Trial Act would clearly be a mistake. The three years preceding the imposition of time limits showed an even faster growth rate (11.3 percent per annum) than the post-implementation period. Moreover, both before and after implementation of the Act, the rate of civil filings had been growing more or less consistently. In 1973-1976 filings increased an average of 9.8 percent per annum, while in 1976-1979 the average rate was 5.8 percent per year. This simple growth in the volume of business before the courts could be expected to exert primary influence over the number of cases pending on any date.

The number of cases pending at any moment is the product of the number filed and the average time between filing and termination. The longer a case spends in the backlog, the higher the probability that it will be included in one of the June 30 counts. In a dynamically changing system, this relationship is only approximate, because of ambiguities in determining which rate of filings to apply at any moment and which definition of "average" age to use. To resolve these ambiguities, we turn to direct measures of the length of time cases have been pending.

6.3.3 Change in Civil Processing Time

Figure 6.3 shows that the median age of pending civil cases has remained approximately constant from 1974 to 1979. It also shows that the median does not tell the whole story: for the tenth of cases pending longest, there is a sustained increase in age from 29.7 months in 1975 to 37.9 months in 1979. Thus, while the majority of cases were experiencing no greater delays at the end of the decade than they had faced in earlier years, it was distinctly possible that some kinds of cases were being adversely affected by speedy trial constraints.

Figure 6.2

CIVIL CASES FILED, TERMINATED, AND PENDING
1966 - 1979

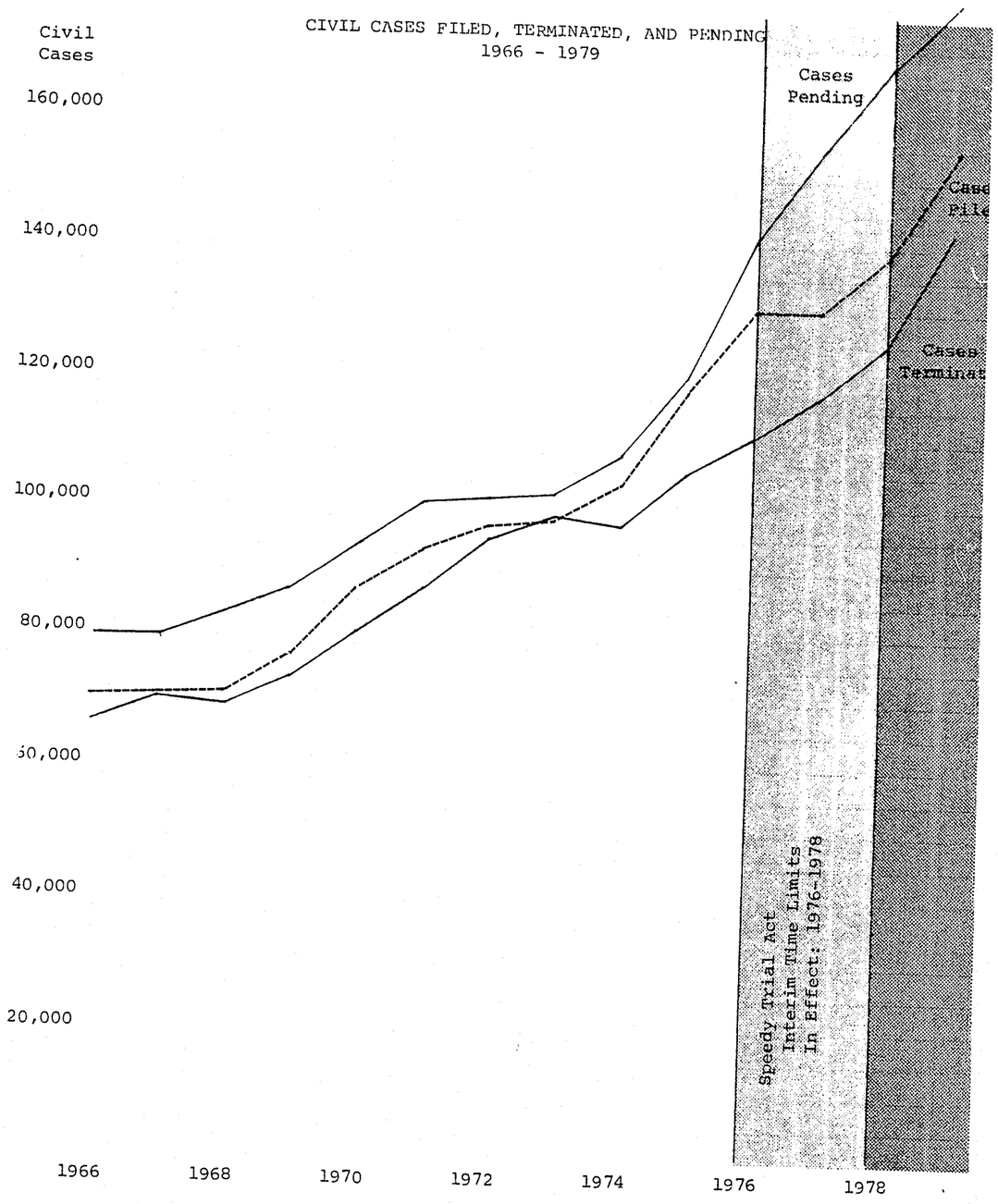
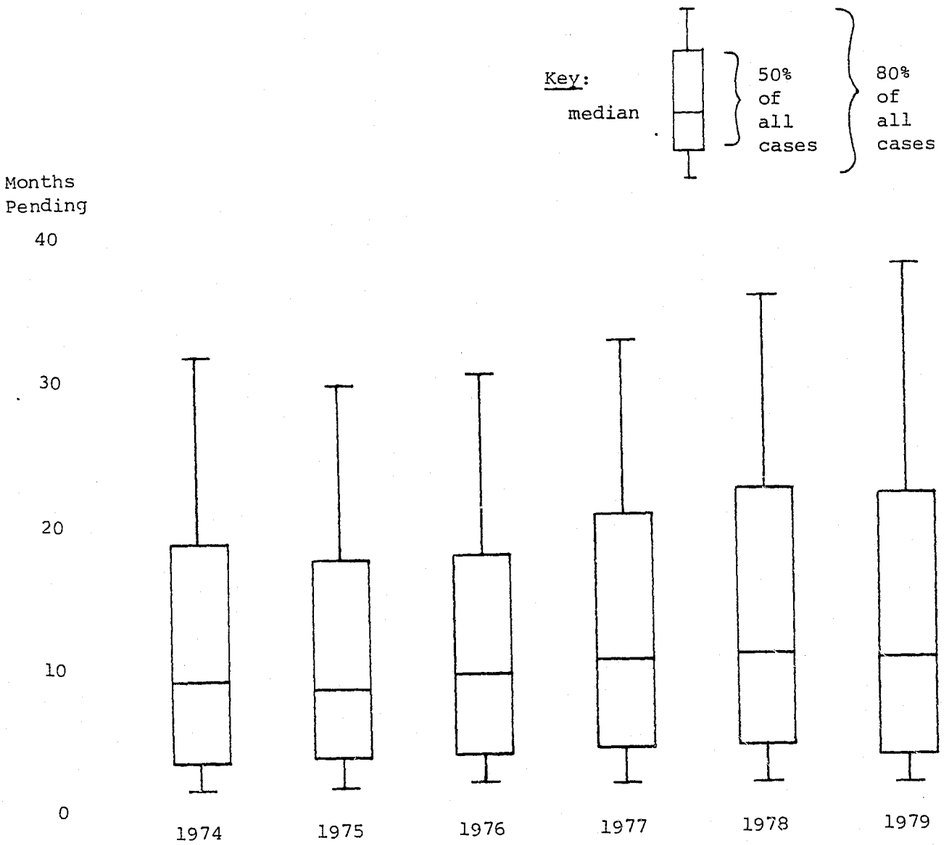


Figure 6.3

AGE OF PENDING CIVIL CASES
1974 - 1979



An alternative explanation was that the caseloads of the districts were changing in ways which resulted in greater concentrations of more complex cases in the later years. If so, the growing number of long-pending cases might reflect an increase in those types of cases which require a long time to resolve. Table 6.1 shows that the caseload of the United States attorneys' offices was undergoing change. The number of contract suits brought by the Government was five times as large in 1979 as it had been in earlier years and made up twice as large a fraction of all United States plaintiff cases. Referring to Table 6.2, we see that these cases are in fact unusually short, having the lowest average age of any of the sub-groups shown in the table. Similarly, in cases where the United States appears as defendant, the greatest growth in volume occurs in the category involving property rights, Social Security, and related matters. These again are not unusually long cases, requiring approximately the same amount of time as the average of other case types. On the other hand, the unusually long civil rights cases have represented a progressively smaller fraction of the total United States attorney's office caseload over the years, declining from 7.9 percent of all government cases in 1975 to 4.6 percent in 1979. Thus, the major trends in litigation by United States attorneys' offices all point in the direction of reducing the number of long civil cases.

6.3.4 Relation of Criminal and Civil Speed in Case Processing

With the data adjusted as described in section 6.2.2 above to reflect differences in casload composition, we can begin to examine the ways in which districts differ in their speed of processing civil cases. The correlation between the age of civil cases pending on June 30 in a given year and the same variable in the same district in the prior year averages .90 across all districts. This means that most (81 percent) of the total variance among districts in a given year is attributable to conditions which existed in the district a year earlier. This correlation reflects the combined effect of all those attributes of a district which persist as the cases change: types of litigation, productivity of judges, experience and expectations of local attorneys, and so forth. This cluster of persistant attributes has come to be aggregated under the rubric of local legal culture. It is apparent not only in the statistical descriptions of case processing, but in the verbal descriptions which participants give of the litigating styles of various courts, when they speak of a particular judge moving cases more or less rapidly than is normal for the court.

Local legal culture plays a significant role in determining the relationship between criminal and civil speed in a district. Table 6.3 shows the relationship between median time to disposition for criminal and civil cases in 1979 in the Federal district courts. Of the 28 fastest districts relative to criminal processing, half also process civil cases faster than average. Of the 30 slowest criminal courts, only two (seven percent) are fast in their processing of civil cases. At the other extreme, only 14 percent of the fast

criminal courts are slow on civil matters, while 43 percent of the courts which are slow in treating criminal cases are also slow on civil business. This means that, on the average, fast courts, whose compliance with the Speedy Trial Act is generally high, also clear their civil backlogs rapidly.

Table 6.1

TYPES OF CASES LITIGATED BY U.S. ATTORNEYS
1975-1979

	United States Plaintiff		
	1975	1977	1979
Contracts	14.9%	13.2%	27.2%
Real Property	36.1	45.7	48.4
Torts	1.8	1.3	.6
Civil Rights	6.5	5.6	2.5
Prisoner Petitions	NA	NA	NA
Forfeiture & Penalty	15.1	12.3	7.2
Labor Law	13.5	11.2	6.2
Property & Social Security	10.9	10.2	7.8
Local Question	1.1	.5	—
(Total Cases)	(9,718)	(14,621)	(27,220)
	United States Defendant		
Contracts	5.9%	4.0%	3.0%
Real Property	2.7	2.1	2.7
Torts	16.0	11.9	13.5
Civil Rights	8.7	7.4	6.5
Prisoner Petitions	10.7	8.4	8.5
Forfeiture & Penalty	NA	NA	NA
Labor Law	.7	.8	.9
Property & Social Security	55.1	65.3	64.9
Local Question	.1	.1	.1
(Total Cases)	(16,160)	(25,120)	(28,813)

Table 6.2

AVERAGE AGE OF PENDING CASES, IN MONTHS,
JUNE 30, 1979,
BY PARTIES AND NATURE OF SUIT

	United States Plaintiff	United States Defendant	Private
Contracts	3.6	12.0	11.0
Real Property	12.7	14.0	10.1
Torts	13.6	10.6	10.9
Civil Rights	18.0	14.4	18.8
Prisoner Petitions	NA	7.7	9.5
Forfeiture & Penalty	7.6	NA	NA
Labor Law	10.0	10.4	10.4
Property & Social Security	9.8	11.8	14.8
Local Question	*	*	12.7
Total Number of Cases	(27,220)	(28,813)	(121,559)

*Since there are fewer than 100 cases in these cells, averages are unreliable.

