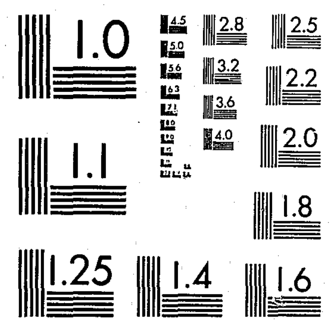

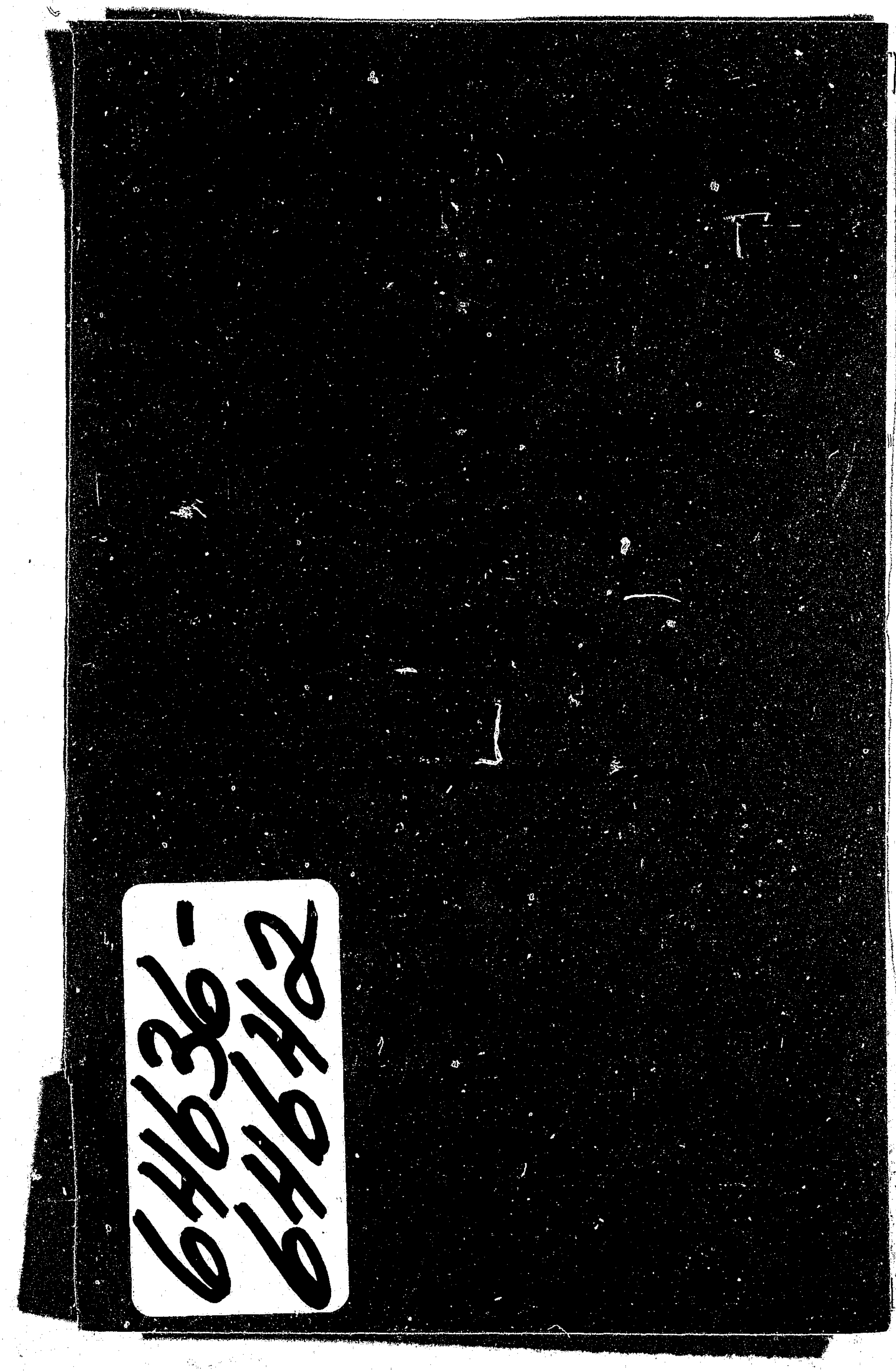

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[1] These materials may be found in the files of the Subcommittee on the Constitution.
[2] Tentative printing for vol. 47, 1979, not available to the public at the time of this hearing.

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PREPARED STATEMENT OF JOHN J. CLEARY

THE NEED FOR IMPLEMENTATION OF THE SPEEDY TRIAL ACT OF 1974

Introduction

The sixth amendment of the Constitution of the United States provides: "In all criminal prosecutions the accused shall enjoy the right to a *speedy* and public trial * * *" (italic added). This fundamental constitutional right of an accused applies in both state and federal criminal prosecutions as a part of rudimentary fairness. *Klopfer* v. *North Carolina*, 386 U.S. 213 (1967); *Smith* v. *Hooey*, 393 U.S. 374 (1969). The Supreme Court of the United States has held that this fundamental sixth amendment right which adheres at the formal commencement of a criminal proceeding, either the filing of the charge or the arrest of the defendant. *United States* v. *Marion*, 404 U.S. 307 (1971); *Barker* v. *Wingo*, 407 U.S. 514 (1972); *Dillingham* v. *United States*, 423 U.S. 64 (1975).

Under statutory federal criminal law an indictment or information must be filed within five years of the commission of a non-capital offense (18 U.S.C. 3282). Pre-indictment delay shorter than five years may offend the defendant's constitutional right of due process, but proof of a violation may be very difficult to establish. The Supreme Court has held that an eighteen-month pre-indictment delay in which the defendant was prejudiced by the loss of two witnesses did not constitute denial of due process. *United States* v. *Lovasco*, 431 U.S. 783 (1977). The constitutional rights to a speedy trial and due process as well as the five-year statute of limitations serve as a general time frame for all criminal prosecutions.

For different phases and types of criminal proceedings, there are prescribed specific time requirements. A preliminary examination in a criminal case must be held within ten days within the initial appearance of an in-custody defendant and twenty days for those not in custody. 18 U.S.C. 3060; Rule 5(c), Federal Rules of Criminal Procedure. Other designated time requirements are established for extradition proceedings (18 U.S. C. 3188), parole revocation (18 U.S.C. 4214), and detainers [Interstate Agreement on Detainers, Pub. L. 91–538; 84 Stat. 1397 (1970].

Less than four months prior to the enactment of the Speedy Trial Act, Congress enacted a straightforward and succinct Speedy Trial Act for juveniles with immediate implementation. That requirement for a trial within thirty days from the detention of an alleged delinquent could serve as a model provision for adult prosecutions with the interpolation only of 100 days in lieu of the thirty-day limitation. That section of the Juvenile Delinquency Prevention Act of 1974 (18 U.S.C. 5036) provides:

"If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that the additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Execpt in extraordinary circumstances, an information dismissed under this section may not be reinstituted."

