The original documents are located in Box 20, folder "1975/01/03 S754 Speedy Trial Act of 1974" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
JAN 3 - 1975
Statement issued 1/4/75

Posted 1/4/75
To Archives 1/6/75

THE WHITE HOUSE
WASHINGTON

ACTION

Last Day: January 4

January 2, 1975

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill S. 754
Speedy Trial Act of 1974

Attached for your consideration is S. 754, sponsored by Senator Ervin, which would for the first time define speedy trial in terms of specific time periods for carrying out the steps in criminal trials. Additionally, the bill would:

--Impose sanctions to enforce time periods,

--Provide for development of plans in each Federal Judicial district,

--Authorize appropriations for such planning, and

--Establish demonstration pretrial service agencies in ten districts.

The most objectionable feature of this bill has been the mandatory dismissal with prejudice if a defendant were not actually brought to trial within 60 days. Fortunately, this feature, as well as many other objectionable ones, was compromised at the last minute so that it will not come into effect for four years -- and the individual Federal Judge will have the discretion of whether to dismiss with prejudice or without prejudice.

Although Justice vigorously opposed the legislation, it has resigned itself to the compromises achieved and fears an even worse product next year if this should be vetoed. Silberman particularly feels a veto would undermine public and Congressional acceptance of your own anti-crime proposals for the next Congress.

OMB recommends approval and provides you with additional background information in the enrolled bill report at Tab A.

RECOMMENDATIONS

Justice, Areeda and Friedersdorf recommend approval and issuance of the signing statement which has been approved by Paul Theis.

DECISIONS:

S. 754

Sign (Tab C) ____ Pocket Veto ____
(Prepare memorandum of disapproval)

Signing Statement (Tab B)

Approve ____ Disapprove ____

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

DEC 2 9 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 754 - Speedy Trial Act of 1974
Sponsor - Sen. Ervin (D) North Carolina and 46 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Establish phased-in time limits for bringing defendants to trial; impose sanctions to enforce those limits; provide for development of plans in each Federal judicial district; authorize appropriations for such planning; and establish demonstration pretrial service agencies in ten districts.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No objection
Administrative Office of the United States Courts	No recommendation

Discussion

The enrolled bill would for the first time define speedy trial in terms of specific time periods for carrying out the steps in criminal trials. The bill would phase-in these schedules over a period of four years to facilitate implementation by the Justice Department and the Judiciary. There are provisions for further extended phase-in periods where necessary.

To assure implementation of the time schedules, the bill would impose sanctions including dismissal of charges and sanctions against defense attorneys for dilatory actions.

S. 754 further provides for plans to be prepared by each of the 94 districts to accelerate the disposition of criminal cases consistent with time standards established in the bill. Such plans are to include provisions to assure fairness to the accused and efficient and equitable enforcement of the law.

The enrolled bill would establish a demonstration pretrial service agency in each of ten districts to supervise and provide services to defendants from a correctional institution on parole or probation or prior to trial.

Specifically the enrolled bill would:

-- require that a judge set a trial date at the earliest practicable time after consultation with the prosecutor and defense counsel

-- provide specific time limits (unless within specific exceptions) by which key steps in the prosecution of an accused must take place, the trial commencing within ninety days of arrest

-- provide for exceptions to the time limits to accommodate such specified factors as unusually complex grand jury proceedings, mutually agreed pretrial diversion programs, and defendant incompetence to stand trial. Delay on grounds of court congestion would not be permissible grounds for an exception

-- provide for gradual phasing in of the time periods and sanctions over a four-year period beginning in July 1975

-- make special provision for such situations as fresh indictments after dismissal and retrials

-- provide for sanctions, for failure to meet the time limitations of the bill, including dismissal of charges with or without prejudice in the discretion of the judge and

-- provide for sanctions against defense counsel for specified dilatory tactics.

The enrolled bill would further provide for development of interim plans providing that all detained defendants and released defendants considered "high risk" be tried within 90 days.

Sanctions for failure to meet this deadline would not include dismissal but some lesser form of relief would be provided.

The bill would also encourage the Federal criminal justice system to engage in comprehensive planning and budgeting toward the goal of providing a speedy trial. The bill provides for planning, testing innovative techniques, itemizing additional resources necessary, and communicating plans and additional budget requirements to Congress through the Judicial Conference for the Federal Judiciary.

In its views letter on the enrolled bill the Administrative Office of the United States Courts states that the bill would be a costly addition to the Federal Judiciary budget.

> "As passed, it authorizes...prior to the end of the current fiscal year...$2,500,000 to be allocated by the Administrative Office to the federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans and...the appropriation for the current fiscal year of the sum of $10,000,000 to commence the planning phases for pretrial services agencies... In addition, it will be necessary to seek funds for extended computer coverage, personnel and other expenditures..."

The Administrative Office further states that additional jurors, staff, and supporting facilities and personnel such as probation officers and additional judgeships would be required to implement the provisions of the enrolled bill. It has advised us that, assuming a constant volume of case filings, compliance with the speedy trial mandate could cost as much as $172 million a year by 1980. Justice states in its views letter that "the cost of implementing this legislation will be substantial" ultimately. However, they advise us that any specific cost projection would be impossible at this time.

With respect to planning, S. 754 would provide:

-- that each district form a planning group within sixty days of the effective date of the bill

-- that prosecution and defense counsels and a person skilled in legal research be included in the planning group

-- that each judicial district prepare a plan for implementation of the enrolled bill

-- that the group be broadly charged to examine all factors affecting the criminal justice system and to make recommendations to the Administrative Office of the U.S. Courts

-- that the planning group be purely advisory

-- specific criteria for the content of the district plans

-- for review of the plans by the Administrative Office of the U.S. Courts.

S. 754 would further establish ten demonstration pretrial service agencies. These agencies would gather information, supervise persons released on pretrial diversion and other programs, and operate facilities such as halfway houses. The agencies would be governed by a board of trustees representative of the interested public and private communities. Supervision of pretrial agencies would be under the Director of the Administrative Office of U.S. Courts.

The bill would, finally, authorize appropriations of $10 million for fiscal year 1975 and such sums as may be necessary in subsequent years for pretrial services agencies and $2.5 million in fiscal year 1975 for the judiciary for the initial phases of planning and administering district plans.

In its views letter on S. 754, the Department of Justice states that while it has opposed the legislation strongly in Congress and continues to have strong reservations, its judgment is that the bill should not be vetoed. Justice feels the bill is premature. They state that:

"

> "Rule 50(b) of the Federal Rules of Criminal Procedure, which has been in effect less than two years, has resulted in every district court adopting a 'speedy trial' plan, including rules relating to time limits within which pretrial proceedings, the trial, and sentencing must take place. We believe that the Rule 50(b) approach, which seemed promising, should have been given a chance prior to any far-reaching congressional reform such as is embodied in this bill."

Justice further states that it is concerned with the shortness of the time limits and with the sanctions which would be imposed. It is also concerned with the vagueness and complexity of the bill which may result in litigation and with costs of implementation.

However, Justice concludes that:

> "Notwithstanding the foregoing reservations, it is the Department's judgment that the bill should not be vetoed. This Department did succeed in the 93rd Congress in getting many amendments to the bill adopted. The next Congress will be different in character from this one and probably less receptive to our concerns. It is our opinion that if this bill is vetoed, the 94th Congress will enact legislation along similar lines, perhaps even less favorable than S. 754. While we foresee formidable problems in interpreting and administering S. 754, we contemplate a continuing oversight process in which this Department, the Federal Judiciary, and the Congress will monitor and evaluate the bill as it is phased in. The sanctions section does not become operative until four years after July 1, 1975.
>
> "Time is thus afforded in which the Congress may make any necessary changes in the bill that are dictated by experience, as well as provide the increased judicial and prosecutive resources essential to implement its provisions. Accordingly, we interpose no objection to Executive approval of the bill."

Wilfred H Rommel

Assistant Director for
Legislative Reference

Enclosures

STATEMENT BY THE PRESIDENT

I today have given my approval to S. 754, the so-called "Speedy Trial Act of 1974." I have done so, however, with some reservations.

I fully endorse the goal of speedy justice, but I am concerned about the sanctions imposed by the bill. If its time limits are not met, Section 3162 provides for dismissal of the indictment and permits the trial judge to decide whether a subsequent reindictment would be permitted. I believe that dismissal without precluding reindictment would constitute an ample sanction to insure that prompt trials do take place. I hope that the sound discretion of our Federal District Court judges will minimize the possibility that a defendant will be unnecessarily exonerated from punishment for a serious offense without ever having undergone a trial.

I also take this opportunity to call for prompt Congressional action on the recommendation of the Judicial Conference of the United States for the creation of 51 additional Federal District Court judgeships in 33 separate judicial districts across the country. This measure recognizes that justice delayed is too often justice denied. However, without a commitment to meet the increased demands which the bill will impose on our federal judiciary, as well as prosecutors, its benefits become transparent.

The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

Gerald R. Ford

To
H. Hendricks
12-30-74
11:00 A.M.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 2 9 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 754 - Speedy Trial Act of 1974
Sponsor - Sen. Ervin (D) North Carolina and 46 others

Last Day for Action

January 4, 1975 - Saturday

Purpose

Establish phased-in time limits for bringing defendants to trial; impose sanctions to enforce those limits; provide for development of plans in each Federal judicial district; authorize appropriations for such planning; and establish demonstration pretrial service agencies in ten districts.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	No objection
Administrative Office of the United States Courts	No recommendation

Discussion

The enrolled bill would for the first time define speedy trial in terms of specific time periods for carrying out the steps in criminal trials. The bill would phase-in these schedules over a period of four years to facilitate implementation by the Justice Department and the Judiciary. There are provisions for further extended phase-in periods where necessary.

To assure implementation of the time schedules, the bill would impose sanctions including dismissal of charges and sanctions against defense attorneys for dilatory actions.

S. 754

THE WHITE HOUSE

WASHINGTON

December 31, 1974

NOTE TO PAUL THEIS

FROM GEOFF SHEPARD

We need your comments on the attached.

1974 DEC 31 PM 4 07

mber 30, 1974 5:00 p.m.

TION: Geoff Shepard
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: December 31, 1974 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 754 - Speedy Trial Act of 1974

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

Statement by the President Upon Signing S. 754, The "Speedy Trial Act of 1974"

I today have given my approval to S. 754, the so-called "Speedy Trial Act of 1974." I have done so, however, with a reservation ~~which bears mention~~.

~~While~~ I fully endorse the goal of speedy justice, I am concerned by the sanctions imposed by the bill. ~~In the event that~~ its time limits are not met, Section 3162 provides for dismissal of the indictment and permits the trial judge to decide whether a subsequent reindictment would be permitted. I believe that dismissal without precluding reindictment would ~~consitute~~ constitute an ample sanction to insure ~~conformity with the Act~~ that prompt trials do take place. I hope that the sound discretion of our Federal District Court judges will minimize the possibility that a defendant will be unnecessarily exonerated from punishment for a serious offense without ever having undergone a trial.

I also take this opportunity to call for prompt Congressional action on the recommendation of the Judicial Conference of the United States for the creation of 51 additional Federal District Court judgeships in 33 separate judicial districts across the country. ~~This measure S. 754~~ recognizes that justice delayed is too often justice denied. However, ~~however,~~ without a commitment to meet the increased demands which the ~~measure~~ bill will impose on our federal judiciary, as well as prosecutors, its benefits become ~~all too~~ transparent.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Rowland F. Kirks DATE: Dec. 30, 1974

FROM : Edward V. Garabedian

SUBJECT: Budgetary Impact of Speedy Trial Legislation

Supplementing my memorandum to you dated December 27, 1974, I believe some clarification is desirable with regard to the $172 million estimate of requirements to "comply with the Congressional mandate for speedy trial." Of this $172 million the sum of $50 million relates specifically to the establishment of pretrial services agencies provided for in the Act.

Twenty judgeships at a cost of approximately $4 million are being budgeted for. These 20 judgeships are in addition to the 52 previously requested of the Congress but which the Congress has not granted to date. $2.5 million has been included for planning purposes. These three items attributable solely to the passage of the speedy trial act total $56.5 million. The difference between $172 million and $56.5 million is $115.5 million which would be required irrespective of whether speedy trial is mandated by an Act of Congress or accomplished under rule 50(b) of the Federal Rules of Criminal Procedure as a self-imposed commitment.

STATEMENT BY THE PRESIDENT

I today have given my approval to S. 754, the so-called "Speedy Trial Act of 1974." I have done so, however, with some reservations.

I fully endorse the goal of speedy justice, but I am concerned about the sanctions imposed by the bill. If its time limits are not met, Section 3162 provides for dismissal of the indictment and permits the trial judge to decide whether a subsequent reindictment would be permitted. I believe that dismissal without precluding reindictment would constitute an ample sanction to insure that prompt trials do take place. I hope that the sound discretion of our Federal District Court judges will minimize the possibility that a defendant will be unnecessarily exonerated from punishment for a serious offense without ever having undergone a trial.

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The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

Statement by the President Upon Signing S. 754, The "Speedy Trial Act of 1974"

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I also take this opportunity to call for prompt Congressional action on the recommendation of the Judicial Conference of the United States for the creation of 51 additional Federal District Court judgeships in 33 separate judicial districts across the country. This measure ~~S. 754~~ recognizes that justice delayed is too often justice denied. However, ~~however~~ without a commitment to meet the increased demands which the ~~measure~~ bill will impose on our federal judiciary, as well as prosecutors, its benefits become ~~all too~~ transparent.

The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 911

Date: December 30, 1974 Time: 5:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf sign
Phil Areeda sign

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: ~~Monday~~ December 31, 1974 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 754 - Speedy Trial ~~Act of 1974~~ 1974

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

DEC 27 1974

Honorable Roy L. Ash
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 754, a bill "To assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial and for other purposes."

The provisions of the bill apply to all Federal District Courts and the effective date of enactment will be July 1, 1975. Essentially, Title I of the bill imposes time limits (Section 3161) within which a defendant must be indicted, arraigned, and his trial commenced. These time limits will be phased in over a period of four years, with the ultimate requirements being that an individual charged with an offense must be indicted within thirty days of arrest or service with summons; he must be arraigned within ten days of indictment or from the date he has been ordered held to answer and has appeared before a judicial officer of the court in which the charge is pending; and his trial must be commenced within sixty days of the arraignment. Failure to meet these time limits will result in mandatory dismissal of the charge (Section 3162). The Court shall determine whether the dismissal shall be with or without prejudice and in making this determination, shall consider certain express, but nonexclusive, factors.

Section 3161 provides for exclusion, in the computation of the time limits, of various periods of delay such as those resulting from other proceedings concerning the defendant. Sections 3165 through 3171 provide for District Court planning appropriations. Section 3174 provides for the limited suspension of Section 3161 time limits in the event a district court is unable to meet the time limits.

As you know, this Department has strongly opposed this legislation in both the House and the Senate. We continue to have strong reservations about the desirability of the bill.

It is our view that the bill is premature. Rule 50(b) of the Federal Rules of Criminal Procedure, which has been in effect less than two years, has resulted in every district court adopting a "speedy trial" plan, including rules relating to time limits within which pretrial proceedings, the trial, and sentencing must take place. Although the impact of the Rule cannot yet statistically be assessed, the Administrative Office of United States Courts testified before Congress that the plan is working. The figures on average delays in federal courts that were cited by the Congress to support the need for S. 754 were based on pre-Rule 50(b) experience. We believe that the Rule 50(b) approach, which seemed promising, should have been given a chance prior to any far-reaching congressional reform such as is embodied in this bill. This was also the view of the Judicial Conference of the United States speaking on behalf of all federal judges, in testimony before the House.

A feature of the bill that causes us great concern is the length of the time limits ultimately to be established -- thirty days between complaint and indictment or information, and seventy days between indictment or information and trial. Even allowing in the ensuing four or five years for a considerable augmentation in the numbers of district judges and federal prosecutors which the sponsors of this legislation say is contemplated, we are fearful that the time limits will impose an unrealistic burden (current experience under Rule 50(b) allows generally for six months between indictment and trial) and that prosecutors will be deterred from undertaking the difficult kinds of anti-corruption, fraud, and organized crime investigations and prosecutions to which we believe priority should be given. Contrary to the views of the defense bar as well as some congressmen, the government cannot use the time limits of the bill to its advantage by simply delaying the return of an indictment against a person until its case is ready for trial. While this procedure may be feasible in certain cases, there will remain many instances in which it is the government's responsibility to arrest an individual, and thereby prevent the commission of future crimes, prior to the time a grand jury has completed its investigation. In such a case, the time limits of the bill will be triggered.

We are also disturbed by the sanctions (Section 3162) in the event the time limits of the bill are not met. Although, in response to this Department's strong objections, the sanctions section was altered from a posture of mandatory dismissal with prejudice to a position of judicial discretion whether a dismissal is to be with prejudice, we remain of the view that no dismissal with prejudice should be permitted. The Supreme Court has observed that a dismissal with prejudice is an "unsatisfactorily severe remedy" which is appropriate, nonetheless, when a defendant's constitutional right to a speedy trial has been infringed. Here, where no constitutional right is at stake, we believe that a dismissal without

prejudice, which would cause serious inconvenience, is an ample sanction to insure that prosecutors and courts would "toe the line," without giving rise to the possibility that a defendant will be exonerated from punishment for a serious offense without ever having undergone a trial. It should be noted that, while Section 3162 lists a number of factors that the court is to take into consideration in making its judgment, there is no presumption against dismissal with prejudice and there thus remains the very real prospect that substantial numbers of criminally accused persons will be "freed" before trial because of inability to meet the requirements of the bill.

We are, finally, troubled by the complicated structure and vague terminology of the bill which, we fear, will result in numerous hearings and appeals concerning the bill's construction. This is particularly true with respect to the provisions regarding periods to be excluded from the normally applicable time limits (Section 3161(h)), e.g., when a continuance is granted in the "ends of justice," one factor in which is a provision for the "unusual" and "complex" case. In our view, the time absorbed in litigating whether or not the provisions of the bill should be or have been properly applied will itself cause delays not now present in the criminal justice system and significantly dimishes the likelihood that the bill will achieve its laudable purposes.

The cost of implementing this legislation will be substantial when the ultimate time limits of the bill become effective. The number of additional Assistant United States Attorneys and federal judges that will be needed cannot now be accurately estimated. However, in fiscal year 1975 this bill authorizes 2.5 million dollars to the Federal Judiciary to carry out the initial phases of planning and administering the district plans for the disposition of criminal cases. In addition, ten million dollars is authorized in this fiscal year for the establishment and operation on a demonstration basis of a Pre-trial Services Agency in each of ten representative judicial districts.

Notwithstanding the foregoing reservations, it is the Department's judgment that the bill should not be vetoed. This Department did succeed in the 93rd Congress in getting many amendments to the bill adopted. The next Congress will be different in character from this one and probably less receptive to our concerns. It is our opinion that if this bill is vetoed, the 94th Congress will enact legislation along similar lines, perhaps even less favorable than S. 754. While we foresee formidable problems in interpreting and administering S. 754, we contemplate a continuing oversight process in which this Department, the Federal Judiciary, and the Congress will monitor and evaluate the bill as it is phased in. The sanctions section does not become operative until four years after July 1, 1975.

Time is thus afforded in which the Congress may make any necessary changes in the bill that are dictated by experience, as well as provide the increased judicial and prosecutive resources essential to implement its provisions. Accordingly, we interpose no objection to Executive approval of the bill.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General
Legislative Affairs

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

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

December 26, 1974

W. H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Rommel:

Reference is made to your Enrolled Bill Request of December 24, 1974, transmitting for comment S. 754, the Act cited as the "Speedy Trial Act of 1974."

Although the Senate of the United States did not seek the views of the federal judiciary in considering S. 754, the Subcommittee on Crime of the House Judiciary Committee held extensive hearings with testimony from the Director of this office and from representatives of the Judicial Conference of the United States. As a result several provisions of the original Senate draft, considered by many representatives of the Judicial Branch to be totally unworkable, were eliminated or modified. The bill as now passed by both Houses of Congress, while aimed at achieving a desirable result, still contains provisions of questionable usefulness. In addition this legislation will be a costly addition to the expenditures of the federal judiciary. As passed, it authorizes in Title I the appropriation prior to the end of the current fiscal year of the sum of $2,500,000 to be allocated by the Administrative Office to the federal judicial districts to carry out the initial phases of planning and implementation of speedy trial plans and in Title II authorizes the appropriation for the current fiscal year of the sum of $10,000,000 to commence the planning phases for pretrial services agencies and the operation of the provisions of Title II. It will, of course, be necessary at once to seek the appropriations for the planning phase as thus authorized. In addition, it will be necessary to seek funds for extended computer coverage, personnel and other expenditures of the Administrative Office and the Federal Judicial Center as well as for planning groups in the field.

The impact on the overall needs of the judiciary must also be considered. This legislation cannot now be implemented without new supplemental appropriations which might not be forthcoming in sufficient time to recruit and train new court staffs and procure and program new data computer equipment. Even with such appropriations, moreover, it will be difficult to implement the proposed legislation without new judgeships being authorized. In view of the fact that an omnibus judgeship bill has been pending in the two judiciary committees of the Congress since January 1973 without definitive committee action, the prospects of having judges actually in office and ready to meet the initial critical deadlines set by the bill are indeed dim. Likewise, the impact on the needs for funds for additional deputy clerks, probation officers and jurors must be taken into account.

When this legislation was considered by the Judicial Conference of the United States at its September 1974 session the Conference urged the Congress to defer consideration of this legislation until after the close of fiscal year 1975 in order to make it possible for the Conference and the Congress to evaluate the effectiveness of the plans adopted pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure. These plans, designed to achieve the speedy trial of criminal cases in the courts, have been operational only a year and a half and it is the view of the Conference that further study should be given to the effectiveness of these plans before mandatory federal legislation is enacted. Although the Congress did not see fit to accept the views of the Judicial Conference, it did agree to defer the effective date of the Act until July 1, 1975 to permit time for the planning phase which is necessary to implement the Act and to allow time to submit requests for supplemental appropriations for fiscal year 1975 and amended budget requests for fiscal year 1976.

In the circumstances no recommendation as to Executive approval will be made on behalf of the Judicial Conference.

Sincerely,

William E. Foley
Deputy Director

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 911

Date: December 30, 1974 Time: 5:00 p.m.

FOR ACTION: Geoff Shepard
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones
Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: December 31, 1974 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 754 - Speedy Trial Act of 1974

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

1) Sign the bill
2) Suggested signing statement attached.
(It should be checked with justice)

P Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Statement by the President Upon Signing S. 754, The "Speedy Trial Act of 1974"

I today have given my approval to S. 754, the so-called "Speedy Trial Act of 1974." I have done so, however, with a reservation which bears mention.

While I fully endorse the goal of speedy justice, I am concerned by the sanctions imposed by the bill. In the event that its time limits are not met, Section 3162 provides for dismissal of the indictment and permits the trial judge to decide whether a subsequent reindictment would be permitted. I believe that dismissal without precluding reindictment would consitute an ample sanction to insure conformity with the Act. I hope that the sound discretion of our Federal District Court judges will minimize the possibility that a defendant will be unnecessarily exonerated from punishment for a serious offense without ever having undergone a trial.

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The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

THE WHITE HOUSE

WASHINGTON

December 31, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: Max Friedersdorf for MAX L. FRIEDERSDORF

SUBJECT: Action Memorandum - Log No. 911

The Office of Legislative Affairs concurs with the Agencies that the enrolled bill should be signed.

Attachments

THE WHITE HOUSE
WASHINGTON

DATE: 12/31

TO: ~~Hamilton~~ / Pat

FROM: Max L. Friedersdorf

Please handle _____

Please see me _____

For your information _____

Other Concern re agency views.

Comments Should increase pressure for Senate to act on pending judgeships.

Vern Loen

Calendar No. 980

93d Congress
2d Session

SENATE

REPORT
No. 93-1021

SPEEDY TRIAL ACT OF 1974

REPORT

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ON

S. 754

TO GIVE EFFECT TO THE SIXTH AMENDMENT RIGHT TO A SPEEDY TRIAL FOR PERSONS CHARGED WITH CRIMINAL OFFENSES AND TO REDUCE THE DANGER OF RECIDIVISM BY STRENGTHENING THE SUPERVISION OVER PERSONS RELEASED PENDING TRIAL, AND FOR OTHER PURPOSES

JULY 18, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
38-010 WASHINGTON : 1974

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 60 cents
Stock Number 5270-02431

CONTENTS

Calendar No. 980

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-1021

SPEEDY TRIAL ACT OF 1974

July 18, 1974.—Ordered to be printed

Mr. ERVIN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 754, amended]

The Committee on the Judiciary to which was referred the bill (S. 754) to give effect to the sixth amendment right to a speedy trial for persons charged with criminal offenses, having considered the same, reports favorably thereon with amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of the bill is to make effective the sixth amendment right to a speedy trial in Federal criminal cases by requiring that each Federal district court, in cooperation with the United States Attorney and attorneys active in the defense of criminal cases in that district, establish a plan for trying criminal cases within 90 days of arrest or receipt of summons. The bill takes effect over a seven year period so that the goals of a 30-day limit on the period between arrest and indictment and a 60-day limit on the period between indictment and commencement of trial will not be in force until the seventh year after enactment.

For a period beginning 90 days after enactment until the end of the fifth year after enactment interim time limits will be in effect and detained defendants must be tried within 90 days or released. The phase-in of the general time limits provided by the bill begin in the second year. During that year, a 60-day arrest to indictment time limit and a 180-day indictment to trial time limit will be in effect and failure to comply with the time limits will be reported to the Adminis-

trative Office of the United States Courts. During the third and fourth year, the arrest to indictment time limit will be 45 days, the indictment to trial time limit will be 120 days, and failure to comply with the time limits also be reported to the Administrative Office. During the fifth and sixth year, the arrest to indictment time limit will be 30 days, the indictment to trial time limit will be 60 days, and failure to comply with the time limits will result in dismissal of the case. Starting in the seventh year after enactment the 30-day arrest to indictment and the 60-day indictment to trial time limits will be enforced by a dismissal without prejudice but with a burden on the Government to demonstrate "exceptional circumstances" prior to reprosecution. A planning process for the district courts will be established to enable the districts to determine what additional resources, personnel and facilities will be required to comply with the progressive time limitations. District plans which will detail these needs will be required at specified times during the seven year phasing in of time limits. (See Calendar of Implementation, Chart 1, p. 55.) This, in turn, will enable Congress to consider the needs of each individual district, and of the whole Federal criminal justice system.

Along with its provision for speedy trials, S. 754 also authorizes the creation of demonstration "Pretrial Services Agencies" in 10 Federal districts, excluding the District of Columbia which is already served by the District of Columbia Bail Agency, performing many of the same functions. These agencies will make bail recommendations, supervise persons on bail and assist them with employment, medical, and other services designed to reduce crime on bail. This provision will greatly enhance the operations of the Bail Reform Act of 1966.

II. Committee Amendments

Several amendments to S. 754 have been incorporated into the bill as reported by the Committee. These amendments reflect the careful consideration of several different viewpoints concerning the best solution to the speedy trial problem. Among those who have had the greatest impact on these most recent amendments were the representatives of the Justice Department, Senators McClellan and Hruska, the various witnesses who appeared at hearings conducted by the Subcommittee on Constitutional Rights, and Professor Dan Freed of Yale Law School who during the past three years has provided invaluable advice to the Subcommittee on this legislation. The Subcommittee reported S. 754 with amendments in March of 1974. The major changes incorporated by these amendments are as follows:

1. Segmented time limits.—As introduced, S. 754 provided a single 60-day time limit between arrest or return of indictment and commencement of trial. The committee has amended Section 3161 to establish two separate sets of time limits, one between arrest and indictment and one between indictment and commencement of trial. The arrest-to-indictment time limit would eventually be 30 days and the indictment-to-trial time limit would eventually be 60 days.

2. Dismissal with prejudice.—The bill as introduced contained a provision requiring dismissal with prejudice if a case extended beyond the time limits. At the suggestion of Senators Hruska and McClellan this provision has been replaced with a dismissal without prejudice sanction. However, beginning the 7th year after enactment a prosecution can only be recommenced following a dismissal without prejudice if the Government can show "exceptional circumstances." (See sec. 3162(b) and pp. 42–44)

3. Elongated phase-in of time limits and sanctions.—The original bill provided that the time limits be phased-in over a three year period. The Committee has amended the bill to allow the time limits and the sanctions for non-compliance with the time limits to be phased-in over a seven year period. (See Calendar of Implementation, Chart 1, p. 55.)

4. Expanded planning process.—The Committee has amended the old Section 3165 of the bill which deals with the planning process for implementing speedy trial in the district courts, and has renumbered it as a new section 3166. In addition, new Sections 3166, 3167, 3168, and 3169 have been created. The effect of these new sections is to further define what is expected from the district courts, the United States Attorneys and defense counsel in terms of planning for the implementation of speedy trials and to provide reporting requirements so that the progress of implementation and its resource needs can be easily monitored. (For further explanation see pp. 45–49.)

5. Balancing test for determination of allowable exclusions from the speedy trial time limits.—At the suggestion of Senators McClellan and Hruska section 3161(h)(8) has been amended in order to specify the factors which a judge should consider when determining whether to grant an exclusion from the speedy trial time limits. This section now specifies that a judge should use a balancing test in order to make this determination. The judge must find that the "ends of justice" outweigh the interest of the defendant and society in a speedy trial.

6. Technical amendments.—The Committee made several technical amendments to the bill to remedy problems of practical application which were brought out in testimony at the hearings.

III. Legislative History

Speedy trial legislation has been introduced in almost every session since the 88th Congress. One of the first such pieces of legislation was introduced by former Senator Morse and cosponsored by Senator Fong, a member of the Subcommittee on Constitutional Rights.

S. 754 is based upon a similar bill, S. 3936, introduced by Senators Ervin, Hart, Bayh, Hughes, and former Senator Young in the 91st Congress and upon S. 895, introduced on February 22, 1971. S. 895 differed from S. 3936 in that the former did not provide for specific additional penalties for crimes committed while a defendant was released awaiting trial. That provision, title II of S. 3936, was dropped in light of considerable unfavorable comment by Members of the Senate and from experts whose opinions were obtained during hearings held before the Subcommittee on Constitutional Rights in the fall of 1971. S. 895 and S. 3936 were designed to be vehicles for hearings and legislative study of the problem of speedy trial, a foundation upon which effective speedy trial legislation could be based. Senator Ervin introduced S. 754 along with 46 cosponsors on February 5, 1973. S. 754, as now amended represents the culmination of over three years of work by the Subcommittee on S. 3936 and S. 895 and contains many of the suggestions made by experts during the course of comment and criticism on the two earlier bills.