Table 6.3

CLASSIFICATION OF UNITED STATES DISTRICT COURTS ACCORDING TO MEDIAN PROCESSING TIMES, CIVIL AND CRIMINAL CASES, 1979

Speed of Processing in Civil Cases	Speed of Processing in Criminal Cases		
	Fast	Medium	Slow
Fast	14[a] (50%)	4 (12%)	2 (7%)
Medium	10 (36%)	20 (39%)	15 (50%)
Slow	4 (14%)	10 (29%)	13 (43%)
TOTAL	28 (100%)	34 (100%)	30 (43%)

[a]This cell entry, for example, means that half of the 28 districts with speediest criminal case procesing were also significantly faster than average in their processing of criminal cases.

6.3.5 Relationship of Speedy Trial Compliance and Civil Backlog

The relationship described above is not an effect of speedy trial, but simply a consequence of longstanding mechanisms which condition the generally fast or slow handling of cases. We can use the year-to-year relationship of civil speed and criminal speed (in 1976 through 1979) to attempt to separate local legal culture effects from the effects of accelerated criminal case processing.[1]

Initially our findings indicate that, on the average, civil speed in a court is nearly constant from year to year. Moreover, there is little relationship between the processing of criminal cases and age of civil cases. Only in 1979 is the effect significantly larger than one would expect by chance. In this year, 85.1 percent of the total variance in age of civil cases is attributable to pre-existing conditions, and an additional 1.2 percent is contributed by information about criminal cases.

This change in 1979 is consistent with the phased implementation of the Speedy Trial Act. No limits were in effect in 1976. In 1977 the time limit from arraignment to trial was 180 days (plus any excluded time). Over the next two years the limits contracted to 120 and 80 days, respectively. Under the more liberal early limits, most districts needed only minimal processing acceleration in order to comply with the legislated requirements. As the limit fell, greater changes were presumably required to achieve the same measure of compliance, so that only in the most recent year were the changes large enough to be evident in the statistical data.

In either absolute or relative terms, the effect of criminal acceleration from 1978-1979 was small.[2] The mathematical model indicates that a district whose criminal cases were accelerated by one full month (an extremely large change) would find its civil cases aging an additional three to seven days, depending on initial levels of criminal and civil backlog. Since the median age of

[1]Table D-1 in Appendix D shows the coefficients estimated in four separate regression equations employing the transformed and adjusted district civil processing times in 1976 through 1979 as dependent variables. The relative sizes of these regression coefficients are an indication of the strength of the relationship between the contemporary age of civil cases and past civil and criminal processing, taking into account the other independent factors in the equation.

[2]The criminal information accounts for only 1.2 percent of the total variation at the district level. District level variation, in turn, is 16 percent of the total variation in the ages of individual cases. The total criminal effect is thus approximately one five-hundredth of the total variance in the age of civil cases.

criminal cases in most districts is three or four months, while that of civil cases is ten to 12 months, this means that a 25 percent change in criminal speed corresponds to a two percent change in civil speed.

These analyses describe the general pattern of all civil litigation in the United States district courts. In addition, parallel analyses were run on cases in which the United States appeared as either plaintiff or defendant, and on the largest class of civil cases not litigated by United States attorneys' offices, i.e., those involving a Federal question. No significant effects were found in either group of Government cases.[1] Nor did we find an effect on the subset of civil cases actually going to trial.

[1] In the United States plaintiff cases, criminal information contributed 1.2 percent to the total variance, but the residual variance is large enough that this is no better than would be expected by chance (p=.3). The same situation prevails for cases naming the United States as defendant: here one percent of the variance is contributed by criminal processing (p=.125). In contrast, the private cases involving a Federal question almost exactly mirror the total civil backlog analysis, but with even stronger effects.

7.0 SUMMARY AND CONCLUSIONS

In the preceding chapters we described findings from the three components of Abt Associates' Speedy Trial Act study. In this section, we summarize these results, and discuss the policy implications of our findings. While specific cost estimates were beyond the scope of the study, we also discuss the general areas in which additional resources may be needed to ensure full compliance. It should be noted that, with the exception of the analysis of civil backlog, all of our results are based on a relatively small sample of districts and respondents. While these districts were chosen to reflect the range of United States attorneys' offices and constituencies affected by the Act, we cannot generalize fully to the entire set of offices in the Federal system or to all groups involved in speedy trial implementation.

7.1 Patterns of Compliance

When a uniform standard of excludable time (based on detailed knowledge and understanding of the Judicial Conference Guidelines) was applied to a sample of cases,[1] the estimated level of compliance was 94 percent for Interval I, 92 percent for Interval II, and 91 percent for the combined compliance in both Intervals I and II. Actual compliance levels may change, however, as the courts rule on interpretation of specific sections of the Speedy Trial Act, as United States attorneys' offices and courts modify their administrative practices in response to the imposition of sanctions, and as defense counsel seek to use the speedy trial dismissal sanction on behalf of their clients.

The most frequently cited reason for noncompliance in Interval I was the failure to complete a deferred prosecution agreement within the speedy trial time limits. Court congestion was most frequently cited in Interval II. A number of other reasons were also offered. With the exception of protracted plea negotiations, however, many of these problems could have been averted through full use of relevant excludable time provisions and careful monitoring of the time limits.

[1] All cases initiated during November and December, 1979 in a representative sample of United States attorneys' offices.

The level of compliance--even using a uniform policy on exclusion of time--varied greatly among both sample districts and all United States district courts. In general, large districts had a lower rate of compliance for both intervals than did smaller districts.

In addition to speed in case processing, compliance with the Speedy Trial Act depends upon using the excludable time provisions specified in the Act. During the post-indictment interval, slow districts making more frequent use of continuances in the "ends of justice" had a higher rate of compliance than slow districts using such exclusions rarely (94 percent vs. 86 percent compliance).

7.2 Measures Designed to Reduce Case Processing Time: Strengths and Weaknesses

While the United States attorneys' offices and courts in the six District Approaches sites face a number of common problems that suggest a need for administrative--if not statutory--change, all have adopted affirmative policies and procedures designed to achieve compliance with the time limits of the Act. At least one, and in some cases a combination, of the procedures listed below were used by these districts to speed case processing. The weaknesses discovered in each procedure are noted where appropriate:

- Monitoring and Reporting. All districts have developed monitoring and reporting systems of varying sophistication to remind assistant United States attorneys (AUSAs) and/or judges of impending deadlines. Monitoring by United States attorneys' offices is concentrated in the arrest-to-indictment interval while court monitoring is focused in the indictment-to-trial interval. The two largest courts have implemented computerized management information systems designed to produce regular status reports to judges and prosecutors on all or selected defendants. An automated case tracking system is being implemented in one of the United States attorney's offices visited. Given the intricacy of the Act and the pressures faced by AUSAs in fulfilling their responsibilities for case preparation, a major weakness is the current lack of centralized and automated monitoring of intervals--particularly Interval II--in the United States attorneys' offices.

- Coordination with Investigative Agencies. In all six districts, United States attorneys' offices have increased coordination with investigative agencies, including expedited handling of cases facing speedy trial limits, joint determination of law enforcement priorities, and coordination of arrest policies and practices. However, in some districts there continue to be problems obtaining investigative reports in timely fashion.

- Planning and Coordination. All six districts have made some effort to develop a coordinated approach to compliance with the Act. All have convened Speedy Trial Planning Groups, although none has given them an ongoing role in planning and coordinating the compliance effort. Another major weakness is that there is an inadequate flow of speedy trial information from prosecutor to court during Interval I and from court to prosecutor during Interval II. (However, some respondents felt that serious separation of powers and due process issues would be raised by increased court-to-prosecutor information flow.)

- Allocation of Resources. All districts have attempted to make more efficient use of existing staff, including flexible assigment and reassignment of judges and AUSAs. There is varying use of senior and visiting judges; however, no district visited yet makes full use of United States magistrates to ease the pressure on judges' calendars. The two largest courts employ full-time speedy trial coordinators. However, none of the six United States attorneys' offices had assigned coordination of speedy trial compliance to a single individual.

- Scheduling Case Events. All courts have attempted to expedite scheduling of arraignments, discovery, motions practice, and trials with varying effectiveness. Some United States attorneys' offices have scheduled more grand jury sessions to meet the pressures of the Act.

- Training and Dissemination. Although some of the United States attorneys' offices visited have distributed the Act and related administrative materials, none has instituted formal training on the provisions of the Act and only a few have produced local instructional materials. This fact helps to explain the relatively low level of familiarity with specific provisions of the Act displayed by AUSAs in some study districts. Training and dissemination efforts in the courts have been more effective as evidenced by the higher levels of knowledge of the Act displayed by staff in clerks' offices. There continues to be widespread variability in interpretation of various provisions among all respondent groups, however.

In summary, it appears that in most districts, most of the principal actors are making efforts to comply with the Act. As one might expect, however, the level of commitment to carrying out the mandate of the Act is not uniform across districts nor across individuals within any one district. Moreover, there are general areas in which substantial improvement might help bring about full compliance.

7.3 Impact on Civil Backlog

When the Speedy Trial Act of 1974 was first passed it was feared that speedy processing of criminal cases might adversely affect civil litigation, unless substantial resources were added to the judicial system, and this concern continues to be widespread. Nevertheless, empirical analysis of historical data collected by the Administrative Office of the United States Courts (AOUSC) has failed to support those fears. Based on these data, we found that:

- While the total backlog of civil cases has grown at an average rate of 8.25 percent per year since the first speedy trial time limits became effective on July 1, 1976, the three years preceding these limits showed an even faster growth rate. Moreover, there were increases in the rate of civil filings roughly proportional to the increases in civil backlog both before and after implementation of the Act.

- The median time required for civil case processing has not significantly increased from 1974 through 1979, indicating that the majority of civil cases faced no greater delays following the implementation of the Act.

- For cases pending the longest times, there was a sustained increase in processing time from 1975 to 1979, despite the fact that caseload composition appears to have changed in the direction of reducing the number of long civil cases.

- In attempting to understand the reasons underlying this increase, we found that current district speed is largely due to pre-existing district characteristics. Simply stated, the fastest civil courts have always been the fastest civil courts. Moreover, the fastest criminal courts are also the fastest civil courts. This relationship appears not to be an effect of speedy trial but the consequence of long-standing mechanisms which condition the generally fast or slow handling of cases--mechanisms that compose what has been described as the "local legal culture."

- Once we control for all of the above, there is only a slight tendency for accelerated criminal processing to be associated with longer civil processing. In considering this finding, recall that:

  - the size of the effect is such that even with large changes in criminal speed (25 percent acceleration) only small changes (2 percent increase) in civil delay result. (Changes in criminal speed as large as 25 percent are extremely rare.)

  - the effect appears only in 1979; no earlier years show any speedy trial effect, possibly because of the longer time limits specified by the Act;

  - the effect applies only to non-Government cases; there is no indication that either United States plaintiff or United States defendant cases are delayed at all; and

  - the effect was not found for the subset of civil cases actually going to trial.