THE SPEEDY TRIAL ACT: A BALANCED APPROACH

The constitutional protections are afforded solely to an accused in a criminal case, but Congress has instituted a balanced approach to protect both the interests of society as well as those of the accused. Our adversary system requires a confrontation between the prosecution and the defense before an impartial and neutral court. The interests of all are served by this legislation, for all will benefit from prompt disposition of criminal cases. Rather than resort to unnecessary and harsh preventative detention, Congress has established a clear-cut policy for the prompt resolution of federal criminal charges. The Speedy Trial Act has sought to achieve efficiency in our courts without sacrificing fairness in the administration of criminal justice.

To achieve certainty, a definite time period (an aggregate of 100 days effective 1 July 1979) is established, but it is counterbalanced by flexible and possibly even extremely malleable excludable time periods. The general requirement for a prompt disposition of a criminal case is satisfied by the definite time period, but the particular circumstances of any case that may necessitate some adjustment or short categorized delay are met by the enumeration of specific situations that would authorize additional time.

The uniqueness of the federal Speedy Trial Act is found in the four-year planning period that preceded its effective date. Rather than cause an immediate shock with the institution of this flexible time schedule (unlike its counterpart in the Juvenile Delinquency Prevention Act of 1974), Congress deliberately promulgated a statute that would allow more than sufficient response and adjustment to the new procedure. To allow each district to develop its own particular response to the new requirements, Congress funded planning groups that would develop district plans. Although planning was at the heart of this legislation, since the Ac was not in effect many did not feel the responsibility to comply with the new procedure. See, Misner, "District Court Compliance with he Speedy Trial Act of 1974: The Ninth Circuit Experience," 1977 Ariz.St.L.J. 1.

The time for planning is over. Congress must now allow implementation with viable sanctions.

ADVANTAGES AND DISADVANTAGES OF PLANNING

The district court plans, authorized under 18 U.S.C. 3165, were necessary, but because the plans were more the work of professional consultants, with a more esoteric and academic orientation, little was accomplished beyond the general guidance provided by the Administrative Office of the U.S. Courts which had published general guidelines for the implementation of the Speedy Trial Act. The similarity of various district court plans was not unexpected, but the planning process has not achieved the uniquely local response for which it was designed. This statutory scheme invades the prerogatives of the prosecutor (with his special resistance to the implementation of the sanctions) as well as the freedom of the courts. With a less than favorable milieu, planning for the unpleasant generates only reluctant and minimum compliance. Necessity, that the statute will really take effect on 1 July 1979, will breed a far more positive response by all those connected with its operation. The reporter for the Planning Group for the Northern District of Illinois in Frase, "The Speedy Trial Act of 1974," 43 Univ.Chi.L.R. 667, said that you could not measure required performance by the observation of a practice run:

"The anticipation of future implementation problems and resource needs is also problematic. The basic limitation of the planning process is that it attempts to predict disposition rates and times after the effective date of the statutory sanctions on the basis of current experience without these sanctions, which is like trying to predict the outcome of a tennis match on the basis of the warm-up. Judges and other participants are likely to work much harder after 1979 than during the interim, but how much harder they can work and how effective their

efforts will be is unpredictable. Judges are also likely to make much greater use of excludable time provisions after 1979, whereas data for the first few months of 1976 suggest that, if anything, judges have been underutilizing these provisions in the pre-sanction period. Thus, Congress will probably not know until after 1979 just how broadly the exclusion provisions will be interpreted, and it will certainly not know until then how often the dismissal without prejudice option will be used." Ibid., 721–722.

The district courts have now geared up for the anticipated implementation of the Speedy Trial Act. Many have installed data processing equipment, and these programs have been geared to the requirements and time periods set forth in the Act. Enclosed as Exhibit A is a sample of printouts made available by the Clerk, Southern District of California, concerning pending cases.[1] For Congress not to permit the implementation of a statute at this time indicates that this rather "soft" control (broad excludable time provisions rather than a straight definite time period) would probably signal to those in the criminal justice system as well as the public generally that the act will probably never be enforced. Further delay would only exacerbate the built-in statutory four-year delay. The procedure is an experiment, but it can never be tested until it is implemented with its sanctions. Substantial expenditures have been made in anticipation of the enforcement of the Act, and further delay would only cause needless additional costs.

During the preparation period if we have not been able to secure innovative plans, we have acquired a substantial data base that will prove invaluable in understanding the criminal justice process. Again, Mr. Frase in his article, supra, says it so well:

"Independent of the speedy trial problem, the detailed offender-based statistics contemplated by the planning provision should produce, for the first time, comprehensive statistics on all levels of the federal criminal justice process, which will facilitate system-wide research and planning, as well as improve judicial administration." Ibid., 720.

The data base needs to be amplified with actual experience, and the information resources will permit quicker response if changes are later needed in this legislation. Further delay would constitute not only a major setback on the statute itself but would probably lead to a curtailment and possibly abandonment of the really first steps at attempting to define with valid research tools the operation of the federal criminal justice system.

NEED FOR REFORM

Systemic reassessment was built into the Act [18 U.S.C. 3168(b)], but it has been badly neglected. The federal grand jury system is sorely in need of reform, and the American Bar Association has promulgated a set of needed reforms. Although many states have achieved substantial reform of their grand juries,[2] the federal government has not. Planning groups could not be faulted for failing to suggest reform in the grand jury system in light of the several unsuccessful Congressional efforts to reform. Pretrial diversion now exists under the rubric of deferred prosecution which is a procedure solely within the discretion of the prosecutor. If permitted, it is often under terms and conditions requiring formal supervision by the Probation Department. Efforts to establish some statutory basis for pretrial diversion have also been unsuccessful with Congress.

The well financed federal investigative agencies do an exemplary job in the development of information and reports that serve as a basis for federal prosecutions. The acquisition by the defense of information in the hands of the prosecution or federal agents is commonly called "discovery." Under existing federal law, the defendant's access to information that would allow proper understanding of the nature of the charges against him as well as the reasonable opportunity to prepare a defense is extremely limited. One of the worst road blocks to information is the Jencks Act (18 U.S.C. 3500) enacted in 1957 which precludes access to a government witness' statement until that witness has testified at trial. The government has unlimited time in which to prepare for trial, but once the charge is filed and the clock has commenced on the application of the

[1] The Southern District of California has also developed materials and conducted seminars for judges, prosecutors and defense lawyers in preparation of the implementation of the Act.

[2] For example, New York permits a lawyer to accompany a witness before the grand jury.

Speedy Trial Act, the defense must effectively prepare by gathering information and evidence quickly in order to meet serious charges with substantial adverse consequences. Where the federal government may have investigated a case for years, the defense may be expected to respond and prepare in months. The unfairness is readily apparent. In order to expedite the criminal process, there should be a free flow of all information made available to the defense save only in those cases where the prosecution can affirmatively demonstrate some actual or reasonably expected threat to a witness. In those cases, protective orders from the court should allow at least defense counsel, if not the defendant, access to such information under conditions that would limit its dissemination. To achieve the purposes of the Speedy Trial Act, the laws on discovery in federal criminal cases need to be substantially overhauled to provide much greater access to government information. Such discovery facilitates the focus on contested issues and often serves as the catalyst for disposition without trial. The federal government needs to be brought in line with the minimum standards advocated by the American Bar Association and found in most modern state jurisdictions.