On July 8, 1970, the Constitutional Rights Subcommittee transmitted a copy of S. 3936 to over 300 prominent members of the bench and bar around the country. The subcommittee received responses from 225 of these experts. Their views, as well as those of the 20 witnesses who appeared before the Constitutional Rights Subcommittee in hearings held in July and September of 1971, are reflected in S. 754. Testimony was received from several of the bill's cosponsors and a number of others submitted statements for the record. In addition, the subcommittee heard from a Federal and a State judge, both from busy districts, who told the subcommittee how they achieved the goal of speedy trial in their own jurisdictions. Also testifying were interested and knowledgeable witnesses with extensive experience in prosecution, defense, and pretrial rehabilitation services.

On September 14, 1971, then Assistant Attorney General William H. Rehnquist, accompanied by Donald E. Santarelli, then Associate Deputy Attorney General for Criminal Justice, presented the Justice Department's position. The Justice Department while supporting the bill, proposed some changes in the language of S. 895. The subcommittee did, in the course of its deliberations on S. 895 and S. 754, adopt a majority of the 29 specific language changes proposed by the Department.

Also testifying on September 14 were former Congressman Abner J. Mikva, author of H.R. 7107, speedy trial legislation similar to S. 895; and Professor Daniel Freed, former Director of the Justice Department's Office of Criminal Justice. Commenting on the hearings Senator Ervin said:

> I was most encouraged to find two common threads extending throughout the testimony and statements presented to the subcommittee at that time. First, there was general agreement that speedy trial is not an unattainable goal—that it is a realistic objective within our grasp. Second, I found that a sincere desire to find a practical means to reach that goal speedily pervaded the entire record—everyone has offered constructive comment aimed at realizing our goal just as soon as practically possible.

On October 12, 1972, the Subcommittee on Constitutional Rights adopted an amendment in the nature of a substitute for S. 895 and reported the bill as amended out of the Subcommittee to the full Committee for consideration. In the October 1972 redraft the Subcommittee made six important changes in S. 895 as introduced most of which have been retained in S. 754 as adopted by the full committee:

First, although the basic provision requiring that defendants be tried within 60 days or have their charges dismissed was retained by the Subcommittee in its first redraft of speedy trial legislation, the 60-day requirement would not have become operative until 3 years after enactment. In the meantime, beginning one year after enactment, trials would have had to be held within 180 days and, beginning 2 years after enactment, trials would have had to be held within 120 days. There was considerable sentiment among witnesses at the Subcommittee's 1971 hearings that it was unrealistic to expect Federal courts to be able to conduct 60-day trials within 3 months of enactment as provided in S. 895 as introduced. The amendment adopted by the Subcommittee in October 1972 was based upon a suggestion by Senator Percy and others that the time limits be phased-in over a

number of years. The Committee's recent amendment to S. 754 lengthens that phase-in from three years to six years (see p. 34).

Second, the Subcommittee in its October 1972 revision of S. 895 added a new section 3164 which would provide that beginning three months after enactment and continuing until the 60-day provision would have been effective 3 years after enactment, detained defendants be tried within 90 days or be released from pretrial detention until trial. There was consensus among the witnesses that although immediate implementation of 60-day trials was impractical, it was important and would be feasible to provide speedy trials for detained defendants. This change is based in part upon a similar provision adopted by the United States Court of Appeals for the Second Circuit. The Committee has retained this provision of S. 754.

Third, the Justice Department suggested that section 3162 of S. 895 be amended to authorize sanctions against defense counsel responsible for unwarranted delay. The Department argued that section 3162 sanctioned government delay by providing for mandatory dismissal if trials were not commenced within the prescribed time limits and that to create a balanced bill, defense attorneys who cause unnecessary delay should be subject to some type of penalty. The provision is based upon language proposed by Senator Thurmond and in many respects is simply a codification of existing law. The Committee has also retained this provision in S. 754.

Fourth, many witnesses contended that the categorization of crimes and effective dates contained in section 3163 of S. 895 which had been derived from an Administration preventive detention bill was artificial and should be eliminated. The bill, as amended by the Subcommittee in October 1972, applied to all offenses except petty offenses. Of course, this section which has been retained in S. 754 is also subject to the phase-in of the time limits contained in section 3161.

Fifth, S. 895 would have allowed the districts considerably more time to prepare their speedy trial plans. While S. 895 as introduced allowed only 3 months to prepare for speedy trials for certain classes of crimes, S. 895 as amended by Subcommittee in October 1972, would have provided at least one year to prepare for 180-day trials and three years to prepare for 60-day trials. The Committee's most recent amendments further lengthen the planning process (see p. 47), in recognition of the need for new resources and the time needed to speed up the entire system without prejudicing important prosecution and defense interests.

Sixth, Section 3163 of S. 895 as introduced had provided a blanket exemption from the time limits for certain complex cases such as antitrust cases and organized crime conspiracy cases. The Subcommittee dropped that provision as a result of criticism by several witnesses who suggested that the provision would remove the impetus to speed up those cases at all. However, complicated cases would still be subject to much more lenient time limits because unusual complexity would be the grounds for a continuance under subsection 3161(h)(8). Therefore, under the new provision adopted in October 1972 and retained in S. 754 complicated cases would be exempted from the standard time limits and given special individualized limits in lieu thereof by court order on a case-by-case basis.

S. 754 as introduced on February 5, 1973, is identical to S. 895 as it was amended by the Subcommittee on October 12, 1972. For a more detailed discussion of the six major changes and the numerous techni-

cal changes in S. 895 made by the Subcommittee see Section VI of this report where S. 754 is compared to S. 895 as introduced.

On April 17, 1973, the Subcommittee conducted one day of hearings so that the Department of Justice might have an opportunity to clarify its position on S. 754. Speaking for the Department, Joseph Sneed, then Deputy Attorney General, set out three major areas of concern. First, the Department would have preferred that the Congress defer to the Supreme Court on the whole matter and await the impact on court delay of its recently promulgated Rule 50(b) which requires district courts to adopt speedy trial plans. Second, the Department was concerned about the flexibility of the time limits and the sanction of dismissal for failure to comply with the time limits, and third, the speed with which S. 754 would implement these time limits. These and other issues are discussed in Sections IV and VI of this report.

In response to the Department's concerns the Subcommittee adopted a number of amendments to S. 754 and reported the measure to the full Committee in April of 1974. On July 10th, the full committee reported the measure to the floor with several additional amendments, including a replacement of the dismissal with prejudice with dismissal without prejudice. (See p. 2 *supra* for a summary of the most recent amendments to S. 754.)

IV. Discussion

TITLE I—SPEEDY TRIAL

President Nixon summarized the debilitating effect of court delay upon our criminal justice system in a speech to the National Conference on the Judiciary in Williamsburg in March of 1971:

> In case after case, the appeal process is misused—to obstruct rather than to advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as a year and a half. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.
>
> The law's delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload—in other words, as some have said, to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.
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> In his perceptive message on "The State of the Federal Judiciary," Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions, not just the Federal courts.
>
> Justice delayed is not only justice denied, it is justice circumvented, justice mocked, and the system of justice undetermined.

The committee shares the President's view of the crisis in the criminal justice system. Congress must recognize that delay in the Federal criminal justice system occurs at two levels, between arrest and trial and also post trial in the appellate process. However, the Committee has concluded that from the point of view of crime control

and the constitutional rights of defendants, the most serious aspect of delay in the Federal criminal justice system has to do with the period between arrest and the commencement of trial or retrial resulting from appeal. Therefore, S. 754 is addressed to the problem of delay in commencing trial rather than delay related to the trial itself, sentencing or even the appellate process. A study by the Federal Judicial Center on delay in Federal criminal cases found that 84 percent of the delay between indictment and sentencing in the criminal cases it studied occurred between indictment and the commencement of trial. Appellate delay is a serious problem but the number of retrials resulting from successful appeals is not large because the rate of success on criminal appeals is still relatively small. Furthermore Congress has already addressed the question of delay in the Federal appellate process with the creation in 1972 of the Commission on Revision of the Federal court appellate system. Therefore, it is trial delay, not appellate delay, which has most seriously undermined the deterrent value of the criminal process, created the crisis in pretrial crime, and which must command the primary attention of Congress at this time.

In a speech in April 1973 former Attorney General Richard Kleindienst summarized very forcefully the discouraging situation in State and Federal criminal courts:

> We in the Federal system believe we are in the forefront of improvement, yet the Administrative Office for U.S. Courts shows in its latest report that the median time for disposition of a criminal case in a jury trial is 6.3 months. In some districts it runs up to 12 and 15 months. My information is that the situation is at least as bad in many state courts. In one Eastern metropolis the average time from arrest to disposition of a felony case is 6½ months, while many cases run much longer. Other studies show an average lapse of more than eight months in two different populous counties in the Midwest. I understand that in many state courts a disposition time of two years or more is not uncommon.

The Federal Judicial Center study mentioned earlier confirms the Attorney General's conclusion that there is a speedy trial crisis in the Federal courts. It found that the average delay between arrest and indictment in the busier Federal courts was over 100 days and between indictment and trial over 250 days. This suggests that delay between arrest and trial may be as long as 350 days. Another study by the Center involving many of these same Federal courts suggests that the situation has not improved over the past two years. While during fiscal year 1970, fifty-seven percent of all cases were over 3 months old at disposition, in fiscal year 1972 fifty-nine percent of all cases were over 3 months old at disposition. Unfortunately, the study only measured the time between indictment and disposition and did not include the time between arrest and disposition. If those figures were included, the situation would look much worse.

Judged by any standard the approximate one-year delay in commencing trial in Federal criminal cases reflected in the Center's statistics is a disturbing revelation. Judged by its impact upon the deterrent value of the criminal justice system, a hiatus of 10 to 12 months between arrest and trial is unacceptable. Although it is difficult to measure the deterrent effect of the criminal justice system,

one important indicator is the relationship between delay in commencing trial and the likelihood that a defendant released prior to trial as required by the Constitution will commit a subsequent crime during that period because he feels that he will never be held accountable for his first crime. The only study on this subject was conducted by the National Bureau of Standards in 1970 and indicates that if a defendant is released pretrial the likelihood he will commit a subsequent crime increases significantly if he is not brought to trial within 60 days of arrest. This suggests that if the criminal justice system is to have deterrent effect it should try defendants within two or three months, not one year, after arrest.

A second standard by which to judge these figures is the length of time within which experts feel it is feasible to commence trial in the typical Federal criminal case. Federal prosecutors, former Federal prosecutors, defense attorneys, the American Civil Liberties Union, District of Columbia judges and United States district court judges have testified before the subcommittee that in the typical Federal criminal prosecution trial can—and should—occur within approximately 2 months of arrest. As Judge George L. Hart, Jr. of the United States District Court for the District of Columbia told the Constitutional Rights Subcommittee in 1970:

> Every criminal trial except for extraordinary circumstances, should be tried within 6 weeks to 2 months, and if this were done, I would seriously doubt that you would need to amend the Bail Reform Act to provide for preventive detention.
>
> While it would be true that some crime would no doubt be committed in this 6-week to 2-month period, I think in most cases it would be at an absolute minimum.

According to Whitney North Seymour, Jr., former United States Attorney for the Southern District of New York, perhaps the busiest United States district in the country, prosecutors in his office are ready for trial within 60 days of arrest in all "short trial" cases. These cases comprising "the overwhelming bulk of cases" in his district, are defined as cases which can be tried within 3 court days. Because of this and other evidence, the committee has reached the conclusion that the goal of speedy trial should be to reduce the period between arrest and the commencement of trial to 90 days in the typical Federal criminal prosecution. The purpose of S. 754 is to achieve that goal within 7 years of enactment.

A. Causes of Delay

While there seems to be considerable consensus that the goal of achieving trials within 90 days in the typical criminal prosecution is desirable and necessary in a well-working criminal justice system, there is great controversy over how this goal should be achieved. At the heart of this controversy is a fundamental disagreement over the causes for delay.

Every expert on criminal justice delay has his own explanation. Frequently each theory reflects experience associated with a particular perspective of the observer. Defense counsel often blame delay on the prosecutors—prosecutors may blame the courts and defense counsel—and the judges often blame both sides. This was reflected

in hearings held before the Subcommittee on April 17, 1973 when the Justice Department representatives blamed unnecessary defense motions as a primary cause of delay, while Gilbert Rosenthal, past President of the National Association of Criminal Defense Lawyers, rejected that argument and accused the United States Attorney's Office in the Southern District of New York of judge-shopping.

The Subcommittee on Constitutional Rights in its three years of study of delay in the Federal criminal justice system has concluded that the causes of delay are as complex as the system itself. It recognized that the litany of blame described above will never result in a comprehensive explanation of the causes of delay because discussions among prosecutors, defense counsel and judges which accomplish no more than pointing out the failures of the others are fruitless. The major reason for this non-dialogue is that delay has become an integral part of criminal justice administration. Judges, prosecutors, and defense counsel in many jurisdictions have come to depend upon delay to cope with their workloads. As is discussed in greater detail in subsection B below, no effective statutory or constitutional incentive currently requires judges, defense attorneys and prosecutors to come to grips with their own inefficiency. Until speedy trial is statutorily mandated upon the system from the outside, along with resources where necessary to make it possible, many participants in the criminal justice process will not—and probably cannot—discipline themselves to discover the real causes for delay and to take effective steps to end delay.

Without a mandate requiring speedy trial the Subcommittee discovered that comprehensive analysis and action toward speedy trial was impossible among components of the criminal justice system. Therefore, the Subcommittee concluded that Congress could not at the present time resolve the delay problem by adopting specific criminal procedure reform proposals, an alternative discussed in greater detail in Subsection B below.[1]

A more immediately fruitful avenue of reducing delay is to eliminate the wasteful loss of time involved in moving from one stage or procedure of the pretrial process to the next. For example, in most Federal prosecutions almost half of the delay between arrest and trial is consumed awaiting indictment. This is not because the grand jury hearing itself takes weeks or months—in most cases presentation of evidence and deliberation combined is a matter of hours. However, weeks and months of delay are consumed simply waiting for a grand jury to hear the case. Similarly great and unnecessary delays are involved once the grand jury votes a bill until the papers are completed and the formal indictment is issued.

Another example of lengthy delay between proceedings was reflected in the Federal Judicial Center's speedy trial study which measured the delay between pretrial and the commencement of trial. Pretrial was defined as the point after the last substantive motion in a criminal case had been decided. Therefore, the period between that point and the commencement of trial represents delay simply awaiting a judge to hear the case or prosecutor or defense counsel prepared to begin trial. By definition neither the judge, prosecutor nor defense counsel could point to a pending pretrial proceeding as the cause of delay

[1] Without a comprehensive understanding of the "underlying causes of delay" the Subcommittee concluded that it would be irresponsible to recommend habeas corpus reform, modification of the exclusionary rule, abolition of the grand jury, enactment of an omnibus hearing procedure or more liberal pretrial discovery as a panacea for delay in criminal justice administration.

between pretrial and commencement of trial. The Federal Judicial Center found that on the average that period was 75 days. Furthermore, the Federal Judicial Center found that it took on the average 387 days simply to dismiss a case. On the whole these extraordinary delays can be blamed on two basic causes: (1) inefficient use of existing resources and (2) inadequacy of resources for courts, prosecutors and public defenders.

However, as the President said in his Williamsburg address, more prosecutors, judges, clerks, United States Marshals is not the total answer. That would simply mean more of the same. Rather, modern management techniques must be utilized by courts, prosecutors and defense counsel to control more efficiently the flow of cases from one pretrial stage to the next.

It is common knowledge that the technology for more efficient management of caseload not only exists but is presently being utilized in the Federal system. In his annual report on the state of the Federal judiciary on August 14, 1972, the Chief Justice summarized many of the important developments in this area in the past few years. First, the Institute for Court Management has been established at the University of Denver Law School. The Institute has been providing two vital services: research into court management problems and training of court personnel in the use of modern management techniques. Second, the Federal Judicial Center has been serving much the same purpose with a special emphasis on the problems faced by the Federal judiciary. A third development was the creation by Congress of the position of court executive for each of the 11 circuits to bring, in the Chief Justice's words, "modern concepts of private business and public administration into the Federal courts."

Two major contributions by the Federal Judicial Center to the cause of speedy trial in the Federal courts include the speedy trial studies and statistics mentioned earlier in this report and the development of a management information system for use in the Federal courts called COURTRAN. This system which has been placed in operation in the District Court for the District of Columbia and in the Northern District of Illinois monitors the flow of cases through the court, pointing out problem cases and helping judges and court personnel analyze and remedy causes of delay. The system was specifically designed to help courts comply with statutory time limits provisions such as those contained in S. 754.

This new research and training has already resulted in the development and application of important, new procedural techniques in the Federal judiciary. In his speech the Chief Justice mentions two innovations. The individual calendar has been adopted in a number of districts. Under this calendaring system, cases are assigned to a particular judge who is responsible for every phase of the case through post-trial motions. Therefore, responsibility for pretrail delay is clearly associated with that judge. And secondly, the omnibus hearing procedure deals with the problem of successive pretrial motions being filed on a "one-at-a-time basis" thereby delaying the commencement of trial. Under the omnibus proceeding all pretrial motions must be consolidated, filed by a certain date and heard together.

Prosecutors have also begun to use sophisticated management techniques to deal more efficiently and intelligently with their staggering caseload. A leader in this respect is the United States Attorney's Office in the District of Columbia. That office, with only about 100

assistant United States Attorneys, handles between 30,000 and 40,000 criminal cases a year. With the help of a grant from the Law Enforcement Assistance Administration that office established an automated information system called PROMIS (Prosecutor's Management Information System).

In a recent article describing PROMIS in the *American Criminal Law Quarterly* the two assistant United States attorneys who developed the system, Fred Watts and Charles Work, listed four basic pieces of information that the system is able to supply the prosecutor:

(1) Reports and statistical information on cases processed, method of disposition and attorney performance;

(2) A method of tracking defendants through the criminal justice system in order to minimize delays, crime on bail, and miscarriages of justice;

(3) A daily list of cases which would rank cases in order of urgency for conviction and identify potential problem areas, and

(4) Automated notification of witnesses concerning court appearance dates, change of trial dates, and cancellation of trials.

The Justice Department credits this new management system with being one of the major reasons for reducing the delay between indictment and disposition in the District of Columbia from 9.5 months in 1968 to 2 months in 1972.

Such management technology would be of immense value to United States Attorneys' offices elsewhere in the Federal system. There are only about 1250 staff attorneys working in United States Attorneys offices around the country, yet over 185,000 matters were brought to their attention by the Federal Bureau of Investigation and other Federal investigative agencies in fiscal year 1972. Of these 185,000 matters the United States Attorneys declined to prosecute in almost 120,000 or well over 60 percent of the cases. Obviously enormous amounts of time and energy are spent on that screening process, not to mention the management nightmare of bringing the remaining 60 thousand cases to disposition. A management information system like PROMIS would be invaluable to United States Attorneys' offices in making these critical decisions and managing this staggering caseload.

The Justice Department is now encouraging United States Attorneys' offices to adopt management information systems like PROMIS. But even if that technology is made available, the United States Attorneys must have the incentive to use it, just as the courts must have the incentive to use the new technology being made available to them. Furthermore, assuming that the technology were made available and Congress created the incentive to use it, the resources expended on prosecution of Federal criminal cases would still probably be inadequate.

Although the Federal government spends approximately $85 million on the United States Attorneys' program, that amount is disproportionately small when compared to the amount it spends investigating cases. For example, the total budget of the Federal Bureau of Investigation is almost three times that amount. There are over 7800 FBI agents but only 1200 United States Attorneys to process the cases investigated by the Bureau. It is no small wonder that the United States Attorneys' offices around the country are swamped

with work and must turn down over 60 percent of the cases brought to them by the Bureau.

Of course, the same case can be made for the inadequacy of resources for courts and defense services. Even with the implementation of every conceivable innovation, most Federal courts would possibly not be able to try criminal cases within 90 days of arrest unless there is a considerable increase in available resources. Even a three- or four-fold increase in the appropriation for the Federal judiciary would seem a small price to pay for speedy trial and an efficient criminal justice system. The whole Federal judiciary costs the taxpayer approximately $200 million annually, which is less than the total estimated cost of one nuclear-powered guided missile frigate. In view of the pressing need to improve justice and increase "law and order," quite clearly some of the resources even now allocated to improving the criminal justice system should be and can be directed toward achieving the goal of 90-day speedy trial.

In summary, the Committee has found no comprehensive analysis of the causes of delay in processing criminal cases in the Federal system. This is in part because all of those involved in the administration of criminal justice, judges, prosecutors, and defense counsel alike have come to depend on delay. Therefore, no incentive exists to find the causes of delay because there is no institutional requirement for speedy trial which applies equally to judges, prosecutors, and defense counsel. The Committee has also found that the technology has been developed for moving cases more rapidly from one pretrial procedure to the other, but without the institutional incentive for speedy trial this technology is only being used erratically and not system-wide. Finally, even if the incentive existed to find the underlying causes of delay and to utilize new technology and procedures to attack these underlying causes, additional resources would still be required for courts, prosecutors and defense services.

B. Alternative Approaches

The committee has examined four different approaches under active consideration or presently being used on both the State and Federal level to achieve speedy trial. The committee judged each alternative by one general standard—whether it could serve as a vehicle in the Federal system for the achievement of trials within 90 days of arrest for the typical criminal prosecution. More specifically the committee was searching for a scheme which would eliminate court and calendar congestion prior to trial, (1) by encouraging the Federal criminal justice system, courts, prosecutors and defense attorneys alike to search for the specific causes of delay in their own jurisdictions, (2) by encouraging those same people and agencies to agree upon a strategy for alleviating the delay problem, including the application of new management technology and other innovative procedures and (3) by providing sufficient resources to the system.

1. Simplifying pretrial procedures

The first suggested alternative for dealing with pretrial calendar congestion and delay is the proposal that certain pretrial proceedings be revised, simplified, or eliminated. For example, as early as 1931

a national crime commission suggested that the grand jury itself is an unnecessary appendage and should be abolished. Of course, at least in the Federal system, a formal abolition of the grand jury would probably require a constitutional amendment and such a proposal provokes considerable controversy.

It has also been suggested that a large amount of the pretrial delay occurring in Federal criminal cases results from pretrial motions based upon recent Supreme Court rulings. The *Miranda* opinion, the various search and seizure cases, the *Wade-Stoval* line of cases on identification, and other rulings during the past decade have no doubt made the prosecution of Federal cases more complex. Therefore, some reformers advocate Federal legislation which would restrict or modify these requirements as a means of reducing pretrial delay.

Despite years of controversy, however, the actual impact of these Supreme Court decisions upon pretrial delay in Federal cases is unclear. For example, there are no statistics indicating how frequently motions based upon these cases are actually filed in Federal criminal cases. A forthcoming study by the Federal Judicial Center on this subject should shed some light upon whether defense attorneys are actually filing more pretrial motions as a result of these court decisions or whether defense attorneys rarely have grounds for such motions. It stands to reason that the latter might be the case because of the professionalism of the Federal Bureau of Investigation which only very infrequently subjects a defendant to a search, identification, or confession in violation of the Supreme Court's rulings.

Until these questions are resolved, it would be unwise to consider legislation which would modify or restrict these procedures. Furthermore less controversial alternatives exist. As in the case with grand jury delay, hearings on these matters are usually rather summary. Delay caused by the motions result from the time waiting for a judge to hear the motion and is not usually caused by the hearing itself. At this time the more fruitful course is to encourage the courts and United States Attorneys to adopt innovations such as the omnibus hearing and modern management techniques which are designed to reduce delay in procuring a hearing rather than attempt to eliminate the hearing altogether.

The Justice Department has made a proposal along the same lines in regard to habeas corpus petitions. In testimony on S. 895 before the Subcommittee on Constitutional Rights in September 1971, the Department pointed to the alarming increase in the number of petitions filed by State and Federal prisoners for collateral relief in the Federal courts. The Department proposed legislation restricting the jurisdiction of the Federal courts to entertain the petitions. In 1950 there were 672 such petitions filed in the Federal courts, while in 1971 the number had grown to over 9,000. While the alarming increase in prisoner petitions has had an important impact upon the workload of the Federal courts, its impact on delay in commencing criminal trial may not be as significant as one might suspect. This is because a habeas petition only contributes to the speedy trial problem if it actually results in a hearing or is successful. However, the number of hearings resulting from habeas petitions is not significant and according to the Administrative Office of the United States Courts, the success rate on petitions is less than 5 percent.

Furthermore the amount of time actually spent by judges on these petitions is minimal. A time study conducted by the Federal Judicial Center indicates that the average district judge actually spends less than 5 percent of his time on prisoner petitions. Furthermore, reform of the Federal habeas corpus statute probably should be considered in the context of the friction it causes between State and Federal courts, and the necessity for improving post-conviction review procedures, rather than in the context of reducing court burdens.

Elimination of certain pretrial procedures no doubt will reduce some of the time it takes to bring a case to trial. But all such proposals including these of the Justice Department to reform habeas corpus procedures and to alter the exclusionary rule, produce great debate and controversy. In terms of reducing delay, the time it would take to effectuate such changes through Congress may be far greater than the savings in time eventually achieved. And most important for our purposes here, none of these proposals touch upon the most immediate and least justified cause of delay—inefficient management of resources. No matter how many pretrial procedures are challenged, certainly a minimal number are constitutionally required and would have to be retained. As long as there are such procedures, there will be congested calendars associated with the procedures and therefore substantial pretrial delay. The committee sees greater immediate gain by applying good management techniques to the congested calendars associated with the pretrial procedures first, and leaving the question of which procedures should be eliminated until later.

2. Judicial interpretation of constitutional speedy trial provisions

Although few jurisdictions have relied upon the first alternative—eliminating certain pretrial procedures—the second approach has been tried in most States. This traditional approach to the speedy trial problem involves interpretation of a State constitutional provision requiring speedy trial usually based upon language similar to that contained in the sixth amendment to the United States Constitution. The evidence of the failure of this approach is overwhelming, especially on the Federal level where in over two-thirds of the criminal cases there is a more than 90 day lag between indictment and disposition.

The reason for the failure of the courts to achieve speedy trial through case-by-case interpretation of constitutional speedy trial provisions is quite simple. Both State and Federal judges who interpret these provisions usually do not act unless called upon by the defendant. Only very rarely is it in the defendant's interest to seek speedy trial, for in most cases it is the last thing he wants. Most defendants realize that delay inures to their benefit while speedy trial may mean speedy incarceration of the guilty.

Furthermore, State and Federal courts interpreting constitutional speedy trial provisions have placed so many burdens upon the rare defendant who seeks a speedy trial that such motions rarely succeed. In a recent case, a North Carolina court summarized very succinctly the prevailing rules applied to the constitutional concept of speedy trial as viewed by the courts:

> [u]ndue delay cannot be defined in terms of days, months, or even years. The length of the delay, the cause of the delay, prejudice to the defendant and waiver by the defendant are interrelated factors to be considered in determining whether a trial has been unduly delayed. The burden is on the accused who asserts the denial of his right to a speedy trial to show that the delay was due to the neglect or willfulness of the prosecution. [*State* v. *Ball* 277 N.C. 714, 717, 178 S.E. 2d 377, 380 (1971)]

A speedy trial motion usually succeeds only after all of the following requirements are met: First, the defendant cannot simply rely upon a showing of lengthy delay. The courts have held that the sixth amendment right is relative and that no precise time limit is constitutionally required. Therefore lengthy delay between indictment and trial by itself is not determinative. Second, the defendant must not be the cause of delay. Even if the prosecution is the cause, the defendant must prove that delay was "purposeful or oppressive." Third, in most cases, a defendant must also prove that he was prejudiced by delay. To show prejudice, a defendant must demonstrate that his ability to prepare his defense has been undermined in particular, and not merely in general terms. Fourth, under traditional constitutional doctrine, an accused impliedly waives his right to a speedy trial if he does not assert it during the period of delay.

In addition to these factors which have prevented an effective court-developed rule for insuring speedy trials, there are other more general reasons why case-by-case adjudication is not satisfactory. First, the sixth amendment is a right of the community as well as of any particular defendant. There are reasons for enforcing speedy trial which go far beyond the particular interest of any one individual. The administration of justice is the most sacred function of government, and the failures of our criminal justice system which are reflected in intolerable criminal justice delay are a responsibility of Congress, not of individual litigants.

Second, the factors which cause delay are endemic to the criminal justice system, and are not susceptible to remedy by decisions in individual cases. While the sixth amendment remains to protect against isolated abuses, general legislation such as S. 754 is required to attack the problem in its entirety.

Third, trial delay as already suggested, is not simply a matter of "purposeful" delay by the prosecution or defense counsel. Rather it is a product of the joint failure of court administration, judges, the prosecution, the defendant, defense attorneys, and Congress as well, and remedies must be designed with this in mind.

Quite clearly, the case-by-case approach cannot, and should not be expected to solve the problem of court delays.

3. Statutory time limits plus dismissal sanction

In the face of the failure of the case-by-case approach, some States have recognized that the criminal justice system itself has an affirmative duty to the defendant and to society in general to assure speedy trial in criminal cases. Instead of predicating speedy trial upon the rare defendant who seeks it by motion, these States have established strict time limits within which criminal trials must commence.

In these States, a statute sets a maximum number of days within which certain events in the criminal process must take place. For example, in California, trial must occur within 60 days of filing of information; in Illinois, within 120 days of arrest; in Iowa, within 60

days of indictment. The statutes also exclude certain periods of time from the time limits—for example, time consumed by certain pretrial proceedings and most of the statutes allow exclusions for "good cause".

Many of the statutory schemes require that the criminal charge against the defendant be dismissed if trial does not commence within the time limits. Indeed the English Habeas Corpus Act of 1679 required that trials be commenced within a time certain on the pain of dismissal, although the dismissal was not with prejudice. Most of the older speedy trial statutes modeled after the Habeas Corpus Act also provide for dismissal, but without prejudice.

The American Bar Association Minimum Standards on Speedy Trial recommend that if a defendant has not been brought to trial within the time limits, the charges be dismissed with prejudice. Many of the more recent State speedy trial statutes take the same position (e.g. Florida, New Mexico, Illinois, and New York). The necessity of a mandatory dismissal with prejudice provision was stated quite succinctly in the commentary to section 4.1 of the American Bar Association's Speedy Trial Standards:

> The position taken here is that the only effective remedy. for denial of speedy trial is absolute and complete discharge. If, following undue delay in going to trial, the prosecution is free to commence prosecution again for the same offense, subject only to the running of the statute of limitations, the right to speedy trial is largely meaningless. Prosecutors who are free to commence another prosecution later have not been deterred from undue delay.

The committee agrees in principle with the ABA's conclusion. Although, a mandatory dismissal with prejudice sanction is not included in S. 754 the bill provides for dismissal with a subsequent prosecution only in the most "exceptional circumstances" (see section 3162).