7.4 Use of Excludable Time Provisions and Determination of Compliance

In order to accommodate the variety of cases entering the Federal judicial system, the Act had to be extremely intricate. The excludable time provisions were designed, at least in part, to balance the interest of the public in speedy trials with the right of the defendant to due process. In actuality, these provisions pose a number of administrative problems.

In general, we found that many prosecutors fail to rely on the excludable time provisions to achieve compliance with the arrest-to-indictment interval due to the following:

- lack of explicit exclusions for delays which prosecutors feel are unavoidable in this interval;

- lack of familiarity with or disagreement over proper interpretation of the provision governing excludable time in complex cases [§ 3161(h)(8)(B)(iii)];

- avoidance of pre-indictment exclusions by prosecutors who fear that since their requests for exclusions may be denied by the court, the time required to request exclusions could be better spent in other ways;

- administrative burden associated with monitoring the use of excludable time and requesting exclusions from the court; and

- lack of clear guidance as to the means of identifying, recording, and notifying the court of excludable time occurring during this interval.

Given the above problems, many AUSAs simply treat the arrest-to-indictment period as a fixed 30-day interval. This, in turn, occasionally leads to one of two practices which may be viewed as unintended consequences of the Act. One is premature indictment before the full facts of the case are known or before the entire case (involving all counts and all defendants) has been developed. The second is dismissal of the complaint prior to indictment, which may be followed by reopening the case as a grand jury original. The extent to which this practice occurs cannot be determined at this time.

With respect to the indictment-to-trial period, judges, prosecutors, and defense attorneys alike expressed concern over continued judge variability in the use of exclusions. Some judges have adopted a relatively restrictive interpretation of the "ends of justice" continuance. Indeed, both prosecuting and defense attorneys cite narrow construction of the provision as the major reason for continuing difficulties in securing continuity of counsel and adequate time for effective case preparation. On the other hand, some respondents expressed the opinion that other judges use continuances with such high frequency that they appear to violate the spirit, if not the letter, of the statute.

Finally, monitoring of excludable time poses a serious administrative burden on both the United States district courts and United States attorneys' offices. Moreover, determination of compliance (i.e., calculating total calendar time for an interval less all non-overlapping excludable time) is not a trivial task. Particularly in cases involving overlapping pre-trial motions, documentation of excludable time and determination of speedy trial time limits may require a great deal of effort.

7.5 Unintended Consequences

A number of prosecutorial policies and practices have been discussed in this report, all of which mitigate the pressures of the Speedy Trial Act. To the extent that these are direct responses to the Act, they may be viewed as its unintended consequences.

There is anecdotal evidence that speedy trial requirements have an impact, at least in part, on the following:

- declination and deferral strategies;
- arrest policies and practices;
- premature indictment;
- pre-indictment dismissals, followed by indictment at a later date; and
- offense classification and plea negotiation.

The perceptions of prosecutors and other respondents are partially supported by analyses of secondary data and data from our Records Study component. For example, AOUSC data suggest a small decline in the percentage of cases initiated by arrest in all districts, from 38 percent in the year ending June 30, 1977 to 32 percent in the year ending June 30, 1979. In addition, we

found evidence of a number of cases in our Records Study which were dismissed pre-indictment, reportedly because of speedy trial pressures. Clearly, however, many factors other than the Speedy Trial Act--including local conditions and national law enforcement priorities--are exerting strong influence on these prosecutorial decisions.

Finally, it should be pointed out that several districts continue to use waivers of speedy trial limits in the belief that they are a proper exercise of defendants' constitutional rights. Generally, there is disagreement among those whom we interviewed as to the legality of this practice.

7.6 Policy Implications

7.6.1 Local Measures

We did not find a clearcut relationship between any single measure designed to achieve compliance with the Act and actual compliance in the six site-visited districts in our study. Nevertheless, we believe that the intricacy of the Act and the additional demands it places on prosecutors, court personnel, and investigative agents, require that current measures be strengthened and that additional measures be adopted in order to achieve full compliance. Continued and expanded efforts are needed in order to avoid not only the risk of court-ordered dismissals once sanctions are in effect, but also policies and practices which may be counter to the spirit, if not the letter, of the law.

Local implementation efforts might be strengthened by the following:

- Improved coordination between the United States attorney's office and the court through:
  - -use of planning groups as ongoing coordinating committees; and
  - -increased information sharing, particularly with respect to excludable time and action deadlines on individual cases.
- The development of more specific dissemination and training materials on the Act's provisions in order to increase uniformity in the interpretation of the Act.
  - For judges, these materials would focus on the use of "ends of justice" provisions.
  - For AUSAs, the emphasis would be on the interpretation and use of pre-indictment exclusions.

- Centralized and, where feasible, automated systems within both the courts and United States attorneys' offices for monitoring compliance.

- Designation of individuals within both the courts and United States attorneys' offices to perform speedy trial coordination functions.

- Careful assessment of local staffing policies and practices, particularly with respect to the use of magistrates.

Some of these recommendations obviously have resource implications. Among those measures which may incur increased costs are the continued operation of local planning groups, implementation of automated case tracking systems, and designation of individuals to perform speedy trial coordination functions. The latter, in particular, requires explanation.

It was impossible based on the small number of sites visited to assess whether or not United States attorneys' offices and courts have sufficient staff to meet both the letter and the spirit of the Speedy Trial Act. Clearly, local legal culture has an impact on the speed of case processing, independent of staffing ratios. Furthermore, recent increases in the number of judgeships authorized by the Omnibus Judgeship Act, coupled with a rise in staffing levels in the United States attorneys' offices, appear to have alleviated the pressures posed by the Speedy Trial Act in at least some districts. Nevertheless, other districts continue to feel a need for increased prosecutorial and/or court staff, particularly given the expectation that the rise in civil filings will continue. These needs have been documented in their requests for additional staff submitted to the Department of Justice and the AOUSC.

Without commenting on overall staffing needs, we did find that the ordinary pressures faced by both the United States attorneys' offices and the courts make it difficult for existing staff to absorb the additional duties imposed by speedy trial constraints. In fact, in one district with a sizeable caseload and a relatively poor compliance record, a number of monitoring procedures have been developed but not implemented for lack of sufficient staff. Therefore, we believe that additional resources, targeted to speedy trial monitoring and coordination functions, would help achieve Congressional intent. Since large districts appear to face particular problems in achieving compliance, resources should be directed to these districts as a minimum.

7.6.2 Department of Justice Initiatives

Obviously, our findings also have implications for the Department of Justice. Clearly, increased dissemination of materials covering both interpretation of

the Act's provisions and application of these provisions would be helpful. In particular, such materials might highlight the allowable exclusions in the arrest-to-indictment interval and mechanisms for entering them in the record of the case, thus clarifying the Department's policy on these matters.[1] Respondents have requested examples illustrating how to deal with common problems related to various types of exclusions. In addition, development of monitoring forms, dissemination of information on successful management strategies, and local or nationally focused training activities might be helpful. Finally, continued technical assistance in the form of computerized tracking systems and other case management techniques might assist the United States attorneys' offices in managing the recordkeeping burden of the Act.

Once again, these recommendations have resource implications. Identification and dissemination of exemplary practices, development and installation of computerized tracking systems, and preparation and distribution of annotated materials designed to clarify the Act's provisions all involve certain costs. Given competing priorities, additional resources targeted to these activities might facilitate full implementation of the Act.

7.6.3 Changes in the Statute and/or Implementing Guidelines

In order to reduce some of the problems pertaining to the excludable time provisions, we would suggest the following:

- Congress consider incorporating in the Act specific exclusions for the pre-indictment interval to provide prosecutors additional flexibility and obviate the "dismiss-reopen" practice. These might include:
  - reasonable delays in obtaining investigative and laboratory reports in certain circumstances, e.g., translations of statements, transcripts of wiretaps, handwriting and fingerprint analyses;
  - reasonable delays in obtaining records subject to the Financial Privacy Act;
  - reasonable periods of time necessary to develop evidence of conspiracies or continuing criminal activity through cultivation of cooperating defendants; and
  - reasonable periods of time necessary to negotiate deferred prosecution or pre-trial diversion arrangements.

[1] As this report went to press, a new version of that section of the United States Attorneys' Manual dealing with the Speedy Trial Act was disseminated. This section addresses some of the concerns raised here.

- Clarification of excludable time provisions through:
  - continuing refinement of implementing guidelines, possibly by a panel representative of all affected constituencies; or
  - designation of and provision of authority to an agency to promulgate binding regulations.

Although the Act is extremely intricate, we found little evidence that argues for major structural change at this time. However, the need to consider structural revisions may become significantly more compelling once sanctions are in effect and the defense bar has had the opportunity to move for dismissals. Under these circmstances, an inordinate amount of time may be spent not only in identifying and recording exclusions and calculating net time, but also in litigating motions for dismissal. This may provide stronger justification for legislative action to simplify the excludable delay provisions of the Act.

In addition to providing additional pre-indictment exclusions, other statutory refinements might include:

- clarification of provisions relating to the practice of pre-indictment dismissal followed by indictment at a later date;
- clarification of the way in which § 3161(d)(2) and § 3161(h)(6) apply to superseding indictments, including clarification of the distinction between "old" and "new" charges and its implications for speedy trial intervals; and
- reconciliation of Department policy with respect to court approval of deferred prosecution agreements and the wording of the § 3161(h)(2) exclusion intended to cover these agreements.

APPENDIX A

United States Attorneys'

Records Study Methodology

APPENDIX A

INTRODUCTION

In this technical appendix, we describe the Records Study design, data collection process, data conversion and editing procedures, and analytic methods.

SAMPLING

The study examined compliance with the 30-day pre-indictment and 70-day post-indictment time limits for each defendant in a stratified sample of cases. Eighteen districts were selected from the 96 United States attorneys' offices, and data were collected on a total of 1351 defendants in those districts between November, 1979 and June, 1980. Nineteen of these defendants no longer belong in the study. Most of these 19 cases have been transferred out of a study district under Rule 20 of the Federal Rules of Criminal Procedure. We were unable to obtain full information on another 27 defendants. This left a total of 1305 defendants for whom compliance estimates could be computed. Seven-hundred-and-fourteen of these defendants were in cases initiated by arrest and these defendants were included in our analysis of Interval I compliance. A large percentage of the arrested defendants were later indicted;[1] other defendants were indicted without having been arrested first. In all, a total of 1103 defendants entered Interval II and were included in our analysis of the 70-day time limit.

Site Selection

The universe of 96 United States attorneys' offices was stratified by size, level of speedy trial compliance in the year ending June 30, 1979, and number of civil cases pending over three years as of June 30, 1979. There are six United States attorneys' offices with more than fifty AUSAs. These six offices alone account for 18 percent of all federal criminal filings, and thus exercise a significant role in determining national levels of compliance. All six of these districts were included in the sample, i.e., large districts were sampled with certainty. Each remaining stratum was represented by one district selected from it at random. Because districts and strata are of

[1] We use this term broadly to cover all cases entering the indictment-to-trial period through indictment, information, or other means.

unequal size, this meant that different defendants had different probabilities of entering the sample, depending on the districts from which they came. To provide unbiased estimates of national levels of speedy trial compliance, each district was assigned a weight equal to the total number of defendants in its stratum.

Defendants Included in the Study

All defendants[1] whose cases were initiated between November 1 and December 31, 1979 in the 18 sample districts were included in the study.[2] The date of initiation for Interval I defendants was defined as the date of arrest, service of summons, or, if there was an informal notice of charges, defendant's first appearance. Cases without an Interval I were considered initiated on the date of filing of an indictment or information. When a defendant was added to a case by superseding indictment, the date of filing of the superseding indictment was taken as the date of initiation of the case.