The grand jury is an investigative tool of the prosecutor that will produce the result that the prosecutor desires. It is a one-sided secret hearing dominated by the prosecutor which need only find probable cause to issue its formal charge, the indictment. Although Federal law does provide for a preliminary examination to establish evidence of probable cause (Rule 5.1, Federal Rules of Criminal Procedure), experienced federal criminal practitioners know that it is a theoretical procedure rarely utilized. Since a grand jury indictment is regularly returned in a felony case, the requirement for a preliminary examination is abrogated [rule 5(c)]. The preliminary examination conducted before a magistrate, not requiring a district court judge, would permit a summary evaluation of the worth of a criminal case. After reviewing the actual circumstances surrounding the case, the credibility of the witnesses, and other intangible items not found in an investigative report, the prosecution may be willing to dispose of a case as a misdemeanor or deferred prosecution (pretrial diversion). The existing preliminary examination, when one rarely occurs, may seldom consist of more than a Federal agent reading his report to support a finding of probable cause. To encourage the greater use of the preliminary examination to provide case assessment, the Speedy Trial Act should be amended to provide for an additional 14-day period in the event a preliminary examination was conducted pursuant to the Federal Rules of Evidence [which are not now applicable to that proceeding, Rule 1101(d)(3)]. California, the largest State criminal jurisdiction, now has preliminary hearings where only admissible evidence is permitted, and the Federal jurisdiction could benefit from the adoption of a similar procedure. Although a mandatory preliminary hearing would be essential for a modern Federal criminal justice system, this modest proposal is to induce its experimental use in return for a 2-week extension. Local district courts could adopt this procedural advice, and the 14-day extension may fall within the "ends of justice" excludable time category with the consent of both parties and the court.

Congress is now considering amendments to the jurisdiction of U.S. magistrates (18 U.S.C. 3401). To alleviate the burdens of the district court for low-grade felony offenses, magistrates should be permitted to try non-capital felony offenses with the consent of both the prosecution and the defense with the proviso that a sentence not exceed eighteen months confinement. Although many felonies that go to trial might have maximum penalties far in excess of eighteen months, experienced counsel can assess a case to know that even if guilt were established a sentence of eighteen months or less would be obvious. In such cases, the matter could best be tried before a magistrate, with or without a jury, which would furnish a judicial resource not otherwise available for the trial of felony cases.

Although planning groups were asked to comment about the excessive reach of federal criminal law, Congress is still attempting to expand federal criminal jurisdiction beyond its now overly broad limits. The proposed Federal Criminal Code of last Congress known as S. 1437 will most likely be with us again. The expansion of federal police power which often duplicates that of effective state police agencies is unnecessary and a waste of limited government resources and taxpayer funds. Federal jurisdiction is by its very nature limited, but the broad-ranging and vague federal criminal statutes often permit the prosecution of many cases that should have never been in federal court.

Except for nationwide large-scale operations, controlled substance offenses should be left to the states. The overly broad federal gun statutes should not be utilized unless there is an aggravated case not covered by state criminal laws. Recently a government report indicated that it might be more fiscally sound as well as efficient to have bank robberies, traditionally within the scope of the federal government and investigated by the Federal Bureau of Investigation, handled by local law enforcement agencies. In some districts such cases have been deferred to state authorities, but in other districts the federal investigative agencies would prefer to continue their jurisdiction over these offenses. The federal courts should be the focus of the most serious national or international crimes, for although federal criminal jurisdiction is almost limitless,[3] the resources of federal prosecution agencies are not. The Department of Justice has recently announced its intention to prosecute serious "white collar" crime, organized crime, official corruption, large-scale fraud, and other offenses that would better justify the limited but costly resources of the federal government and its courts. One of the greatest wastes of federal executive and judicial resources is the felony jury trial of an alien who illegally re-entered the United States after deportation (8 U.S.C. 1326). To achieve better utilization of the federal courts, Congress should provide the leadership in narrowing, rather than broadening, federal criminal jurisdiction.[4]

DROP IN CRIMINAL CASELOAD

The severe drop in criminal cases these last two years favorably and timely supports the implementation of the Speedy Trial Act in 1979. What better opportunity to experiment when there have been provided an additional 152 federal judges and the caseload is declining.
Criminal cases.[5]

1977	41,589
1978	35,983
Percent of decline	—13.5

In evaluating even the civil cases, it must be remembered that 16% (21,924 out of 138,770 civil cases for 1978) are prisoner petitions related to federal or state criminal cases that are not affected by the Act.

NONDIVISIBLE TIME PERIOD

Effective 1 July 1979 the Act provides for three specific time periods: thirty days from arrest or summons to indictment, ten days from indictment or information to arraignment, and sixty days from arraignment to trial. The aggregate time period would be 100 days. Rather than the trifurcated or divisible steps in the overall time period, it would provide greater flexibility to have a simple 100-day period. The period from arrest to indictment is now covered by the provisions for a preliminary examination, and the time period from indictment to arraignment is somewhat artificial. The 100 days should commence from the date of arrest or the first court appearance of the defendant, whichever occurs first. Illinois has a 120-day requirement for those in custody and 160 days for those not in custody who demand trial. This 100-day period under federal law is far more generous, because of the enumerated and flexible excludable time periods. One of the inherent dangers in the federal legislation is the potential "ballooning" of the overall time period through ingenious and skillful expansions of those designated periods.

EXCLUDABLE TIME PERIODS

If the Speedy Trial Act is to work, Congress must clarify, tighten, and restrict the possible abuse of the excludable time periods.

The provision for delay resulting from an examination of the defendant for mental incompetency or physical incapacity [18 U.S.C. 3161(h)(1)(A)] should be restricted to not more than 90 days. Even if the examination would take place

[3] The scope of federal criminal jurisdiction is directly proportional to size of the U.S. Attorney's staff.
[4] Congress should also consider narrowing federal civil jurisdiction, *i.e.*, diversity cases.
[5] Report of Administration Office of U.S. Courts for 12 months ending June 30, 1978, and this now includes minor offenses.

at the Medical Center for Federal Prisoners at Springfield, Missouri, an outer limit of 90 days should be placed for the purpose of the examination. If the defendant is mentally or physically unable to stand trial [18 U.S.C. 3161(h)(4)], that time period should be limited to one year. See, *Jackson* v. *Indiana*, 406 U.S. 715, 731–739 (1972). If the defendant lacks mental responsibility for the offense (a higher degree of mental responsibility than that required for standing trial), and that condition persists, the government would not be able to establish its case. Fundamental fairness and humane considerations dictate that the individual should be transferred to an available state mental institution for treatment which is not now available within the federal prison system.