Of course, the dismissal sanction is not only a deterrent for unwarranted prosecutorial delay. It also works as a powerful sanction against inefficient use of judical resources. Professor Lewis Katz of Case Western Reserve Law School in his book *Justice Is the Crime—Pretrial Delay in Felony Cases* describes the effect that the dismissal sanction will have upon prosecutors and judges:

> Dismissals for failure to comply with the statute will require explanations to the public from judges and prosecutors; if a significant number of dismissals occur, demands for explanation will not be long coming.

Furthermore, the dismissal sanction also creates an incentive in the defendant and his counsel to seek speedy trial. The prosecutor and judge know that they must move cases within the time limits or face the consequence of dismissal.

However, if the judge and prosecutor have agreed upon effective speedy trial procedures and are adequately funded, then few defendants will succeed on their dismissal motions. In California, which has had a statute providing speedy trial time limits plus dismissal sanction for over 100 years, there are very few dismissals.[2] For

[2] According to a memorandum submitted to the Subcommittee by Judge Winslow Christian, then Director of the National Center for State Courts.

example, in San Diego there are only about three or four speedy trial dismissals out of approximately 17,000 criminal filings in one year. The time limits plus dismissal sanction provision has been very effective in encouraging judges, defense attorneys and prosecutors to work together in good faith to achieve speedy trial. Most importantly, it has encouraged the state legislature to make sufficient resources available to the California criminal justice system to avoid the embarrassment of mass dismissals under the speedy trial statute.

4. Judicially imposed time limits plus dismissal sanction

In recent years a number of State court systems and the Federal court system itself have promulgated their own set of speedy trial rules including time limits and, in several cases, the sanction of dismissal with prejudice for failure to meet the limits. In some cases, like Florida, the State legislature specifically delegated to the State court system the authority to promulgate such rules. In other States, like New York, the courts acted on their own, adopting tough rules which forced the State legislature either to appropriate enough money for the criminal justice system so that it might comply with the rules, repeal the rules, or replace them with a more moderate alternative.

On January 5, 1971, the Judicial Council for the United States Court of Appeals for the Second Circuit announced its intention to place into operation six months hence a set of rules requiring the prompt disposition of criminal cases. In essence, the rules require the Government to be ready for trial within six months of arrest if the defendant is not detained, and within 90 days if he is detained. The rules also allow a number of the traditional exclusions (i.e. for certain pretrial proceedings), suggested by the American Bar Association Standards, and contained in many of the modern speedy trial statutes. The rules also contain a mandatory dismissal sanction if the United States Attorney is not ready for trial within the prescribed time limits.

Although the Federal Rules of Criminal Procedure at that time contained general speedy trial admonitions in Rule 48, the Second Circuit rules represent the first effort to apply time defined limits plus a mandatory dismissal sanction in Federal criminal cases. Within a few months of the promulgation of the Second Circuit rules, the Chief Justice announced his intention to propose an addition to the Federal Rules which would encourage district courts to promulgate similar rules. On April 25, 1972, the Supreme Court sent to Congress its proposed amendments to the rules which contained a new rule, Rule 50(b), which reads as follows:

> Rule 50. Calendars; plan for prompt disposition
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> * * * * * * *
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> (b) Plan for achieving prompt disposition of criminal cases.—To minimize undue delay and to further prompt disposition of criminal cases, 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 a plan for the prompt disposition of criminal cases which shall include rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place, means of reporting the status of cases, and such other matters as are necessary or proper to

> minimize delay and facilitate the prompt disposition of such cases. The district plan shall include special provision for the prompt disposition of any case in which it appears to the court that there is reason to believe that the pretrial liberty of a particular defendant who is in custody or released pursuant to Rule 46, poses a danger to himself, to any other person, or to the community. The district plan 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 the district court may designate. If approved 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. 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. Each district court shall submit its plan to the reviewing panel not later than 90 days from the effective date of this rule.

Before adopting Rule 50(b) the Judicial Conference considered a more substantive alternative. In March 1971 the Conference circulated a draft amendment to Rule 45 which would have set specific time limits for various stages in the criminal process—for example, a 90-day limit between arraignment and trial for detained defendants and 180 days for released defendants. Failure to meet these time limits would not, however, have required dismissal with prejudice. Evidently, the Judicial Conference chose the district plans approach embodied in Rule 50(b) because it provided greater freedom of choice for the individual district courts and because of a proper reluctance to adopt a substantive speedy trial rule through amendment of the Criminal Rules of Procedure. Understandably, the Judicial Conference left the consideration of such changes to the Congress where it properly belongs.

The new rule was inspired by the Second Circuit's action and is based, in part, on a provision of S. 754, which requires district court, to develop their own speedy trial plans. The Federal Judicial Centesr the research arm of the Federal courts, has developed a model plan and a number of district courts have submitted plans which are even stricter than the model plan. For example, while neither Rule 50(b) nor the model plan require or even suggest, a mandatory dismissal sanction as is contained in the Second Circuit rule, the Northern District of Illinois has submitted a plan pursuant to Rule 50(b) which is very similar to the Second Circuit rules and which also contains a mandatory dismissal provision.

Rule 50(b), the Second Circuit rules, and the various responses to both in the district courts and courts of appeal elsewhere in the Federal system are significant contributions to the cause of speedy trial. However, at the same time, their effect upon the separation of powers between coordinate branches of government should not be a subject of rejoicing by Members of Congress. For, in effect, the Supreme Court and the Second Circuit are doing what, under the Constitution, the Congress should be doing—legislating a solution to the problem of court delay. As Justice Douglas said in his dissent to the promulgation of Rule 50(b):

> There may be several better ways of achieving the desired result (speedy trial). This Court is not able to make discerning judgments between various policy choices where the relative advantage of the several alternatives depends on extensive fact-finding. That is a "legislative" determination. Under our constitutional system that function is left to the Congress with approval or veto by the President. (406 U.S. 981)

In the past Justice Black refused to concur in the promulgation of Federal Rules of Prodecure which went beyond what he termed "housekeeping details." In 1962 he dissented from the promulgation of procedural rules because they, "determine matters so substantially affecting the rights of litigants in lawsuits that in practical effect they are the equivalent of new legislation which, in our judgment, the Constitution requires to be initiated in and enacted by the Congress and approved by the President."

In the past few months Congress has become increasingly wary about the Supreme Court's promulgation of rules which go beyond "housekeeping details." For example, in the first few months of the first session, Congress enacted legislation which required affirmative Congressional ratification of the Rules of Evidence promulgated by the Supreme Court under the Rules Enabling Act, on November 20, 1972. By overwhelming votes both the Senate and the House warned the Supreme Court to exercise greater care in promulgating rules of procedure.

The Court, in adopting Rule 50(b), has not imposed tough constraints upon the district courts, prosecutors or defense attorneys. The model rules prepared by the Judicial Conference and adopted by most district courts in response to Rule 50(b) recognize that the courts have limited power under the Rules Enabling Act. They also confirm the fact that judges will not force themselves and cannot force their overworked colleagues in the United States Attorneys Office or the Public Defenders Office to move cases more rapidly without an explicit mandate from Congress. The model rules promulgated under Rule 50(b) generally give to the prosecutor considerable discretion to set his own time limits for preparation of the government's case.

Furthermore, the courts have not imposed strict time limits upon themselves in Rule 50(b). The model rules would require trial within approximately six months for released defendants. That is hardly "speedy trial" in the Committee's view. What is more, that 180 day period is measured from indictment and not from arrest. The Federal Judicial Center statistics mentioned earlier show that there may be months additional delay between arrest and indictment in a majority of Federal criminal cases. Thus the 50(b) model plan promises little improvement in overall delay. The model plan does provide for much shorter time limits for defendants in custody. But in the Federal system, most defendants are required to be released prior to trial pursuant to the Bail Reform Act in any case.

A report prepared for the Administrative Office of the United States Courts in a Criminal Justice System Workshop paper at Yale Law School by Mr. Andrew H. Cohn and made available to the Subcommittee on Constitutional Rights has analyzed the initial Rule 50(b) plans submitted by 92 district courts (see p. 220 of the subcommittee's 1973 hearings). This study shows that while the average time limits adopted by the district courts are somewhat shorter, most of the districts adopted the time limits proposed in the Model Plan. Most of the districts surveyed included provisions granting broad discretion with regard to granting extensions of the time limits. The report's comparison of the submitted plans for 20 districts and the current actual court-processing time in those districts shows that district plan arraignment time limits are strongly correlated with the time currently used for this process. In addition, the comparison shows that the district time limits for the period between arraignment and trial for defendants not in custody corresponded to the delay presently experienced in these districts. The arraignment to trial time limits for defendants in custody were found to vary proportionately with the case load of the particular court. Thus, the effect of the plans submitted under Rule 50(b) has not been to substantially decrease the delays currently experienced in the district courts but to tend to preserve the status quo.

The explanation for the failure of the rulemaking approach to achieve speed in trials is obvious. The courts do not have the authority to impose speedy trial upon the other components of the criminal justice system and cannot provide additional resources to understaffed courts, prosecutors and public defender agencies by adopting rules.

C. Approach Adopted by the Committee in S. 754

Of the four alternatives, the Committee has decided that a statutory approach has the most promise of affecting a significant improvement in speedy trial. Trial delays provide the impetus for those who urge simplification of procedural rules, but it is not persuasive to argue that such rule changes will by themselves eliminate delay. The failure of a "common-law" approach should be obvious since case-by-case adjudication cannot affect major institutional reform even if the courts were willing to impose the requirements on themselves. Judicial caution, plus the unsuitability of the rule-making process for deciding substantive policy issues, makes reliance on the Rules Enabling Act not only inappropriate but inadequate. Quite clearly there is no reason for Congress to avoid exercising what is unquestionably a legislative function and duty to secure the Sixth Amendment right.

Congress has the power under the "Necessary and Proper" Clause of Article I, Section 8, as well as Article III of the Constitution to enact legislation which implements the speedy trial requirement contained in the Sixth Amendment. Congress has on many occasions enacted legislation which implemented other constitutional provisions, for example, the Criminal Justice Act (right to counsel) and the Bail Reform Act (right to reasonable bail). The fact that the Supreme Court in a number of recent cases has not been willing to go quite as far as S. 754 in interpreting the speedy trial provision should not deter Congress from legislating in the area. Indeed, the Court should exercise considerable restraint in interpreting the Sixth Amendment as long as it has little guidance from Congress. None of the Supreme Court's rulings in the speedy trial area go to the question of Congress' power to enact S. 754. They only address the question of a defendant's constitutional right to speedy trial in the absence of legislation such as S. 754.

Many of the substantive features included in the court rule schemes, the Second Circuit rules, Rule 50(b), the New York and Florida State court rules, have been incorporated in S. 754. The most attractive feature in these schemes is that they place upon the criminal justice system an affirmative duty to provide speedy trial for the benefit of society and the defendant. The first step in encouraging the criminal justice system to learn to use existing resources more efficiently and to commit more resources to the system is to enunciate that affirmative duty by statute. Enactment of S. 754 would represent Congress' judgment that the Sixth Amendment requirement of speedy trial is to be defined as trial within 90 days of arrest for the average noncomplex criminal case.

S. 754 provides that in the seventh year after enactment of the bill all Federal criminal trials will be subject to a 30-day time limit between arrest and indictment and a 60-day time limit between indictment and commencement of trial. Failure to meet these time restrictions would result in the dismissal of the case. It is important to note that the dismissal sanction and the 90-day combined time limit will not be effective until the seventh year after enactment of the bill. The impact of mandatory time limits and sanctions for noncompliance is cushioned by allowing a six year phasing-in period during which less stringent sanctions and time limits will apply.

The bill does more, of course, than merely impose prosecution limits on the Federal criminal trial. It has carefully constructed exclusions and exceptions which permit normal pre-trial preparation in the ordinary noncomplex cases which represent the bulk of business in the Federal courts. The bill also accommodates complex cases which require long periods of preparation by prosecutors and defense counsel. While the bill does not automatically exclude certain criminal trials by type, it does set forth a method by which the complex case can be identified. The bill also provides for unusual circumstances which may demand exceptions to the normal time limits. In order to avoid the pitfalls of unnecessary rigidity on the one hand, and a loop-hole which would nullify the intent of the legislation on the other, a balancing test is established in order to enable the judge to determine when the "ends of justice" require an extraordinary suspension of the time limits.

A key aspect of the legislation is the imposition of sanctions, primarily that of dismissal, for failure to meet the limits specified. The mere existence of the technology necessary to unclog the court calendars and even the existence of court personnel trained in that technology will not by themselves result in speedy trial. Only when the system is committed to the goal of speedy trial will these techniques and personnel be put to work. That will not happen unless judges, prosecutors and defense counsel are held accountable for the failure to achieve speedy trial. The most effective means is through the use of sanctions. The dismissal sanction has the effect of compelling judges

and prosecutors to choose between speedy trial or no prosecution whatsoever. The sanctions in S. 754 for defense counsel are designed to remind them that there is no "constitutional right" to delay trials for the purpose of frustrating justice.

Sanctions alone are not necessarily sufficient. There will not be dramatic movement toward speedy trial unless both the courts and the prosecutor's office are covered by the time limits. This is not the case in most of the schemes which the Committee has examined. Cases in point are the Second Circuit rule and the statute recently adopted in New York. In both, time limits plus a dismissal sanction have been adopted, but the sanction applies only where the prosecutor is not ready for trial within the time limits. The "ready rule" means that even if the prosecution is prepared to go to trial the sanction cannot be applied if the court is so congested that it cannot provide a judge to hear the pretrial motions or conduct the trial. The effect of this provision is to allow court congestion to nullify the speedy trial rules. Other speedy trial plans allow for suspension of the time limits and exclusions for "good cause" which has been interpreted to include court congestion. S. 754 is drafted in such a way as to avoid these pitfalls. Under the bill the dismissal sanction applies even if there is court congestion, for that is the very problem the bill is designed to address.

Of course, it would be grossly unjust to legislate a scheme of time limits without exceptions for congestion, if there were no method for providing resources for the courts to deal with their overloaded dockets. Where there is no link between a speedy trial requirement and the appropriation process, the courts and the prosecutors are faced with the option of fierce public reaction resulting from wholesale dismissals for failure to meet the time limits or simply ignoring the rule.

S. 754 provides the vital link with the appropriations process through an elaborate planning and reporting process by the district courts. Each district court devises a speedy trial plan. The plans required by the bill would also summarize any additional resources necessary in the court, the United States Attorney's Office, and the Public Defender Office. These reports are summarized and approved by the Judicial Conference which submits a nation-wide master plan to the Congress.

This is the mechanism which will enable the Federal criminal justice system to prepare for the achievement of 90-day trials and for Congress to provide the necessary resources for additional judges, prosecutors, public defenders and management technology. Furthermore, S. 754 does not impose the time limits immediately upon the Federal system but delays their effective date until seven years after enactment. The bill requires the Chief Judge in each District to sit down with the United States Attorney, the Public Defender, or attorneys active in the defense in criminal cases if there is no Public Defender, and agree upon a seven-year strategy to comply with the 90-day trial requirement. Faced with the inevitability of Congress' mandate, the parties will have to work in good faith to formulate a plan—agreeing upon what innovative procedural rules and new management systems to adopt and itemizing the essential new resources necessary to meet the Congress' mandate. The plan would require a careful study of the causes of delay in that court, the adoption of those innovations which will meet the peculiar needs of the court, and a budget requesting the

necessary additional resources. These plans will help the system to allocate existing resources more efficiently and to present Congress with a precise statement of what more is needed and how it will be used.

At that point the courts, the prosecutors and the public defenders will have done all in their power to achieve speedy trial. They will have agreed to a 7-year plan during which 90-day trials in the average simple Federal prosecution would be phased-in. Then the responsibility will be on Congress, where it ultimately must reside.

The Congress will have two alternatives. It can appropriate to the criminal justice system those additional resources which are proved to be necessary to achieve the goal set by law in this bill. If the criminal justice system has fulfilled its responsibilities to the statute, to the Sixth Amendment, and to justice, any failure of Congress to do its part will be evident. Congress would then have to bear the burden of imposing obligations on others, while failing to meet its own.

The advantage of this approach is evident. In the past, each of the parties—the courts, the prosecution, the defense, and the Congress—have been able to avoid the problem of court delay by pointing out the failures, real or imagined, of the others. Judges have not improved procedures in the courts. Rather, they have repeatedly asked for more judicial appointments as the easy solution. Congress, reluctantly, has granted some of these requests always seeking vainly some solution other than the unending request for more judges. Courts, failing to get all they wish from Congress, point to this as a reason for trial delay. This litany of blame is duplicated in disputes between prosecutors and defense counsel. The simple answer is that trial delay is not to be laid at one door, but at all. S. 754, by imposing responsibilities on all parties, and sanctions on them as well, seeks to break through this fruitless circle of fingerpointing and waste of resources.

The approach adopted in S. 754 has been carefully tailored to remedy the failures of past efforts. The time limits provisions plus the phase-in and planning process will encourage courts, prosecutors and defense attorneys to search for specific causes of delay in their own jurisdictions and to agree upon a strategy for alleviating the delay problem. Hopefully it will result in the application of new management technology and other innovative procedures. Finally, and perhaps most importantly, this planning process should provide Congress with a mechanism for adopting an intelligent and economical budget and strategy for speedy trial—providing courts, prosecutors and defense services with the additional resources necessary to make the strategy work.

D. Conclusion

The approach adopted by the Committee in Title I of S. 754 has been carefully tailored to meet the criteria it set out for analysis of speedy trial schemes at the beginning of Subsection B above. The time limits provisions plus the phase-in and planning process will encourage courts, prosecutors and defense attorneys to search for specific causes of delay in their own jurisdictions and to agree upon a strategy for alleviating the delay problem and hopefully will result in the application of new management technology and other innovative procedures. Finally, and perhaps most importantly, this planning

process should provide Congress with a mechanism for adopting an intelligent and economical budget and strategy for speedy trial—providing courts, prosecutors and defense services with the additional resources necessary to make the strategy work.

If title I of S. 754 is enacted, it will represent a commitment on the part of the Government to the proposition that the efficient administration of criminal justice is worth any reasonable cost. As has already been suggested, the committee would not find even a three- or four-fold increase in the expenditures on the Federal judiciary extravagant on condition that the resources are efficiently used. However, speedy trial is not likely to be that expensive. The subcommittee heard testimony that in the busy Central District of California the average criminal case is disposed of within 60 days of indictment without the expenditure of any additional resources. In the Southern District of New York, also one of the six or seven busiest Federal districts, the United States prosecutor is ready for trial within 60 days of arrest in the typical criminal case—the type intended to be covered by S. 754.

The "resource" which appears to be lacking until now, and which has been supplied in these court systems, is simply that of will. When there is a desire to achieve speedy trial, the necessary ingredients are apparently easy to find. Absent a genuine desire for speedy trial, there are no incentives on any of the participants to improve the situation. Speedy trial is not self-enforcing. S. 754 will provide the incentive by announcing a clear and definite national policy that trials are to be commenced within 90 days of arrest or receipt of summons. With that national policy announced, as only congressionally enacted law can declare it, the committee is confident that relatively little in additional funds will prove necessary.

TITLE II—PRETRIAL SERVICES AGENCIES

The second title of S. 754 like the first, is designed to improve the efficiency and deterrent of the criminal justice system. More specifically it is designed to reduce the likelihood that defendants released pretrial will commit a subsequent crime before trial commences. While trials within 90 days would be the surest means of reducing pretrial crime, the committee is of the view that more careful selection of pretrial release options for defendants and closer supervision of released defendants would also reduce pretrial crime.

Defendants in the Federal system are released prior to trial pursuant to the Bail Reform Act of 1966. Although there are no statistics on the operation of the Bail Reform Act outside the District of Columbia, it is common knowledge that many Federal judges are reluctant to release defendants pursuant to the act and all too often when they do, defendants either commit subsequent crimes or become fugitives. This situation exists because district courts do not have personnel to conduct interviews of arrested defendants so that judges can make informed decisions as to whether to release defendants. Furthermore, outside the District of Columbia, there is no agency charged with supervising bail conditions for defendants released prior to trial. Therefore, even if a defendant is released on his own recognizance prior to trial on a condition set by the judge, for example that the defendant

refrain from associating with certain persons or that he not use narcotic drugs, there is no agency charged with assuring compliance with the judge's order.

Judges without sufficient information on a defendant's eligibility for pretrial release either detain the defendant until trial or guess at the defendant's likelihood to remain in the jurisdiction. When the court takes the former course, it, in effect, ignores both Federal law and constitutional requirements that a defendant be released prior to trial. Furthermore, pretrial detention is an enormous fiscal burden upon the judicial system. It costs approximately $7 to $10 a day for the Government to detain a defendant. If a defendant is detained for 6 months prior to trial, which is not unusual in the Federal system, the total cost to the Government is between $1,250 and $1,800 for just one defendant.

If the court takes the latter course, and guesses at the defendant's likelihood of flight, it risks releasing a defendant who will flee the jurisdiction. Indeed, recent statistics compiled by the Administrative Office of the United States Courts suggests that the number of fugitives has increased dramatically in recent years and that fugitive defendants may be one of the most significant causes of delay in the Federal courts. According to the report, "Nationally, 57 percent of the criminal cases pending one year or more involved a fugitive defendant." The trend in the number of fugitives in the Federal courts is reflected in the report's finding that in 1968 there were only 1,495 cases pending for more than a year involving a fugitive defendant while in 1971 there were 4,124 such cases.

Title II of S. 754 would attempt to alleviate the fugitive problem by providing 10 Federal districts on a demonstration basis with sufficient resources to both conduct bail interviews and supervise conditions of release. A pretrial services agency, similar to the District of Columbia Bail Agency, would be established in each of these districts. This approach, which has been applauded by almost everyone testifying or commenting on S. 754, is based upon the experience of the Bail Agency in enhancing the operation of the Bail Reform Act in the District of Columbia.

V. Section-by-Section Summary

TITLE I—SPEEDY TRIAL

Section 101. Title 18, United States Code is amended by adding immediately after chapter 207 a new chapter 208, as follows:

CHAPTER 208—SPEEDY TRIAL

Section 3161 time limits and exclusions

Subsection 3161(a) requires the judge to set a date certain for trial, at the earliest practicable point in the process. The date is set upon consultation with the prosecutor and defendant.

Subsection 3161(b) sets a 30-day limit on the period between the filing of a complaint or an arrest and the filing of an information or indictment based on the complaint or arrest. Informations or indict-

ments could not be brought after the 30-day limit. The time limit imposed by this subsection is subject to the allowable delays as set forth in Subsection 3161(h).

Subsection 3161(c) requires that trial must commence within 60 days of the date of the filing of an indictment or information. Combined with the 30-day arrest to indictment time limit imposed by subsection 3161(b), the total period between arrest and trial allowed by S. 754 would be 90 days.

Subsection 3161(d) allows the time limits imposed by subsections 3161(b) and (c) to begin to run afresh should an indictment or information be dismissed upon defendant's motion on grounds other than nonconformance with the speedy trial time limits, and a subsequent complaint charging the defendant with the same offense or with an offense based on the same criminal conduct or episode is filed.

Subsection 3161(e) provides for time limits where there is a mistrial or where the defendant succeeds in collateral attack or appeal. As a general matter the provision requires that if the Government decides to retry the defendant in any of these situations the time limits begin to run on the day that the order occasioning the retrial becomes final.

Subsection 3161(f) provides that the 30-day arrest to indictment time limit required by subsection 3161(b) will not take effect immediately upon enactment. Instead, it will be phased in, along with the sanctions for failure to comply with the time limits, over a seven year period. During the second year after enactment, the arrest to indictment time limit will be 60 days.[3] During the third and fourth years after enactment, the time limit will be 45 days. Thereafter, the 30-day time limit specified in subsection 3161(b) will be in effect. (See Calendar of Implementation, Chart 1, p. 55).

Subsection 3161(g) provides that the 60-day indictment to trial time limit required by subsection 3161(c) will not take effect immediately upon enactment. The 60-day indictment to trial time limit will also be phased in over a seven year period. For the second year following enactment, the time limit will be 180 days. For the third and fourth years the time limit will be 120 days. For the fifth year and thereafter the time limit will be the 60 days required by subsection 3161(c), although the accompanying phase-in of sanctions will not make the dismissal sanction mandatory until the seventh year. (See Calendar of Implementation, Chart 1, p. 55).

Subsection 3161(h) excepts from the time limits imposed in subsections 3161(b) and (c) the following periods of delay:

(1) Delays caused by proceedings relating to the defendant such as hearings on competency to stand trial, hearings on pretrial motions, trials on other charges, and interlocutory appeals;

(2) Delays caused by deferred prosecution upon agreement of defense counsel, prosecutor, and the court for the purpose of demonstrating the defendant's good conduct;

(3) Delays caused by absence or unavailability of the defendant;

[3] Because section 3161 does not become effective until one year after enactment, S. 754 refers to the second year after enactment as the "first twelve calendar month period after the effective date", the third year after enactment as the "second twelve calendar month period after the effective date", etc. For the purposes of discussion this report refers to the years in terms of years after enactment, not years after the effective date.

(4) Delays resulting from the fact that the defendant is incompetent to stand trial;

(5) Delays resulting from the treatment of the defendant pursuant to the Narcotic Addict Rehabilitation Act;

(6) Delays between the dropping of a charge and the filing of a new charge for the same or related offense;

(7) Reasonable periods of delay when the defendant is joined for trial with a codefendant, and neither defendant has shown good cause to grant a severance; and

(8) Any other delay resulting from a continuance granted at the request of defense or prosecution upon a finding of the judge that the ends of justice cannot be met unless the continuance is granted. The judge must balance the right of the defendant and the interest of the public in speedy trial against the "ends of justice", and set forth in the record his reasons for granting the continuance.

Subsection 3161(i) provides that where a defendant pleads guilty and then withdraws his plea that the time limits commence again on the day the plea is withdrawn.

Section 3162 sanctions

This section declares that if the case is not brought to trial within the prescribed period the charges shall be dropped and that a subsequent prosecution can only be brought in the limited circumstance where the Government can establish "exceptional circumstances." Dismissal with limited reprosecution would only be imposed beginning the seventh year after enactment, but dismissal without limitation on reprosecution would be imposed during the fifth and sixth years after enactment. If either prosecutor or defense counsel is responsible for intentional delay, he may be subject to sanctions including fines, penalties and a withdrawal of the right to practice for as long as three months.

Section 3163 effective dates

This section, when read with subsections 3161(b) and (c), implements the phasing-in of the time limits. The result is a seven year graduated phase-in of the time limits during which the time limits between arrest and trial are shortened and the sanction for failure to meet the time limits becomes more severe. (See Calendar of Implementation, Chart 1, p. 55.)

Section 3164 interim limits

This section would require jurisdictions to implement interim time limits within three months of enactment, to remain in effect until the effective date of the time limits of subsections 3161(b) and (c). (See Calendar of Implementation, Chart 1, p. 55.) These interim plans must provide that all detained defendants and all released defendants considered to be "high risk" by the United States attorney be tried within 90 days. The sanction for failure to try detained defendants within 90 days would be release, and "high risk" defendants would have their release conditions automatically reviewed.

Section 3165 planning process

This section requires that each United States judicial district form a planning group within 60 days of the effective date of this Act for the purposes of the initial formulation of the district plans required by Sections 3166 and 3167 and the continued study of the criminal justice system in the individual district.

Section 3166 district plans—generally

Subsection (a) of section 3166 requires each District court, upon approval of the judicial council of the circuit, to submit three plans for the trial of cases in accordance with section 3161 to the Administrative Office of the United States Courts. The first plan is to be submitted one year after enactment and would plan for the courts' compliance with the time limits required for the third and fourth years following enactment, during which the 45 days arrest to indictment and 120 days indictment to trial time limits are in effect. The second plan is to be submitted three years after enactment and would plan for compliance with the time limits required for the fifth and sixth years following the effective date of the act, during which the 30 days arrest to indictment and 60 days indictment to trial time limits are in effect. The final plan is to be submitted five years after enactment and would plan for compliance with the combined dismissal sanction and the time limits required for the seventh and following years. (See Calendar of Implementation, Chart 1, p. 55.)

Subsection (b) requires the chief judge of the Superior Court of the District of Columbia, upon approval of the Joint Committee on Judicial Administration to submit three plans for the trial of cases in accordance with section 3161 of the Act. These plans would be submitted to the Administrative Office of the United States Courts at the same time as the plans required by Subsection 3166(a) and would be formulated after consultation with the Joint Committee and the criminal justice planning group established for the District of Columbia pursuant to section 3165.

Subsection (c) requires that the Administrative Office of the United States Courts with the approval of the Judicial Conference submit three reports to the Congress summarizing the reports to the Administrative Office by the various districts. (See Calendar of Implementation, Chart 1, p. 55.)

Subsection (d) requires that the District plans required by this section will become public documents.

Subsection (e) authorizes the appropriation of such sums as Congress might find necessary for the purpose of carrying out this section and section 3165.

Section 3167 district plans—contents

This section prescribes minimum requirements for the information which must be included in the District plans required by section 3166. The required information includes a description of the conditions present in the District which may affect implementation of the time limits set forth in the Act, the manner in which the district will implement the Act, and description of procedures and techniques for gathering statistics dealing with implementation of the Act.

Section 3168 speedy trial reports

This section requires the submission of periodic reports by the various participants in the criminal justice system (defense counsel, prosecutors and judges) for the purpose of compiling statistics concerning implementation of the speedy trial time limits, the complexity of various types of cases, and the needs of the individual participants in the criminal justice system. These reports will be particularly valuable in the first six years before the dismissal sanction is imposed, because the planning group will be informed of each instance in which a case has gone beyond the time limits. Therefore the planners can have a better idea of the impact of shorter time limits and more severe sanctions before they are actually imposed.

Section 3169 pilot districts

This section authorizes the appropriation of $5,000,000.00 to be used in conducting the initial phases of planning and implementation of speedy trial plans in five pilot federal judicial districts. The pilot districts will be selected by the Chief Justice and the Attorney General from the applications submitted by the planning groups of the various districts. Funds given to these pilot districts can be used only by a two-thirds vote of the planning groups in the districts selected as pilot districts.

Section 3170 definitions

This section contains the definitions of terms used in Title I of the act. The term "offense" is defined in such a manner as to exclude defendants charged with petty offenses from the speedy trial provisions. The terms "judge" and "judicial officer" are defined so that the title applies to the Superior Court of the District of Columbia.

Section 3171 sixth amendment rights

This section provides that nothing in the speedy trial bill shall be interpreted as a bar to a claim by a defendant that his right to speedy trial under the Sixth Amendment of the Constitution had been violated.