To ensure that the sample included all cases covered by the Speedy Trial Act, provisions for several rare events were incorporated in the data collection rules:

- Three cases had new trials ordered. In accordance with 18 U.S.C. § 3161(d)(2) and § 3161(e) the initiation date for these cases was taken to be the date the action occasioning the retrial became final.

- Twenty-two defendants entered the study by a Rule 20 transfer from another district. These cases were considered to be initiated on the date the Rule 20 transfer papers were received in the district where the case was finally adjudicated. (Defendants who were transferred out of a study district were excluded from the study in order to avoid double representation of transferred cases.)

[1]The unit of count in all analyses is the defendant, rather than the case, even though there may be multiple defendants per case. In standard statistical usage, observations are called cases, and readers should be aware that in this report the term "case" often refers to defendants within legal cases.

[2]The initiation dates defined here are used for the purpose of specifying rules for inclusion of cases in the study based on this date. The initiation dates defined here are not necessarily the dates when various speedy trial "clocks" begin to run.

- Superseding indictments filed after an original indictment was dismissed on motion of the government occurred in two instances. All such indictments occurring during November and December 1979 were included regardless of when the original indictments were filed in order to represent similar cases where the superseding indictment would occur after December 1979 without our knowledge.

It is important to consider how representative of the entire year the months of November and December are. In order to do this we examined the monthly distribution of all cases filed in the U.S. District Courts between July 1, 1978 and June 30, 1979.[1] Because cases initiated by arrest during late December in our study would be filed in court in January, 1980, we were interested in the percentage of all cases filed during this year that were filed during November, December and January. These figures are presented in Table A.1.

If cases were filed at a constant rate throughout the year, one would expect to find approximately 25 percent filed during these three months. While the difference between the percentage actually filed for the nation as a whole (23 percent) and that observed in our sample is statistically significant, the magnitude of the difference is so small that seasonal variation in total filings need not be a concern when looking at the nation as a whole.

There is variation from district to district in these percentages, ranging from a low of 10 percent to a high of 36 percent. (When we looked at variations across districts in the November through January filings of different types of offense, we also found variation by offense category.) Despite such variation, we would conclude that overall the November through January filing rate approximates that for the entire year. Thus, we believe that the cases reported here are not substantially different from those filed at other seasons of the year.

[1]These data were derived from a computer tape provided by AOUSC listing all JS-2 forms filed during this period. While certain types of cases that were clearly not speedy trial cases were eliminated from the counts, no effort was made to delimit this universe to include only speedy trial cases. Moreover, this universe clearly does not include all speedy trial cases. For example, pre-indictment dismissals are not reported to AOUSC. However, the intent here is merely to gauge the general magnitude of seasonal effects.

Table A.1

PERCENTAGE OF ALL CASES FILED IN EACH DISTRICT DURING NOVEMBER, DECEMBER AND JANUARY BY DISTRICT[a]

District	Percentage of Cases Filed November - January
Arkansas W.	10%
California C.	25
Colorado	21
District of Columbia	25
Florida S.	19
Illinois N.	31
Indiana N.	24
Massachusetts	22
Missouri W.	26
New Jersey	25
New Mexico	19
New York E.	20
New York S.	28
North Carolina E.	36
Ohio S.	17
South Carolina	24
Texas E.	25
Wisconsin W.	23
All Other Districts	23
All Districts in U.S.	23

[a]Based on data provided by AOUSC for the year ending June 30, 1979.

INSTRUMENTATION

Data on the cases included in the study were collected primarily through an AUSA self-reporting system. A major reason for choosing an ongoing examination of cases initiated during a specified period rather than a reconstruction of cases terminated during a specified period was to allow AUSAs to record events as they occurred and when details were fresh in their minds.

The data collection instrument was developed in close collaboration with Department of Justice (DOJ) project monitors and was pre-tested in three United States attorneys' offices in New England. It was designed to capture the following types of information on each defendant in the study:

- defendant characteristics;
- nature of charges;
- key dates--starting and ending dates of Speedy Trial intervals;
- outcome of case through dismissal, plea of guilty, or verdict; and
- data on the pace of processing, i.e.
  - motions filed
  - excluded time
  - time required to obtain reports and records
  - other non-excluded processing time.

The instrument is included as Exhibit 1 to this Appendix.

It should be pointed out that although the study was designed to rely on AUSA self-reporting, in several districts none of the forms were completed by the AUSA responsible for the case and in other districts only some of the forms were completed by the AUSA. Some AUSAs were unwilling or unable to participate in the data collection. As a result, law clerks, paralegals, United States attorneys' office docket clerks, AUSAs' secretaries, other attorneys, and Abt Associates field monitors had to fill out many of the record forms.

DATA COLLECTION PROCEDURES

Once the instrument had been approved by DOJ, it was introduced to the 18 districts on visits by Abt Associates' senior staff. Prior to these visits, each site was contacted and a liaison person was identified in the United States attorney's office. The initial visits occurred in late November and

early December 1979.[1] The visits usually involved meetings with the United States attorney and the designated liaison. In these meetings the instrument and the instructions for its completion were discussed with the liaison and/or groups of criminal division AUSAs. In some sites, project staff gave presentations on the instrument at regular criminal division staff meetings. In general, AUSAs were asked to maintain the instruments in the case jackets and enter information on them as events occurred.

Soon after the initial visits, Abt Associates field monitors were assigned to each site to maintain contact with the liaison person and to conduct follow-up visits.

An important element in the follow-up process was the early and careful identification of the cases to be reported and the preparation of a master case log for each district. This was particularly important since, due to the timing of project start-up, initial visits did not begin until three weeks after the official start of data collection. Thus it was necessary to identify cases initiated early in November retroactively for inclusion in the study.

Concerted efforts were made to identify all cases that belonged within the sampling frame. In some sites, liaison persons identified the sample of cases and prepared the case log after receiving detailed instructions from project staff. In other districts these tasks were carried out by Abt Associates monitors. Since district recordkeeping differed substantially, various sources had to be used to compile the master lists. These included magistrates' minutes, arrest logs, court minutes, lists of indictments and informations filed, and logs of Rule 20 cases. Information on "unusual cases" --mistrials, superseding indictments, magistrates cases--was developed through discussions with liaison persons, United States attorneys' docket clerks, and court minute clerks.

Between February 19 and 29, 1980, Abt Associates field monitors visited ten districts to collect and review record forms on pending and completed cases. They also obtained copies of court or magistrate docket sheets on as many cases in the study as possible. These were used for cross-validation of the data recorded by the AUSAs. The other eight districts in the study--the small and several of the medium-sized offices--mailed their forms and docket sheets to Abt Associates during this same period. These data were analyzed and presented in an earlier report to Congress dated April 1980.

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[1] There was one exception: the Northern District of Illinois was not visited until late December.

A second phase of data collection was carried out in order to gather more complete information on the cases that were still pending (approximately 44 percent of the total) when the Phase I data collection effort ended. In order to reduce the reporting burden on AUSAs, court docket sheets and magistrate docket sheets were relied on as the primary data sources. Between May 5 and 21, 1980 Abt Associates staff visited six districts to obtain updated copies of docket sheets for cases which were still pending at the end of Phase I and for completed cases lacking docket sheets at the end of Phase I. The remaining twelve districts provided updated docket sheets by mail for the comparable set of cases in those districts.

DATA CONVERSION AND EDITING

The bulk of the coding and editing task involved verifying information reported on the record forms. Because the most important analytic task was the determination of compliance, most of the editing resources were devoted to obtaining accurate starting and ending dates for Intervals I and II so that valid numbers of calendar days could be calculated. This made it possible to focus our efforts on identification of excludable time periods in those cases where excludable time played a role in determining compliance --cases having more than 30 calendar days in Interval I or more than 70 calendar days in Interval II. Efforts to calculate accurate excludable and net time for cases that were compliant even without the use of excludable time were abandoned when it became apparent that the limited usefulness of this information did not justify the high cost of obtaining it.

To validate the starting and ending dates of intervals, the dates provided on our record forms were compared to those on court docket sheets. Where the docket and the questionnaire disagreed or the information was missing from the questionnaire, the docket sheet information was used.[1] When a necessary date was not available on either the docket sheet or the record form, project staff attempted to obtain the information directly from the AUSA or court docket clerk. Docket sheets and telephone calls to AUSAs were also used to obtain required information not requested on the questionnaire. The most important such item was the date of the defendant's initial appearance before a judicial officer in the charging district for cases initiated by indictment.

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[1] Because there is often a delay in posting information to the docket sheets, a number of trial and plea dates reported on the questionnaire could not be verified. In approximately 14 percent of the arrest cases we were unable to validate the arrest date reported on the questionnaire. In about 62 percent of arrest cases, we could not verify dates of release from custody. For this reason, we have not included the data on compliance with the custody time limits in our analysis.

ANALYTIC METHODS

Calculating Calendar Time

Using the data produced by the manual editing procedure just described, calendar times for each of the speedy trial intervals were calculated using a computer program written specifically for this purpose. While the manual editing procedure was directed at capturing as many speedy trial dates as possible, the logic of determining the beginning and ending dates of the intervals was embodied in this computer program. A complex computer program was required to capture the intricacies of the Act, including provisions governing Rule 40 cases, Rule 20 cases, superseding indictments, consents to trial on complaints, sealed indictments, and overlapping excludable periods. The program also allowed for automatic extension of intervals with expiration dates falling on non-business days, pursuant to Rule 45(a) of the Federal Rules of Criminal Procedure. The program also included extensive cross-checks of the over 100 dates required in our data base. Thus we have confidence in the accuracy of the calendar times calculated for all cases in the study.

Determining Compliance

To determine compliance, we used a three-phase strategy. First, we identified all cases with Interval I calendar times in excess of 30 days and/or with Interval II calendar times in excess of 70 days. The second phase consisted of a careful follow-up procedure to identify all excludable time in these potentially non-compliant cases. In the third phase, the compliance of those pending cases which had not yet exceeded the time limits was estimated.

The follow-up procedure involved an intense effort to bring cases into compliance by making use of all exclusions permitted by the Judicial Conference Guidelines. First we used any exclusions that could be documented from the court docket sheets. If sufficient excludable time could not be found there, calls were made to the clerk of court in search of any exclusions not posted on the dockets. If these steps could not produce compliance, project staff contacted the AUSA responsible for the case. Of the cases which we ultimately judged to be compliant, we were able to document compliance for 98 percent of these cases through court docket sheets or through telephone conversations with court docket clerks working from other court records. In two percent of the cases which we judged to be compliant, we were not able to document sufficient excludable time from court records, and instead we relied on information provided to us over the telephone by the AUSA responsible for the case.

The most frequent kinds of exclusions utilized to bring cases into compliance are given below in approximate order of frequency of usage:

- "ends of justice" continuances under § 3161(h)(8); (we found that even where we had magistrates' dockets, many of these exclusions were not recorded on the docket in Interval I);
- use of Rule 45(a) to exclude non-business days occurring at the end of an interval;
- pre-trial motions excludable under § 3161(h)(1)(F) and (J);
- exclusions under § 3161(h)(7) which make compliant a co-defendant joined with a defendant whose case is compliant on other grounds;
- exclusions for "other proceedings concerning the defendant" not explicitly listed in the Act. This includes court days spent in bail hearings, preliminary examinations, arraignments, and pre-trial conferences as described in the Judicial Conference Guidelines on page 42.[1]

Phase three involved estimating compliance for pending cases not yet exceeding the time limits. By definition, the group of cases pending at the end of data collection included those with very long life spans. Unbiased estimates of compliance required development of a method which would take into account the fact that cases had been exposed to different periods of observation. These estimates can be produced by applying a Markov model to the data available.[2] In this technical appendix we present a formal description of the model used in Chapter 2.