The provision for delay resulting from trials with respect to other charges [18 U.S.C. 3161(h)(1)(C)] should be expressly limited to delays related to the trial and not pre- or post-trial actions.

The delay resulting from proceedings relating to transfer from other districts which most likely includes Rule 40 removal proceedings as well as Rule 20 pleas of guilty should be expressly limited to 30 days. A defendant arrested in one federal district should be removed to the district wherein the offense was committed within 30 days, for the removal proceeding merely requires the establishment of identity and probable cause, the latter requirement eliminated if an indictment had been filed. Those cases where a defendant wishes to plead guilty in the district where he was arrested or is present should facilitate prompt processing, and there appears to be no justifiable reason that if both prosecutors consent that the paperwork could not be transferred to the district within a period of 30 days.

The most incongruous and unexplainable delay authorized by the Act is set forth in 18 U.S.C. 3161(h)(1)(G) which permits a delay of not to exceed thirty days in which any proceeding is held under advisement. This section provides the greatest potential for abuse. In many criminal cases, simple motions are now filed and heard after brief (one to three hours) evidentiary hearings. Almost all motions are ruled on from the bench at the end of the hearing, but now the court to provide "elastic" could take the motions under submission for up to 30 days. The legislative history indicates that this exclusion was for novel legal issues, but greater clarification is needed to prevent it from becoming an overused "escape clause."

Deferred prosecution is for the first time statutorily recognized by 18 U.S.C. 3161(h)(2). Ordinarily, a person is placed on deferred prosecution for a period of one year, and in some cases as much as two years. This proviso for deferred prosecution should be expressly limited to a period of not more than two years. By analogy, consideration could be given to the only federal statute providing for deferred sentencing [21 U.S.C. 844(b)(1)] which sets the limit for deferred sentencing at not more than one year.

The provision for excludable time for an unavailable co-defendant could cause severe hardship in a large multi-defendant trial [18 U.S.C. 3161(h)(7)]. Because there is a substantial efficiency to be gained in a joint trial, some latitude should be given to the government to permit consolidation of several defendants. However, such delay should be limited to a period of not to exceed 60 days.

The catchall provision which permits continuances for "the ends of justice" [18 U.S.C. 3161(h)(8)] is almost limitless. Since the government has the opportunity to prepare its case over a substantial period of time, this provision should limit the government's ability to obtain any delay for the ends of justice of more than 60 days. The 60-day limit on this provision would even apply to complex cases, for it would give the government at least 160 days (100 days standard time plus the 60-day complex time plus any additional excludable time periods). The defense should not be subject to any maximum limitation, for the defense ordinarily has the opportunity to prepare and meet the charges only after those charges have been filed. The statutory language should be expressly clarified to ensure that the defense has an adequate opportunity to prepare which would include proper investigation, research and access to the court's process to ensure adequate discovery and access to witnesses. The principles underlying the defense's inherent right to prepare [*Powell* v. *Alabama*, 287 U.S. 45 (1932)] should be more clearly stated in this statute.

STARTING THE CLOCK

One of the principal misconceptions in determining the application of the prescribed time periods under the Speedy Trial Act is the belief that in prepara-

tion for trial the prosecution and defense are on equal footing.[6] When the charge, an indictment or information, has been filed, the prosecution has completed its preparation. At that time the defense commences its investigation, if any, and the federal investigation may have taken several years. The prosecution also has the advantage of picking the most appropriate time in filing the charge and literally controls the "starting of the clock" of the time periods set forth in the Act. In determining the excludable time for "the ends of justice," the amount of time the prosecution has spent in investigation of the case should be considered in determining the time necessary to prepare a defense.

The Speedy Trial Act should be amended to expressly provide that in any case where charges are filed more than one year after the circumstances giving rise to the criminal offense are known to the government, the government must file with the district court a report explaining the nature, scope and duration of the investigation and the reasons for filing the charge more than a year after the offense was known to the government. The court should be given the discretionary authority to dismiss the charges with prejudice if the delay was not based upon good cause. *See* Rule 48(b), Federal Rules of Criminal Procedure.

AVOIDANCE AND WAIVER

Because there could be a serious abuse of excludable time, the court should be required to make findings and reasons for any excludable time. If the court had a crowded docket and was interested in avoiding the stated time periods, the court might request a stipulation from prosecution and defense as to excludable time. Perfunctory waivers should be outlawed. The efficacy of the Act will be sorely questioned of the court, with the acquiescence of the prosecutor, could merely ask for and receive a "waiver of time" from the defense which would, in effect, constitute a waiver of the defendant's right to move to dismiss the indictment for failure to adhere to the time periods [18 U.S.C. 3162(a)(2)].

If a court were interested in avoiding the application of the Speedy Trial Act, what protections would a defendant have if the court would arbitarily accelerate the ordinary time for a trial if counsel would not agree to a waiver of his motion to dismiss? Other subtle pressures may also be used. For example, the judge might indicate to defense counsel that if the waiver was not forthcoming the case would be transferred to another judge whose litigation style might be arbitrary and his sentences severe.

A trial commences when the jury is sworn or in a non-jury trial when the first witness gives evidence. Will a district court be able to avoid the effect of the plan by swearing a jury and hearing one witness and then continuing the trial indefinitely? Will that amount to a "trial" so as to "stop the clock?"

These and other devices may be used to offset the application of the Act, but the Act must first be implemented to determine if these abuses will be attempted. If so, appellate decisions or amended legislation may be necessary to correct these defects. Good faith on the part of the federal judiciary, which is to be expected, would not tolerate such circumvention, directly or indirectly. Many of the fears about the Act are unfounded and are speculative. The Act needs to be tested. Although the intent of Congress has already been made fairly clear in the original statute and its legislative history, a supplemental legislative history might be promulgated to more clearly articulate the intention of the drafters that may eliminate many fears and purge some unwarranted anticipated difficulties.

PROSECUTORIAL RESPONSIBILTY AND ACCOUNTABILITY

The Speedy Trial Act forces United States Attorneys to carefully examine their charging process. After 1 July 1979 when a case is now filed, its "judicial impact" must be studied and calculated. Is the case sufficiently important to command the attenion of the limited judicial resources available in the district, and if so, how can it now be prosecuted within the time requirements set by the Act? The broad, unfettered discretion of the federal prosecutor to charge remains the same, but now the prosecutor will have to orchestrate the timing of the charges. The time requirements may not require that he file less charges, but rather than he file them in a manner so as to achieve their disposition within the stated time periods. As a manager of the government's law firm and as an integral activity in the federal district court, the prosecution will have to more

[6] Given that the majority of Federal criminal defendants need the services of appointed counsel, it should be conceded that resources of the Federal Government are far superior to that which might be available to the defense.

carefully survey existing judicial resources as well as that of his or her staff, obtain continuing feedback from the court on the processing of pending cases, and constantly re-evaluate policy decision in the filing of new criminal cases.