TITLE II—PRETRIAL SERVICES AGENCIES

Sec. 201. Chapter 207 of Title 18, United States Code, is amended by striking section 3152 and adding the following new sections:

Section 3152 establishment of pretrial services agencies

This section creates on a demonstration basis in 10 judicial districts, other than the District of Columbia, pretrial services agencies to supervise and control defendants released on bail. The districts are to be selected by the Chief Justice, upon consultation with the Attorney General, on the basis of the number of criminal cases in the district, the percentage of defendants detained before trial, the incidence of crime charged to persons released prior to trial, and the resources available.

Section 3153 organization of pretrial services agencies

This section creates a board of trustees for the pretrial services agencies in the designated districts. The board shall be composed of the Chief Judge of the Federal District Court, the United States Attorney, the Public Defender, if there is one in the district, a member of the local defense bar, the chief probation officer, and representatives of community organizations appointed by the Chief Judge. The board appoints a Chief Pretrial Services Officer who is responsible for the operation of the agency and who may appoint other personnel to the staff of the agency.

Section 3154 functions and powers of pretrial services agencies

Each agency is to perform various functions, as the court shall direct, including: collection and verification of information pertaining to eligibility of defendants for release; recommendation of conditions of release; supervision and control of released persons; operation or contraction for operating facilities for custody or care of released persons, such as halfway houses, narcotics and alcohol treatment centers, and counseling centers; coordination of other agencies to serve as custodians of released persons; and assistance in securing medical, legal, social and employment assistance to released persons. Information collected by the agencies is to be used only for the determinatfon of bail and is otherwise confidential. However, the Board of Trustees is empowered to create certain exceptions to the confidentiality provision.

Section 3155 report to Congress

The Director of the Administrative Office of the United States Courts shall make an annual report on the operation of the pretrial services agencies, with special attention to their effectiveness in reducing pretrial crime and the volume and cost of pretrial detention. In this fourth annual report, the Director shall include recommendations for modifications of this chapter or for its expansion to other districts. This report shall also compare the effectiveness of these pretrial services agencies to traditional monetary bail programs.

The Director shall also submit to Congress a report on the administration and operation of the whole Speedy Trial Act six years after enactment.

Section 3156 definitions

This section contains the definitions of former section 3152.

Section 302 amends the analysis of chapter 207 of title 18, to reflect the amendments made by title II of the bill.

Section 303 authorizes the appropriation of $10 million for the fiscal year ending June 30, 1974 and such sums as Congress might find necessary in subsequent years.

Section 304 amends section 604, title 28, United States Code, relating to the functions of the Director of the Administrative Office of the United States Courts, to reflect the new duties imposed by the creation of pretrial services under this title.

VI—Section-by-Section Analysis

TITLE I—SPEEDY TRIAL

Significant changes have been made in the language of S. 754 to accommodate suggestions of Committee members, the Justice Department, Federal judges, and defense counsel who will have to carry out the provisions of the bill if it is enacted.

What follows is a section-by-section analysis of the bill as reported by Committee with a brief explanation of each provision including the Committee amendments. Also the analysis notes the more significant differences between S. 754 and its predecessor in the last Congress, S. 895.

Section 3161 time limits and exclusions

Subsection 3161(a) requires the judge at the earliest practicable point in the process to set a date certain for trial. The date is set upon consultation with the prosecutor and defense counsel.

This provision requires that all parties must be on notice of the trial date as early in the proceeding as possible. Setting a trial date early in the process permits the parties, the witness, and especially the courts, to plan out the trial schedule and to integrate the schedule with their other obligations. This eliminates difficulties with subsequent scheduling conflicts of the attorneys, especially those defense counsel who may have a civil practice. Any conflict existing at this time can be resolved and no future conflicts can be permitted to defer the trial date, since the attorney is already on notice as to his primary obligation to prepare and try this particular case.

S. 895 required that the date certain be set at initial appearance rather than at the earliest practicable point. The Justice Department and several other witnesses suggested that setting a date certain at initial appearance was unworkable because United States magistrates, who conduct initial appearance procedures in many districts, would be setting the date for a trial to be conducted by a district court judge. Based upon Judge Albert Stephen's suggestion, the requirement has been eliminated so that the Federal district judges can retain control over their own calendars. S. 754 would still provide that the court set a date certain for trial at the earliest possible point in the process. Thus, the courts would be free to adopt rules on this subject consistent with their own peculiar needs and capabilities.

Subsection 3161(b) sets a 30-day limit on the period between the filing of a complaint or an arrest and the filing of an information or indictment based on the complaint. If cases are not brought within this period they must be dismissed. The time limit imposed by this subsection is subject to the allowable delays as set forth in Subsection 3161(h).

Subsection 3161(c) requires that trial must commence within 60 days of the date of the filing of an indictment or information. Combined with the 30-day arrest to indictment time limit imposed by subsection 3161(b), the total period between arrest and trial allowed by S. 754 would be 90 days.

The Committee is convinced that the goal of trial within three months of arrest in the typical Federal criminal case is a reasonable one. The Subcommittee on Constitutional Rights heard considerable testimony from prominent members of the bench and bar on the reasonableness of such a time limit.

Such time limits are absolutely essential to effective crime control. Speedy trial seems to decrease crime by defendants on pretrial release and to increase the rate at which defendants plead guilty. A study by the National Bureau of Standards found that defendants who are released prior to trial are more likely to commit a subsequent crime before they are tried for the first if they are not brought to trial within two to three months of arrest. When a 60-day speedy trial program was established in the United States Attorney's Office in the Southern District of New York the proportion of defendants pleading guilty increased from 90 percent to 95 percent.

However, the Justice Department objected to the original provisions of S. 754 which provided a single time limit of 60 days between arrest and commencement of trial. According to the Department the grand jury process should not be covered in the speedy trial time limits. The Department is worried that in complicated cases, such as conspiracies in which arrest precedes indictment, prosecution cannot be adequately prepared in a two-month period. Furthermore, in approximately 40 percent of the Federal criminal cases, arrests are made before indictment for the purpose of halting on-going criminal activity. Thus, the Department of Justice proposed commencing the speedy trial time limits with arraignment.

However, a study by the Federal Judicial Center found that over one-half of the delay in an average Federal case occurs between arrest and indictment and that delays of approximately 100 days during this period are typical. In light of these findings it seemed inadvisable to adopt the Department's proposal, commencing the time limits with arraignment and thus excluding the period between arrest and indictment from the legislation.

Senator McClellan suggested a workable compromise on this question. He proposed that there be two different time limits, one between arrest and indictment where arrest precedes indictment and one between indictment and trial in all cases. The Committee has adopted the McClellan proposal in Subsections 3161(b) and (c)—a 30-day limit from arrest to indictment and a 60-day period between indictment and trial.

In 1967 the President's Crime Commission suggested that in the average case the delay between arrest and indictment should only be approximately 15 days and a recent survey conducted by the Administrative Office of the United States Courts for the Constitutional Rights Subcommittee found that several District courts were able to indict defendants within 30 days. The Committee arrived at the 30-day time limit for the period between arrest and indictment based on this data.

While the Committee has concluded that it is necessary to minimize the delays currently experienced during the arrest to indictment period, it recognizes that complexity of the grand jury process sometimes leads to unavoidable delays. For this reason, the time limits imposed by this subsection are subject to special tolling provisions as provided in subsection 3161(h). For example subsection 3161(h)(8) specifically provides that grand jury proceedings which are sufficiently complex are to be exempt from the arrest to indictment time limits.

Section 3161(h) provides other enumerated exclusions from both the arrest to indictment and the indictment to trial time limits. Most of the exclusions apply to pretrial proceedings which take place after

indictment. However any exclusion of time or tolling of time limits permitted by 3161(h) would be permitted whether it occurred before or after indictment.

In further response to the Department's concern about the imposition of time limits the Committee has amended S. 754 to allow for a gradual phase-in of the time limits over a seven year period in conjunction with a gradual phase-in of the sanctions for non-compliance. Judges could begin to impose dismissal in the fifth year after enactment but would not have to dismiss with restrictions on reprosecution for violation of the time limits until the seventh year. (See Calendar of Implementation, Chart 1, p. 55.) This gradual phasing-in of the time limits should allow the districts to identify and solve any problems that might arise in complying with the time limits.

Subsection 3161(d) allows the time limits imposed by subsections 3161 (b) and (c) to begin to run afresh should an indictment or information be dismissed upon defendant's motion on grounds other than non-conformance with speedy trial time limits, and a subsequent complaint charging the defendant with the same offense or with an offense based on the same criminal conduct or episode is filed.

This subsection allows latitude to the prosecutor to re-institute prosecution of a criminal defendant whose case has previously been dismissed on non-speedy trial grounds without having to comply with the time limits imposed by the filing of the earlier complaint. To require a prosecutor to conform to indictment and trial time limits which were set by the filing of the original complaint in order to reopen a case on the basis of new evidence would be an insurmountable burden. Thus, when subsequent complaints are brought, the time limits will begin to run from the date of the filing of the subsequent complaint.

The Committee is concerned that this provision not be used to evade the speedy trial time limits set out in this Act. The prosecutor should not be able to avoid the speedy trial time limitations when his carelessness in preparing the original complaint or indictment has resulted in a dismissal under this section. Therefore, when a judge dismisses an original information or indictment on other than speedy trial grounds he should, nevertheless, take into consideration the defendant's right to speedy trial under the statute and under the Constitution. For example, the judge might want to order that the original dismissal be with prejudice so that the prosecutor could not reindict several months after a carelessly drawn indictment has been dismissed.

Subsection 3161(e) provides for time limits where there is a mistrial or where the defendant succeeds in collateral attack or appeal. As a general matter the provision requires that if the Government decides to retry the defendant in any of these situations the time limits begin to run on the date that the order occasioning the retrial becomes final.

Although there was little disagreement among witnesses appearing before the Subcommittee on Constitutional Rights as to the wisdom of commencing time limits with the date of the order giving rise to the retrial, there was controversy over whether 60 days, as provided in S. 895, was a sufficient amount of time. The Justice Department contended that 60 days was insufficient time to prepare for a retrial after successful collateral attack, which could come years after the original trial. The section as it appears in S. 754 draws a distinction between

cases of retrial following declaration by a trial judge of a mistrial or an order by the trial judge for a new trial; and cases where there is a retrial following a collateral attack or appeal. In the former case the speedy trial period is 60 days while in the latter case the period is also 60 days, except that the period may be extended if unavailability of witnesses or other factors resulting from the passage of time make trial within 60 days impractical. This dichotomy recognizes the difficulty of preparing a new case after successful collateral attack but would not allow inordinate delay where retrial is contemporaneous with the original trial as in a declaration of mistrial by the trial judge.

Subsection 3161(f) provides that the 30-day arrest to indictment time limit required by Subsection 3161(b) will not take effect immediately upon enactment. Instead, it will be phased in, along with the sanctions for failure to comply with the time limits, over a seven year period. During the second year after enactment, the arrest to indictment time limit will be 60 days. During the third and fourth years after enactment, the time limit will be 45 days. Thereafter, the 30-day time limit specified in Subsection 3161(b) will be in effect. (See Calendar of Implementation, Chart 1, p. 55.)

During the phase-in, provided by this subsection, the time limit which will apply in any particular case will depend upon the time limits in effect when the arrest takes place. If the arrest takes place when the 60-day time limit is in effect then the 60-day limits will apply regardless of whether new limits go into effect for other cases in the interim.

Subsection 3161(g) provides that the 60-day indictment to trial time limit required by Subsection 3161(c) will not take effect immediately upon enactment. The 60-day indictment to trial time limit will also be phased in over a seven year period. For the second year following enactment, the time limit will be 180 days. For the third and fourth years the time limit will be 120 days. For the fifth year and thereafter the time limit will be the 60 days. However, the accompanying phase-in of sanctions will not make the dismissal sanction plus limitation on reprosecution mandatory until the seventh year. (See Calendar of Implementation, Chart 1, p. 55.)

Subsection 3161(f) and (g) are the result of much discussion and compromise concerning the time necessary for achieving compliance with the mandatory speedy trial time limits contemplated by S. 754.

In testimony before the Subcommittee on Constitutional Rights, Senator Percy expressed concern about imposing an unrealistically short time limit too quickly. He suggested a 180-day period with a plan requiring the cases not tried in 160 days be automatically placed upon special calendars for expedited disposition. Once a case got on a judge's special calendar it would have priority and could go to trial as soon as he completed the case before him. Senator Percy also expressed support for an alternative that would provide an initial 180-day period with phased reductions to the ultimate goal. These suggestions formed the basis for a phase-in period of three years which was incorporated in S. 895 as adopted by the Constitutional Rights Subcommittee in October of 1972 and which was also incorporated in S. 754 as introduced in February of 1973.

S. 754 has been amended to extend the phase-in period to now cover seven years. This is accomplished by imposing progressively shorter time limits coupled with progressively stricter sanctions for non-compliance. (The phasing-in of the dismissal sanction is discussed in more detail in Section 3162 at p. 42. See also the Calendar of Implementation, Chart 1, p. 55.) The end result will be a mandatory 30-day arrest to indictment time limit and a mandatory 60-day indictment to trial time limit enforced by a mandatory dismissal sanction during the seventh year after enactment. This lengthening of the phase-in period grows out of suggestions by the Justice Department and Professor Freed of Yale Law School that the Federal criminal justice system could not comply with a three-year phase-in period. Imposing the required time limits in graduated stages over a seven year period accompanied by the gradual introduction of more severe sanctions for non-compliance plus a division of the time limits into an arrest-to-indictment period and an indictment-to-trial period should alleviate the burden that compliance with these speedy trial standards will place on the courts and the Justice Department.

During the phase-in provided by this subsection, the time limits which will apply to any particular case will depend upon the time limits in effect at the time the indictment or information is filed against the defendant. If the indictment or information is filed when the 180-day limits are in effect then the 180-day limits will apply regardless of whether new limits go into effect for other cases in the interim.

Subsection 3161(h) excepts from the time limits imposed in Subsections 3161 (b) and (c) the following periods of delay:

(1) Delays caused by proceedings relating to the defendant such as hearings on competency to stand trial, hearings on pretrial motions, trials on other charges, and interlocutory appeals;

(2) Delays caused by deferred prosecution upon agreement of defense counsel, prosecutor, and the court for the purpose of demonstrating the defendant's good conduct;

(3) Delays caused by absence or unavailability of the defendant;

(4) Delays resulting from the fact that the defendant is incompetent to stand trial;

(5) Delays resulting from the treatment of the defendant pursuant to the Narcotic Addict Rehabilitation Act;

(6) Delays between the dropping of a charge and the filing of a new charge for the same or related offense;

(7) Reasonable periods of delay when the defendant is joined for trial with a codefendant, and neither defendant has shown good cause to grant a severance; and

(8) Any other delay resulting from a continuance granted at the request of defense or prosecution upon a finding of the judge that the ends of justice cannot be met unless the continuance is granted. The judge must balance the right of the defendant and the interest of the public in speedy trial against the "ends of justice", and set forth in the record his reasons for granting the continuance.

Proceedings Concerning the Defendant.

Subparagraph 3161(h)(1) allows the court to exempt from the time limits, time consumed by "proceedings concerning the defendant." This provision, when considered with all the enumerated exclusions from the time limits contained in 3161(h), assures that the time limits do not fall too harshly upon either the defendant or the Government. Subparagraph 3161(h)(1) allows the defendant to take advantage of

certain procedures on his own motion such as mental competency hearings or motions to suppress evidence without penalizing the Government for the resulting delay.

At the suggestion of the Justice Department, the committee has enumerated in the text of the bill examples of what is meant by "proceedings concerning the defendant." The list is not intended to be exhaustive. It is representative of procedures of which a defendant might legitimately seek to take advantage for the purpose of pursuing his defense.

Also at the suggestion of the Justice Department, new language was added by the subcommittee to subparagraph 3161(h)(1) to resolve an ambiguity in the original language of S. 895. Subparagraph 3161(h)(1) of S. 895 as introduced did not clarify whether an exclusion for a "proceeding concerning the defendant" includes just the period consumed by the hearing or also includes the period during which it is under advisement. Under that provision a pretrial motion which only consumes a few hours in hearing could exclude days or even weeks from the time limits while the motion is under advisement. To meet this problem, the latter half of the section as amended, 3161(h)(1)(B), would have excluded only "court days" actually consumed in a proceeding covered by the subparagraph. It was intended however, that a unique question of law or unusually complex pretrial hearing could be the basis for an "ends of justice" continuance (see discussion of 3161(h)(8), p. 38ff).

However, the committee dropped the subcommittee's language on "court days." Under the committee amendment delays "reasonably attributable to delays during which a matter is actually under advisement" may toll the time limits. It was not the intent of the committee in adopting this amendment to give a blanket exception to matters under advisement for the time excluded must be "reasonably attributable" and the matter must be "actually under advisement." Therefore the judge must be actually considering the question, for example, conducting the research on a novel legal question.

It is intended that an examination for mental competency or for narcotics addiction pursuant to the Narcotics Addict Rehabilitation Act (NARA), section 2902 of title 28 of the United States Code, should be treated the same as the hearing on these issues. Therefore, a reasonable amount of time actually consumed while the defendant is under physical or mental examination shall also be excluded in computing time. Of course, it would still be inappropriate to exclude time spent at a hospital after the examination is complete or as a result of unreasonable delays at the hospital awaiting examination.

Deferral of Prosecution.

Subparagraph 3161(h)(2) is designed to encourage the current trend among United States attorneys to allow for deferral of prosecution on the condition of good behavior. A number of Federal and State courts have been experimenting with pretrial diversion or intervention programs in which prosecution of a certain category of defendants is held in abeyance on the condition that the defendant participate in a social rehabilitation program. If the defendant succeeds in the program, charges are dropped. Such diversion programs have been quite successful with first offenders in Washington, D.C. (Project Crossroads) and in New York City (Manhattan Court Employment Project). Some success has also been noted in programs where

the defendant's alleged criminality is related to a specific social problem such as prostitution or heroin addiction. Of course, in the absence of a provision allowing the tolling of the speedy trial time limits, prosecutors would never agree to such diversion programs. Without such a provision the defendant could automatically obtain a dismissal of charges if prosecution were held in abeyance for a period of time in excess of the time limits set out in section 3161 (b) and (c). This section of S. 754 differs from its counterpart in S. 895. It now requires that exclusion for diversion only be allowed where deferral of prosecution is conducted "with approval of the court."

This assures that the court will be involved in the decision to divert and that the procedure will not be used by prosecutors and defense counsel to avoid the speedy trial time limits.

Absence or Unavailability

Subparagraph 3161(h)(3) provides for exclusion of time during which the defendant or an essential witness is absent or unavailable. Therefore, a fugitive defendant with an outstanding indictment cannot deduct from his 60 days the time during which he avoids prosecution. At the suggestion of Senator Thurmond and Mr. Rezneck, S. 754 was drafted so that it follows the language of the American Bar Association Speedy Trial Standards in defining the terms "absence" and "unavailability." Furthermore, the term "unavailable" means that if the defendant is located in another jurisdiction and is not resisting extradition and the attorney for the Government has exercised due diligence, the reasonable delay related to the administrative operation of the extradition system would also be excluded.

This subsection has been amended by the Committee to include the absence of an essential witness, as well as the absence of the defendant, as one of the periods of delay which are exempted from the time limits. The necessity of including essential witnesses in this exclusion was pointed out by testimony of the Justice Department before the Subcommittee on Constitutional Rights. The subsection as now constructed would remedy the situation in which an essential government witness becomes unavailable on the 59th day after indictment. Under the provisions contained in S. 754 as introduced, the case would be dismissed on the 60th day. This problem is especially acute when expert witnesses are involved because their presence is often required in different courts on the same day.

This problem is resolved by the subsection in that an "absent" or "unavailable" witness is treated in the same manner as an "absent" or "unavailable" defendant. By an "essential witness" the Committee means a witness so essential to the proceeding that continuation without the witness would either be impossible or would likely result in a miscarriage of justice. For example, a chemist who has identified narcotics in the defendant's possession would be an "essential witness" within the meaning of this subsection.

Mental Incompetence Hearings

Subparagraph 3161(h)(4) of the bill as reported deals with the exclusion of periods of time during which the defendant is mentally incompetent to stand trial. Reference is made to the exclusion of periods of time relating to examination for mental incompetency in subparagraph 3161(h)(1)(A) as a "proceeding concerning the defendant". That provision provides for the exclusion of time consumed

in competency hearings and a reasonable number of hospital days actually consumed by physicians in mental examination. However, once the defendant is determined incompetent the only consideration is his return to competency. The length of time required for him to do so obviously should not be the basis of a speedy trial claim under the bill. Therefore, a separate exclusion has been added to subsection 3161(h).

Narcotic Addict Rehabilitation Act Proceedings

Subparagraph 3161(h)(5) of S. 754 deals with the exclusion of periods of time during which the defendant is under examination or treatment pending trial pursuant to the Narcotic Addict Rehabilitation Act of 1966 (NARA). Reference is made to the exclusion of periods of time relating to examination for addiction pursuant to NARA in subparagraph 3161(h)(1)(A) as a "proceeding concerning the defendant." That provision provides for the exclusion of time actually consumed in hearings on the issue of addiction and a reasonable number of hospital days actually consumed by physicians in physical examination. However, once the defendant is determined to be an addict and falls within the eligibility provision of NARA, he is covered by that act and speedy trial is much less relevant. Therefore a separate exclusion has been added to subsection 3161(h).

Reindictment After Dismissal.

Subparagraph 3161(h)(6) provides for the case where the Government decides for one reason or another to dismiss charges on its own motion and to then recommence prosecution. Under this provision only the period of time during which the prosecution has actually been halted is excluded from the 60-day time limits. Therefore, under 3161(h)(6) when the Government dismisses charges only the time between when the Government dismisses charges to when it reindicts is excluded from the 60-day time limits. For example, if the Government decides 50 days after indictment to dismiss charges against the defendant then waits six months and reindicts the defendant for the same offense the Government only has 10 days in which to be ready for trial.

Joinder of Codefendants.

Subparagraph 3161(h)(7) provides for the exclusion of time from the time limits where the defendant is joined for trial with a codefendant who was arrested or indicted after the defendant. The purpose of the provision is to make sure that S. 754 does not alter the present rules on severence of codefendants by forcing the Government to prosecute the first defendant separately or to be subject to a speedy trial dismissal motion under section 3162.

The committee amended this provision, which appeared as 3161(c)(5) in the bill as introduced, to make it absolutely clear that Congress did not intend to alter the traditional rules of severance. According to the Justice Department, the original provision would have required the Government to show good cause for not granting a severance. This is contrary to present law which places the burden on the defendant who seeks the severance. The new provision deletes any reference to burdens of proof or "good cause" and simply refers to codefendants as to whom "no motion for severance has been granted."

"Ends of Justice" Continuance

Subparagraph 3161(h)(8) is the heart of the speedy trial scheme created by S. 754. It allows for the necessary flexibility to make 90 day trials a realistic goal within seven years of enactment.

The provision represents considerable revision by the committee. The original provisions of S. 895 dealing with general continuances, set a dual standard for continuances—in some cases continuances would have been permitted for "good cause" and in some cases to meet the "ends of justice." The original provisions also only allowed seven day continuances for "good cause." The Department of Justice as well as many other commentators and witnesses found the provisions unnecessarily complicated and confusing. Therefore the committee consolidated all of the continuance provisions into one provision, 3161(h)(8) of the bill as reported.

The new provision eliminates the words "good cause" and simply adopts the stiffer "ends of justice" standard—a standard which was used in the original bill for those situations which could not fall within the "good cause" continuance provisions. "Ends of justice" is the standard found in section 3651 of title 18 of the United States Code in reference to suspension of sentence and the granting of probation. In essence, the new provision allows a judge to grant a continuance only where he finds that the "ends of justice" outweigh the best interest of the public and the best interest of the defendant in speedy trial. This means that in each case where a continuance is requested, and the factual situation does not fall within 3161(h)(1) through (7), the judge must determine before granting the continuance that society's interest in meeting the "ends of justice" outweighs the interest of the defendant and of society in achieving speedy trial. Furthermore the judge must set out in writing his reasons for believing that in granting the continuance he strikes the proper balance between these two societal interests.

Although it is intended that continuances under 3161(h)(8) should be given only in unusual cases, it is anticipated that the provision will be necessary in many protracted and complicated Federal prosecutions, that is antitrust cases, and complicated organized crime conspiracy cases. However, the Committee has rejected a blanket exception for these cases and opted for a case-by-case approach (see p. 44). Each time such a continuance is granted in a complicated case the judge will still have to weigh the right of society and the defendant to a speedy trial against the "ends of justice." For example, although a case like the alleged conspiracy involving the so-called "Watergate case" might normally be subject to a continuance under this provision because of its complexity, society's interest in a speedy trial in light of the then upcoming election might have outweighed that consideration. Of course, another option open to the judge in that case, were S. 754 the law, would have been to sever the burglary charges from the conspiracy case, and of course a continuance would not have been appropriate in the simple burglary case.

The original "ends of justice" provision contained in S. 754 was vague even when construed in light of the accompanying legislative history. Therefore, upon the suggestion of Senators Hruska and McClellan and the Justice Department, subsection 3161(h)(8) has been redrafted to reflect the Committee's clear intention that the

determination of whether or not to grant an exclusion is to be via a balancing test. Before establishing a special, more lenient set of limits, a court would have to determine that the "ends of justice" outweigh the defendant's and society's interest in speedy trial. Also, the section as amended by the Committee sets out, in the statutory language, the specific factors which a judge should consider when weighing these interests. This is designed to give the courts the maximum degree of guidance in interpreting this critical provision.

The new provision suggests three factors which a judge may consider in determining whether to grant a request for a special set of limits. First, it would be appropriate if the judge determines that failure to do so would make "continuation of such proceeding impossible, or result in a miscarriage of justice". For example, the following circumstances would be sufficient to warrant the granting of an "ends of justice" extension: where the judge trying the case, the attorney for the Government, defense counsel, the defendant or an essential witness is ill or unable to continue, or the defense counsel has been permitted by the court to resign from the case, or the court has removed counsel from the case.

A second factor which the amended section would permit the judge to consider is the overall complexity of the case. The court would rely on its own experience but also upon objective indicators of complexity when granting an "ends of justice" extension.

There are several fairly objective factors that a judge might consider in determining whether to grant a continuance under this provision because of the complicated nature of the case. None of these factors alone should be sufficient to grant a continuance. A judge might attempt to determine through conferences with defense and government counsel the number of days of trial which will be required to present the evidence in the case. For example, in the Southern District of New York, the United States attorney is ready for trial within 60 days of arrest for all "short trial" cases—cases which will take less than three days to try. This rule of thumb might be used under section 3161(h)(8). Therefore a continuance would be more appropriate in a case which is likely to take more than three days to try than in one which will take less than three days.

Another objective indicator of case complexity is the weighted caseload. This is a formula which has been used by the Federal judiciary to measure the complexity of cases for the purpose of determining the true workload for each district so that Congress can know when a new judgeship should be created. The formula is based on a periodic time study by the Federal Judicial Center which analyzes the actual amount of time spent on different kinds of cases. A new index was completed in May of 1971.[4] It would be very appropriate to grant continuances under section 3161(h)(8) for a bribery case which has a weighted caseload index of 5.94, while in the typical auto theft case where the index is only .63 a continuance based on complexity would not be appropriate.

The third factor to be used by the judge in determining whether to grant a continuance under this subsection is related to the second. It

[4] For a discussion of the weighted caseload formula and the new index, see *The Annual Report of the Director of the Administrative Office of the United States Courts, 1971*. Administrative Office of the U.S. Courts, Washington, D.C., p. 167 ff; and for a discussion as to how the formula was derived, see *The 1969-70 Federal District Court Time Study, June 1971*, Federal Judicial Center, Washington, D.C.

would permit an exclusion where proceedings become stalled in grand jury because of the "unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the government." This provision is specifically designed to deal with the situation where arrest precedes indictment thus commencing the time limits but grand jury proceedings become stalled. It is not designed to cover every situation where grand jury proceedings are delayed—only where the delay was caused when an unusual amount of new or complex evidence is elicited in those proceedings. The more complicated the evidence presented, the more appropriate it would be for a judge to allow a continuance.

A grand jury continuance might be appropriate in a case involving continuing criminal activity, such as an organized crime or internal security conspiracy in which the prosecution has no real choice in commencing prosecution because the police have decided to arrest the defendant for the purpose of stopping the criminal activity. In most other cases, the continuance provision should not be used to give the prosecution time to gather evidence because the Government should not initiate prosecution until it is ready to move fairly rapidly to trial.

However, as a general matter the Committee intends that, except for the above situations, this provision should be rarely used. Furthermore, even the above situations should be handled on a case-by-case basis with the court stating in writing the reasons why it believes that granting the continuance strikes the proper balance between the ends of justice on the one hand and the interest of society in a speedy trial and the interest of the defendant in a speedy trial on the other.

It is assumed that the denial of a continuance under this subsection or any part of 3161(h) would not be appealable as an interlocutory matter. However, the question of the improper granting or denial of a continuance would be a proper question for review on the granting of a motion to dismiss under section 3162 of the act or on review of a conviction after such motion was denied. This provision is, however, not intended to give the prosecution any right to appeal that it does not already enjoy under the Criminal Appeals Act.

Subsection 3161(i) provides that where a defendant pleads guilty and then withdraws his plea that the time limits commence again on the date the plea is withdrawn.

This provision added at the suggestion of the Justice Department, takes into account the relative ease with which pleas of guilty may be withdrawn prior to sentence. Under S. 895, without such a provision, it was possible for a defendant to enter a plea of guilty on the 59th day to one of several charges and wait several weeks, and then withdraw his plea before sentencing, thereby frustrating any prosecution on the other counts which might not yet have been dismissed. It was even possible under the original language that the Government would have been unable to prosecute the defendant with respect to the charge to which he pleaded guilty but subsequently withdrew the plea.

The Committee followed the Justice Department's proposed solution to this problem in providing that the time limits start all over again on the day that a withdrawal of a plea becomes final. Therefore the day on which the defendant withdraws the plea is treated as the initiation of a legitimate subsequent prosecution. If a defendant pleads guilty to a charge on the 59th day after arrest and then withdraws his

plea, the withdrawal of plea is treated as the first day of a new prosecution with 60 days remaining in which to try the defendant.

Section 3162 sanctions

Section 3162 declares that if the case is not brought to trial within the prescribed period the charges shall be dropped and that the defendant cannot be reprosecuted except in "exceptional circumstances." Dismissal with limitations on reprosecution would only be imposed beginning seven years after enactment but dismissal without limitation on reprosecution would be imposed during the fifth and sixth years after enactment. If either prosecutor or defense counsel is responsible for intentional delay, he may be subject to sanctions including fines, penalties and a withdrawal of the right to practice for as long as three months.