For estimating compliance, the key statistic is the fraction of cases which would be pending on the 31st or 71st day (for Intervals I and II, respectively), taking into account periods of delay excludable under the provisions of the Act. Cases which are still pending at the beginning of the 30th day of Interval I can experience three fates during that day. Some will terminate on that day, hence comply with the time limit. (Let us say there are T_{30} such cases.) A second group will not have been completed by the end of the day, hence will fail to comply. (Let us call the number of such cases P_{30}.) Finally, the last day of our data collection effort might have fallen on the 30th day of a small number of cases. This last group of cases is unlike the other two groups in that we are not able to observe what happened to these cases on the 30th day. (Let X_{30} denote the number of

[1] When such a proceeding occurred on the day beginning an interval, it was not counted as an exclusion, because there appears to be disagreement over whether such a day is legitimately excludable. Since it seems to be clear that such proceedings occurring on the last day of an interval are not excludable, these were not counted in our study.

[2] Readers seeking a theoretical development of Markov processes may consult any of several standard texts. Samuel Karlin's A First Course in Stochastic Processes (Academic Press, New York, 1969) is one of the most complete.

these cases.) We can estimate what will happen to these cases on the 30th day by assuming that the percentage of terminations that will occur in cases we cannot observe on the 30th day will be the same as the percentage of terminations that occurred in cases we were able to observe on the 30th day ($T_{30}/(T_{30} + P_{30})$). This also gives us an estimate ($P_{30}/(T_{30} + P_{30})$) of the percentage of the unobserved cases that will be noncompliant as a result of being pending at the end of the 30th day. Thus, if we had an estimate of the number of Interval I cases which would begin day 30, we could use T_{30} and P_{30} to estimate the total number of noncompliant cases.

We could similarly define T_{29}, P_{29}, and X_{29} to represent the numbers of cases terminated, pending, or unobserved on their 29th day, and then use $T_{29}/(T_{29} + P_{29})$ to estimate how many of the 29-day-old cases would become 30-day-old cases. This chain of logic can be pushed all the way back to cases which begin day 1 (i.e., all cases in the sample). Thus as long as we can assume that cases of a particular age which were still pending on the last day of the study will experience the same chance of terminating during that day as cases which reached the same age on an earlier date, we can apply the successive probabilities to compute the total fraction of cases which would eventually fail to comply with either the 30-day or 70-day time limit.

Estimating Overall Compliance

Figure A.1 displays the main paths which a given case could follow and the percentage of defendants following each path. These percentages were used to estimate overall compliance. According to our data, approximately one-third (35 percent) of all defendants experienced an Interval I.[1] Our analysis estimated that 5.6 percent of these took longer than the 30-day period allowed by the Act. Multiplying 5.6 percent by 35 percent gives approximately 2 percent of all defendants who can be expected to fail at this juncture. Cases will be dismissed against 16 percent of the compliant Interval I defendants, leaving a total of 27.7 percent of all defendants to start Interval II after having completed Interval I. As indicated in the figure, compliance with the Interval II time limits for these defendants appears to be slightly less likely than for those not arrested. Multiplying the 7.9 percent noncompliance rate for this group by the 27.7 percent of all defendants who follow this path, we find roughly 2 percent of all defendants who will have complied with Interval I but not with Interval II. Finally, a similar calculation gives approximately 5 percent of all defendants who skip Interval I and fail to comply with Interval II. Altogether 8.9 percent of all defendants are estimated to fail at some point in their path through the system.

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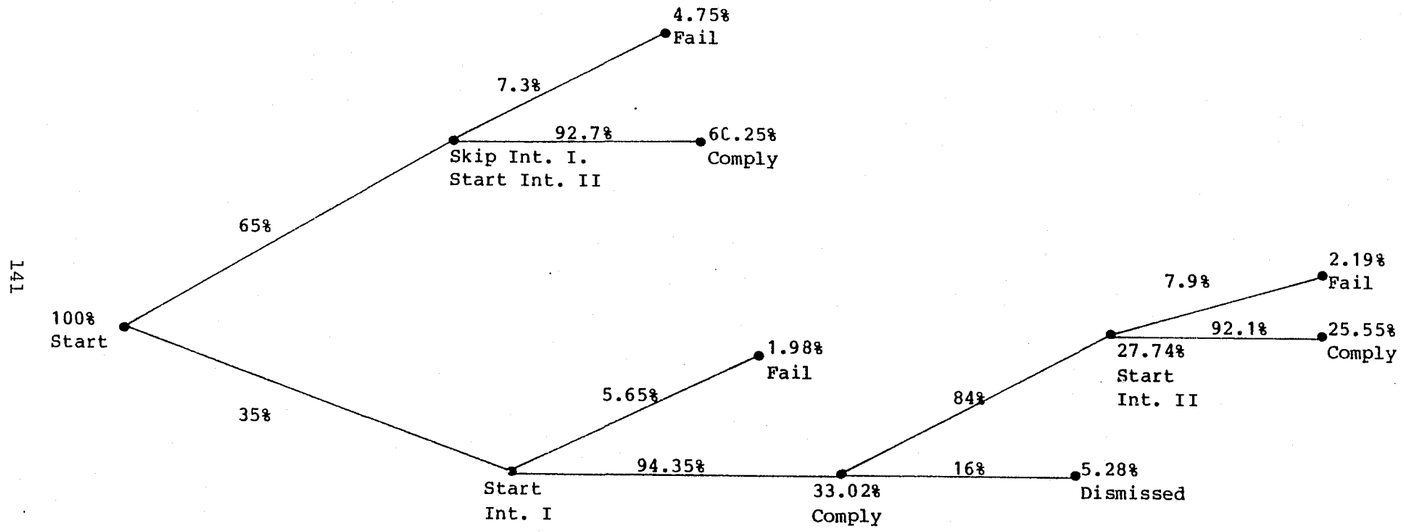
[1] The national estimate is roughly comparable. For the year ending June 30, 1979, 32 percent of all cases filed were initiated by arrest according to AOUSC statistics. We believe our data base includes some cases initiated by arrest but not indicted and therefore not known to AOUSC.

Figure A.1

DEFENDANT FLOW CHART USED TO ESTIMATE OVERALL COMPLIANCE



Abt Associates Inc.
55 Wheeler St.
Cambridge, Mass. 02138

Record Number | | | | | | | | | 1-8/
DISTRICT OFFICE CASE
(For Office Use Only)
CARD 1
9-10/(01)

Department of Justice
Federal Justice Research Program
Speedy Trial Act Study, 1979 - 1980

Instructions

Forms are required on all cases in which a "case initiating event" occurs from November 1, 1979 through December 31, 1979. A **separate form** should be completed **for each defendant** in all cases which qualify for reporting. For the purposes of this study, case initiating events include the following:

1. arrest;
2. filing of **information** or **indictment**, whichever occurs last;
3. filing of **superseding indictment**, even if the original indictment was filed before November 1, 1979.

   If a superseding indictment is filed before January 1, 1980 in a case already being reported, complete the form covering the original indictment and begin a new form, treating the superseding indictment as the case initiating event in Question 10 on page 4.
4. event occasioning **retrial** or **new trial**, even if the case actually began before November 1, 1979.

   If an event occasioning a retrial or new trial occurs before January 1, 1980 in a case already being reported, complete the form covering the original indictment or information and begin a new form, treating the event occasioning such retrial or new trial as the case initiating event in Question 10 on page 4.

The form should be maintained in the case jacket and items should be completed as the events occur. If more than one attorney participates in a case, each should enter the data relevant to the period of his/her participation. Final entries should be made upon adjudication of the case or upon notification by an Abt Associates representative that the period of data collection has ended, whichever occurs first.

If any questions arise concerning completion of this form, please call Dr. Theodore Hammett collect at (617) 492-7100, extension 578.

This record will be used solely as a statistical research or reporting record. In accordance with 5 USC § a (b) (5), data will be reported only at the aggregate and not the individual level.

A. District _____ B. Office _____

C. Name of Defendant _____
Last First M.I.

D. Number of Codefendants ☐☐ 11/12

E. Criminal Case Number _____
(Enter the complaint number or other preindictment number used by the U.S. Attorney's Office to identify this case. If more than one number, enter the first number only.)

F. Court Docket Number (if applicable) ☐☐☐☐☐☐ 13-20/
Year Docket No. Def.

G. Person(s) completing this form:

1. _____ Phone No. _____
Last First M.I.

2. _____ Phone No. _____
Last First M.I.

3. _____ Phone No. _____
Last First M.I.

H. Magistrate/Judges responsible for this case:

1. _____
Last First M.I.

2. _____
Last First M.I.

3. _____
Last First M.I.

---

1. Type of defense counsel. (Check as many as apply:)

Court appointed counsel	☐ 21-1	Pro se	☐ 24-1
Public Defender	☐ 22-1	Other (please specify) _____	☐ 25-1
Privately retained	☐ 23-1	_____	26/

2. Defendant's date of birth: ☐☐ 27/28 ☐☐ 29/30 ☐☐ 31/32
Month Day Year

3. Number of prior felony convictions? ☐☐ 33/34

4. Is the defendant designated "high risk" by the U.S. Attorney? No ☐ 35-1 Yes ☐ -2

5. Was the defendant detained? No ☐ 36-1 Yes ☐ -2 → Date: ☐☐☐☐ 37-40/
Month Day

6. Was the defendant released?
No ☐ 41-1
Yes ☐ -2 →

A. Date: ☐☐ 42/43 ☐☐ 44/45
Month Day

B. What was the condition of release/bail? (Check only one response.)

Personal recognizance	☐ 46-1	Unsecured bond	☐ -2
10% bond	☐ -3	Surety bond	☐ -4
Third party	☐ -5	Pre-trial services agency	☐ -6
Other (please specify) _____			☐ -7
_____			47/

7. What agencies investigated this case? (Check as many as apply.)

Alcohol, Tobacco, and Firearms (ATF)	☐ 48-1	Secret Service	☐ 55-1
Customs	☐ 49-1	Local Police	☐ 56-1
Drug Enforcement Administration	☐ 50-1	State Police	☐ 57-1
FBI	☐ 51-1	Other (please specify) _____	☐ 58-59/
IRS	☐ 52-1	_____	60/
Naturalization/Immigration	☐ 53-1	_____	61/
Postal	☐ 54-1	_____	62/

8. Is this a prosecution on a superseding indictment?
No ☐ 62-1
Yes ☐ -2 →

A. What was the reason(s) for the superseding indictment?
_____ 64-65/
_____ 66-67/
_____ 68-69/

B. Who filed the motion for dismissal of the original information/indictment? (Check only one response.) Defense ☐ 70-1 Prosecution ☐ -2

C. Date of that dismissal: ☐☐ 71/72 ☐☐ 73/74
Month Day

D. What was the original case number? (Note only if different from the *present* criminal case number on page 2.) _____

CARD 2
9/10 - (02)

9. What were the specific offenses alleged in this case? (If there were more than 8, list the first 8 only.) Please indicate the number of counts for each offense in the designated column; do *not* list multiple counts of the same offense separately (e.g., 18 § 201 (b), bribery of public official, 3 counts).