At the present time, 90% of all federal criminal charges are disposed of by pleas of guilty. That process is influenced by the prosecutor's standards in the somewhat questionable practice of plea bargaining. In many districts, this practice is now limited to charge bargaining—the prosecutor makes no recommendation as to sentence but allows a plea to a charge leaving the discretion of sentencing within the statutory maximum to the district court judge. The impact of the plea bargaining process could influence the requirement for jury trials, which if the demand for jury trials after 1 July 1979 noticeably increased may decrease the number of cases that the district court previously processed.

The new time requirements might have the salutary effect of ensuring that the prosecutor has fully prepared those cases which are indicted and is ready, willing, and able to take those cases to trial. If there were some serious doubt about the cases, they should not be indicted. Today in many jurisdictions, cases are filed with the expectation by many federal prosecutors that only one in ten would go to trial. It becomes a form of "roulette preparation"—you only prepare in those cases where the defendant has such temerity to demand trial. By imposing these time restraints the prosecutor must account for delays in the handling of every case. The resultant advantage will be an increase in the quality of prosecutions which may reduce the need for coercive plea bargaining practices.

CREATIVE AND INDEPENDENT COURT MANAGEMENT

Too often the court may only passively respond to the number of criminal cases filed. The court will make every attempt to dispose of all of the cases filed. but now the court will no longer be able to adjust its docket to the convenience of the parties. The court will have to exercise independent control so as to comply with the terms of the Act. Too often the overwhelming number of criminal cases and the limited judicial resources placed the court in a difficult and often inextricable relationship with the prosecutor in a combined effort to dispose of all of the cases. The ability of the court to maintain its independence and impartiality from the prosecution is difficult at best.

The objective criteria for the processing of cases imposed from without by Congress now affords the court the opportunity to allow the prosecutor to exercise his or her discretion the presentation of cases that will fall within the guidelines. If the cases do not comply with the stated time periods and do not satisfy the requirements of additional time afforded under the excludable time provisions, the court will have to determine whether or not sanctions will be imposed. Dismissal is not the only sanction, and even then it may be permitted without prejudice.[7] The Act also provides for sanctions against counsel, although these should not be used so as to threaten or coerce waivers of the time period. The statute with its stated time periods and sanctions serves as a monitor rather than a policeman. If a policeman analogy would be appropriate, it would be more of the traffic policeman on the highway whose presence encourages greater compliance than the issuance of citations. The systemic impact of the Speedy Trial Act will have a positive effect in ensuring prompt disposition of cases within a stated time period or providing additional time only in those instances where it is fully justified and explained on the record. The court by the Act will gain greater control of its own calendar.

Although existing federal court procedures in the handling of criminal cases might not be sufficient to meet the challenge of the Speedy Trial Act, innovations could be developed to assist in adherence to the new time requirements. Some of the following techniques might have some application in one or more districts:

1. *Master Calendar System.*—Although the majority of federal district courts now use individual calendars which permit random assignment of cases and evaluation of an individual's workload, the master calendar provides an option that would permit the processing of cases by district judges who are more efficient than others. Although the workload of the individual district judges might not be equitable, the overall requirement of prompt disposition of cases would be achieved. The peer group pressure should have a tendency to achieve equal caseloads among the various district court judges. If the master calendar system were utilized, Congress should expressly provide either by statute or by local district option the opportunity of a defense challenge to avoid transfer of a case

[7] Clearly, dismissal with prejudice is preferred absent a showing of extraordinary circumstances.

to an unpopular judge. See attached Exhibit B which is Rule 741(a) providing for a defendant's motion for substitution in a criminal case recommended by the National Commissioners on Uniform State Laws in 1974.

2. *Greater Pretrial Discovery.*—To meet the demands of expeditious handling of cases, the district courts might provide greater pretrial discovery. The adoption of the open file policy by prosecutors could be encouraged by the use of the omnibus hearing form which is common in several districts (including the Southern District of California). The court might provide a transcript of the grand jury proceedings with a minimum showing of particularized need.

3. *Pretrial Conference.*—Pretrial conferences that would monitor the progress of the case (and more than one could be used) are now permitted under Rule 17.1, Federal Rules of Criminal Procedure. To achieve thorough prosecutorial preparation, a trial memo could be required from the prosecution that would set forth witnesses who will testify, a summary of their testimony, documents and other exhibits that will be introduced at trial. The trial memo developed early on and filed with the court would indicate that the prosecution was in fact ready to try the case.

4. *Scheduling.*—Tighter calendar control is suggested by the Act itself [18 U.S.C. 3161(h)]. At the arraignment the trial court could provide a motion schedule, pretrial conference, and jury trial setting. The early assignment of trial dates would commit counsel to these time periods, and the court would, in effect, schedule a given number of trials for a certain week. Those cases would have to be disposed by trial or other disposition. If three cases were set for a given Monday, they would have to be tried within the week or if the time period expired, dismissed. If the prosecutor knows of that in advance, he has the option of determining which case should be tried in the event a disposition is not reached. The selection rests with the prosecutor.

5. *Greater Use of Magistrates.*—In addition to developing new ways in which to assign civil cases to magistrates (in the Southern District of California the district court judges give the parties the opportunity to select any one of the three full-time magistrates to hear a civil case), the court could expand the areas in which the magistrate participates in criminal cases. Discovery motions, pretrial conferences, status conferences, and possibly the hearing of motions to suppress could be relegated to the magistrates.

ADDITIONAL COVERAGE

Together with other legislation requiring the time processing of criminally related proceedings, the Speedy Trial Act still leaves open certain persons who should be afforded coverage that would ensure prompt disposition of the case.

Material witnesses (18 U.S.C. 3149) are those persons who have information important to the case who would not otherwise be available unless they were held in confinement. In the Southern District of California these individuals are often alleged illegal aliens who are held in custody as potential witnesses against those charged with alien smuggling (18 U.S.C. 1324). Special consideration should be given to expediting the trials where there are many such material witnesses in custody, and as a rule of thumb, one-half of the stated time should be applicable (50 days rather than 100 days). The court should also make an effort to permit their release from confinement by some showing that they would be available for trial or in the alternative placed in facilities other than a maximum security institution (the Bureau of Prisons' Metropolitan Correctional Centers or federal jails).

Although existing law provides general language that the defendant charged with a probation violation should be taken "as speedily as possible after arrest . . . before the court" (18 U.S.C. 3653), that limitation has not been effective. Statutory or legislative guidance should be given to require that any action taken on a known violation of probation should take place within 60 days after the occurrence is known to the Probation Department (the issuance of a bench warrant or a citation on an order to show cause why probation should not be revoked) and that the defendant should be brought before the court having jurisdiction within 30 days of his arrest on a warrant.

During the year ending 30 June 1978, there were 21,924 prisoner petitions filed in federal court (approximately 16% of the total civil caseload, 138,770 civil cases). Although there are some general rules requiring that such petitions be heard "promptly" [Rule 4, 2254 cases, Rule 4(b), 2255 cases; Rule 81(a)(2)] there should be a requirement that such petitions be acted on within 30 days after receipt by the district court. The action required by the district court need

be no more than to request additional information, issue an order to show cause, or dismiss, but the time for action needs to be quantified.