Title I of S. 754, when considered as a whole, represents a direction by Congress, on behalf of the American people, to the Federal criminal justice system to achieve the goal of 90-day trials within seven years of enactment. Section 3162 assures that the other provisions of title I which set out this laudable goal do not remain an unfulfilled promise. This provision establishes an evenhanded scheme of sanctions for violating the speedy trial time limits against two of the critical actors in the Federal criminal justice system, defense attorneys and United States attorneys.

The sanction against the United States attorney and the court for failure to comply with the speedy trial time limits is dismissal of the prosecution. For a discussion of similar provisions being used in State speedy trial schemes and the Committee's reasoning in adopting the dismissal sanctions, see pages 15–17.

The mandatory dismissal section is the most controversial provision in S. 754. The Department originally endorsed mandatory dismissal with prejudice when Assistant Attorney General Rehnquist appeared before the Subcommittee on behalf of the Department but for the past two years the Department has opposed this aspect of the bill. The issue of mandatory dismissal was discussed at some length during the April 17, 1973 hearings conducted by the Subcommittee. Both the Department and Carol Vance of the National District Attorneys Association were attracted by Professor Dallin Oaks' suggestion that a dismissal without prejudice provision might be an acceptable alternative.

Professor Oaks suggests that the Subcommittee look to the California speedy trial statute which provides dismissal without prejudice for failure to comply with the time limits. According to both Professor Oaks and Justice Winslow Christian, then Director of the National Center for State Courts, once a case is dismissed for failure to meet the speedy trial time limits in California it is rarely recommenced. That is because California judges impose a heavy burden upon the prosecution to justify its failure to meet the time limits on the first attempt. Therefore, this burden to justify reprosecution serves as a sufficient deterrent to failure to comply with the time limits while at the same time permitting reprosecution in extreme cases. According to Justice Christian, the metropolitan District Attorneys Offices in California very rarely fail to comply with the time limits. For example, in San Diego in an average year there were only three or four speedy trial dismissals out of 17,000 prosecutions.

The Committee has adopted Oaks' suggestion because of the California experience. S. 754, as amended by Committee, provides that charges be dismissed in cases where the defendant is not brought to trial within the time limits. However, the government can reinstitute charges if it presents compelling evidence that failure to meet the time limits in the first prosecution was caused by "exceptional circumstances which the government and the court could not have foreseen or avoided." This is intended to be an even higher standard than that provided in section 3161(h)(8), "ends of justice." Indeed, in order for the government to reprosecute there would have to exist circumstances which the government could not and did not know about before the original dismissal. For example, "exceptional circumstances" might apply where a defendant or his counsel perjured himself in alleging circumstances which led a judge to dismiss charges for failure to meet the speedy trial time limits. It might be impossible to reinstate the charges were it not for such a provision.

S. 754, as amended, would impose a dismissal without limitation on reprosecution during the fifth and sixth years after enactment. Beginning seven years after enactment dismissal would be with a limitation on subsequent prosecutions. Yet during the second, third and fourth years the only sanction for failure to meet the time limits would be the requirement that each such failure be reported to the District criminal justice planning group and to the Administrative Office of the United States Courts (see sec. 3168). The effect of this part of the Committee amendment plus the elongation of the phase-in (see discussion p. 34) is to increase the severity of the sanction as the length of the speedy trail time limits are shortened. (See Calendar of Implementation, Chart 1, p. 55.)

At the suggestion of the Justice Department, S. 754 adds language which places the burden of proof upon the defendant when he makes a speedy trial dismissal motion. The Government would still have the burden of going forward with the evidence in connection with an exclusion under subparagraph 3161(h)(3). Also at the suggestion of the Department, S. 754 would eliminate the requirement, contained in S. 895, that to succeed on the dismissal motion the defendant must show lack of fault for the delay. S. 754 also adds "nolo contendere" to the last sentence so that a plea of nolo contendere, like a plea of guilty, would constitute a waiver of the right to dismissal under the section. The Committee assumes that any waiver of a defendant's right to speedy trial is an intelligent waiver and that a defendant has been informed by the judge of his rights under the statute prior to taking any action which would constitute a waiver to the right to dismissal under section 3162.

The sanction for the failure of defense counsel to comply with the time limits is a scheme of penalties for dilatory tactics. The latter half of section 3162 is based upon an amendment to S. 895 proposed in the last Congress by Senator Thurmond. It sets out four situations when sanctions against counsel would be appropriate: (1) where counsel agrees to a trial date when he knows one of his witnesses will be absent; (2) where counsel files a motion which he knows is frivolous and without merit solely for the purpose of delay; (3) where counsel makes a false statement for the purpose of obtaining a continuance; and (4) where counsel otherwise fails to proceed to trail without justification consistent with section 3161. It sets out a range of penalties including

the decreasing of compensation of appointed defense counsel, fines, the denial of the right to practice in that court for as long as three months, and the filing of a report with the appropriate disciplinary committee. The new provision also requires the court to follow rule 42 of the Federal Rules of Criminal Procedure in conducting procedures which lead to such penalties.

Section 3163 effective dates

Section 3163, when read with subsections 3161(b) and (c) and subsections 3161(f) and (g) implements the phasing-in of the time limits. The result is a seven year graduated phase-in of the time limits during which the time limits between arrest and trial are shortened and the sanction for failure to meet the time limits become more severe. (See Calendar of Implementation, Chart 1, p. 55.)

Along with implementing the phase-in of the time limits, this section also specifies which kinds of pending cases will fall under the time limits after enactment. The arrest to indictment time limit would apply to all cases brought on or following the effective date of the Act and also to all summons issued or arrests conducted prior to the effective date but for which no indictment or information has yet been filed. The indictment to trial time limit would apply to all cases brought on or following the effective date and to all indictments or informations filed prior to the effective date.

The effective date of the Act will be one year after enactment. During the year between the date of enactment and the effective date, the interim time limits discussed in Section 3164 will apply.

An important difference between the original section 3163 contained in S. 895 and the new version is that the latter would eliminate the exclusion of antitrust, securities, and tax cases from the act. As Mr. Rezneck suggested, it is these very cases that are responsible for the egregious delays in the Federal courts. In Rezneck's words:

> In almost all such cases, the bringing of a criminal charge follows a long government investigation, involving extensive grand jury proceedings. The defendant also is well aware of the possibility of prosecution and has substantial time to prepare his case even before the formal institution of prosecution. No doubt more time for trial preparation may be required for some of these cases because of their complexity, but the continuance provisions of the Act can make allowance for such cases on an appropriate showing of good cause. A case-by-case approach to such problems is preferable to a blanket exemption for any class of cases.

This is essentially the approach taken by the Committee in its amendment to section 3163 and the "ends of justice" continuance provision, 3161(h)(8) where complex cases would be subject to a case-by-case continuance (see pp. 38–41).

Section 3164 interim plans

Section 3164 would require jurisdictions to implement interim plans within three months of enactment to remain in effect until the effective date of the 90-day time limits of subsection 3161 (b) and (c). (See Calendar of Implementation, Chart 1, p. 55.) These interim plans must provide that all detained defendants and all released defendants considered to be "high risk" by the United States attorney be tried within 90 days.

Section 3164 has been added to title I of the legislation as a result of the suggestion by Professor Freed that certain minimal speedy trial requirements be placed into operation soon after enactment and until the courts are prepared to implement the mandatory time limits. These interim plans would be similar to the plan adopted by the United States Court of Appeals for the Second Circuit. (See Section IV. Discussion, pp. 17–20.) The section would require trials within 90 days for pretrial detainees or "high risk" defendants who are on pretrial release, pending the full effectiveness of sections 3161 and 3162. The sanctions for failure to adhere to the limits would not be dismissal, as in section 3162, but pretrail release in the case of detainees and review of release conditions in the case of high risk releasees. The provision would not apply to detainees who have already been convicted of another offense because independent grounds for their detention exist.

Planning Process Sections

The overall function of S. 754 is to encourage the Federal criminal justice system to engage in comprehensive planning and budgeting toward the goal of achieving speedy trial. The most widely known section of the bill is the first section which imposes the time limits. However, the most important sections of the bill are the planning process sections (sections 3165–69) which provide a planning process whereby each district court formulates a plan for the implementation of speedy trial and sets out the additional resources necessary to meet the limits of section 3161.

The planning process sections are critical to the bill's success because they provide the vital link between the Federal criminal justice system and the appropriations process. In summary they provide the courts and the United States Attorneys with a mechanism to plan for the implementation of 90-day trials in a systematic manner, to try innovative techniques on a pilot basis, to itemize the additional resources necessary to achieve the 90-day trial goal, and to communicate with Congress concerning its plans and the additional budget requests.

S. 754 as introduced had only one section on the planning process which simply required the courts to formulate a plan for the implementation of speedy trial. The Committee agrees with representatives of the Justice Department and the Federal Judicial Center as well as Professor Freed that section 3165 of S. 754, as introduced, is inadequate. The provision did not set out with sufficient precision the goals of the planning and implementation process, the contents of the district plans or the types of studies and analysis which should precede each plan. Nor did the bill provide for a reporting or information-gathering process which would provide a data base for those preparing the district plans.

Judging from a recent study of the experience in the Federal Judiciary under Rule 50(b), this concern about the planning process of

S. 754 is warranted. That study found that most courts responded to the new Supreme Court rule by merely adopting the model speedy trial plan circulated by the Administrative Office of the United States Courts or a plan which was only "slightly different". None of the district courts conducted in-depth analysis of the speedy trial situation within their jurisdictions other than to determine the actual processing times between various stages so that the time limits selected under the plans did not threaten the status quo. The result was that the plans did not require the adoption of new management technology, nor did they isolate causes of delay in the district and attempt to eliminate them. Consequently, the plans simply set norms for processing cases without attempting to shorten the actual case processing time and therefore Rule 50(b) is not having a major impact on the speedy trial crisis in the Federal courts.

The planning process contemplated by S. 754 demands much more of the district courts. The plans cannot simply restate the norms set out in section 3161 of the act as the courts have done with the model plan under Rule 50(b). Under S. 754 comprehensive criminal justice analysis must be undertaken in each district to isolate the causes of delay which keep the district from meeting those norms. The plan will explain those causes of delay and will set out a realistic strategy for attacking them. This amendment will make it absolutely clear what is expected of each district in the planning process and thereby avoid the pitfalls of Rule 50(b).

Some critics of S. 754 have asserted that even if the planning process works perfectly, speedy trial will not be forthcoming. They contend that basic changes in criminal law must precede any effort to achieve speedy trial [5] or that the management techniques necessary to utilize criminal justice resources more efficiently cannot be implemented within the time frame contemplated by the bill or finally that Congress will not appropriate the necessary additional resources to help the system meet the time limits. Therefore, they suggest that the time limits approach be attempted on a pilot basis in several districts with appropriations for additional resources made available in advance.

The revision of section 3165 by the Committee is part of a comprehensive rewrite of the whole planning process. The Committee has (1) revised and clarified the planning process by requiring the establishment of special criminal justice planning groups in each district court (Section 3165); (2) described in greater detail the purpose of the planning process by explaining exactly what must be contained in each district plan (Section 3167); (3) created a reporting system requiring participants in the criminal justice system to report violations of the time limits (Section 3168); and finally (4) authorized five Federal districts to be chosen to plan for speedy trials as pilot districts with the knowledge that funds are to be available from the outset (Section 3169).

Section 3165 planning process

Section 3165 specifically requires that each United States judicial district form a planning group within 60 days of the effective date of this Act, for the purposes of the initial formulation of the district

[5] E.g. repeal of habeas corpus, and modification of the exclusionary role.

plans required by Sections 3166 and 3167 and the continued study of the criminal justice system in the district.

Section 3165 is designed to broaden the base of participants in the planning process. Courts alone do not cause delay, and courts alone or solely in consultation with others cannot cure delay. The district planning group would consist of the Chief Judge, the United States Attorney, the Federal Public Defender, if any, a private attorney experienced in the defense of criminal cases in the District, the Chief Federal Probation Officer and a person skilled in criminal justice research. This group would be charged with gathering the necessary information and undertaking the appropriate studies and analysis and formulating a plan which would be submitted to the district court for adoption. Although purely advisory, the planning group would have a broad jurisdiction and could make recommendations ranging from suggested statutory changes to recommendations as to how many new typewriters the clerk's office will need.

Section 3166 district plans—generally

Section 3166 is based on section 3165 of S. 754, as introduced. The original provision has been revised to comport with the Committee's elongation of the phase-in of the time limits to seven years. Under the new provision, district plans are prepared one year before each new set of time limits are placed into operation and before the dismissal sanctions go into effect. (See discussion p. 42, and Calendar of Implementation, Chart 1, p. 55.) The section retains the requirement that the reports be transmitted to the Administrative Office of the United States Courts which in turn must summarize the reports within three months and transmit a nationwide report to the Congress.

Subsection 3166(a) requires each district court, upon approval of the judicial council of the circuit, to submit three plans for the trial of cases in accordance with section 3161 to the Administrative Office of the United States Courts. The first plan is to be submitted one year after enactment and would plan for the courts' compliance with the time limits required for the third and fourth years following enactment during which the 45 day arrest to indictment and 120 day indictment to trial time limits are in effect.[6] The second plan is to be submitted three years after enactment and would plan for compliance with the time limits required for the fifth and sixth years following enactment during which the 30 day arrest to indictment and 60 day indictment to trial time limits are in effect. The final plan is to be submitted five years after enactment and would plan for compliance with the combined dismissal sanction with limited reprosecution and the time limits required for the seventh and following years. (See Calendar of Implementation, Chart 1, p. 55.)

Subsection 3166(b) requires the Chief Judge of the Superior Court of the District of Columbia, upon approval of the Joint Committee on Judicial Administration to submit three plans for the trial of cases

[6] Because section 3161 does not become effective until one year after enactment, S. 754 refers to the second year after enactment as the "first twelve calendar month period after the effective date", the third year after enactment as the "second twelve calendar month period after the effective date", etc. For the purposes o discussion this report refers to the years in terms of years after enactment, not years after the effective date.

in accordance with section 3161 of the Act. These plans would be submitted to the Administrative Office of the United States Courts at the same time as the plans required by Subsection 3166(a) and would be formulated after consultation with the Joint Committee and the criminal justice planning group established for the District of Columbia pursuant to section 3165.

Subsection 3166(c) requires that the Administrative Office of the United States Courts with the approval of the Judicial Conference submit three reports to the Congress summarizing the reports to the Administrative Office by the various districts. (See Calendar of Implementation, Chart 1, p. 55.)

Subsection 3166(d) requires that the district plans required by this section will become public documents.

Subsection 3166(e) authorizes the appropriation of such sums as Congress might find necessary for the purpose of carrying out this section.

Section 3167 district plans—contents

Section 3167 prescribes minimum requirements for the information which must be included in the district plans required by section 3166. The required information includes a description of the conditions present in the district which may affect implementation of the time limits set forth in the Act, the manner in which the district will implement the Act, and a description of procedures and techniques for gathering statistics dealing with implementation of the Act.

In clarifying exactly what must be contained in the district plans, Section 3167 should facilitate compliance with Section 3166. Furthermore, it recognizes many of the problems which the courts had in complying with Rule 50(b) as indicated in the study mentioned earlier. The new section 3167 sets out exactly what statistical information the planning group must place in the plan and requires each district to adopt procedures which will facilitate the reporting process set out in a new section 3168 described below, thereby providing the planning group and the district court with the information it needs to draft a plan.

Section 3168 speedy trial reports

Section 3168 requires the submission of periodic reports by the various participants in the criminal justice system for the purpose of compiling statistics concerning implementation of the speedy trial time limits, the complexity of various types of cases, and the needs of the individual participants in the criminal justice system.

Under the provisions of this section, all participants in the criminal justice process, the prosecutor, the defense attorney, the judge, the district planning groups, the Administrative Office of the United States Courts, the Department of Justice, and the General Accounting Office, will participate in the filing of reports. The reports filed with list problems encountered in meeting the time limits, each extension of time limits and the circumstances under which extensions are granted. Ultimately the reports or summaries will be relayed to the Judiciary Committees and the Appropriations Committee of the House and Senate.

These reports should be invaluable to criminal justice planners in the years before any sanctions are imposed. It will help the planners to anticipate the problems the district will face when sanctions and shorter time limits are phased in. This reporting process continues even after the dismissal limited reprosecution sanction goes into effect in order to provide the planners with information on performance under the time limits so that they can anticipate the rate at which dismissals might occur when that sanction is imposed.

Section 3169 pilot districts

Section 3169 authorizes the appropriation of $5,000,000.00 to be used in conducting the initial phases of planning and implementation of speedy trial plans in five pilot Federal judicial districts. The pilot districts will be selected by the Chief Justice and the Attorney General from applications submitted by the planning groups of the various districts. Funds given to these pilot districts can be used only by a two-thirds vote of the planning groups in the districts selected as pilot districts.

This section grows out of a suggestion by Charles R. Work, former chief prosecutor in the Superior Court in Washington, D.C. (and now Deputy Administrator of LEAA), and Professor Daniel Freed. Its purpose is to test the hypothesis that additional resources can help the system meet the time limits and to experiment with different management techniques and innovations which will help other districts comply with the time limits. Pilot districts will be funded in the first few years so that other districts and the Congress can gain from the experience of the pilot districts before imposition of the shorter time limits and stiffer sanctions in the rest of the nation.

Professor Freed has set out several of the questions which he feels the pilot districts could answer:

> . . . How should money be used to accomplish the intended results? How can Congress ensure that planners will accommodate the availability of funds wisely to situations where inefficiency or tradition or excess proceduralism rather than shortages of personnel or facilities, are the major factors producing delay? Will the knowledge that funds are forthcoming promote unnecessary requests for added manpower and higher salaries, or for research and innovative reforms? What restraints should be imposed on these expenditures? Without funds available to at least some jurisdictions from the outset, how can a district's criminal justice system, or Congress, know, or learn, whether—and how much—money should be appropriated?

Section 3170 definitions

Section 3170 contains the definitions of terms used in Title I of the Act. The term "offense" is defined in such a manner as to exclude defendants charged with petty offenses from the speedy trial provisions. The terms "judge" and "judicial officer" are defined so that the title applies to the Superior Court of the District of Columbia.

Section 3171 sixth amendment rights

Section 3171 provides that nothing in the speedy trial bill shall be interpreted as a bar to a claim by a defendant that his rights to speedy trial under the Sixth Amendment of the Constitution had been violated.

At the suggestion of Senator Fong a provision has been added to title II of the bill clarifying the intent of the Committee that no provision of this bill is to act as a bar to a defendant's claim of denial of speedy trial under the Sixth Amendment of the Constitution. Therefore, while this bill would be an exercise of Congress' power to implement the Sixth Amendment, it is not intended to be, and obviously could not be, a conclusive interpretation precluding the courts from going beyond Congress if they found the Sixth Amendment's speedy trial provision so required. Similarly, the courts, in interpreting the Sixth Amendment, could not strike down a provision of this Act because, in its view, the Sixth Amendment did not require it. Conceivably a court may determine that the Sixth Amendment requires trials within 100 days. If so, the provisions of this bill permitting trials within 240 days in the second year and within 165 days in the third and fourth years would be in conflict with the Sixth Amendment, and would fail. But the fact that the bill requires trials within 90 days beginning in the fifth year would be unaffected by such a decision. Congress may not do less than the Constitution requires, but it may do more.

TITLE II—PRETRIAL SERVICES AGENCIES

Section 3152 establishment of pretrial services agencies

Section 3152 creates on a demonstration basis in 10 judicial districts, other than the District of Columbia, pretrial services agencies to supervise and control defendants released on bail. The districts are to be selected by the Chief Justice, upon consultation with the Attorney General, on the basis of the number of criminal cases in the district, the percentage of defendants detained before trial, the incidence of crime charged to persons released prior to trial, and the resources available.

Section 3153 organization of pretrial services agencies

Section 3153 creates a board of trustees for the pretrial services agencies in the designated districts. The board shall be composed of the Chief Judge of the Federal District Court, the United States Attorney, the Public Defender, if there is one in the district, a member of the local defense bar, the chief probation officer, and representatives of community organizations appointed by the Chief Judge. The board appoints a Chief Pretrial Services Officer who is responsible for the operation of the agency and who may appoint other personnel to the staff of the agency.

Section 3154 functions and powers of pretrial services agencies

Section 3154 provides that each agency is to perform various functions, as the court shall direct, including: collection and verification of information pertaining to eligibility of defendants for release; recommendation of conditions of release; supervision and control of released persons; operation or contraction for operating facilities for custody or care of released persons, such as halfway houses, narcotics, and alcohol treatment centers, and counseling centers; coordination of other agencies to serve as custodians of released persons; and assistance in securing medical, legal, social and employment assistance to released persons. Information collected by the agencies is to be used only for the determination of bail and is otherwise confidential. The Board of trustees may create exceptions to this confidentiality requirement.

Although the primary function of the pretrial services agencies will be supervision of pretrial release, the Committee does not intend that their responsibilities be restricted to bail proceedings. The agencies could perform any service, as set out in section 3154, for any defendant prior to or even in lieu of trial. For example, the Committee sees no reason why the agencies could not provide services for defendants who are in pretrial intervention programs such as the programs contemplated by S. 798 (93d Cong., 1st Sess.) which was enacted by the Senate on October 3, 1973. Indeed, the pretrial services agencies could even administer a pretrial intervention program so long as such administration would not be in violation of any other statute and so long as such administration would not interfere with the agencies' primary responsibility under this Title.

The whole second title, like the first, is designed to improve the efficiency and deterrent of the Federal criminal justice system. The second title is directed at the problem of defendants who are released pretrial pursuant to the Bail Reform Act of 1966 and either commit a subsequent crime before trial commences or who flee the jurisdiction to avoid prosecution. The title is based on the theory that more careful selection of defendants for pretrial release and closer supervision of released defendants, like trial within 90 days, would reduce pretrial crime. (For a more detailed discussion of the Committee's reasons for title II see pp. 24–25.)

This approach is based upon the experience in the District of Columbia Circuit. The District of Columbia Bail Agency has enhanced the operation of the Bail Reform Act in the District of Columbia because of the reliability of its recommendation for release and the quality of its supervision of released defendants. Title II would improve the operation of the Bail Reform Act by providing 10 Federal districts on a demonstration basis with sufficient resources to both conduct bail interviews and supervise conditions of release. A Pretrial Services Agency similar to the District of Columbia Bail Agency would be established in each of these districts.

There are only minor differences between Title II of S. 895 and Title II of S. 754. The number of pretrial services agencies which could be established have been increaed from five to 10. This is based on the advice of criminal justice experts that there were at least 10 Federal district courts which could benefit from such a demonstration project.

S. 754 would also explicitly place the responsibility for establishing the pretrial services agencies upon the Director of Administrative Office of the United States Courts although the Chief Justice would still select the districts. Also the provision would no longer mention the District of Columbia as one of the jurisdictions in which a pretrial

services agency must be established since the District of Columbia Bail Agency already serves that purpose.

Section 3153 on the organization and operation of pretrial services agencies has been rewritten so that the pretrial services agencies would be governed by a policy board or coordinating council. Based upon recommendations by Professor Freed and the Department of Justice, the new draft would establish a board of trustees, to be appointed by the Chief Judge of the district court and to be composed of one district judge, the United States attorney, the public defender, a member of the local defense bar, the chief probation officer and two representatives of community organizations.

Section 3154 has been amended to create a limited confidentiality for agency files. The confidentiality provision is designed to promote candor and truthfulness by the defendant in bail interviews. The committee is concerned that defendants would be reluctant to speak to interviewers if the information in the files could be used against the defendant on the issue of guilt. However, the provision does not create blanket confidentiality for the files; it leaves some discretion to the Board of Trustees to develop its own policy on the release of agency files. The Board's regulations must, of course, comport with the general policy set out in the section. As a general rule the agencies' files should only be used in initial bail hearings and in subseqeunt hearings where there is an apparent violation of release conditions. Exceptions shall be created to permit access by the agency's own personnel and by qualified persons for research purposes. The regulations on release of information for research purposes should require the preservation of the anonymity of the individual to whom such information relates; the completion of nondisclosure agreements by qualified persons and such additional requirements and conditions as the Board of Trustees finds to be necessary to assure the protection of privacy and security interests.

The section also would allow the Board of Trustees to permit dissemination of agency files to probation officers for presentence reports; to third party custodian agencies and in certain limited situations to law enforcement agencies for law enforcement purposes. The Committee has attempted to adopt a compromise between the language contained in the original confidentiality provision for the District of Columbia Bail Agency and the revision of that provision in 1970. The original provision (D.C. Code 23–903) provided a blanket confidentiality of the files, while the only limitation on the use of the information in the 1970 amendments (D.C. Code 23–1303) is that such information could not be used on the question of the defendant's guilt. The 1970 amendments permit the use of the information gained in bail interviews for the purpose of a perjury prosecution or for the purpose of impeaching the defendant's credibility. The Committee's language permits each Board of Trustees to make its own judgment on this question. Finally, the Committee assumes that each pretrial services agency will report annually to the Director of the Administrative Office of the United States Courts on the agency's experience with its confidentiality regulations and that the Director will in turn make a summary of the agencies' experience available in his annual report to the Congress required by Section 3155.

Section 3155 report to Congress

Section 3155 requires that the Director of the Administrative Office of the United States Courts shall make an annual report on the operation of the pretrial services agencies, with special attention to their effectiveness in reducing pretrial crime and the volume and cost of pretrial detention. In this fourth annual report, the Director shall include recommendations for modifications of this chapter or for its expansion to other districts. This report shall also compare the effectiveness of these pretrial services agencies to traditional monetary bail programs. The Director shall also submit to Congress a report on the administration and operation of the whole Speedy Trial Act six years after enactment.

The purpose of this section is to keep Congress informed on the operation of both titles of S. 754. The first subsection of 3155 is specifically concerned with the effectiveness of the 10 pretrial services agencies. The Committee intends that an objective evaluation of each of the 10 pretrial services agencies be conducted. At the suggestion of Senator Bayh this provision was rewritten to assure that the final report on these pretrial services agencies would compare the effectiveness of these agencies to traditional monetary bail programs.

Professor Freed in his testimony before the Subcommittee on Constitutional Rights, pointed out that title II would empower a pretrial services agency to take over responsibility for filing bi-weekly detention reports which the United States attorneys are required to file pursuant to rule 46(g) of the Federal Rules of Criminal Procedure. The reports filed by the Administrative Office of the United States Courts pursuant to subsection (a) should contain summaries of these bi-weekly reports from the 10 demonstration districts. Professor Freed set out an outline of data which might be compiled in this regard in appendix B to his testimony, appearing at page 148 of the hearings conducted by the Subcommittee in 1971. The reports required by subsection (a) should, at a minimum, contain this information on pretrial detention in the 10 pretrial services districts.

The report required by subsection (b) of this provision is directed more toward the operation of title I of S. 754, although summaries of the findings in the other reports might be mentioned. The Committee intends that a report be prepared similar to Professor Dallin Oaks' report to Congress on the operation and effectiveness of the Criminal Justice Act. The Oaks study led to amendments to the Criminal Justice Act and hopefully the report contemplated by subsection (b) would be of sufficient caliber to lead to improvements in the Act.

Section 3156 definitions

Section 3156 contains the definitions for title II.

Section 302 amends the analysis of chapter 207 of title 18, to reflect the amendments made by title II of the bill.

Section 303 authorizes the appropriation of $10,000,000 for the fiscal year ending June 30, 1974, and such sums as Congress might find necessary in subsequent years.

The Committee arrived at the $10,000,000 authorization by considering the budget of the District of Columbia Bail Agency and the

expense of conducting the sophisticated evaluations required by section 3155. Of course, this is only an authorization and the Appropriations Committees of both Houses of Congress would have to conduct hearings to determine whether $1,000,000 need be spent on each of the pretrial services agencies. Some districts where pretrial services agencies will be established will have a caseload considerably less than the District of Columbia Bail Agency, and presumably the appropriation would reflect that difference.

Section 304 amends section 604, title 28 of the United States Code, relating to the functions of the Director of the Administrative Office of the United States Courts, to reflect the new duties imposed by the creation of pretrial services under this title.

CHART 1

	Year 1 [1]	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7 and thereafter
Interim limits		Arrest to indictment, 60 days; indictment to trial, 180 days.	Arrest to indictment, 45 days; indictment to trial, 120 days.	Arrest to indictment, 45 days; indictment to trial, 120 days.	Arrest to indictment, 30 days; indictment to trial, 60 days.		
Time limits							
Sanction		Report failure to meet all time limits.			Dismissal for failure to meet arrest-indictment-trial time limits.		Dismissal without prejudice for failure to meet arrest-indictment and indictment-trail time limits with a burden on the Government for reprosecution.
Planning process	60 days after enactment: District planning groups established. 1 year after enactment District plan for years 3 and 4 filed with Administrative Office.	15 months after enactment: Years 3 and 4 District plans summarized and sent to Congress.	3 years after enactment: District plans for years 5 and 6 filed with Administrative Office.	39 months after enactment: Years 5 and 6 District plans summarized and sent to Congress.	5 years after enactment: District plans for year 7 and thereafter filed with Administrative Office.	63 months after enactment: District plans for year 7 and thereafter summarized and sent to Congress.	

[1] Because sec. 3161 does not become effective until one year after enactment, S. 754 refers to the second year after enactment as the "first twelve calendar month period after the effective date", the third year after enactment as the "second twelve calendar month period after the effective date", etc. For the purposes of discussion this report refers to the years in terms of years after enactment, not years after the effective date.

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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1508

SPEEDY TRIAL ACT OF 1974

November 27, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

REPORT

together with

MINORITY AND ADDITIONAL VIEWS

[To accompany H.R. 17409]

The Committee on the Judiciary, to whom was referred the bill (H.R. 17409) to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

Page 2, immediately before line 2, strike out the following:

"3165. Planning process.
"3166. District plans—generally.
"3167. District plans—contents.
"3168. Speedy trial reports.
"3169. Planning appropriations.
"3170. Definitions.
"3171. Sixth amendment rights.
"3172. Judicial emergency.

and insert in lieu thereof the following:

"3165. District plans—generally.
"3166. District plans—contents.
"3167. Reports to Congress.
"3168. Planning process.
"3169. Federarl Judicial Center.
"3170. Speedy trial data.
"3171. Planning appropriations.
"3172. Definitions.
"3173. Sixth Amendment Rights.
"3174. Judicial Emergency.

Page 2, line 17, and page 3, lines 1 and 2, strike out the following: "days, but in no such case shall an individual awaiting indictment be

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detained in excess of 30 days from the date of arrest," and insert in lieu thereof the following: "days."