	Title	Section	Subsection	Description of Offense	Counts
1.	☐☐ 11/12	☐☐☐ 13-16/	☐ 17/	_____ 18/19	☐☐ 20/21
2.	☐☐ 22/23	☐☐☐ 24-27/	☐ 28/	_____ 29/30	☐☐ 31/32
3.	☐☐ 33/34	☐☐☐ 35-38/	☐ 39/	_____ 40/41	☐☐ 42/43
4.	☐☐ 44/45	☐☐☐ 46-49/	☐ 50/	_____ 51/52	☐☐ 53/54
5.	☐☐ 55/56	☐☐☐ 57-60/	☐ 61/	_____ 62/63	☐☐ 64/65
6.	☐☐ 66/67	☐☐☐ 68-71/	☐ 72/	_____ 73/74	☐☐ 75/76

CARD 3
9/10 - (03)

7.	☐☐ 11/12	☐☐☐ 13-16/	☐ 17/	_____ 18/19	☐☐ 20/21
8.	☐☐ 22/23	☐☐☐ 24-27/	☐ 28/	_____ 29/30	☐☐ 31/32

Total Number of Counts (include all counts, even if more than 8 offenses). ☐☐ 33/34

10. Key Dates

A. What was the case initiating event? (Check only one response and enter appropriate dates.)

(1) Information or indictment filed (whichever occurred last) ☐ 35-1

	Month	Day	
Date Filed	☐☐	☐☐	36-39/
Date of Arrest	☐☐	☐☐	40-43/

(2) Arrest ☐ -2

	Month	Day	
Date of Arrest	☐☐	☐☐	44-47/
Preliminary (Probable Cause) Hearing	☐☐	☐☐	48-51/
Information Filed	☐☐	☐☐	52-55/
Indictment Filed	☐☐	☐☐	56-59/

(3) Other Case Initiating Event:

- Mistrial declared ☐ -3
- New trial ordered ☐ -4
- Reinstatement following appeal ☐ -5
- Retrial order resulting from collateral attack ☐ -6
- Other (please specify) ☐ -7

_____ 60-61/

	Month	Day	
Date of event occasioning trial, retrial or new trial	☐☐	☐☐	62-65/

B. Please enter all other dates that apply:

	Month	Day	
Arraignment	☐☐	☐☐	66-69/
Entry of plea of guilty or nolo contendere	☐☐	☐☐	70-73/
Withdrawal of guilty plea (date accepted by court)	☐☐	☐☐	11-14/
Trial commences	☐☐	☐☐	15-18/

CARD 4
9/10 - (04)

11. On what date did the defendant make his/her first court appearance through defense counsel?

☐☐ Month 19/20 ☐☐ Day 21/22

23/24 BLANK

Not applicable ☐ 25-1

A. What was the nature of that court appearance (e.g., bail hearing, etc.)? _____

_____ 26-27/

12. Did the defendant waive minimum 30-day period from first appearance through counsel to commencement of trial?

No ☐ 28-1 Yes ☐ -2

13. Has this case been adjudicated? No ☐ 29-1 Yes ☐ -2 → SKIP TO QUESTION 15, PAGE 6.

A. Were all offenses dismissed? No ☐ 30-1 Yes ☐ -2

i. By whom? (Check only one response.)

Prosecutor, pre-indictment ☐ 31-1 By the court, with prejudice ☐ -3
By the court, without prejudice ☐ -2

ii. On what date were the offenses dismissed? Month ☐☐ 32/33 Day ☐☐ 34/35

NOW SKIP TO QUESTION 14 BELOW.

B. By what means was this case adjudicated? (Check only one response,) Jury ☐ 36-1 Judge ☐ -2 Plea ☐ -3

C. What was the disposition of this case? (Check only one response.)

Guilty on all original counts ☐ 37-1
Not guilty on all original counts ☐ -2
Other ☐ -3

→ NOW SKIP TO QUESTION 15, PAGE 6.

38/blank

i. List all specific offenses on which the defendant was determined to be *guilty*. Please indicate the number of counts for each offense in the designated column. If there were more than 8 offenses, list the first 8 only.

	Title	Section	Subsection	Description of Offense	Counts
1.	☐☐ 39/40	☐☐☐☐ 41-44/	☐ 45/	46/47	☐☐ 48/49
2.	☐☐ 50/51	☐☐☐☐ 52-55/	☐ 56/	57/58	☐☐ 59/60
3.	☐☐ 61/62	☐☐☐☐ 63-66/	☐ 67/	68/69	☐☐ 70/71
4.	☐☐ 72/73	☐☐☐☐ 11-14/	☐ 15/	16/17	☐☐ 18/19
5.	☐☐ 20/21	☐☐☐☐ 22-25/	☐ 26/	27/28	☐☐ 29/30
6.	☐☐ 31/32	☐☐☐☐ 33-36/	☐ 37/	38/39	☐☐ 40/41
7.	☐☐ 42/43	☐☐☐☐ 44-47/	☐ 48/	49/50	☐☐ 51/52
8.	☐☐ 53/54	☐☐☐☐ 55-58/	☐ 59/	60/61	☐☐ 62/63

CARD 5
9-10 (05)

Total Number of Counts (include all counts, even if *more* than 8 offenses) ☐☐ 64/65

14. If any offenses (counts) were dismissed, with or without prejudice, please explain in what way this was affected by the Speedy Trial Act (e.g., drug case dismissed because lab report could not be obtained in time to comply with the 30-day arrest to indictment period).

_____ 66/67

_____ 68/69

_____ 70/71

15. List below all pretrial motions except those on other motions.

	Type of Motion (Use generic term, e.g., suppress, continuance)	Party Filing (Check one response) Pros.	Def.	Other	Date Filed Month Day	Date Disposed Month Day	Check if consideration of this motion resulted in time *ordered* or *recognized* as excluded by the court No	Yes
1.	72/73	74-1	-2	-3	11-14/	15-18/	19-1	-2
2.	20/21	22-1	-2	-3	23-26/	27-30/	31-1	-2
3.	32/33	34-1	-2	-3	35-38/	39-42/	43-1	-2
4.	44/45	46-1	-2	-3	47-50/	51-54/	55-1	-2
5.	56/57	58-1	-2	-3	59-62/	63-66/	67-1	-2
6.	68/69	70-1	-2	-3	71-74/	11-14/	15-1	-2
7.	16/17	18-1	-2	-3	19-22/	23-26/	27-1	-2
8.	28/29	30-1	-2	-3	31-34/	35-38/	39-1	-2
9.	40/41	42-1	-2	-3	43-46/	47-50/	51-1	-2
10.	52/53	54-1	-2	-3	55-58/	59-62/	63-1	-2
11.	64/65	66-1	-2	-3	67-70/	71-74/	11-1	-2
12.	12/13	14-1	-2	-3	15-18/	19-22/	23-1	-2
13.	24/25	26-1	-2	-3	27-30/	31-34/	35-1	-2
14.	36/37	38-1	-2	-3	39-42/	43-46/	47-1	-2
15.	48/49	50-1	-2	-3	51-54/	55-58/	59-1	-2
16.	60/61	62-1	-2	-3	63-66/	67-70/	71-1	-2
17.	72/73	74-1	-2	-3	11-14/	15-18/	19-1	-2
18.	20/21	22-1	2	-3	23-26/	27-30/	31-1	-2
19.	32/33	34-1	-2	-3	35-38/	39-42/	43-1	-2
20.	44/45	46-1	-2	-3	47-50/	51-54/	55-1	-2

CARD 6 9/10 - (06)

CARD 9 9/10 - (09)

CARD 7 9/10 - (07)

CARD 8 9/10 - (08)

(If more than 20, use additional sheets)

16. List below all periods of time *ordered* or *recognized* as excluded by the court. Refer to the listing of excludable time appearing on this page and enter the **code** from that list in the first column below.

Code	Dates From Month Day	To Month Day
	56/57	58-61/ 62-65/
	66/67	68-71/ 72-75/
	11/12	13-16/ 17-20/
	21/22	23-26/ 27-30/
	31/32	33-36/ 37-40/
	41/42	43-46/ 47-50/
	51/52	53-56/ 57-60/
	61/62	63-66/ 67-70/
	71/72	12-15/ 16-19/
	20/21	22-25/ 26-29/

CARD 10 9/10 - (10)

CARD 11 9/10 - (11)

List of Excludable Time

Code	Category	Amended Section 3161
A	Exam or hearing for mental or physical incapacity (18 U.S.C. 4244)	(h) (1) (A)
B	NARA Exam (28 U.S.C. 2902)	(h) (1) B
C	State or Federal trials or other charges	(h) (1) (D)
D	Interlocutory appeals	(h) (1) (E)
E	Pretrial Motions (from filing to hearing or other prompt disposition)	(h) (1) (F)
F	Transfers from other districts (Per F.R.Cr.P. 20, 21, and 40)	(h) (1) (G)
G	Proceeding under advisement not to exceed 30 days	(h) (1) J
H	Miscellaneous proceedings: Parole or probation revocation, deportation, extradition	
5	Deferral of prosecution under 28 U.S.C. 2902	(h) (1) (C)
6	Transportation from another district or to/from examination or hospitalization in ten days or less	(h) (1) (H)
7	Consideration by court of proposed plea agreement	(h) (1) (I)
I	Prosecution deferred by mutual agreement	(h) (2)
M	Unavailability of defendant or essential witness	(h) (3) (A) (B)
N	Period of mental or physical incompetence of defendant to stand trial	(h) (4)
O	Period of NARA commitment or treatment	(h) (5)
P	Superseding indictment and/or new charges	(h) (6)
R	Defendant awaiting trial of co-defendant when no severance has been granted	(h) (7)
T	Continuances granted per (h) (8) – use "T" alone if more than one of reasons below are given in support of continuance or if none of them are given	(h) (8) (A) (B)
T1	1) Failure to continue would stop further proceedings or result in miscarriage of justice	(h) (8) (B) (i)
T2	2) Case unusual or complex	(h) (8) (B) (ii)
T3	3) Indictment following arrest cannot be filed in 30 days	(h) (8) (B) (iii)
T4	4) Continuance granted in order to obtain or substitute counsel, or give reasonable time to prepare or maintain continuity of counsel	(h) (8) (B) (iv)
U	Time up to withdrawal of guilty plea	(i)
W	Grand jury indictment time extended 30 more days	(b)
X	Other Specify	
Y	Other Specify	
Z	Other Specify	

17. Please enter below the time required to obtain reports, records and legal research in this case. Also enter the specific type of items obtained.

	Date Begun/ Requested Month Day		Date Completed/ Obtained Month Day	
Laboratory Reports 1. _____ 30/31	☐☐☐☐	32-35/	☐☐☐☐	36-39/
2. _____ 40/41	☐☐☐☐	42-45/	☐☐☐☐	46-49/
Investigative Reports 1. _____ 50/51	☐☐☐☐	52-55/	☐☐☐☐	56-59/
2. _____ 60/61	☐☐☐☐	62-65/	☐☐☐☐	66-69/
Obtain Records Subject to Federal Privacy Act 1. _____ 70/71	☐☐☐☐	72-75/	☐☐☐☐	11-14/
2. _____ 15/16	☐☐☐☐	17-20/	☐☐☐☐	21-24/
Obtain Other Records from Other Federal Offices 1. _____ 25/26	☐☐☐☐	27-30/	☐☐☐☐	31-34/
2. _____ 35/36	☐☐☐☐	37-40/	☐☐☐☐	41-44/
Obtain Records from State or Local Offices 1. _____ 45/46	☐☐☐☐	47-50/	☐☐☐☐	51-54/
2. _____ 55/56	☐☐☐☐	57-60/	☐☐☐☐	61-64/
Legal Research or Guidance Requested 1. _____ 65/66	☐☐☐☐	67-70/	☐☐☐☐	71-74/
2. _____ 11/12	☐☐☐☐	13-16/	☐☐☐☐	17-20/

CARD 12
9/10 - (12)

CARD 13
9-10 - (13)

18. Please estimate the *non-excluded* pre-indictment and post-indictment processing time attributable to each of the following activities. Non-excluded time is time neither ordered nor recognized as excluded by the court. List other substantial periods of non-excluded time (e.g., scheduling grand jury, liaison with state/local prosecutors) in items 12 - 14.