PRETRIAL RELEASE AGENCIES

Under the original Speedy Trial Act ten experimental pretrial release agencies (five by the Probation Division of the Administrative Office of the U.S. Courts and five by independent organizations) were established. To ensure effective implementation of the Bail Reform Act of 1966 as well as to avoid unwarranted pretrial detention, the number of these programs should be increased. The majority of criminal defendants tried in federal courts are financially unable to employ counsel and often require the services of a federal defender. Today there are 38 federal defender programs, and in those districts where there is a federal defender, there is ordinarily a need for a pretrial release agency. Where the caseload is extremely small, consideration should be given to coordinating the pretrial release agency with the federal defender office.

To avoid potential conflicts of interest, pretrial release agencies should be established under the provisions for an independent Board of Trustees [18 U.S.C. 3153(b)]. The Probation Departments operate as an arm of the court which are involved in both deferred prosecution (pretrial diversion) as well as probationary supervision after sentencing. The function of supervising probationers is in a quasi-police role which may be inconsistent with seeking release of persons from police custody or control.

In those districts where there are federal jails (Metropolitan Correctional Centers) an anomaly exists in the federal system because pretrial detainees have case counselors. These Bureau of Prison officials, at least in our district, have not assisted in the release of their charges, the pretrial detainee. Their role as prison guards clouds their role in relation to detainees who are not sentenced prisoners. There is a difference.

An independent agency operated under a Board of Trustees can objectively and impartially assess the individual's responsibility to make each and every court appearance. Such agencies are needed to ensure that not only at the first appearance is a full-scale effort made to secure pretrial release on conditions other than custody, but a constant review of those in pretrial confinement must be explored at every reasonable opportunity to ensure that the legal principle of presumption of innocence is worth something.

Our federal defender organization assists those brought before the magistrate on their initial hearing (Rule 5, Federal Rules of Criminal Procedure) and to the extent possible, we assist in seeking to obtain their pretrial release. Where there is no pretrial release agency, the Act on its legislative history should support the use of federal defenders in this important role.

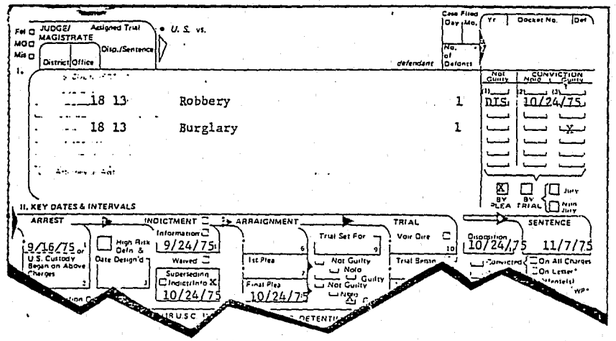
SANCTIONS

For four years there have been no sanctions, even though the Speedy Trial Act has been on the books. The interim limits (18 U.S.C. 3164) which provided for release from custody (not dismissal) of those held for more than 90 days in custody will expire 1 July 1979. Without sanctions, the words of the statute would be meaningless, its purpose obfuscated, and its eventual doom predicted. The Act has never been tested, and the cries of those that certain defendants will go "unwhipped of justice" is no more than a scare tactic to justify any resistance to an ameliorative change in the criminal justice system that will require extra efforts by all of the participants. The implementation of the Speedy Trial Act will not be easy, but it can be achieved. After the Act has been demonstrated with its dismissal provisions, which should clearly emphasize the preference of dismissal with prejudice, then the criticisms can be compiled and the appropriate action taken to amend the legislation.

CONCLUSION

The enormous preparation for the implementation of this Act should not be scuttled. The districts that have spent so much time in the preparation for the implementation of this Act should not be penalized and those districts which have resisted and avoided the implementation of the Act rewarded.

In 1215 the Magna Carta provided, "To none will we sell, to none deny or delay, right or justice." In 1979, the Act which is designed to prevent delays of criminal cases in the courts should not itself be further delayed by Congress.



SPEEDY TRIAL LIST REPORTED INVENTORY OF "MOST USED" EXCLUDABLE DELAYED AS OF JAN. 31, 1979

Name	Docket	Curr. int.	XA	XC	XD	XE	XO	XI	XII	XN	XT	Other encl.
Nitta-Camarena, Armando	77CR600-3	0	0	0	0	0	0	0	405	0	0	0
Concannon, William David	77CR623-1	2	0	0	0	0	0	450	0	0	0	0
Esparza-Salas, Guillermo	76CR054-1	2	0	0	0	0	0	0	047	0	0	0
Beck, Joan Karen	70CR1170-27	2	169	0	0	0	0	0	0	0	0	0
Anderson, Rickey Charles	70CR017-2	3	0	0	0	0	0	0	61	0	0	0
Cruz-Martinez, Enrique	70CR745-1	3	0	0	0	0	0	27	0	0	0	0
Coloma, Juliette V	70CR676-2	3	0	0	29	0	0	0	0	0	0	0
Palacchia, Fred Angelo	70CR676-1	3	0	0	29	0	0	0	0	0	0	0
Luna, Kenneth Paul	78CR593-3	3	0	0	0	0	0	70	0	0	0	0
Grossmayer, Melanie Ruth	70CR536-1	3	0	0	0	0	0	50	0	0	0	0
Castro-Carmona, Jose	70CR420-1	3	0	0	0	0	0	0	233	0	0	0
Pine, David Edward	70CR362-1	3	0	0	0	0	0	0	162	0	0	0
Medina, Felix Soto	70CR330-1	3	0	246	0	0	0	0	0	0	0	0
Short, Rodney Eugene	70CR254-2	3	0	0	243	0	0	0	0	0	0	0
Renroteron, David John	70CR254-1	3	0	0	243	0	0	0	0	0	0	0
Olsen, Raye	70CR171-2	3	0	0	0	0	0	107	0	0	0	0
Wilson, Edgar James	70CR171-1	3	0	0	0	0	0	107	0	0	0	0
Do	70CR131-2	3	0	0	0	0	0	107	0	0	0	0
Olsen, Raye	70CR131-1	3	0	0	0	0	0	107	0	0	0	0
Lopez, Ofelia Garcia	77CR740-1	3	0	0	0	0	0	50	0	0	0	0
Jenkins, Dennis Charles	77CR551-1	3	0	0	0	0	0	0	511	0	0	0
Mendoza, Leon Carlos	77CR336-1	3	0	0	0	0	0	0	506	0	0	0
Nitta-Camarena, Armando	77CR205-3	3	0	0	0	0	0	0	405	0	0	0
Olmos-Gonzales, Esiahistao	76CR690-1	3	0	0	0	0	0	0	087	0	0	0
Vera-Estrada, Larry John	76CR560-4	3	0	0	0	0	0	0	080	0	0	0
Caron, Harvey	76CR267-6	3	0	0	0	0	0	0	926	0	0	0
Elias-Sanchez, Alejandro	75CR1950-2	3	0	0	0	0	0	0	1,093	0	0	0
Tosiado, Eduardo A	75CR1946-2	3	0	0	0	0	0	0	1,016	0	0	0
Vajda, Janos	75CR1903-1	3	0	0	0	0	0	0	1,150	0	0	0
Casifelanos-Alfaro, Elias	75CR1076-1	3	0	0	0	0	0	0	1,171	0	0	0

RULE 741—GENERAL PROVISIONS

COMMENTS

It may be excess of caution to add a provision such as this subdivision, taken from the Model State Witness Immunity Act (1952), because this exception to immunity is well established, even absent an express provision. See Commentary to Model Act at 190.