Page 3, line 3, immediately before "The arraignment" insert the following:

"(c)

Page 3, line 10, strike out "a defendant shall be tried" and insert in lieu thereof "the trial of the defendant shall commence".

Page 4, line 20, strike out "(b)" and insert in lieu thereof "(a)".

Page 5, line 4, strike out "(c)" and insert in lieu thereof "(b)".

Page 5, line 5, strike out "indictment" and insert in lieu thereof "arraignment".

On page 5, line 10, strike out 'indictment" and insert in lieu thereof "arraignment".

Page 6, lines 5 and 6, strike out "under Rule 20 of" and insert in lieu thereof "relating to transfer from other districts under".

Page 9, line 9, strike out "such".

Page 9, line 11, immediately after "calendar" strike out the comma and insert "or" in lieu thereof.

Page 9, line 12, immediately after "preparation" strike out the comma.

Page 9, line 12, immediately following "witnesses" strike out the period and insert in lieu thereof the following: "on the part of the attorney for the Government.".

Page 11, line 5, immediately after "dropped." insert the following: "Dismissal with prejudice shall only apply to those offenses which were known or reasonably should have been known at the time of dismissal."

Page 11, lines 7 and 8, strike out the following: "or arising from the same criminal episode".

Page 11, lines 17, and 18, strike out the following: "or arising from the same criminal episode".

Page 11, line 18, immediately before "Failure of the defendent" insert the following: "Dismissal with prejudice shall not apply to those offenses which were known or reasonably should have been known at the time of dismissal."

Page 13, line 6, strike out "Rule 42 of" and insert in lieu thereof "procedures established in".

Page 14, lines 21 and 22, strike out the following: "(and the Superior Court for the District of Columbia)".

Pages 16 through 29, strike out sections 3165 through 3172, and insert in lieu thereof the following:

§ 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 Act. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the criminal justice advisory 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 the Act 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 ditsrict court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Court, 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 review 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 the date of the enactment of this Act, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial of 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 the date of enactment of this Act, 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 with the jurisdiction of such court during the fourth twelve-calendar month period following the effective date of subsection 3161(b) and subsection 3161(c).

§ 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 information and statistics, by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts, consistent with the time limits and other objectives of this Act.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this Act, including:

"(1) the incidence of, and reasons for, request or al-

lowance of extensions of time beyond statutory or district standards;

"(2) the incidence of, and reasons for, periods of delay under § 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 Rule 46(g) of the Federal Rules of Criminal Procedure; and

"(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classification.

(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; and

"(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

(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 3168 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

§ 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 Act. 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 releases; 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.

§ 3168. Planning process

(a) Within sixty days of enactment of this Act, 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, a private attorney experienced in the defense of criminal cases 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 the Act and in aid thereof, it shall be entitled to the planning funds specified in section 3169.

(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.

§ 3169. Federal judicial center

The Federal Judicial Center shall advise and consult with the criminal justice advisory planning groups and the district courts in connection with their duties under this Act.

§ 3170. Speedy trial data

(a) To facilitate the planning process and the implementation of the time limits and objectives of this Act, the Clerk of each district court shall assemble the information and compile the statistics required by section 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 section 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 criminal justice advisory planning group, the circuit council, and the Administrative Office of the United States Courts.

§ 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 of which sum up to $25,000 shall be allocated by the Administrative Office of the United States Courts to each Federal judicial district, and to the Superior Court of the District of Columbia, 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.

§ 3172. Definitions

"(a) As used in this chapter—

"(1) the terms "judge" or "judicial officer" means, unless otherwise indicated, any United States magistrate, Federal district judge, or judge of the Superior Court for the District of Columbia, and

"(2) the term "offense" means any 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).

§ 3173. Sixth amendment rights

No provision of this title shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

§ 3174. Judicial emergency

(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. 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 shall find that no remedy for such congession is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such 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) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrtaive Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a

suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year.

Page 29, immediately after line 8, insert the following:

SEC. 102. The tables of chapters for title 18 of the United States Code and for part II of title 18 of the United States Code are amended by inserting immediately after the item relating to chapter 207 the following new item:

208. Speedy trial---------- 3161.

Page 29, line 11, strike out "adding" and insert in lieu thereof "inserting in lieu thereof".

Page 34, line 23, strike out "rule 46(g) of the Federal Rules of Criminal Procedure." and insert in lieu thereof "the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.".

Page 36, lines 11 and 12, strike out "and any judge of the Superior Court for the District of Columbia,".

Page 36, strike out lines 13 through 17 and insert in lieu thereof the following:

(2) the term "offense" means any 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).

Page 37, beginning with ", and for each" on line 2, strike out all down through line 3, and insert in lieu thereof a period.

I. PURPOSE

The purpose of this bill is to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial. In order to achieve this purpose each Federal district court, in cooperation with the United States Attorney, attorneys active in the defense of criminal cases, and other members of the criminal justice process in the district, is required to establish a plan for trying criminal cases within 100 days of arrest or receipt of summons. The bill takes effect over a five-year period so that the goals of a 30-day limit on the period between arrest and indictment and a 60-day limit on the period between arraignment and the commencement of trial will not become effective until the fifth year after enactment. The time limits of the bill are tolled by a number of exclusions provided for necessary delay occasioned by pre-trial motions, proceedings and other contingencies that arise during the course of criminal prosecutions. The bill would establish ten pre-trial services agencies on a demonstration basis to provide for the supervision and control over defendants released prior to trial. These agencies would be administered by an independent board of trustees in five districts and by the Division of Probation of the Administrative Office of the United States Courts in the remaining districts. They would also provide supportive services to released defendants.

II. STATEMENT

Introduction

The Senate, on July 23, 1974, unanimously approved and sent to the House S. 754, which would give effect to the Sixth Amendment right to a speedy trial. The bill was referred to the Subcommittee on Crime on August 2, 1974. On September 12, 18 and 19, the Subcommittee conducted the first House hearings on speedy trial legislation with S. 754 providing the primary focus of the hearings. During the hearings, the Subcommittee also considered eight similar House bills, which differ in a number of important respects from the Senate bill. The two most significant differences between the House bills and S. 754 are: first, the House bills provide no phase-in period between the date of enactment and the effective date of the speedy trial time limits; second, all of the House bills provide for the sanction of dismissal with prejudice for failure to meet the time limits. In its deliberations, the Subcommittee was mindful of these distinctions. On October 10, 1974, the Subcommittee unanimously approved a substitute version of S. 754 and directed the Chairman to introduce a clean bill. H.R. 17409 was introduced on October 16 by the Subcommittee's Chairman, John Conyers, Jr., the ranking minority member, William S. Cohen, and six members of the Subcommittee.

Difference Between H.R. 17409 and S. 754

The basic differences between H.R. 17409 and S. 754 are as follows:

1. *Judicial Emergency.*—A number of witnesses, particularly the Justice Department and the Administrative Office of the United States Courts, contended that if the Congress fails to provide the necessary funds to make speedy trial a reality or if a particular district is beset by an unforeseeable occurrence which would make compliance with the time limits impossible, the unwarranted dismissal of cases could result. The Subcommittee drafted an amendment to authorize the Judicial Conference of the United States to suspend the time limits between indictment and trial for up to a period of one year in the event of a judicial emergency.

2. *Phase-In.*—H.R. 17409 provides that both the sanctions and the ultimate time limits of the bill become effective in the fifth year after enactment; S. 754 provides that they become effective in the seventh year. Because of the adoption of the judicial emergency provision, the Subcommittee felt that the phase-in period could be reduced without endangering the objectives of the bill.

3. *Sanctions.*—H.R. 17409 provides that the failure to meet the speedy trial limits will result in the dismissal of the complaint, information, or indictment. This would forever bar prosecution of the defendant for any offenses which were known or reasonably should have been known at the time of the granting of the dismissal. This sanction becomes effective in the fifth year after enactment. S. 754 provides for the dismissal of cases in the seventh year for failure to meet the time limits, but permits reprosecution if the government can demonstrate exceptional circumstances.

4. *Time Limits to Trial.*—S. 754 computes the time limits between the periods of arrest to indictment and indictment to trial. At the

suggestion of the Department of Justice, the Subcommittee adopted an amendment to begin the running of the time limits to trial from arraignment. An additional 10 days were added between indictment to arraignment.

5. *Filing Indictments.*—At the request of both the Department of Justice and the Administrative Office of the United States Courts, the Subcommittee adopted an amendment which would permit up to 30 additional days for the filing of an indictment in those districts where grand juries meet infrequently. This amendment is intended to give more flexibility to rural districts, where criminal case filings do not warrant the continuous operation of the grand jury.

6. *Pilot Planning.*—The Subcommittee adopted an amendment to do away with pilot planning districts. Instead, each district planning group is entitled to receive an appropriation for the initial phases of planning.

7. *Planning Process.*—The Committee adopted an amendment to the Subcommittee bill which essentially had the effect of reorganizing the planning provision of S. 754. Very few substantive changes were made with the exception of granting the Judicial Conference of the United States, through the Administrative Office of the United States Courts, greater influence over the administrative aspects of the planning process.

8. *Pretrial Services.*—The Subcommittee adopted an amendment to permit the probation service of the Administrative Office of the United States Courts to administer five of the ten pretrial services agencies. The Administrative Office had urged the Subcommittee to vest all ten pretrial services agencies in the Division of Probation, but the Committee believes that a dual approach would provide greater flexibility and opportunity for experimentation.

Subcommittee Hearings

The Subcommittee received testimony from a number of distinguished witnesses who are representative of the Federal criminal justice system. The speedy trial bill contemplates that each participant in that system become an important factor in increasing the efficiency of the Federal courts in order to achieve the speedy disposition of criminal cases. The Subcommittee wished to know and understand the views of these individuals with respect to the implications of speedy trial legislation as to the Federal courts. Because each member of the system has different interest to be considered in any examination of speedy trial legislation, the subcommittee sought to be fully aware of their positions on this issue.

Witnesses testifying before the Subcommittee from the defense point of view included a Chief Federal Public Defender, a private defense attorney, and the American Civil Liberties Union. The prosecution side was represented by the Justice Department: its witnesses included Assistant Attorney General for Legislative Affairs W. Vincent Rakestraw and a panel of three United States Attorneys. The courts were represented by Rowland F. Kirks, the Director of the Administrative Office, and two Federal district court judges, one of whom represented the Committee on Administration of the Criminal Law of the Judicial Conference. The academic community was represented by Professor Daniel J. Freed who, while serving as director of the

Office of Criminal Justice, drafted one of the first speedy trial bills more than six years ago. Testimony was also received from the American Bar Association, which speaks for all segments of the criminal justice process. The ABA was responsible for drafting the first standards for speedy trial in 1967 as part of its historic series of standards for criminal justice.

Issues Considered by the Subcommittee

The major issues which the Subcommittee wished to consider during the hearings included: whether speedy trial legislation is necessary; whether placing time limits on the period between arrest and trial would have a detrimental impact upon the rights of defendants; what time limits would be reasonable from the point of view of the defendant, the prosecution and the courts; whether uniform time limits could be adopted for all Federal district courts; whether the sanction for failing to meet the speedy trial time limits should be dismissal with prejudice of the charges against the defendant; what, if anything, additional resources the courts would require to implement the time limits; what would occur if the Congress fails to appropriate the necessary resources; and whether the implementation of speedy trial legislation would have an impact upon reducing crime. These and many other issues were considered during the Subcommittee's hearings.

It should be observed that during the long debate over speedy trial, which has spanned more than seven years, the American Bar Association, the Senate Constitutional Rights Subcommittee, the House Select Committee on Crime and two presidential crime commissions have examined and commented on all of these issues relating to speedy trial.

Need for Federal Legislation

The Committee finds that the adoption of speedy trial legislation is necessary in order to give real meaning to that Sixth Amendment right. Thus far, neither the decisions of the Supreme Court nor the implementation of Rule 50(b) of the Federal Rules of Criminal Procedure, concerning plans for achieving the prompt disposition of criminal cases, provides the courts with adequate guidance on this question.

The Supreme Court has held that the right to a speedy trial is relative and depends upon a number of factors. A delay of one year in some instances has been interpreted as prima facie evidence of a denial of the right. However, in others, a delay of up to eighteen years has been held not to violate the Sixth Amendment. In its 1972 decision, *Barker* v. *Wingo*, 407 U.S. 514, the Court stressed four factors in determining whether the right to a speedy trial had been denied to a defendant: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. The task of balancing these factors and arriving at a conclusion which is fair in all cases is a difficult task. It provides no guidance to either the defendant or the criminal justice system. It is, in effect, a neutral test which reinforces the legitimacy of delay.

With respect to providing specified time periods in which a defendant must be brought to trial, the Court in *Barker* admitted that such

a ruling would have the virtue of clarifying when the right is infringed and of simplifying the courts' application of it. However, the Court said:

> But such a result would require this Court to engage in legislative or rulemaking activity, rather than in the adjudicative process to which we should confine our efforts. *Id* at 523.

Several States have adopted either by court rule or legislative action statutes which would give definition to the right to a speedy trial. The approaches taken in these statutes varies from providing specific time limits in terms of days to terms of court. Some of the statutes, such as Rhode Island apply to defendants who are incarcerated prior to trial. The time limits in a number of State laws are computed from the filing of an indictment or information, while a small number compute the time to trial from arrest. For example, in the States of Alaska, Iowa, Nevada, Oklahoma and Oregon, bifurcated time limits are provided similar to the approach taken in S. 754 and H.R. 17409, wherein an indictment or information must be filed within a period ranging from 15 to 30 days and trial is required to commence within an exact number of days thereafter.

Rule 50(b)—Judicial Speedy Trial Guidelines

During the course of the hearings, the Justice Department and the Administrative Office urged the Subcommittee to defer the enactment of legislation mandating speedy trial until the courts have had adequate time to evaluate the results of plans adopted by the Federal courts pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure. Rule 50(b) provides that each district court "shall prepare a plan for the prompt disposition of criminal cases" within its district. It was drafted by the Judicial Conference and submitted to Congress in June, 1972, by the Supreme Court and became law as a result of the Rules Enabling Act. It has been in effect since January, 1973. The Congress played no role in the fact finding process with regard to Rule 50(b) although the Senate at the time of its adoption had already amassed a record on speedy trial. Pursuant to Rule 50(b), the Administrative Office prepared a Model Plan which was submitted to each district court.

The Model Plan provides for time limits between indictment and arraignment, arraignment and trial, and conviction and sentencing. No sanction is provided for failure of the district court to provide a speedy trial, with the exception of release from custody for defendants who are incarcerated prior to trial. Each district had the option of either preparing its own plan or adopting the Model Plan.

The Model Plan suggests a 20-day and 30-day period respectively for the time between indictment and arraignment for defendants in custody or released prior to trial. The time between arraignment and entry of a guilty plea for defendants in custody is 90 days and for those not in custody, 180 days. Thereafter, the sentencing of a convicted defendant or one who pleads guilty or *nolo contendere* is required to take place within 45 days of either of these occurrences.

While the Committee believes that the adoption of Rule 50(b) at the initiative of the courts is a laudable attempt to provide the criminally accused with a speedy trial, it finds that this plan suffers from

the same defect which characterizes the decisions of the Supreme Court on the issue of the denial of the right to a speedy trial.

Each district is permitted to set its own time limits with respect to the two procedures beginning with indictment to trial. Twenty eight districts adopted the Model Plan without change, while others provided time limits which were lower than those of their sister districts. For example, in Georgia, if a defendant commits a crime in the Southern District, he is entitled to trial within 45 days of arraignment; in the Middle District, the same defendant would be entitled to a trial within 90 days and in the Northern District, his trial would commence within 180 days of arraignment. The disparities among the time limits would indicate that each district may be trying cases within approximately the same time it now takes in each district, without mandatory time limits. Moreover, Rule 50(b) provides no uniform definition of the defendant's right to a speedy trial.

A number of other deficiencies are apparent in Rule 50(b); many of these deficiencies were pointed out in a July, 1973, report prepared by Professor Daniel J. Freed and Mr. Andrew H. Cohn of Yale Law School. [Hearings, p. 274.] The Committee relied heavily upon this report.

It was prepared with the cooperation of the Administrative Office, and its validity was not questioned by that Office or by any other witness during the course of either the House or Senate hearings on speedy trial legislation. The study consisted of a review of 92 district plans. A summary of the findings of that report follows: circuits differ in the degree of uniformity among their district plans, with most circuits not enforcing any strict uniformity; the goal of the Model Plan, that the suggested time limits be shortened by the districts is largely unrealized; the Model Plan grants broad discretion with respect to the extensions of time limits—a pattern which is followed in most districts. The report further indicates that a comparison of actual court proceeding time and the Rule 50(b) plans for 20 districts shows that a strong correlation exists between the time limits adopted in the districts and the prevailing norm at the time of adoption. The Committee believes that Rule (b) and the Model Plan adopted by many district courts is an inadequate response to the need for speedy trial, in that it encourages the perpetuation of the *status quo*.

Reasonableness of Time Limits

The Committee finds that the time limits contained in H.R. 17409 are reasonable and that, with increased manpower contemplated by H.R. 17409, the district courts will be in a position to meet the phase-in requirements and the ultimate time limits which take effect in the fifth year following enactment. The Committee rejected amendments proposed by the Justice Department which would have substantially increased time limits during the phase-in period and the ultimate time limits in the fifth year. The Department proposed that the Committee increase the time limits in the fifth year from 30 days between arrest and indictment to 60 days, and from 60 days between arraignment and trial to 90 days.

Statistics provided by the Administrative Office show that the median time between indictment and trial in 90 Federal districts is 5.5 months, while the median time to disposition in all cases—including

dismissals, guilty pleas, court trials and jury trials—is 3.8 months. Although these figures represent only those cases in the middle of the spectrum, they are a reliable indication that the courts are at least meeting the time limits which would be required by the bill during the first two years following enactment. The bill requires no time limits during the first year. During the second and third years the time limits are 180 and 120 days, respectively. The Committee, by adopting the Justice Department's amendments, would have made the speedy trial time limits substantially greater than what many districts are now able to meet.

A factor the Committee considered in determining the optimum time limits in which to require that a defendant be brought to trial is the amount of time it takes an individual who is on bail to be rearrested for a subsequent crime. A National Bureau of Standards study, which was conducted in the District of Columbia during 1970, indicates that the likelihood that a defendant on pretrial release will commit another crime increases substantially if he is not brought to trial within 60 days. Also, the National Advisory Commission on Criminal Justice Standards and Goals proposed that the time limit between arrest and the beginning of trial be set at 60 days. However, the most compelling evidence that the courts would be capable of meeting the time limits contained in S. 754 was provided by Judge Alfonse J. Zirpoli who said:

> At the outset I should emphasize that the limits provided in S. 754 from arrest to indictment and from indictment to trial for federal criminal defendants are entirely acceptable to the federal judiciary and give us not particular concern, for we are confident that long before the seven years phase-in period covered by the bill expires, we of the federal judiciary will have achieved all of its objectives pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure, and that absent dramatic and unforeseen increases in federal crimes, this can be accomplished whether we do or do not receive the additional resources, personnel and facilities which S. 754 would mandate. [Hearings, pp. 368–69.]

Effect of Speedy Trial on Rights of the Accused

The Committee finds that placing time limits on criminal proceedings would not have a detrimental effect on the rights of defendants. The history of speedy trial legislation has shown that both the defense and the prosecution rely upon delay as a tactic in the trial of criminal cases. However, from the defendant's point of view, delay is not synonymous with due process. A defendant who is required to wait long periods to be tried suffers from a magnitude of disabilities which in no way contribute to his well being. If he is incarcerated awaiting trial, unnecessary delay in the commencement of trial could result in irreparable injury to an innocent individual. To one who is ultimately found guilty of a criminal offense, the time spent in detention may represent added time to his ultimate sentence and further retard the rehabilitative process.

The Supreme Court in *Barker* outlined a number of factors which work against an individual who is forced to await trial for long periods of time. If he is detained, the time spent in jail disrupts family life

and enforces idleness; jail offers little or no recreational or rehabilitative programs; "dead time" hinders the defendant's ability to gather evidence, contact witnesses, and otherwise prepare his case. For defendants on pretrial release, the denial of a speedy trial may result in loss of employment or make it impossible to find work; restraints are placed on the accused's liberty, and he may be forced to live under a cloud of anxiety, suspicion, and hostility. The defendant's resources may be drained and his associations curtailed; and he may be subjected to public obloquy, which creates anxiety in his family, friends and the defendant himself.

The Subcommittee was fortunate to have heard the views of witnesses who have been engaged in the defense of the criminally accused. With respect to the implication of speedy trial upon the defendant's ability to prepare his case and receive fair treatment before the court during the pretrial stages of the proceeding, defense attorney Ivan Barris said:

> As I read Senate bill 754, I think there are certainly adequate protections to the rights of the defendant, there are provisions by which discretion can be exercised by the trial judge in seeing that the rights of the individual to a complete and full hearing are not trampled under in the headlong rush for the disposition of a trial. [Hearings, p. 338.]

In this regard, H.R. 17409 provides a number of exclusions from the running of the time limits to trial for proceedings concerning the defendant. Also the defendant may request the court to continue his case for reasons which are within the interest of justice. In addition, section 3165(b) of the bill specifically mandates that the planning process seek to avoid underenforcement, overenforcement, and discriminatory enforcement of the law. The Committee believes that both delay and haste in the processing of criminal cases must be avoided; neither of these tactics inures to the benefit of the defendant, the Government, the courts nor society. The word speedy does not, in the Committee's view, denote assembly-line justice, but efficiency in the processing of cases which is commensurate with due process.

Benefits of speedy trial to society

The Committee believes that the right to a speedy trial belongs not only to the defendant, but to society as well. A defendant who is charged with a violation of the law becomes a burden to society in the sense that his status consumes the time and energy of all components of the criminal justice system with which he comes in contact: the police, magistrate, clerks of court, probation officers, judges and others.

This creates a financial as well as an administrative burden on the taxpayer. When a defendant is detained pending trial, the taxpayer must bear the burden of sustaining him for an indefinite length of time. Most significantly, the defendant may be a danger to the community in which he resides. In the Federal system, although no exact national data is presently available, it is estimated that three-quarters of all defendants are released awaiting trial. This means that persons who are likely to commit additional crimes could without adequate supervision and assistance continue to reap the profits of criminal activity at the expense of the public. The National Bureau of Standards study provides the only statistical data on rearrests of de-

fendants awaiting trial. In a study of 712 defendants during four weeks in 1968, the study found that of the 426 defendants on pretrial release, 47 were rearrested and formally charged with crimes committed while on release. This amounts to an 11 percent recidivism, or rearrest, rate. But, most importantly, the study's recidivist index shows:

(a) An increased propensity to be re-arrested when released more than 280 days;

(b) an increased propensity of persons classified as dangerous under the proposed legislation to be re-arrested in the period from 24 to 8 weeks prior to trial; and

(c) a somewhat greater propensity to be re-arrested while awaiting sentence or appeal after trial than when on pre-trial release.

Although the Subcommittee could not rely on this study as an indication of the recidivism rate for defendants charged with crimes in the Federal courts, it does shed some light on the issue of the amount of time in which the trial of a defendant should take place. It also shows that the frequency of rearrests points to the need for both speedy trials and the establishment of pretrial service agencies, as provided in the bill.

The nation's crime rate during the past year has shown a marked increase. The Uniform Crime Reports, issued by the Federal Bureau of Investigation on crimes prosecuted on the State level, show that crime index offenses during the first half of 1974 exceeded those of the comparable period of 1973 by 16 percent. In the Federal system, a number of general offenses show an increase in 1974 over 1973. For example, criminal cases commenced during fiscal year 1974 reflect the following increases: homicide, 11.1 percent; assault 2.2 percent; larceny and theft, 1.4 percent; embezzlement, 2.6 percent; forgery and counterfeiting, 6.2 percent; sex offenses, 5.0 percent; miscellaneous general offenses, 19.9 percent. A few categories such as robbery and fraud show slight decreases, while substantial decreases were reported in auto thefts and narcotics cases.

The Committee concurs in the views of the recent *Courts* report of the National Advisory Commission on Criminal Justice Standards and Goals which concluded that faster and efficient criminal processing would increase the deterrent effect of the criminal law, ease the task of rehabilitation of offenders and reduce crime.

Controversy over causes of delay

The Committee believes that unlike certain other rights secured by the Constitution, the right to a speedy trial has not been denied purposefully by those who control the reins of justice, but unwittingly by a system which has not matured fast enough to keep pace with the new demands placed upon it by a changing and complex society. Not only has the number of individuals who are processed through the Federal court system increased astronomically since the adoption of the Constitution, but also the number of issues which are litigated has placed tremendous demands upon the system. The Congress over the past 200 years has defined thousands of new crimes and provided for as many new civil remedies, due to increasing urbanization and advanced technology. Yet the courts have not kept pace. This has made the right to a speedy trial dependent upon the amount of time that it takes a backlogged court to reach a case and not upon a uniform

standard which takes into consideration the amount of delay which might prejudice the defendant's rights or society's interest in a speedy trial.

Although all segments of the Federal criminal justice system are aware of the many problems which are causing delay in the trial of criminal and civil cases, there seems to be little consensus on what must be done to alleviate these problems. The Subcommittee found in its hearings a tendency on the part of each participant in the system to direct the blame for delay to another component of the system. The Justice Department blamed the Supreme Court and the judges blamed the Justice Department. The Department claims that habeas corpus petitions and the increasing number of pretrial and posttrial motions are causing delay. In this regard, Assistant Attorney General W. Vincent Rakestraw stated:

> Recent trends in the law have led to the proliferation of pre-trial and post-trial hearings. These hearings are taking judges away ftom the trial of criminal cases and are, as the Supreme Judicial Court of Massachusetts recently observed in commenting on the inordinate length of time consumed by pretrial hearings, "amply demonstrative of the reason why there is heavy and constantly increasing congestion in the jury trials of criminal cases." Commonwealth v. Scott, 245 N.E. 2d 415 (Sup. Jud. Ct. Mass. 1969). These hearings result in an enormous drain in available court resources which would otherwise be available for handling the trial of criminal cases. At a time, therefore, when court decisions which protect the rights of the accused have significantly contributed to the delay in the trial of criminal cases. [Hearings, pp. 196–97]

From another perspective, Judge John Feikens believes that the Justice Department should discontinue a practice he terms "indictment overkill."

He remarked:

> I believe, too, that the Congress should consider ways in which the Department of Justice could be limited in the bringing of cases simply for numbers' sake. Far too often, judges see cases in which there is indictment overkill, mainly in the unnecessary number of counts stemming from the same offense. While the court has discretion to sever counts for trial in the interests of justice, this is not a solution. Most of the pretrial and trial time spent in my court are on cases involving indictments against numerous defendants on multiple counts; these are cases which require extensive pretrial evidentiary hearings, motion hearings, many trial days and difficult problems for juries. These multiparty multicount cases are usually conspiracy cases and a favorite device on the part of the proscution is not only to indict all of the defendant alleged to be involved in the conspiracy in a general count, but also to indict each defendant separately for the commission of substantive offenses and then to indict each defendant additionally as an aider and abettor in the commission of substantive offenses—this, against a background

of the application of the Pinkerton doctrine (*Pinkerton* v. *United States*, 328 U.S. 640 (1946) which also enables each of the defendants to be found guilty by a jury—if the jury finds them guilty of the general count of conspiracy—of conspiracy additionally to commit the substantive offenses. This is indictment overkill and it takes real bites out of available court time to try cases involving these indictments. But my point is that convictions of a defendant on multiple counts is interesting really only as a statistic. Rarely would the sentence (prison) be consecutive on all counts. [Hearings, p. 240]

Judge Alfonso J. Zirpoli pointed out another important area in which the Justice Department has contributed to delay in the processing of criminal cases. Case dismissals represent the method by which 25 percent of all criminal cases are disposed of in the Federal system, yet the Justice Department is accused of failing to expedite dismissals. Judge Zirpoli stated:

> The median line for disposition of the dismissed cases is six months. Dismissals, as you are well aware, are not within the control of the courts themselves. The court can dismiss of its own motion only where it lacks jurisdiction or the indictment fails to charge an offense. Such dismissals are rare. Dismissals are therefore basically controlled by the Department of Justice. The United States Attorney must obtain approval of the Attorney General before dismissals are entered. I am confident that this unfortunate time span can be shortened by administrative action at the Department of Justice level and the Committee on the Administration of the Criminal Law is working on this problem. We have every reason to believe that we will be successful in the resolution thereof. I might add that many judges are now resorting to dismissal under Rule 48(b) of the Federal Rules of Criminal Procedure and dismiss such cases as soon as the United States Attorney indicates that he will seek approval for dismissal from the Attorney General. [Hearing, p. 370]

The Committee believes that whatever the real causes of delay are within the Federal court system that they can be remedied only by the concerted action of those who are responsible for operating the system—lawyers, the Justice Department, and the courts. H.R. 17409 is premised upon this conclusion. The Congress cannot predetermine what is necessary in order to reduce delays and increase the efficiency of the courts, nor can it make advance commitments for resources before a better understanding of the problem is achieved. The planning process of H.R. 17409 charges all parts of the system with the responsibility of working together to find solutions for delay. Those solutions may require the addition of new judges, clerks, the purchase of computers, or perhaps will require the Congress to pass legislation reforming current criminal procedures such as limiting the scope of habeas corpus petitions and pretrial motions. Until the causes of delay are beter understood by the criminal justice system, the most worthwhile approach to the problem of delay is in improving the lines of communication between the components of the system. Procedures which would achieve this end, as embodied in H.R. 17409, would require little additional funding.

Guilty pleas

An argument advanced consistently by the Justice Department in its opposition to speedy trial legislation is that under the types of guidelines that such legislation would impose criminals who would ordinarily plead guilty may insist on jury trials to take advantage of the mandatory dismissal after 60 days. Because they claim that our system of criminal justice depends on the guilty plea, it would be overwhelmed by such demands and wholesale dismissals would follow. This position at least recognizes that, at present, the negotiated plea is a fact of life in the Federal judicial system. Whether the negotiated plea is a desirable element within the system or one of the basic causes of delay and court-clogging is another question. The National Advisory Commission in its *Courts* report found that plea bargaining constitutes a triple danger to the system:

(1) *Danger to the Defendant's Rights.*—A survey of more than 3,400 criminal justice practitioners in four states—California, Michigan, New Jersey, and Texas—revealed that 61 percent of those polled agreed that it was probable or somewhat probable that most defense attorneys engage in plea bargaining primarily to expedite the movement of cases. Furthermore, 8 percent agreed that it was probable or somewhat probable that most defense attorneys in plea bargaining negotiations pressure clients into entering a plea that the client feels is unsatisfactory.