Activities	Days Pre-indictment		Days Post-indictment	
1. Awaiting witness availability	☐☐☐	21-23/	☐☐☐	24-26/
2. Awaiting defense counsel availability	☐☐☐	27-29/	☐☐☐	30-32/
3. Awaiting prosecutor availability	☐☐☐	33-35/	☐☐☐	36-38/
4. Scheduling court appearances/conferences with court	☐☐☐	39-41/	☐☐☐	42-44/
5. Transfers of defendant within district	☐☐☐	45-47/	☐☐☐	48-50/
6. Travel of Assistant U.S. Attorneys	☐☐☐	51-53/	☐☐☐	54-56/
7. Plea negotiations	☐☐☐	57-59/	☐☐☐	60-62/
8. Interaction with DOJ/other federal prosecutors	☐☐☐	63-65/	☐☐☐	66-68/
9. Discovery/scheduling depositions	☐☐☐	69-71/	☐☐☐	72-74/
10. Other case preparation	☐☐☐	11-13/	☐☐☐	14-16/
11. Major clerical tasks	☐☐☐	17-19/	☐☐☐	20-22/
12. Other (specify) _____ 23/24	☐☐☐	25-27/	☐☐☐	28-30/
13. Other (specify) _____ 31/32	☐☐☐	33-35/	☐☐☐	36-38/
14. Other (specify) _____ 39/40	☐☐☐	41-43/	☐☐☐	44-46/

CARD 14
9/10 - (14)

Thank You For Completing This Form

APPENDIX B

District Approaches Methodology

The District Approaches component of the study is based on intensive interviews carried out by senior Abt Associates staff with selected respondents in six districts. The districts were chosen on the basis of three variables: size of United States attorneys's office (as reflectd in the number of assistant United States attorneys); level of compliance with the Act; and size of civil backlog.

All United States attorneys' offices were divided into three groups: small offices--fewer than 20 AUSAs; medium offices--21 to 50 AUSAs; and large offices--more than 50 AUSAs. Two districts were then chosen in each size category from each of two strata: one combining high compliance with low civil backlog and one combining low compliance with high civil backlog. Within each stratum, an effort was made to identify districts considered representative with respect to criminal caseloads.

Compliance level was determined by averaging compliance rates across all three pre-amendment time intervals in the year ending June 30, 1979. These averages were used to divide districts into three equal groups: low compliance--lower than 88.6% compliance; medium compliance--88.6% to 96.1% average compliance; and high compliance--higher than 96.1% compliance. The compliance figures for the six districts are displayed in Table B.1. Civil backlog was based on the number of cases pending for three years or more as of June 30, 1979.[1] Districts were divided into two groups: high backlog--above the median, and low backlog--below the median.

Key respondents in each district were drawn primarily from the speedy trial planning groups. These committees, which were mandated in section 3168(a) of the Act, included the United States attorney, the chief judge, a United States magistrate, the clerk of the district court, the Federal public defender (if applicable), two private attorneys (one experienced in criminal cases and one experienced in civil cases), the chief United States probation officer and the reporter for the planning group (usually a law school professor experienced in criminal justice research). We attempted to interview all members of the planning groups. In addition, the heads of the criminal and civil divisions of the United States attorneys' offices were interviewed.

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[1] Both compliance and civil backlog measures were based on AOUSC data for the year ending June 30, 1979.

Table B.1

PERCENTAGE OF DEFENDANTS WHO WERE PROCESSED
WITHIN APPLICABLE TIME LIMITS AS REQUIRED
BY THE SPEEDY TRIAL ACT OF 1974,
ALL CRIMINAL CASES TERMINATED
JULY 1, 1978 - June 30, 1979[a]

District[b]	Arrest to Indictment in 30 Days or Less	Indictment to Arraignment in 10 Days or Less	Arraignment to Trial in 60 Days or Less	Average Compliance
Small				
Georgia (Middle)	99.7	99.4	99.8	99.6
New York (Western)	81.0	94.6	81.1	85.6
Medium				
Missouri (Eastern)	98.7	98.2	100.0	98.9
Pennsylvania (Western)	71.9	83.2	65.4	73.5
Large				
New Jersey	90.4	94.9	88.7	91.3
Illinois (Northern)	39.7	88.4	65.4	64.5

[a]Preliminary Statistical Report compiled for AOUSC, Fifth Report on the Implementation of Title I of the Speedy Trial Act of 1974, Washington, D.C., February 28, 1980.

[b]High compliance districts are listed first within size stratum.

Finally, the United States attorney and the chief judge were asked to identify other respondents in their district (e.g., special agents in charge of the FBI and DEA, the United states marshall, docket clerks in the United States attorney's office and court, and other assistant (AUSAs)[1]. Table B.2 lists the key respondents for the district approaches analysis and identifies the issues that were addressed by each.

Our approach to data collection combined case study and survey methodology.[2] This approach allowed us to specify the types of information needed in greater detail than would a traditional case study approach. The processing of the qualitative data was structured to allow comparisons across and generalizations from the cases. This was done by means of a standardized report outline and an extensive review process.[3]

Interviews were guided by topic agendas keyed to the major research questions. Summaries of the topic agendas are provided at the end of this Appendix. Site teams were responsible for obtaining adequate information on each topic, but because of variation among the respondents and specific information required from each, team members determined the specific questions to be asked. The site teams also identified the specific people to be interviewed in each district within the group of respondents described earlier.

The first topic agenda--contextual factors--was designed to describe the essential characteristics of the United States attorney's office, the court, and the other offices and agencies in each district. It also attempted to identify pre-existing attributes of office organization and caseload which might be associated with compliance levels. This issue was also addressed by asking respondents to discuss reasons for the noncompliance of particular cases.

The second topic agenda was designed to discover the measures used by high and low compliance districts to implement the Act. Questions were designed to elicit information on overall policies with respect to speedy trial

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[1] One of the study districts, Northern Illinois, has a Pre-trial Services Agency. Representatives from this agency were interviewed as well.

[2] For purposes of this report a case represents one of the six sample districts.

[3] For a detailed discussion of the case survey methodology, see "Field Plan for the Case Studies Component, Speedy Trial Act Study 1979-1980." Submitted to Department of Justice, Federal Justice Research Program, Contract No. JA01A-80-C-0016.

Table B.2

ISSUES TO BE ADDRESSED BY KEY RESPONDENTS
IN THE DISTRICT APPROACHES STUDY

	Reasons for Non-Compliance	Remedial Measures	Resources Needed	Recommended Changes	Impact of Speedy Trial Compliance on Civil Case Backlog	Impact and Consequences on Administration of Criminal Justice
U.S. Attorney's Office						
U.S. Attorney	X	X	X	X	X	X
Assistant U.S. Attorneys						
-Chief, Criminal Division	X	X	X	X		X
-Chief, Civil Division			X	X	X	
-Chief, Other Criminal Divisions	X	X	X	X		X
-Other AUSAs within Criminal Division	X	X	X	X		X
Coordinator of Records/ Dockets	X	X	X	X		
Speedy Trial Coordinator	X	X	X	X		X
U.S. District Court						
Chief Judge and Other Judges	X	X	X	X		X
Magistrate(s)		X	X	X	X	X
Clerk of Court	X	X	X	X	X	X
Chief Federal Probation Officer	X	X	X	X		X
Federal Public Defender	X			X		X
Speedy Trial Coordinator	X	X	X	X		X
Pre-trial Service Agency Ch.[a]	X	X	X	X		X
U.S. Marshall	X	X	X	X		X
Others						
Special Agent in Charge[b]	X	X	X	X		X
Reporter for the Planning Group	X	X	X	X	X	X
Private Attorney-Criminal	X			X		X
Private Attorney-Civil				X	X	
Public Defender (CJA)	X			X		X

[a]Only in Northern Illinois

[b]FBI, DEA, others as identified by district

time limits, as well as policies governing the use of excludable delay and specific provisions of the legislation. Among the procedures addressed were case selection and declination, arrest and indictment tactics, case scheduling and case management procedures, monitoring of time limits, training and dissemination activities, and coordination among the various parts of the Federal criminal justice system.

The third topic agenda was designed to elicit recommendations for additional resources needed to comply with the Act. Resources were defined broadly to include not only staff but also non-human resources such as data base management systems, technical assistance and training, and instructions/materials. While our primary focus was on the resources requested by the United States attorneys' offices, as specified in the mandate for this study, we also touched on the resources requested by the courts and other agencies involved, insofar as such resources might affect the ability of the United States attorneys' offices to comply with the time limits.

The fourth topic agenda was used to elicit suggestions for statutory and procedural changes which might further improve the administration of justice and compliance with the Speedy Trial Act. Many of these recommendations may be inferred from analysis of responses to other issues. That is, policies and practices that distinguish high compliance from low compliance districts might be considered candidates for suggested procedural changes. In addition, we questioned key respondents directly about changes they would like to see in the Act or its administration and implementation.

The fifth and six topic agendas dealt with the impact of the Act as amended on the processing of civil and criminal cases. We were interested both in the impact of the speedy trial time limits on civil litigation and in the Act's overall impact on the administration of criminal justice.

CONTINUED

2 OF 3

SUMMARY OF TOPIC AGENDAS

I. CONTEXT/REASONS FOR DELAY

A. General District Characteristics
   1. Size of population
   2. Major cities
   3. Other background characteristics of the district which may affect caseload.

B. Characteristics of United States Attorneys' Offices
   1. Organizational structure
   2. Staff
   3. Remote office(s)
   4. Management Strategies
      a. Role of supervising attorneys
      b. Manner in which criminal cases are assigned
      c. Manner in which criminal cases are monitored/supervised
      d. Manner in which civil cases are assigned and monitored

C. District Court
   1. Staff
   2. Divisions
   3. Caseload characteristics

D. Other Agencies/Offices (e.g.,FBI, DEA, Public Defender, Pretrial Services Agency, U.S. Marshall, etc.)

   1. Organizational structure
   2. Staff
   3. Working relationship with United States Attorney's office

II. POLICIES AND PRACTICES which have been developed in order to achieve compliance

A. Overall policy of United States Attorney's office and the court with respect to Speedy Trial time limits
B Specific policies developed to improve compliance
C. Use of excluded time
D. Interpretations of specific provisions in the Act
E. Record keeping
F. Training/information dissemination
G. Scheduling and monitoring case flow
H. Coordination with the Court
I. Coordination with other agencies/offices

III. RESOURCES REQUIRED

A. United States Attorney's office
B. Court
C. Other agencies/offices

IV. RECOMMENDATIONS

A. United States Attorney's office

   1. Statutory changes
   2. Policies/procedures that could be useful in the implementation of the Act in other districts

V. IMPACT ON CIVIL BACKLOG

A. Local perceptions of the impact of the Speedy Trial Act on the processing of civil cases
B. Rescheduling of civil cases to accommodate trial of criminal cases in danger of exceeding the Speedy Trial Act limits

APPENDIX C

Number of Records and Records Excluded from Files for the AOUSC Data Bases Referenced in Chapter 5 of this Report

Table C.1

NUMBER OF RECORDS AND RECORDS EXCLUDED FROM FILES FOR THE AOUSC DATA BASES REFERENCED IN CHAPTER 5 OF THIS REPORT

	Number of Records		Records Excluded From Files							
	July 1, 1976 through June 30, 1977	July 1, 1978 through June 30, 1979	Duplicate Defendants	Rule 20 Transfers out of District	Juveniles	Appeals from U.S. Magistrates Decisions	Pre-trial Diversion Dispositions	Removals from State Courts	Petty Offenses
INFOREX File (All records)[a]	57,862	44,700							
Criminal File (Defendants Terminated)	53,189[d]	41,175[d]	✓[b]	✓					
Criminal File (Cases Terminated)	44,111[e]	33,442[e]	✓[b]	✓					
Speedy Trial File (AAOUSC)[c]	46,897[f]	36,818[f]		✓	✓	✓	✓	✓	✓
Speedy Trial File (Abt)[c]	49,224	38,896		✓	✓	✓	✓	✓	✓

Sources:

[a] A criminal case is terminated only after final disposition of all defendants in a case.