Penalties for contempt and perjury are not only consistent with schemes of immunity, they are necessary to them. It is the purpose of immunity legislation to make it possible for a witness to be compelled to speak when questioned * * *; if the penalties of contempt were not available, no grant of immunity could have that effect on a witness who remained recalcitrant. If the penalties of perjury were not available, an immunized witness would be free even to deceive the grand jury, and thus to side-track its investigations. [Note, *Immunity Statutes and the Constitution*, 68 Colum.L. Rev. 959, 972–73 (1968).]

Part 4

SUBSTITUTION OF JUDGE

Rule 741. [Substitution of Judge.]

(a) On demand. A defendant may obtain a substitution of the judge before whom a trial or other proceeding is to be conducted by filling a demand therefor, but if trial has commenced before a judge no demand may be filed as to him. A defendant may not file more than one demand in a case. If there are two or more defendants, a defendant may not file a demand, if another defendant has filed a demand, unless a motion for severance of defendants has been denied. The demand shall be signed by the defendant or his counsel, and shall be filed at least [ten days] before the time set for commencement of trial and at least [three days] before the time set for any other proceeding, but it may be filed within [one day] after the defendant ascertains or should have ascertained the judge who is to preside at the trial or proceeding.

COMMENT

In allowing a party to obtain a change of judge without alleging or proving the precise facts which lead him to think he could not get a fair trial before the judge, this accords with provisions of 16 of the 29 states which have provisions on disqualification of judges. See Staff Report, *Disqualification of Judges for Prejudice or Bias—Common Law Evolution, Current Status, and the Oregon Experience*, 48 Ore.L.Rev. 311, 347 (1969) (table of states).

Mr. CLEARY. Misner in his article talks about the ninth circuit experience, where without real planning, the act is really meaningless. Without sanctions, unless they are really to take effect, the act doesn't mean that much.

I have a case running on the clock now. The judge told me—these were his words—"The Speedy Trial Act doesn't apply." It does apply, but there are no sanctions. The proposed GAO delay, if adopted, will create the aura that the act will never apply.

As Professor Freed said, before it is tried it is doomed, because there is so much heat to the act.

I would like to touch upon some specific reasons why the act should take effect in July.

First, drop in the criminal case load.

Senator BIDEN. A drop in the criminal case load?

Mr. CLEARY. Yes. In 1976 the administrative office started including minor offenses with district criminal case load count. From 1977 to 1978 we had a 13.5 percent drop in the criminal case load.

Senator BIDEN. When you say "criminal case," do you mean drop in arrests?

Mr. CLEARY. No, I am talking about the district court cases handled throughout the United States. In the 94 district courts. there were 42,000 cases in 1977, 36,000 cases for the year ending June 30, 1978, a 13.5 percent drop.

The difficulty I have with arrest is, if I were to sit here and play arrest games from now until Christmas, we will never get into the function of prosecutorial discretion.

I would dare say those statistics are really unreliable. The only statistics you can really do are those where the prosecutor says go. In our district we could have 42,000 felonies, if the prosecutor wanted to prosecute all illegal aliens. So the arrest statistics to me are a big balloon, a scare tactic.

I also resent the alleged claim that the heavy duty defendant will walk out the front door. I think that possibly the Congress thinks we have idiots for judges or prosecutors.

It defies common sense and actual criminal practice.

You, Senator, have practiced criminal law. Imagine that you as a prosecutor are faced with three cases coming up for trial, (1) murder, (2) possession of a shotgun by an ex-felon and (3) an illegal alien in the country for the fifth time. The prosecutor will go to trial on the murder case, if he can't get a disposition. In fact, he will get a disposition of some type on all three cases. Nobody's going to walk. I just feel there is sometimes a lack of understanding of the dynamics of the handling of cases at the district court level.

A flat 100-day period is what I would espouse. I think your 30-day, 10-day, 60-day period is wonderful delineations, made of gossamer wings, with lovely cubbyholes. But to be more realistic, why don't you take 100-days across-the-board. I came from Chicago and worked in the criminal courts there. We had a 120-day limit, and it worked.

Senator BIDEN. Wait a minute. This is important. You are suggesting that instead of having 30, 10, and 60, that there be from the——

Mr. CLEARY. From the time of arrest or summons, using the language of the statute, you are on the clock for 100 days to trial. Further, in addition to that, because the Senate and House have been very generous with excludable time, suggest that you tack down time periods. For a mental exam not more than 90 days, even if the defendant goes to Springfield. For these exceptions, you should have a "top." In the statute now there is now no limit. For a mental commitment, under *Jackson* v. *Indiana*, you shouldn't have a person committed indefinitely, when they are incompetent. Under Federal law, if you don't have the requisite mental responsibility, you are found not guilty and the person has to walk. There is no verdict of not guilty by reason of insanity.

Human considerations dictate that any commitment should be to a State mental institution.

On rules 20 and 40, cases from other districts, a top of 30 days should be established. The inordinate bureaucratic shuffling of paperwork even when a guy pleads guilty must be curtailed. Get those time limits. There is nothing that sets a top on Rules 20 and 40 proceedings.

The exception for motions taken under advisement is a joke, but I won't amplify on that.

Prosecution. For the first time Congress has deferred prosecution. There isn't a statute in the books that refers to that, other than speedy trial. But put a top on it. The only deferred sentencing statute, which happens to be a dope charge (21 U.S.C. 844(b)(1)), provides a 1-year top for the deferred sentencing, so I would suggest a 2-year top for deferred prosecution.

Joint trials. Put a top of 60 days for defendants. I understand the Government's need to consolidate dependants, but have a top.

Ends of justice. The Government starts the clock. The Government can prepare for 4 years 8 months, file an indictment, then try to force the defendant to trial under your clock of 100 days.

The Government should be limited to a top of 60 days. That should be limited to complex or protracted cases. There should be no limit on the defense, because if the Government has been preparing for

years, maybe the defense needs half of that time or some substantial period of time once the clock has started.

On starting the clock, I would suggest that Congress have a requirement that in any case where the U.S. attorney files an indictment more than 1 year after the fact, this prosecutor file a report with the district court explaining the nature, scope of the investigation, and why the charge could not be filed prior to 1 year after they became aware of the offense. In this fashion the court, if it so desired under rule 48(b) of the Federal Rules of Criminal Procedure, could exercise a motion to dismiss for preindictment delay.