(2) *Danger to Court Administration.*—Very simply, the Commission found that plea bargaining resulted in the need to pull cases out of the process—sometimes on the morning of trial—making efficient scheduling of cases difficult or impossible. Thus, plea bargaining makes it difficult to use judicial and prosecutorial time effectively.

(3) *Danger to Society's Need for Protection.*—The conclusion of the Commission in this regard is that, because defendants are often dealt with less severely than might normally be the case, plea bargaining results in leniency that reduces the deterrent impact of the law and may have a less direct effect on corrections programs.

The Commission, as part of its comprehensive study, was the first such national commission to confront the question of whether plea bargaining is desirable. Its Standard 3.1 answers that question tersely:

> As soon as possible, but in no event later than 1978, negotiations between prosecutors and defendants—either personally or through their attorneys—concerning concessions to be made in return for guilty pleas should be prohibited. [*Courts*, p. 46.]

Although he did not advocate abolition, Judge Feikens called for restraints on the permissible scope of plea bargaining:

> Consideration by the Congress might be given to the placement of limitations on plea bargaining. Both the attorneys for the government and for the defendant should be required to get to this discussion and decision at a much earlier time than on the day of trial; if this is done, court time availability will be increased. [Hearings, p. 240.]

Thus, while there seems to be the characteristic lack of accord as to whose advantage this facet of the system works, there can be little

doubt that as a practice it is causing defendants, courts and society considerable inconvenience—at some considerable cost.

The Committee finds little evidence to support the allegations that this legislation would cause the judicial system to be inundated with demands for jury trials in a high number of cases. It cannot be denied that the system depends upon the plea of guilty; although such an admission reflects poorly upon a society that claims to afford the right to a jury trial for serious crimes to all citizens, it is a fact that better than 85 percent of all federal criminal cases are disposed of by plea. Experience has demonstrated, however, that the fear of chaos caused by the imposition of fixed time limits for trial is groundless. During the first full quarter after the Second Circuit adopted speedy trial rules in 1971, the rate of disposition increased 20 percent due to increased guilty pleas, and the conviction rate in cases disposed of on the merits increased from 90 to 95 percent.

CONCLUSION

In summary, the Committee contends that any study of the interrelated problems of escalating pretrial crime and intolerable delay suffered by defendants awaiting trial begs but one conclusion: the time has long since past for all parties to put an end to squabbling as to where the blame lies. Prosecuting and defense attorneys alike must abandon the vagaries of cross-accusation and substitute real communication. Federal judges must put their houses in order by beginning a thorough examination and evaluation of their problems to determine what is necessary to solve tehm. Finally, the Congress must begin to address itself realistically to the question of resources and make its commitmet to criminal justice as tangible as it has been rhetorical.

None has perceived this problem more succinctly nor assessed it more eloquently than former Assistant Attorney General William H. Rehnquist in his remarks to the Senate Subcommittee on Constitutional Rights in 1971:

> None of us interested in the administration of criminal justice, Mr. Chairman, whether inside or outside of the Government, whether within or without the bench and bar, can fail to be struck by the stark fact of intolerable delays in our system of administering criminal justice. The Department [of Justice] is of the view that some of the root causes of this unjustifiable delay must be sought out, identified, and dealt with, regardless of whether the solution for any particular facet of the problem tends to hear more heavily on one side of the criminal justice equation than the other.
>
> Therefore, we are unwilling to categorically oppose the mandatory dismissal provision. For it may well be, Mr. Chairman, that the whole system of Federal justice needs to be shaken by the scruff of its neck, and brought up short with a relatively peremptory instruction to prosecutors, defense counsel and judges alike that criminal cases must be tried within a particular period of time. That is certainly the import of the mandatory dismissal provisions of your bill. (Senate Hearings, p. 96)

If such was the need three years ago, the Committee submits that our already overburdened Federal criminal justice system may not tolerate further delay.

III General Description of the Bill

Title I

Time limits

H.R. 17409 provides that all defendants charged with criminal offenses be brought to trial within 100 days of arrest or service of a summons, subject to a number of exclusions for necessary delay. The time limits are divided into three segments: the ultimate period between arrest and filing of an indictment or information would be 30 days, the period between indictment and arraignment, 10 days, and the period between arraignment and trial, 60 days. These time standards do not become effective until the fifth year after enactment. An intervening four-year phase-in period is provided in order to give the courts adequate time to increase their resources, to isolate the causees of delay, and to determine how best to alleviate this problem in each district. [Section 3161 (b) and (c)]

Phase-in period

During the first year following enactment, no time limits are prescribed by the bill; it is not until the second year that the first graduated time limits become effective. In the second year after enactment, the time limit between arrest and the filing of an indictment or information would be 60 days, and the time limit between arraignment and the commencement of trial would be 180 days.

In the third year after enactment, the time limits would be 45 days and 120 days, and, in the fourth such year, 35 and 80 days, respectively. The time limit between indictment and arraignment, which would be 10 days, remains constant throughout the life of the law. [Section 3161 (f) and (g)]

Exclusions

The time limits would be tolled by hearings, proceedings and necessary delay which normally occur prior to the trial of criminal cases.

The act provides for exclusions from the time limits based on the conduct of proceedings concerning the defendant including, but not limited to, delay resulting from: an examination of the defendant and hearings on his mental or physical incapacity; examinations concerning civil commitment of addicts and treatment for alcoholism; trials with respect to other charges; interlocutory appeals; hearings on pretrial motions; proceedings with respect to transfer for plea and sentence; and the time during which any proceeding concerning the defendant is under advisement.

In addition to exclusions for proceedings concerning the defendant, a number of other exclusions are provided in recognition of the impossibility of providing rigid time limits for the trial of criminal cases. These periods include: deferred prosecution by the government; absence or unavailability of the defendant or an essential witness: the period during which the defendant is mentally or physically unable to stand trial, or is being treated for narcotics addiction or alcoholism;

and a reasonable period of delay when the defendant is joined for trial with another defendant, as to whom the time for trial has not run and no motion for severance has been granted. [Section 3161 (h)]

Continuance

A significant provision of the legislation would permit a 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, to grant a continuance which would toll the time limits of the bill. Before deciding the question of whether a continuance should be granted, the court must determine whether the ends of justice served by granting the continuance would outweigh the best interest of the public and the defendant in a speedy trial. The court is required to note in the record the reasons for granting such a continuance. In addition, under the planning process, the court is required to make available to the clerk, for inclusion in a report to the Congress, information concerning the number of and reasons for granting a continuance. This provision serves to provide the Court with the flexibility to extend the time limits of the bill so that they will not operate harshly on the defendant, the government or society.

Motions would be appropriate under this exclusion when the continuation of the proceeding would be made impossible or result in a miscarriage of justice; where the case as a whole is unusual or complex, due to the number of defendants or the nature of the prosecution and it is unreasonable to expect adequate preparation within the time periods; and where the factual determination before a grand jury is complex. In order to prevent abuse of the continuance provision, a continuance will not be granted for 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. [Section 3161(h)(8)]

Speedy trial for incarcerated defendants

In cases where the accused is already serving a term of imprisonment either within or without the district, the attorney for the Government is required to promptly initiate procedures to protect the defendant's right to speedy trial by either seeking to obtain his presence for trial or filing with custodial authorities a detainer and request to advise the defendant of his right to demand trial. Upon receipt of such detainer, the official holding the prisoner must promptly advise him not only of that right, but also must apprise him of the charges lodged against him. If the detainee does exercise his right and demands trial, the custodian must certify that fact promptly to the prosecutor that caused the detainer to be filed who, after receiving the certificate, is then bound to obtain the defendant's presence for trial. After the prosecutor makes such a properly-supported request for temporary custody, the defendant must be made available for trial without prejudice to traditional rights in cases of interjurisdictional transfer. The computation of time for trial begins once the defendant's presence has been obtained, unless the court finds in considering his subsequent claim for dismissal, under the provisions of this legislation, that the prosecutor is responsible for unreasonable delay in either filing a detainer or seeking to obtain the accused person's presence. [Section 3161(j)]

Dismissal with prejudice

In the event that the time limits of the bill, subject to the various exclusions, are not met, the court on motion of the defendant may dismiss the complaint, information or indictment against the individual. This sanction applies to both the period between arrest and indictment and between indictment and trial. The effect of a dismissal would be to bar any future prosecution against the defendant for charges arising out of the same conduct. Dismissal with prejudice would apply to those offenses which were known or reasonably should have been known at the time of dismissal. A defendant must move to dismiss the case prior to trial, entry of a plea of guilty or *nolo contendere*, or he waives the right of dismissal with prejudice on grounds that the requirements of this legislation were not met. [Section 3162(a)]

Sanctions are also provided for attorneys, either for the defense or the Government, who intentionally delay the proceedings. The penalties include a reduction in compensation or a fine, or suspension from practice before the court for up to 90 days. [Section 3162(b)]

Interim time limits

During the first four years under the bill, interim time limits are provided for the trial of individuals detained and those released pending trial who have been designated by the attorney for the Government as being of "high risk." This section would require the trial of these individuals within 90 days following the beginning of detention or designation as "high risk." Moreover, any persons designated "high risk," or detained before the effective date of the interim time limits, is entitled to be brought to trial within 90 days from the date this section becomes effective. The interim time limits become effective 90 days after the enactment of the bill. Failure to commence the trial of a detained person under this section results in the automatic review of the terms of release by the court and, in the case of a person already under detention, release from custody. [Section 3164]

Planning process

The heart of the speedy trial concept embodied in H.R. 17409 is the planning process. These provisions recognize the fact that the Congress—by merely imposing uniform time limits for the disposition of criminal cases, without providing the mechanism for increasing the resources of the courts and helping to initiate criminal justice reform which would increase the efficiency of the system—is making a hollow promise out of the Sixth Amendment. The primary purpose of the planning process is to monitor the ability of the courts to meet the time limits of the bill and to supply the Congress with information concerning the effects on criminal justice administration of the time limits and sanctions, including the effects on the prosecution, the defense, the courts and the correctional process, and the need for additional rule changes and statutes which would operate to make speedy trial a reality. This approach is unique; the State statutes governing speedy trial contain no similar provision linking the time standards with a commitment on the part of the legislature to determine the needs of the courts.

Planning groups

The bill provides for the convening of planning groups by each United States District Court within 60 days after the enactment of

the bill. The planning group will be composed of representatives of all segments of the Federal criminal justice process including: the Chief Judge of the district court; a United States Magistrate, if any; the clerk of the district court; the United States Attorney; the Federal Public Defender, if any; a private attorney experienced in the defense of criminal cases in the district; the chief United States Probation Officer; and a person skilled in criminal justice research and planning to act as a reporter for the group. [Section 3168]

Objectives of the planning process

The planning process will seek to recognize the objectives of effective law enforcement, fairness to accused persons, and efficient judicial administration. The goals of this process are to gain an increased knowledge concerning the proper functioning of the criminal law and to insure that in the administration of the bill overenforcement, underenforcement and discriminatory enforcement of the law is avoided, as well as prejudice to the prompt disposition of civil litigation. [Section 3165(b)] The planning groups are required to address themselves to such criminal justice reforms as the grand jury system, the finality of criminal judgments, *habeas corpus* and collateral attacks, pretrial diversion, pretrial detention, excessive reach of criminal law, simplification and improvement of pretrial and sentencing procedures, and appellate delay, among others. [Section 3168(b)]

Filing and preparation of district plans

The district courts are required to submit two plans to the Administrative Office. The first plan would cover the disposition of criminal cases during the third and fourth years after enactment. These are the years in which the time limits between arrest and indictment are 45 and 35 days, respectively, and between arraignment and trial, 120 and 80 days, respectively. The second and final plan would cover the disposition of criminal cases in the fifth year of the act, when the time limits between arrest and indictment and indictment and trial are 30 and 60 days. [Section 3165(e)]

In the preparation of each district plan, the district court is required to consult with, and consider the recommendations of, the Federal Judicial Center [Section 3169] and the criminal justice planning group for the district. Upon the adoption of each plan, it is submitted for final approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief district judge whose plan is being reviewed or his designee, who shall be a judge of his district court. The plan is then forwarded to the Administrative Office of the United States Courts. [Section 3165(c)] The plans may be modified at any time by the district court with the approval of the reviewing panel. Both the reviewing panel and the Administrative Office of the United States Courts may direct that the plan be modified. All modifications must be reported to the Administrative Office. [Section 3165(d)]

Reports to Congress

Three months following the submission to it of the district plans, the Administrative Office, with the approval of the Judicial Conference, is required to submit a report to the Congress detailing the plans. The report must include any legislative proposals and appropriations necessary to achieve compliance with the time limitations provided in the bill. [Section 3167]

District Plans—Contents

Each district plan will contain information which would provide the Administrative Office and the Congress with an understanding of the characteristics of criminal justice administration in the district. Included in this information would be: the time span between arrest and indictment and indictment and trial; the number of matters presented to the United States Attorney for prosecution, and the acceptance and rejection rates of prosecution; the comparative number of cases disposed of by trial and by plea; the rates of conviction, dismissal, acquittal, *nolle prosequi*, diversion and other types of disposition; and the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition. [Section 3166(c)]

In addition, the plans are required to contain a description of the procedural techniques, innovations, systems and other methods by which the components of the criminal justice process in the Federal courts have expedited, or intend to expedite, trials or other objectives of the planning process. [Section 3166(a)]

Perhaps the most important planning provision is the requirement that each plan specify the rule changes, statutory amendments and appropriations needed to effectuate improvements in the administration of justice in the district. Because of the diversity of problems in the various district courts due to geography and population, needs which might be unique in certain districts could go unnoticed without direct communication from the district to the Judicial Conference and to the Congress. [Section 3166(d)]

Involvement of Federal Judicial Center in Planning Process

The Federal Judicial Center, the research and evaluation component of the Judicial Conference, is directed to advise and consult with the planning groups and the district courts, to assure a free flow of data and technical assistance from the national to the local level. [Section 3169]

Speedy Trial Reports

To facilitate the planning process and the implementation of its time limits and speedy trial objectives, the bill requires the clerk of each district court to collect such information as deemed necessary by the Administrative Office, with the approval of the Judicial Conference, to do so. Total cooperation at the Federal level is effected by the requirement that the Conference consult with the Attorney General of the United States in overseeing the channeling of information from the lowest to the highest administrative levels. [Section 3170]

All non-privileged and non-confidential information necessary to speedy trial objectives may be obtained by the clerk from a variety of relevant sources, including the United States Attorney, the Federal Public Defender, private defense counsel appearing in criminal cases in the district, district court judges, and the Chief Federal Probation Officer. In turn, the clerk must disseminate all such collected data to the court, the planning group, the judicial council of the circuit in which the district is located and the Administrative Office. [Section 3170]

Planning appropriations

The bill would authorize the appropriation of $2,500,000 to carry out the initial phases of planning and implementation of the speedy trial provisions of the bill. The funds would be apportioned to each district on the basis of objective need factors by the Administrative Office; local expenditure would be at the discretion of the planning group, by two-thirds vote. [Section 3171]

Sixth amendment rights

By including language specifying that no provision in title I is to be interpreted as a bar to any claim of denial of speedy trial as required by the Sixth Amendment, the bill further clarifies the intent of the Congress in imposing uniform national time limits for the disposition of federal criminal cases. [Section 3173]

Judicial emergency

To abrogate the possibility that at some time in the future, after the eventual time limits of 30 and 60 days and the dismissal sanction have become effective, courts will be forced to dismiss cases because they are unable due to reasons totally beyond their control to meet those time limits, the bill incorporates a judicial emergency section. The Judicial Conference is permitted under the emergency provision to suspend the operation of the time limits between indictment and trial in individual districts for up to one year. If it finds upon reviewing the district's application that no efficient use of the district's existing resources will enable it to meet the requirements of the legislation, the conference may grant a suspension. The effect of the suspension is to allow a district found deserving of such relief to increase the indictment to trial time during the period of suspension up to 180 days. Although the Conference may not grant more than one suspension per judicial district, it may make application to the Congress for an additional suspension within six months of the end of a current suspension period and, if Congress fails to act on such an application, an additional suspension period would begin, as to that district, immediately upon the expiration of the previous one.

The application procedure that the courts must follow is designed to mesh administratively with the planning and reporting provisions of the bill and is in accord with existing statutes. The chief judge of the district, after soliciting the written views and recommendations of the planning group and the judges within the district, files an application for suspension with the judicial council of the circuit. If the council finds no alternate remedy for the district's problem upon review of its application, it may recommend a suspension to the Conference, which may then grant one for a period not to exceed one year. Within 10 days, the Director of the Administrative Office must file a report with the Congress, which must notice the granting of the application for suspension and include the recommendations of the planning group and any judge or judges of the district, together with additional or dissenting views. The Congress would then be able to determine what additional resources might be required to allow the district to meet the requirements of this legislation, using that data as a basis for action. [Section 3174]

Title II

In title II, the likelihood that defendants released pretrial will commit a subsequent crime before trial commences is reduced by provisions that guarantee a more careful selection of pretrial release options by the courts and closer supervision of releasees by trained personnel.

Establishment of preservices agencies

The first section of the title accomplishes this by creating on a demonstration basis in 10 judicial districts, other than the District of Columbia, pretrial service agencies to supervise, control and provide supportive services for defendants released on bail, which are modeled after a program low in existence in Washington, D.C. After consultation with the Attorney General, the Chief Justice of the Supreme Court of the United States will choose 10 districts that best represent the full spectrum of variations between federal districts with respect to size and workload. To achieve this objective, the Chief Justice will use several factors as a basis for his selections: number of criminal cases in the district, percentage of defendants detained before trial, incidence of crime charged to those released prior to trial and available resources. [Section 3152]

Organization of pretrial services agencies

Given the experimental theme of this legislation and its overall goal of measuring the scope of the Federal problem accurately and fashioning the most appropriate remedy possible, H.R. 17409 organizes the service agencies under the Administrative Office, but vests local control in differing hands to establish a laboratory for later comparison in evaluating their success. In five of the demonstration districts, the agencies will be governed by a Board of Trustees selected by the chief judge, which will set policy for their respective districts and choose a chief pretrial services officer on the basis of recommendations submitted by the judges in the district. Serving on these independent Boards of Trustees will be: from the district, the chief judge, the United States Attorney, and the Federal Public Defender; a member of the local defense bar; the chief probation officer in the district; and representatives of community organizations appointed by the chief judge. In the rest of the jurisdictions, the chief services officer chosen by the Chief of the Division of Probation must be a federal probation officer from within the district, who will manage the agency according to policy established by the Division. [Section 3153]

FUNCTIONS AND POWERS OF PRETRIAL SERVICE AGENCIES

At the direction of the court in the respective districts, all ten agencies are to perform various functions, including: Collection and verification of information pertaining to eligibility of defendants for release; supervision and control of released persons; operation or contraction for operating facilities for custody or care of released persons, such as halfway houses, narcotics and alcohol treatment centers, and counseling centers; coordination of other agencies to serve

as custodians of released persons; and assistance in securing medical, legal, social and employment assistance to released persons. Information collected by the agencies is to be used for the determination of bail and is otherwise confidential. The Board of Trustees and the Division of Probation in respective situations, however, are empowered to create certain exceptions to the confidentiality provision as needs arise. [Section 3154]

Report to Congress

To allow for proper and timely evaluation the Director of the Administrative Office must make an annual report to the Congress on the operation of the pretrial services agencies, devoting special attention to their effectiveness in reducing pretrial crime and the volume and cost of pretrial detention. In the fourth such report, recommendations for modifications of the second title or its expansion to other districts is required. The Director is also charged in the report to compare the relative success of each supervisory approach and their overall effectiveness as measured against traditional monetary bail programs. [Section 3155(a)]

Five years after enactment, the Director must submit to the Congress a comprehensive report on the administration and operation of the whole Speedy Trial Act, which will include his views and recommendations thereon. [Section 3155(b)]

Authorization

The bill authorizes an appropriation of $10,000,000 for the first year's operation of title II. The absence of a continuing authorization is to permit the Congress to closely oversee the annual operation of the pre-trial services agencies program and make appropriate recommendations as to future expenditures. [Section 303]

IV. Technical Explanation of Committee Amendments

The Subcommittee amended several sections of S. 754 to reflect suggestions made by the Justice Department, the Administrative Office, the American Bar Association and other interested parties. An explanation of these amendments follows:

Title I

SCHEDULING TRIALS

Section 3161(a) provides that the judge shall set the date for trial at the earliest practicable point in the proceedings upon consultation with the attorney for the Government and counsel for the defense. The purpose of this provision is to put all participants in the criminal process on notice that the trial will commence not later than 60 days after arraignment. This would allow witnesses for both the defense and the Government to know well in advance when they are required to appear in the proceedings. Also, it would allow the courts to more efficiently administer their dockets. When a trial is scheduled on a day certain, the court could be left without a case to try because of a last-minute guilty plea prior to the commencement of trial. This would be a waste of judicial resources.

When a case is set down for trial on a particular day or week under the speedy trial provisions, the time scheduled for trial is more than just a target date; it is a strong admonition to all parties to plan their schedules accordingly so that delay based on the unavailability of witnesses, inadequate preparation, and scheduling conflicts due to other commitments will not jeopardize the disposition of the case which could be detrimental to the interests of the defendant, the Government, or society. Section 3161(h)(8)(C) expressly provides that general court congestion, lack of diligent preparation and unavailability of witnesses are not proper grounds for granting a continuance.

At the suggestion of the Administrative Office of the United States Courts, the Subcommittee adopted an amendment that would permit the scheduling of cases on a weekly or short-term trial calendar. This provision is not intended to ameliorate the original mandate of the legislation which provides that the case be scheduled for a day certain. The courts, by the addition of the new language, would be permitted the flexibility of using either approach to scheduling cases as long as the original intent of the section as originally drafted is not overlooked—which is to insure that defense counsel, witnesses and the attorney for the Government are not forced to spend unreasonable lengths of time waiting for the calling of their case for trial. The Committee recognizes that a balance must be struck between efficient court management and convenience to the participants in the proceeding. It believes that the district courts under this provision could schedule cases by using one such scheduling alternative—either a day certain or weekly or short-term calendars.

The words "short-term calendar" are not intended to mean a period of duration of more than one week, although it may be a period of less than a week.

At the request of the Justice Department, the subcommittee adopted an amendment which would permit the trial of a case at any place within the judicial district. This language was included in anticipation of problems which might occur in districts with statutory divisions, where it could be difficult to set trial outside the division. The Department, in its comments concerning this provision, pointed out that "no constitutional or statutory barriers" exist to the addition of this language.

TIME LIMITS

Arrest to indictment

Section 3161(b) provides that any information or indictment charging an individual with an offense must be filed within 30 days of the date the accused was arrested or served with a summons. At the request of the Justice Department, the subcommittee adopted an amendment which would allow districts in which no grand jury was in session during the 30-day period following the arrest of, or issuance of the summons to, an individual an additional 30 days in which to file an indictment.

This amendment recognizes the fact that a number of districts do not have a sufficient number of criminal cases to warrant the continuous operation of the grand jury. The subcommittee found that, in 34 districts, grand juries convened 0 through 10 days; in sixteen districts, 11 through 20 days; and, in fifty districts, 20 or less days during

the six-month period from January through June, 1974. Although the Committee recognizes the expenses to the Government and inconvenience ot grand jurors, particularly in the larger geographic districts, involved in convening grand juries for a limited number of cases, it believes that every effort should be made to indict individuals within the time limits provided, and invoking this extension only when necessary.

The Justice Department, in a memorandum to the Subcommittee requested by Mr. Cohen, concluded that this provision would not result in the denial of equal protection of the law for defendants accused of crime who are forced to await indictment in districts where grand juries meet infrequently.

Arraignment to Trial

Section 3161(c) provides that the arraignment of a defendant shall take place within 10 days from either the time the indictment or information is filed and made public or, in the case of a defendant who has not previously appeared before the court, from the time he is ordered held to answer and has appeared before a judicial officer of the court in which the charge is pending, whichever last occurs.

After arraignment, a defendant is required to be brought to trial within 60 days at a place within the district set by the court. This language was substituted for that of the original Senate provision, again at the request of the Justice Department. The purpose of the amendment is to begin the running of the time limits from a logical point in the proceedings. At arrangement, the defendant is required to plead to the charge contained in an information or indictment. The Department pointed out that it would be a waste of judicial resources to require the courts to schedule trials at the time of the filing of an indictment, due to the possibility that the defendant may choose to plead either guilty or *nolo contendere*, thus making trial unecessary. The Committee believes that this provision is more consistent with the goals of Section 3161(a), which requires the court to set trial for either a day certain or on a weekly or other short-term calendar. The scheduling of trials for defendants who will ultimately plead guilty only serves to make more difficult the scheduling of trials for those who will demand them.

Unfortunately, however, the Committee must point out that statistics show that beginning the running of the time to trial from arraignment will not have a substantial impact on reducing the unnecessary scheduling of cases, since the median time it takes for a defendant to plead guilty from the date he is indicted or an information is filed is 3.1 months in the Federal system. In this respect, the following dialogue took place between Mr. Cohen and Mr. James L. Treece, the United States Attorney for the District of Colorado in hearings before the Subcommittee:

> Mr. COHEN. Is it your experience—I ask all of you here—is it your experience most of the guilty pleas come at arraignment time?
>
> Mr. TREECE. No. Generally after trial has been set, approximately a month or 45 days after arraignment. [Hearings, p. 215]

In addition, the Justice Department noted that other delays may also arise prior to arraignment in the charging district. As an example,

the Department cites the difficulty in moving prisoners coming into the district from out-of-state. In this regard, Mr. Treece said:

> For example, prisoners aren't moved immediately when ready because the marshals try to make their trips worthwhile by combining the movement of several prisoners. So it may take several weeks to get a prisoner from Florida to Colorado during which time he will be provided an attorney and perhaps have a hearing relative to his removal. [Hearings, p. 206.]

The Committee cannot conclude that inconvenience to the United States marshals or the minimal expense of transporting prisoners is an excuse for delaying the arraignment of a defendant. This provision is not intended to give the attorney for the Government the discretion to extend the time for arraignment beyond 10 days where the defendant's presence could have been obtained by the exercise of prosecutorial initiative.

This provision is intended to permit the attorney for the Government to issue a summons in lieu of an arrest warrant. Mr. Treece, in his prepared statement, pointed out that normally, if the Government mails summonses and if they do not produce the defendant, they are served by a Federal marshal. If this does not produce the defendant, an arrest warrant is sought and the defendant is arrested. This procedure could potentially be time-consuming if the attorney for the Government fails to execute each procedure with dispatch. The United States Attorney should attempt to set time limits on the mailing of summonses and the subsequent arrest procedure. Under Rule 9 of the Federal Rules of Criminal Procedure, a summons or warrant returned unexecuted "at any time" while the indictment or information is pending may be delivered by the clerk to the marshal or other authorized person for execution or service. The words "at any time" could create unnecessary delay in securing the arrest of a defendant who fails to make return of a summons on the return day. Flexible time limits should be placed on the period from the mailing of the summons to the return date, between the return date and service of the summons by a marshal, and between the return date of the subsequent summons and the execution of an arrest warrant.

Phase-in period

Sections 3161(f) and (g) provide for the phasing-in of time limits between arrest to indictment and arraignment to trial. S. 754 provides for a seven-year phase-in period with the time limits of 30 days between arrest and indictment and 60 days between indictment and trial becoming effective in the fifth year after enactment. Year six and seven in the Senate bill serve as a phasing-in period for the dismissal sanction. Because the Committee makes the sanction of dismissal with prejudice effective in the fifth year, years six and seven are no longer necessary.

With respect to the time limits during the phase-in period, the only difference between S. 754 and H.R. 17409 is that the time limits in the fourth year after enactment between arrest and indictment and indictment and trial have been reduced from 45 days to 35 days and from 120 days to 80 days, respectively. The Senate bill provides identical time periods for the third and fourth years after enactment. The Committee believes that these identical time periods possibly

could result in the maintenance of the status quo during the fourth year. The Committee is of the opinion that each year of the phase-in should result in gradual improvements in reducing the time period between arrest and trial.

Under section 3165(e)(1) of H.R. 17409, a plan for years three and four is required to be submitted prior to the end of the first year after enactment. The Committee believes that when this plan is filed, the districts should not merely duplicate the plan for year three in year four. Rather, they should make every effort to insure that each year during the phase-in period results in an increase in efficiency of the court system which is reflected in a greater ability to speed up the processing of criminal cases. In addition, if the court is able to meet the 35 and 80-day time limits in the fourth year, no foreseeable barriers should exist to meeting the 30 and 60 day time limits in the fifth year after enactment, when the dismissal with prejudice sanction becomes effective. Making the time limits in years four and five more closely approximate each other would serve to avoid the sudden-death fall from high time limits to lower ones in the fifth year, when the sanction is operative.

The Committee cautions that, although no sanction is in effect during the phase-in period, each district should attempt to do all it can to meet the time limits of section 3161(e) and (f) so that they will avoid being placed in the position of applying for a suspension of the indictment to trial time limits under the judicial emergency provision contained in section 3174. During the phase-in, both the Administrative Office and the Federal Judicial Center should cooperate fully with the planning groups and the district court to insure that the time limits are being met and that all available resources are being efficiently utilized. The Administrative Office should also make every attempt to assign visiting judges and other available resources to districts that are encountering difficulties in meeting the time limits during the phase-in period. The need for any additional resources should be brought to the attention of the Congress immediately, whether it is part of a district plan or contained in an independent report initiated by the Administrative Office.

EXCLUDABLE DELAYS

Section 3161(h)(1)(A) allows the exclusion of time in computing the period between arrest and trial for the examination of the defendant relating to his incapacity to stand trial. The subcommittee added the words "mental or physical" prior to "incapacity" at the request of the Justice Department for the sake of clarity.

Section 3161(h)(1)(g) provides for the exclusion of time during which any proceeding concerning the defendent is under advisement. The subcommittee added language which would limit to 30 days the time that each proceeding could be held under actual advisement. The amendment was adopted at the suggestion of Detroit defense attorney Mr. Barris, who said:

> Now, I think the language which is now contained within the bill is that a reasonable time should be allowed when a matter is held under advisement by the district judge. This, of course, is a very flexible term, term "reasonable," and I would suggest that a period of 30 days after all oral argument is heard and all briefs have been submitted on the matter under advisement is not an unreasonable period in which the district judge could act, I do not think that this would compel the judge to reach on any particular issue an improvident answer merely because he is held to a time limit of 30 days. And yet if such a provision or restriction were written into the Act, it would effectively plug up one of the loopholes which I conceive to now exist whereby a district judge were he prone to do so, could well "sit on a matter" for an indefinite period of time and thus rather effectively defeat the purposes of the bill. [Hearings, p. 340.]