[b] More in the past than now, several districts would file separate indictments on a defendant for each of several charges, thereby creating several docket numbers or cases, for that defendant. Additionally, some districts made more use of superseding indictments than others. This had the effect of giving some districts the appearance of heavier workloads. In order to increase the level of comparability between districts, workload statistics are computed by counting a defendant only once per year per district, no matter how many times the defendant's name may appear on different docket numbers.

[c] An intensive, but unsuccessful attempt was made to match the number of defendants cited in the various Speedy Trial Act reports. The difference in the size of these two values reflects an inability to replicate the AOUSC figure, rather than a difference in definition of whom should or should not be included in the file.

[d] Administrative Office of the United States Courts, Fifth Report on the Implementation of Title I of the Speedy Trial Act of 1974, (Washington, D.C., February 29, 1980), Table 20, p. 35.

[e] Ibid., Table 1, p. 3

[f] Ibid., Table 16, p. 27.

APPENDIX D

Regression Equations
Civil Speed with Past and Present Criminal Speed
1976-1979

Table D.1

REGRESSION EQUATIONS
CIVIL SPEED WITH PAST AND PRESENT CRIMINAL SPEED
1976-1979

	Constant	Lag Civil	Contemporary Criminal	Lag Criminal
1976	.178	.954	.091	-.093
		criminal contribution = .1%		(p = .3)
1977	-.060	1.010	-.029	.046
		criminal contribution .05%		(p = .7)
1978	.101	.804	.289	-.183
		criminal contribution = .9%		(p = .2)
1979	-.267	.987	.241	-.291
		criminal contribution = 1.2%		(p = .005)

APPENDIX E

Speedy Trial Act of 1974, Title I, as Amended

CHAPTER 208—SPEEDY TRIAL

§ 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a sum-

mons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c)(1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d)(1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) Notwithstanding the provisions of subsection (b) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(a) of this chapter the time limit imposed with respect to the period between arrest and indictment by subsection (b) of this section shall be sixty days, for the second such twelve-month period such time limit shall be forty-five days and for the third such period such time limit shall be thirty-five days.

(g) Notwithstanding the provisions of subsection (c) of this section, for the first twelve-calendar-month period following the effective date of this section as set forth in section 3163(b) of this chapter, the time limit with respect to the period between arraignment and trial imposed by subsection (c) of this section shall be one hundred and eighty days, for the second such twelve-month period such time limit shall be one hundred and twenty days, and for the third such period such time limit with respect to the period between arraignment and trial shall be eighty days.

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902 of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3) (A) Any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective

preparation, taking into account the exercise of due diligence.

(C) No continuance under paragraph (8)(A) of this subsection shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j) (1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly—

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2076, and amended Pub.L. 96–43, §§ 2–5, Aug. 2, 1979, 93 Stat. 327, 328.)

§ 3162. Sanctions

(a) (1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government (1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed $250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2079.)

§ 3163. Effective dates

(a) The time limitation in section 3161(b) of this chapter—

(1) shall apply to all individuals who are arrested or served with a summons on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration to all individuals who are arrested or served with a summons prior to the date of expiration of such twelve-calendar-month period, in connection with the commission of an offense, and with respect to which offense no information or indictment has been filed prior to such date of expiration.

(b) The time limitation in section 3161(c) of this chapter—

(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following July 1, 1975; and

(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

(c) Subject to the provisions of section 3174(c), section 3162 of this chapter shall become effective and apply to all cases commenced by arrest or summons, and all informations or indictments filed, on or after July 1, 1980.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2080, and amended Pub.L. 96–43, § 6, Aug. 2, 1979, 93 Stat. 328.)

§ 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk,

shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2081, and amended Pub.L. 96–43, § 7, Aug. 2, 1979, 93 Stat. 329.)

§ 3165. District plans—generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrates of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e) (1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and fifth twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(3) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3174(c) shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.

(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2081, and amended Pub.L. 96–43, § 8, Aug. 2, 1979, 93 Stat. 329.)

§ 3166. District plans—contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications;

(8) the incidence of, and reasons for each thirty-day extention [1] under section 3161(b) with respect to an indictment in that district; and

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition;

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition; and

(7)(A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter.
(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2082, and amended Pub.L. 96–43, § 3(a)–(c), Aug. 2, 1979, 93 Stat. 329.)

[1] So in original. Probably should be "extension".

§ 3167. Reports to Congress

(a) The Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit periodic reports to Congress detailing the plans submitted pursuant to section 3165. The reports shall be submitted within three months following the final dates for the submission of plans under section 3165(e) of this title.

(b) Such reports shall include recommendations for legislative changes or additional appropriations to achieve the time limits and objectives of this chapter. The report shall also contain pertinent information such as the state of the criminal docket at the time of the adoption of the plan; the extent of pretrial detention and release; and a description of the time limits, procedural techniques, innovations, systems, and other methods by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts. Such reports shall also include the following:

(1) The reasons why, in those cases not in compliance with the time limits of subsections (b) and (c) of section 3161, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay.

(2) The category of offenses, the number of defendants, and the number of counts involved in those cases which are not meeting the time limits specified in subsections (b) and (c) of section 3161.

(3) The additional judicial resources which would be necessary in order to achieve compliance with the time limits specified in subsections (b) and (c) of section 3161.

(4) The nature of the remedial measures which have been employed to improve conditions and practices in those districts with low compliance experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter.

(5) If a district has experienced difficulty in complying with this chapter, but an application for relief under section 3174 has not been made, the reason why such application has not been made.

(6) The impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in each district as demonstrated by the information assembled and statistics compiled and submitted under sections 3166 and 3170.

(c) Not later than December 31, 1979, the Department of Justice shall prepare and submit to the Congress a report which sets forth the impact of the implementation of this chapter upon the office of the United States Attorney in each district and which shall also include—

(1) the reasons why, in those cases not in compliance, the provisions of section 3161(h) have not been adequate to accommodate reasonable periods of delay;

(2) the nature of the remedial measures which have been employed to improve conditions and practices in the offices of the United States Attorneys in those districts with low compliance

experience under this chapter or to promote the adoption of practices and procedures which have been successful in those districts with high compliance experience under this chapter;

(3) the additional resources for the offices of the United States Attorneys which would be necessary to achieve compliance with the time limits of subsections (b) and (c) of section 3161;

(4) suggested changes in the guidelines or other rules implementing this chapter or statutory amendments which the Department of Justice deems necessary to further improve the administration of justice and meet the objectives of this chapter; and

(5) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the litigation of civil cases by the offices of the United States Attorneys and the rule changes, statutory amendments, and resources necessary to assure that such litigation is not prejudiced by full compliance with this chapter.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2083, and amended Pub.L. 96–43, § 9(e), Aug. 2, 1979, 93 Stat. 330.)

§ 3168. Planning process

(a) Within sixty days after July 1, 1975, each United States district court shall convene a planning group consisting at minimum of the Chief Judge, a United States magistrate, if any designated by the Chief Judge, the United States Attorney, the Clerk of the district court, the Federal Public Defender, if any, two private attorneys, one with substantial experience in the defense of criminal cases in the district and one with substantial experience in civil litigation in the district, the Chief United States Probation Officer for the district, and a person skilled in criminal justice research who shall act as reporter for the group. The group shall advise the district court with respect to the formulation of all district plans and shall submit its recommendations to the district court for each of the district plans required by section 3165. The group shall be responsible for the initial formulation of all district plans and of the reports required by this chapter and in aid thereof, it shall be entitled to the planning funds specified in section 3171.

(b) The planning group shall address itself to the need for reforms in the criminal justice system, including but not limited to changes in the grand jury system, the finality of criminal judgments, habeas corpus and collateral attacks, pretrial diversion, pretrial detention, excessive reach of Federal criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay.

(c) Members of the planning group with the exception of the reporter shall receive no additional compensation for their services, but shall be reimbursed for travel, subsistence and other necessary expenses incurred by them in carrying out the duties of the advisory group in accordance with the provisions of title 5, United States Code, chapter 57. The reporter shall be compensated in accordance with section 3109 of title 5, United States Code, and notwithstanding other provisions of law he may be employed for any period of time during which his services are needed.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2083, and amended Pub.L. 96–43, § 9(d), Aug. 2, 1979, 93 Stat. 330.)

§ 3169. Federal Judicial Center

The Federal Judicial Center shall advise and consult with the planning groups and the district courts in connection with their duties under this chapter.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§ 3170. Speedy trial data

(a) To facilitate the planning process, the implementation of the time limits, and continuous and permanent compliance with the objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics described in sections 3166(b) and (c) of this title. The clerk of each district court shall assemble such information and compile such statistics on such forms and under such regulations as the Administrative Office of the United States Courts shall prescribe with the approval of the Judicial Conference and after consultation with the Attorney General.

(b) The clerk of each district court is authorized to obtain the information required by sections 3166(b) and (c) from all relevant sources including the United States Attorney, Federal Public Defender, private defense counsel appearing in criminal cases in the district, United States district court judges, and the chief Federal Probation Officer for the district. This subsection shall not be construed to require the release of any confidential or privileged information.

(c) The information and statistics compiled by the clerk pursuant to this section shall be made available to the district court, the planning group, the circuit council, and the Administrative Office of the United States Courts.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2084, and amended Pub.L. 96–43, § 9(f), Aug. 2, 1979, 93 Stat. 331.)

§ 3171. Planning appropriations

(a) There is authorized to be appropriated for the fiscal year ending June 30, 1975, to the Federal judiciary the sum of $2,500,000 to be allocated by the Administrative Office of the United States Courts to Federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans under this chapter. The funds so appropriated shall remain available until expended.

(b) No funds appropriated under this section may be expended in any district except by two-thirds vote of the planning group. Funds to the extent available may be expended for personnel, facilities, and any other purpose permitted by law.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2084.)

§ 3172. Definitions

As used in this chapter—

(1) the terms "judge" or "judicial officer" mean, unless otherwise indicated, any United States magistrate, Federal district judge, and

(2) the term "offense" means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a petty offense as defined in section 1(3) of this title, or an offense triable by court-martial, military commission, provost court, or other military tribunal).

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§ 3173. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2085.)

§ 3174. Judicial emergency and implementation

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b). The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from indictment to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c)(1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d)(1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United

States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a).

(Added Pub.L. 93–619, Title I, § 101, Jan. 3, 1975, 88 Stat. 2085, and amended Pub.L. 96–43, § 10, Aug. 2, 1979, 93 Stat. 331.)

References in Text. The date of the enactment of the Speedy Trial Act Amendments Act of 1979, referred to in subsec. (d), means the date of enactment of Pub.L. 96–43, which was enacted Aug. 2, 1979.

END