The Supreme Court in the *Lovasco* case in 1977 held that a preindictment delay of 18 months in which two witnesses were lost to the defense may have been prejudicial but did not constitute violation of due process. There was no relief for that particular defendant.

Avoidance and Waiver. This act will be a nullity if the judges wish to make it so. The statute does not adequately address the issue of waiver. The defendant walks in and the judge says, "Are you going to waive time?" The prosecutor says, "I am not interested in pushing." Defense says, "Yes." End of speedy trial.

The motion to dismiss is gone, because the defense has waived. There is nothing.

You say, "Well, what happens if you get one of those obnoxious lawyers that says, 'No, I ain't going to give up my statutory right.' "

The judge says, "OK, you are going to trial next week."

Or in the alternative, he can say, "Well, I am going to send you down to the Hammer of God," if on a master calendar basis. All sorts of subtle questions are involved with this act which have not been adequately addressed. Induced waivers may not occur, and it should be hoped that all parties will act in good faith.

If waivers become common or are coerced, I would hope for appellate review or later amendments by this Congress.

Prosecutorial responsibility and accountability.

One of the biggest complaints about the act right now is that the prosecutors are going to have to account for their timing of changes and scheduling of cases. Prosecutors are going to have to carefully manage their offices because they only have so many assistants.

Federal jurisdiction is a function of the size of the U.S. Attorney's office.

They can prosecute for convenience store stickups if they want to under existing Federal law, *U.S.* v. *Culbert*. Although Federal jurisdiction exists, it is not always exercised. Prosecutors must figure out how many cases they can push through district court and time them accordingly. That is what you are forcing with the act and that pressure will hurt, because prosecutors now do not have that type of control. I think it's healthy in our system of checks and balances to have accountability.

For judicial creativity and independent judicial management, I think the act is terrific. Sometimes we see an unhealthy and too cozy relationship between the court and prosecution, because the judges want to dispose of the cases filed.

Now you make the court independent. The court need not be responsible for finishing every case. You have set up guidelines on how courts should manage their calendars. You can suggest to the judiciary that

they use some novel techniques, which might include the master calendar, if it is appropriate.

I strongly urge that the Congress adopt, and I re-echo this often, a peremptory challenge to a judge which would help expedite many cases.

There should be far greater pretrial discovery, for you have expressly sought reform in the act. At the present time with the Jencks Act, the defense gets next to nothing, no-statements of the witnesses. Federal jurisdiction is the worst on discovery, yet at the same time Congress yells: "Rawhide, let's move the case out." Yet the defense can't see any of the evidence until after the witnesses testify.

Congress must resolve some of these anomalies.

Pretrial Conference. The scheduling factor, I think, may be worked out with the use of pretrial conferences.

Greater Use of Magistrates. The Senate has proposed an increase in jurisdiction of the magistrates, that's come out of this committee, if I am not mistaken. I suggested the use of low-grade felonies before magistrates. With magistrates you have additional judicial manpower to move these lesser cases along. To my knowledge, this proposal might not pass, but magistrates may handle many aspects of criminal cases that would relieve pressure from the district judges.

There are categories of people not covered by the Speedy Trial Act. One group is the material witnesses, the poor people who are caught up in alien smuggling cases, who are not even charged with an offense. Where do you give them speedy justice? I would like to suggest in the statute you require trial within 50 days, not even 100, half of the regular time, if you have people locked up who are only witnesses.

Probation Revocation. Some of you who don't practice regularly in Federal courts might not understand the concept of "trip wire" probation. Defense counsel is not completely successful in having the client placed on probation. Some of the probation officers with the zealousness of police officers can find infractions. So when your client is arrested in Buffalo, N.Y., and has to be returned to San Diego, Calif., 3 months——

Senator BIDEN. He probably wouldn't want to go.

Mr. MARTOCHE. Oh, Senator, you are mean.

Mr. CLEARY. The point is he might want to go, but he might not want to spend 3 months in transit visiting every jail between Buffalo and San Diego. In that system we should have a 60-day cutoff requiring action by the district court if it knows of a violation; otherwise, it is gone. Once you issue the warrant and the person is seized, in 30 days that person should have the hearing. I don't care where they are in the United States, they should be back to their home district or the district with probationary supervision.

Prisoner petitions are not part of the criminal process and aren't touched by the Speedy Trial Act other than peripherally in some language of the statute. Interestingly enough, they constitute one-sixth of the civil cases.

Senator BIDEN. That isn't at all surprising, though, is it?

Mr. CLEARY. The point is you should see how fast they are processed or forgotten.

The new rules under 2254 and 2255 say they will be processed "promptly." I will like to see this Congress go on record and quantify that term, for an example 30 days after the petition is filed.

Senator BIDEN. If this Congress went on record, it would go on record to suggest they didn't have a right. Don't get greedy.

Mr. CLEARY. I will tell you one thing——

Senator BIDEN. We are going to have enough trouble holding this where it is.

Mr. CLEARY. I find in that—I haven't been too successful with my appearances before the Senate. I appeared before S. 1437 and find again on the one hand, we have too much Federal criminal jurisdiction now, and in the next breath we are out there pushing 1437 with dreamed up new offenses and expanded Federal jurisdiction beyond the mind of man. Though I haven't been successful here, I still have to keep preaching.

On the pretrial release agencies I would like to say that the experiment was excellent. I do not favor pretrial release agencies placed in probation departments. Pretrial release agencies should be independent, and a serious conflict of interest—trying to seek a disposition of a case when the issue is pretrial release—may develop if handled by probation departments.

In the Federal system we create anomalies you couldn't find other than in some dream world. One of the classics, we have in a Federal jail in our jurisdiction. The Bureau of Prisons has counselors for pretrial detainees. You will not be able to point out a State jail in these United States with a counselor for pretrial detainees. Have we ever had a case of one of the counselors assisting in a pretrial release? No. Under Parkinson's rule, they keep them in.

Our present jail has a population of 700, double-celling and everything else. It is terrible. We should have greater implementation of the Bail Reform Act. I would suggest that a pretrial release agency be established in each of the districts where there is a Federal defender or some legislative direction be given that the Federal defender can provide that minimal assistance. We provide it in our district.

The last I would comment on is sanctions. We have to have something that makes the act work. A fantastic data base has been acquired. We have had training programs on the act in our district. A computer network has been established that includes our district. We have all this fantastic data gathering equipment geared awaiting implementation of the act. Either you are going to indicate all of that money for this planning and preparation went for naught or you really want to put it into effect.

People are now familiar with the applicable timetable, and the delay, as the previous speaker noted, conveys that you are really not happy with this legislation and that you would like to pull it out.

I would like to finish by saying you should give this legislation a chance.

Senator BIDEN. Thank you very much.

Mr. ISBELL. Senator, we have submitted a statement on behalf of the ACLU. I don't intend to simply recite what is in the statement. We have indeed submitted a corrected statement this morning, correcting some errors we found in the previous one. I trust the corrected statement will be the one that will go in the record.

Senator BIDEN. Yes.

END