The Committee concurs with the views of Mr. Barris and also with the Alaska speedy trial rules of court, which provides that no pre-trial motion shall be held under advisement for more than 30 days. This modification in no way affects the prerogative of the court to continue cases upon its own motion where, due to the complexity or unusual nature of the case, additional time is needed to consider matters before the court, as set forth in section 3161(h)(8). It should also be noted, however, that in such cases the court must set forth with particularity reasons for granting such a motion.

Section 3161(h)(4) provides for the exclusion from the time limits between arrest and trial of the period during which a defendant is incompetent to stand trial. The Subcommittee added language to clarify the intent of the section. Both mental and physical reasons would qualify as grounds for an exclusion under this provision.

Section 3161(h)(8) provides that no continuance shall be granted for reasons of general court congestion, or lack of diligent preparation, or failure to obtain available witnesses on the part of the attorney for the Government. By approving this provision, the Committee intends to make it clear that the continuance provision should not be invoked for reasons other than those which would meet the ends of justice. The Committee can foresee instances in which institutional delay caused by any of these factors could result in what subsection 3161(h)(8)(b)(i) terms a "miscarriage of justice." However, the nature of the concept of speedy trial is one which recognizes that institutional delays occasioned by poor administration and management can work to the detriment of the accused. Placing a prohibition on the granting of continuances for these reasons serves as an incentive to the courts and the Government to effectively utilize manpower and resources so that defendants may be tried within the time limits provided by the bill.

Although the Committee cannot foresee any excuses for institutional delay which would justify granting a continuance, it does believe that the lack of diligent preparation or failure to obtain available witnesses on the part of the defendant or his attorney could result in a miscarriage of justice and, therefore, exempts these reasons from prohibiting a defendant or his counsel from seeking a continuance. For example, when a defendant's counsel, either intentionally or by lack of diligence fails to properly prepare his client's case, either he or the defendant might seek a continuance on the ground that forcing the defendant to go to trial on the date scheduled would deny the defendant the benefits of a prepared counsel. The court in this situation would

determine whether the defendant participated actively in the delay or whether his counsel alone was responsible for it. If the defendant did not cause the delay, he should not be penalized by being forced to go to trial with an unprepared counsel. In this case, he should be permitted enough time to seek a new counsel and to properly prepare his case for trial. In the event that the defendant actively participated in the delay, then no miscarriage of justice has occurred and the court should deny the defendant's or his counsel's request for a continuance and require the trial to commence on the scheduled date. This is consistent with the well-reasoned view that a defendant should not profit doubly from delay he is responsible for.

Accused prisoners

Section 3161(j) extends the right to a speedy trial to prisoners and is new language added by the Subcommittee. Although such a safeguard is new to this legislation, it is not a novel idea. This provision is a reproduction of Standard 3.1 of the American Bar Association's *Standards Relating to Speedy Trial* as recommended by the Advisory Committee on the Criminal Trial in 1967, and approved by the House of Delegates in 1968. This particular standard also served as a model for a more general detainer provision in section 9(b) of the *Model Plan for the U.S. District Courts of Achieving Prompt Disposition of Criminal Cases*, which was promulgated by the Judicial Conference pursuant to Rule 50(b) and circulated to all Federal judicial districts for adoption.

In fashioning Standard 3.1, the ABA tracked a modern trend in State case law that holds that the government must exercise some degree of diligence in trying to obtain an imprisoned defendant's presence for trial, an appropriate development since "the legal uncertainties of extradition and the difficulties of travel and communication . . . have largely disappeared." A significant number of States have either enacted the Uniform Mandatory Disposition of Detainers Act or some variation thereof, or have ratified the draft of An Interstate Agreement on Detainers. Both are premised upon the assumption that a prisoner who has had a detainer lodged against him for trial upon completion of his sentence is seriously disadvantaged thereby. It should be noted that the prisoner is not the only party prejudiced by such an arrangement:

> The prison administrator is thwarted in his efforts toward rehabilitation. The inmate who has a detainer against him is filled with anxiety and apprehension and frequently does not respond to a training program. He often must be kept in close custody, which bars him from treatment such as trusty-ships, moderations of custody and opportunity for transfer to farms and work camps. In many jurisdictions he is not eligible for parole; there is little hope for his release after an optimum period of training and treatment, when he is ready for return to society with an excellent possibility that he will not offend again. Instead, he often becomes embittered with continued institutionalization and the objective of the correctional system is defeated. [Council of State Governments, the Handbook of Interstate Crime Control, p. 86.]

By adopting the Advisory Committee's detainer standard, the Committee also endorses the ABA's conclusion that—

> (s)uch a requirement is appropriate, for otherwise the prisoner's right to speedy trial could be circumvented by delay on the part of the prosecutor in lodging a detainer against him. It seems clear that a prisoner can be disadvantaged by delay even during the period when no detainer has been lodged against him. Indeed, delay in the trial of a person serving a sentence on another offense can be even more prejudicial than otherwise, for the defendant in custody is in no position to find witnesses or otherwise preserve his defense. [*Standards*, Approved Draft, 1968, p. 35.]

Further, since the Committee believes by endorsing H.R. 17409 that the Congress must set a proper example by enacting uniform national guidelines extending the right to a speedy trial, it would be anomalous indeed to exclude from such safeguards the class of defendants who stand to be most prejudiced by unnecessary delay. In that light, including a detainer proviso runs a parallel course with restoring the sanction of dismissal with prejudice to the legislation, because in both cases the right has very little meaning unless the prosecution is effectively encouraged to respect it.

Section 3161(j)(1) sets forth what is expected of the attorney for the Government when he becomes aware of the fact that the defendant against whom charges have been filed is already imprisoned and serving a sentence pursuant to a prior conviction. In such instances, the prosecutor has two options: he must immediately initiate procedures either to obtain the defendant's presence for trial or furnish the defendant the opportunity to demand trial when the prosecution does not choose to undertake an immediate trial. With respect to the term "promptly" as used in this subsection, the Committee intends that the attorney for the Government—or the custodial official, as provided in paragraphs (2) and (4) of Section 3161(j)—shall initiate detainer or demand certificate procedures as soon after he becomes aware of the fact that the accused is imprisoned as is practicable.

Section 3161(j)(2) sets forth the duty of the custodial officer (a) to give appropriate notice to the prisoner whenever he has received a detainer for that prisoner which, the Committee feels, should be in writing and should include the nature and other particulars of the offense as well as a complete statement of the defendant's right to demand trial; and (b) to inform the attorney for the Government who served the detainer of the prisoner's demand for trial which, to conform with State practice should be sent both to the prosecutor and court by registered or certified mail, return receipt requested. In addition, such notice of demand for trial by the custodial official, in the opinion of the Committee, should set forth the term of commitment under which the prisoner is being held, time already served and remaining to be served on the new sentence, good time earned, time of eligibility for parole of the prisoner and any decisions of appropriate parole authorities relating to the prisoner.

Section 3161(j)(3) makes it clear that once a demand for trial is received, the attorney for the Government must act promptly in seeking to obtain the presence of the prisoner for trial, whether he

be incarcerated within or without the jurisdiction in which the charges are pending. In view of the fact that the section requires notice to the prisoner of the charges and establishes a procedure for demanding trial, the Committee feels it is unnecessary to require the attorney for the Government to proceed in those cases in which demand has not been made; again, however, it should be noted that the prosecutor should act as soon as practicable after notification of demand is received so as to minimize prejudicial delay.

Section 3161(j)(4) requires the custodial official to release the prisoner to the attorney for the Government for trial upon receipt of a properly-supported request for temporary custody, subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery. In preserving the defendant's right to challenge the legality of his being surrendered by the custodial authority, the Committee does not intend in any way to change existing law with respect to extradition or transfer of and responsibility for custody in cases where more than one jurisdiction is involved.

Any reading of this legislation should make it clear that proceedings regarding a prisoner against whom charges are brought while he is serving a term of imprisonment pursuant to an earlier conviction are "proceedings against the defendant" in the same sense as provided in section 3161(h)(1), and that delay resulting from such proceedings, therefore, is excludable and tolls the time limits set forth in section 3161. It should be equally clear that the time for trial begins to run as soon as the prisoner is arraigned, which must occur within ten days either of filing of charges or the date the defendant has been ordered held to answer and has appeared, whichever happens last, as set forth in Section 3161(c). Consequently as soon as the prisoner's presence for trial on charges pending against him has been obtained, the time limits during which he must be brought to trial begin; this means that, if the prisoner does not waive his right to contest the legality of the demand for temporary custody, any time period consumed by proceedings, related to that contest is excludable from the time allowed to bring the prisoner to trial, for the reasons stated above. Similarly, if the attorney for the Government is responsible for unreasonable delay either in causing a detainer to be filed with the custodial official or seeking to obtain the prisoner's presence for trial in lieu of filing a detainer or upon receipt of a certificate of demand for trial, any such period of delay should be counted in ascertaining whether the time for trial has run in connection with the defendant's demand for dismissal under section 3161(a)(2). In addition, the Committee feels that, since the prejudice an incarcerated defendant may suffer is potentially so great, the attorney for the Government is also subject to sanction for such unreasonable delay under section 3162(b)(4). The Committee does not believe that this imposes any hardship upon the attorney for the Government since, unlike state practice in many jurisdictions where the period in which the prisoner must be tried begins upon receipt of the demand for trial, the time limits do not apply until the defendant is actually present for purposes of pleading.

Sanctions

Section 3162 provides that, in the event the time limits of the bill, subject to the various exclusions, are not met, the court on motion of the defendant may dismiss the complaint, information or indictment

against the individual. This sanction applies to both the period between indictment and trial. The effect of a dismissal would be to bar any future prosecution against the defendant on the same conduct. Dismissal with prejudice would apply to those offenses which were known or reasonably should have been known at the time of dismissal. A defendant must move to dismiss the case on grounds that his Sixth Amendment right to speedy trial has been denied under the provisions of this legislation prior to trial or entry of a plea of guilty or *nolo contendere*, or he waives the right. The dismissal sanction would become effective in the fifth year after enactment of the bill.

The dismissal sanction contained in S. 754 would permit the reprosecution of a defendant if the attorney for the Government can demonstrate the existence of exceptional circumstances. The Senate report cites as an example of an exceptional circumstance the case where "a defendant or his counsel perjured himself in alleging circumstances which lead a judge to dismiss charges for failing to meet the speedy trial time limits." The report also states that exceptional circumstances are those which the Government and the courts could not have foreseen or avoided. [S. Rept. No. 93–1021, p. 43.] The Committee believes that permitting the reprosecution of a defendant whose case has been dismissed for failing to meet the speedy trial time limits could result in unnecessary expenses and may have a detrimental impact on the grand jury system, particularly in districts where criminal case filings are high. This danger was highlighted by Judge Feikens in his remarks to the Subcommittee:

> Another area of doubt is that engendered by a consideration of the technique of the bill's (S. 754) dismissal "without prejudice". I would think if I were you, of the impact on the grand jury system of re-indictments and the time requirements of re-indictment. [Hearings, page 239.]

Although the Committee believes that under the Senate version it would be unlikely that a great many cases would be reprosecuted, the potential for such occurrences exists. In addition, two witnesses—Mr. Charles Morgan, Washington Director of the American Civil Liberties Union, and Mr. Barris—added that as they read the decision, the Supreme Court's holding in *Strunk* v. *United States*, 412 U.S. 434 (1973), requires dismissal as the only appropriate remedy in cases where the right to speedy trial is abridged, despite the extreme nature of the remedy. With respect to the propriety of requiring a permanent bar to future prosecution, the Committee adopts the position of the American Bar Association as stated by the Advisory Committee on their Commentary on *Standards Relating to Speedy Trial:*

> The position taken here is that the only effective remedy for denial of speedy trial is absolute and complete discharge. If, following undue delay in going to trial, the prosecution is free to commence prosecution again for the same offense, subject only to the running of the statute of limitations, the right to speedy trial is largely meaningless. Prosecutors who are free to commence another prosecution later have not been deterred from undue delay. [*Standards*, Approved Draft, 1968, pp. 40–41.]

Finally, the Committee notes that the spokesman for the Judicial Conference, Judge Zirpoli endorsed the ABA position and offered some valuable insight into the realities of the legislative process now underway:

> Mr. COHEN. One final thing, what is your position with respect to dismissal of cases with conclusive prejudice against the Government?
>
> Judge ZIRPOLI. Personally, I would be disposed to accept the view—and I want to make one comment about that, very serious comment—I would be disposed to accept the view of the American Bar. Someone said, well, with rule 50(b), they didn't put those sanctions in effect. Senator Ervin couldn't get those sanctions in effect right away. We had to grapple with the Federal judiciary, we had to grapple with the Department of Justice, but we might get those sanctions included. But you couldn't get them in on the first year or the second year of operation of the plan, just as Senator Ervin couldn't get them in, and there is no reason why, given a little more history, the benefit of experience, we couldn't get them in. [Hearings, p. 382.]

Section 3162(a)(1) was amended by the Committee to avoid confusion over what the rights of the prosecution are regarding reprosecution generally. Clarifying language was added, and ambiguous language dropped, to indicate that the bar on reinstitution of charges contemplates only those charges brought originally for offenses discoverable by due diligence on the part of the attorney for the Government. For example, if, after dismissal of the original indictment, the United States Attorney learns for the first time that the defendant engaged in prosecutable criminal conduct prior to dismissal of the charges, he may file charges based on that criminal conduct *as long as that conduct was unknown to him at the time the original indictment was filed, even though he made every reasonable effort to discover all such evidence of offenses, and no previous opportunity has presented itself to secure a new indictment or file an amended information.* Lesser included offenses of the original charges, of ocurse, do not fit this definition. In making this clarification, the Committee assumes that the Federal courts will properly exercise their discretion under the terms of this legislation to prevent abuse.

Pursuant to questions that arose during discussion of the dismissal sanction, several points with respect to H.R. 17409 deserve clarification: first, as already indicated above, dismissal is *mandatory* but not *automatic*, since the defendant is expressly required under section 3162(a)(2) to move for dismissal if not brought to trial within the prescribed time; second, it should be clear that the attorney for the Government is free to contest the granting of a motion to dismiss on the basis of error by noting his exceptions and taking appeal in the proper manner; third, if this bill is enacted into law, it is contemplated that every defendant arraigned in Federal court be properly advised of his right to speedy trial under this legislation, along with the balance of his Sixth Amendment rights, prior to entry of plea. This latter point is especially crucial in the unlikely but plausible event the defendant is represented *pro se* at this juncture of the proceedings.

Interim time limits

Section 3164 provides interim time limits for the trial of defendants who are either detained awaiting trial or have been designated by the attorney for the Government as being of "high risk." Although the Committee made no changes in this provision, it believes that the words "high risk" should be construed to mean a high risk that the defendant will not appear for trial.

District plans

Section 3165(c) provides that each district plan be submitted for approval to a reviewing panel consisting of the judicial council of the circuit and the chief judge of the district whose plan is being reviewed or his designee. S. 754 provides that district plans be approved by the judicial council of the circuit. The Subcommittee broadened the reviewing body to include the chief judge so as to insure that the district's point of view is represented on the reviewing panel. The Committee intends that the chief judge or his designee have the right to vote on the disposition of district plans.

The words "submitted for approval" should be construed to require the reviewing panel to provide a written explanation for either approving or disapproving a district plan. The explanation shall be attached to the plan and shall also contain the additional or dissenting views of any member of the panel. The Administrative Office must indicate in its report to Congress detailing the various district plans, as required by section 3167, whether the plan being detailed had been previously disapproved by the reviewing panel, together with the reasons for disapproval.

The Committee included language to require that all plans be reported to the Judicial Conference to insure that it is kept fully informed of the progress of each district court toward improving the administration of justice and complying with the time standards of the bill. This provision should be read in the context of section 3174 concerning judicial emergency and section 3165(c), concerning the modification of district plans. Because the Judicial Conference is vested with the authority to suspend the time limits between indictment and trial, the Committee believes that the Conference should have data available for the purpose of monitoring the progress of the district plans.

Section 3165(d) provides that district plans may be modified by the district court, the reviewing panel or by the Judicial Conference. Section 3166(a)(2) of S. 754 authorizes only the district court and the reviewing panel to modify district plans. This authority is granted to the Judicial Conference in connection with its authority to suspend the time limits between indictment to trial as provided by section 3174. The authority granted by this provision would permit the Conference to recommend changes in district plans when, in its judgment, such changes would enhance the district's ability to process criminal cases. This provision should not be invoked in order to enforce uniformity or national standards in district plans for the purpose of administrative convenience.

Sections 1365(e)(1) and (e)(2) provide that a district plan be filed for the second, third, and fourth years following the effective date of the time limits between arrest and indictment, and indictment

and trial. The Senate bill, which provides for a seven year phase-in period, would require district plans to be filed for the fifth and sixth years after the effective date of the bill. However, since the Committee reduced the phase-in period from seven years to five years after enactment, the need for plans in years five and six following the effective date are no longer necessary. It should be noted that the time for filing plans is measured from the effective date of sections 3161(b) and (c) which is one year after enactment. This means that the district plans would cover the third, fourth and fifth year after enactment.

The words "calendar month period following enactment of this Act" shall be construed to mean the first full month following the month in which the bill is enacted. For example, should this bill be enacted on December 10, the first calendar month would be measured from January 1.

Reporting forms and procedures

Section 3166(e) provides that each district plan include recommendations to the Administrative Office for reporting forms, procedures and time requirements necessary for carrying out the purposes of the bill. S. 754 provides that each district plan prescribe this information. The Subcommittee amended this provision at the request of the Administrative Office in order to ease the administrative burden which might arise by allowing each district court to prescribe separate reporting forms. In this respect, the Director of the Administrative Office, Mr. Rowland F. Kirks stated:

> To permit each United States district court to prescribe its own reporting forms and procedures would be administratively unworkable. Aside from the cost involved in printing and stocking different forms for each court, the information compiled would likely not be uniform among the district courts which would make analysis and comparison of the operation of speedy trial plans among the various district courts virtually impossible. [Hearings, p. 180]

In adopting this amendment, the Subcommittee included language to require the Administrative Office to take into consideration both the recommendations contained in the district plan and the need to reflect unique local conditions in the reporting forms. The Committee believes that where the need to reflect local conditions exists, administrative burdens must be considered of secondary importance.

Planning Process

Section 3168 provides that each district shall establish a planning group to advise the district court with respect to the formulation of district plans which are required by section 3168. The Subcommittee added to the membership of the planning group the position of United States Magistrate and clerk. The Committee believes that all of the major participants in the Federal criminal justice system should be involved in the planning process.

With respect to the preparation of the initial plans, the planning group and the district court should establish filing dates for the receipt of these plans from the planning group. This will insure that the district courts will have ample time in which to consider the recommendations of the planning groups and to prepare their plans accordingly. However, the courts may choose to invest the planning

group with the responsibility of preparing the final district plan under the supervision of the chief judge. Because judges and their clerks are busy people, it may be advisable for the courts to vest this responsibility in the reporter of the planning group and any staff who are hired pursuant to section 3171.

The draft plan which could be prepared according to the instructions of the planning group might then be circulated to each judge of the district court for approval.

The Committee intends that each plan, whether it is prepared by the planning group or a committee of the court, shall be approved or disapproved by each district judge and the final plan must contain the additional and dissenting views, as the case may be, of any district judge who wishes to comment separately on the plan. In its report to the Congress, required under section 3167, the Administrative Office shall include information concerning any additional or dissenting views filed by district judges with final plans.

Federal Judicial Center

Section 3169 provides that the Federal Judicial Center shall advise and consult with the planning groups. The Committee believes that the Federal Judicial Center could play a major role in improving the management techniques of the district courts. For example, the Center has developed a management information system for use in the Federal courts called Courtran. This system monitors the flow of cases through the courts, pointing out problem cases and helping judges and court personnel analyze and remedy the causes of delay. The system has been placed in operation in the District of Columbia and the Northern District of Illinois. The Center is presently planning to install the Courtran II system in three additional courts.

The adoption of H.R. 17409 would require as many as 25 Courtran II systems for those districts with large criminal case filings.

[See attached letter of Hon. Walter E. Hoffman.]

The Committee believes that these efforts to increase the efficiency of the courts should be encouraged.

Speedy trial data

Section 3170 provides that the clerk of each district court shall collect data concerning the operation of the speedy trial provisions of the bill. The Committee amended this provision in order to simplify the procedures required by S. 754. The section, however, preserves the overall purpose of serving as a barometer for the operation of the speedy trial time limits.

Planning appropriations

Section 3171 provides an authorization of $2,500,000 to the Federal judiciary which shall be allocated by the Administrative Office to each Federal judicial district for the purpose of carrying out the initial phases of planning and implementation of speedy trial plans. S. 754 provides for the authorization of $5,000,000 for the establishment of five pilot districts to be selected by the Chief Justice and the Attorney General.

The Committee believes that establishing five demonstration districts could provide an important laboratory for studying the effects of the speedy trial provisions on courts, but does not wish to draw distinctions between the various districts in allocating funds which are

necessary to attain speedy trials. In addition, S. 754 provides a procedure which would allow 270 days to elapse before the pilot districts are designated, while each district court would be required to establish a planning group within 60 days. The Committee believes that in the interest of fairness each district should be treated equally in the allocation of funds. H.R. 17409 would provide up to $25,000 to each district for the initial phases of planning. The Committee believes that in allocating the funds under this provision, the Administrative Office should develop an objective standard for determining the needs of each district.

Judicial emergency

Section 3174 provides that in the event a district court is unable to comply with the time limits contained in section 3161(c), concerning the period between indictment and trial, the Judicial Conference is authorized to suspend these time limits for a period up to one year. A provision recognizing the possibility of a judicial emergency in a district is not contained in S. 754. The Subcommittee drafted this amendment at the behest of the Justice Department, the Administrative Office, and other witnesses. They claimed that, in the event the Congress fails to appropriate the necessary funds to carry out the mandate for speedy trials, or unforeseeable events occur which jeopardize the operations of the courts, Section 3162 of bill—providing for dismissal of the indictment or information for failure to meet the time-limits—would free potential criminals and backlog calendars with reindictments. Although the Committee was sympathetic to this argument, a number of safeguards contained in the Senate bill would make this contingency unlikely. The judicial emergency provision was adopted because the Committee did not wish to leave the possibility of unjustifiable dismissals to chance. Also, the Committee believes that the incorporation of this provision more than justifies the reduction of S. 754's phase-in period from seven to five years and the adoption of the sanction of dismissal with prejudice, which would prohibit reprosecution of a defendant as is permitted in that bill upon a showing of exceptional circumstances.

A suspension may be granted only on a district-by-district basis; the Judicial Conference may not suspend time limits either on a nationwide or circuit-wide basis. In order to qualify for suspension, the district court, under the direction of the chief judge, is required to evaluate the status of its court calendars to determine the nature and extent of the emergency and whether existing resources are being efficiently utilized.

The chief judge is required to seek the recommendations of the district's planning group prior to applying to the judicial council of the circuit for a suspension. A reasonable period of time, under the particular circumstances of the district, should be allowed before an application for a suspension is filed in order to give the planning group an opportunity to respond.

The recommendations of the planning group should be in writing and must set forth compelling reasons why a suspension should either be requested or not requested. The recommendations submitted to the district court should contain the additional or dissenting views of any member of the planning group with respect to the advisability of

recommending an application for a suspension of time limits, although they are not binding upon the district court.

The recommendations of the planning group need not be elaborate, but should contain enough information to justify an application by the chief judge for a time suspension. The Committee recognizes the need for speed in certain situations, particularly when a district is meeting the time limits and an unforeseeable event occurs which would require a speedy application to the judicial council for a suspension. In this event, the need for an immediate response to the problem may not justify the filing of witten recommendations. However, the recommendations should be reduced to writing as soon as possible and filed with the district court for submission to the judicial council of the circuit and, if necessary, to the Judicial Conference. All recommendations concerning suspensions made by a planning group either before or following the filing of the application by the district court must be sent to the Congress as part of the report required by section 3167.

The chief judge should also seek the recommendations of the judges of his district. As in the procedure for seeking the recommendations of the planning group, the chief judge should undertake to provide enough time for the receipt of views and those views, whether favoring or opposing a suspension, should be made a part of the district application for a suspension to the judicial council of the circuit.

Based upon the information and statistics contained in the application of the district court, the judicial council of the circuit is required to determine the capabilities of the district and to make any appropriate recommendations that would alleviate calendar congestion, particularly the use of visiting judges. If the judicial council finds that no remedy for congestion is reasonably available, it may apply to the Judicial Conference for a suspension of the indictment to trial time limits. The Conference, after a review of the request, is authorized to grant a suspension of the time limits for a period not to exceed one year. The effect of this provision is to allow each district to increase up to 180 days the indictment to trial time limit during the period of suspension. For example, if a district is in the fifth year of operation under the bill, it may increase the indictment to trial time limit from 70 to 180 days. The Committee believes that any district court which successfully meets the time standards in the fisrt four years should be in a position in the ensuing years to perform at least as well as it did in the previous years. With respect to increasing the time limits between indictment and trial, following the approval by the Judicial Conference of a suspension, the district court in its discretion may extend the time limits beyond the existing time limits, so long as a defendant is not required to await the commencement of trial for a period of not to exceed 180 days.

The Committee exempted from the judicial emergency provision the extension of the indictment to trial time limits during a suspension for individuals who are being detained soley because they are awaiting trial. Also, the judicial emergency provision does not apply to defendants who were indicted prior to the effective date of a suspension.

In order to insure that the Congress is informed of all suspensions of time limits granted by the Judicial Conference, the Director of the Administrative Office is required to submit a report to the Con-

gress within 10 days of the granting of any suspension. The report should contain the recommendations of the planning group and any judge or judges of the district, together with the additional or dissenting views of any of the foregoing. This is to insure that the Congress will maintain effective oversight over the granting of suspensions. The authority to grant suspensions is a serious matter and should ont result in an unequal application of the law for certain individuals, merely because their indictment happened to be filed at a time when the court was experiencing a judicial emergency. The Congress, in imposing specific time limits on the period between indictment and trial, has made a legislative decision that defendants are entitled under the Constitution to a trial within 70 days of indictment and that the courts are capable of providing trials within that period of time. However, because of the unique circumstance in which the Congress has placed the courts by enacting speedy trial legislation without providing advanced increases in resources, it is also providing the courts with a tool that would permit them enough flexibility to prevent a miscarriage of justice by dismissing the indictments or informations against potential criminals because of circumstances beyond the control of an individual court.

The Judicial Conference has the authority under H.R. 17409 to grant only one suspension in any given district. If the Conference finds that a district requires another suspension within less than six months following the end of a previous suspension, an application for the additional suspension must be made to The Congress. The Congress has six months in which to act; if it fails to act, the suspension would become effective immediately upon the expiration of the six-month period. In the event that, during any period of suspension, if the Director of the Administrative Office finds that any additional relief time is necessary, he may apply directly to the Congress for the suspension. For example, should it be apparent at any time prior to the filing of the Director's report, detailing the reasons for the first suspension, that an additional period is necessary, he could submit an application as part of his report. In this event, the six-month period in which the Congress has to act upon an application would be measured during the time of the existing suspension and, therefore, would not result in hardship to the district. This provision is not intended as a security blanket, and applications for additional suspensions should not be filed as a matter of course. Each report to Congress must contain detailed reasons for granting both the initial suspension and the need for an additional one. Any additional suspension occasioned by the inaction of the Congress will not exceed one year.

TITLE II

Selection of demonstration districts

Section 3152 was amended by adding the word "representative" to modify "judicial districts," to further clarify the meaning of the sentence in which that phrase appears. The Chief Justice of the Supreme Court of the United States, in selecting 10 districts in which pretrial services agencies are to be established on a demonstration basis, is required to consider several factors in making his selections, including the number of criminal cases prosecuted annually, the percentage of

defendants presently detained prior to trial, the incidence of crime charged against persons released pending trial under the Bail Reform Act, and availability of community resources to implement conditions of release under that Act. Although, without the addition of the word, it may be fairly implied that districts should be chosen that represent the full range of problems currently besetting the Federal judiciary, the Subcommittee was of the opinion that it should be made as clear as possible that given the importance of this "experiment," the best "laboratory" situation should be created for purposes of later evaluation, as provided in section 3155. Therefore, the Committee intends by the insertion of the word "representative" that the Chief Justice give adequate attention to he diversity of case filings, total and by offense, balance of criminal and civil dockets, backlogs on both calendars, and other factors that indicate differences among the ninety-five Federal judicial districts. A healthy mix of types of districts—i.e., resource-rich to poor and busiest to least busy, with fairly typical gradations in between—will guarantee a reliable measure of evaluation under widely varying circumstances at the conclusion of the four-year pilot period.

Pretrial service agencies

Section 3153 represents a significant change made by the Subcommittee to the Senate version, largely at the suggestion of the Administrative Office. In his statement to the Subcommittee on Crime, Mr. Kirks, Director of the Office, observed that:

> The Federal Judiciary has a completely trained, competent and well organized United States Probation Service which is fully capable of performing the principal duties that would be assigned to separate pre-trial services agencies. The probation system is really the logical home for pretrial services. The duties to be performed by the new services agencies would be essentially no different than [sic] the duties presently performed by probation officers whose principal functions are (1) the preparation of presentence reports for use of the United States district judges in imposing sentences in criminal cases, and (2) supervising persons placed on probation status by the district courts or released from federal prisons on parole or mandatory release.
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> * * * To establish separate pretrial services agencies, to provide information about and supervision of persons accused of crime during the brief period prior to trial would certainly be duplicative and expensive. [Hearings, p. 181.]

These sentiments were echoed by Judge Zirpoli:

> We suggest that the pretrial service agencies program be committed to the regulatory authority of the Judicial Conference of the United States which is the central policy-making organ of the federal judiciary.
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> * * * * * * *
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> * * * It would be highly duplicative of effort to establish a separate organization with highly similar functions in each

division of court in the districts chosen on a demonstration basis. The functions of investigation and supervision are already being performed by the probation offices and the probation officers are already availing themselves of the residential treatment centers being established by the Bureau of Prisons both in connection with probation and parole supervision. [Hearings, pp. 373–74.]

S. 754, as presently drafted, requires that all 10 pretrial services agencies be established under the supervision of the Administrative Office and governed by an independent Board of Trustees in each district, composed of the chief judge, United States Attorney, Federal Public Defender, chief probation officer, two members of the local defense bar active in defending criminal cases, and two representatives of community organizations. In the Senate version, the Board after considering the recommendations of district judges, is charged with appointing a member of the local bar to serve as chief pretrial agencies officer to direct and supervise the agency, in accordance with policy established by the Board of Trustees. Drafters of the Senate legislation constructed the program in this manner for several reasons. The District of Columbia Bail Agency, after which the pretrial services agencies are modeled, is governed and its program is administered in similar fashion. Secondly, many federal judges are hesitant to permit probation officers to get a "head start" on the preparation of presentence reports because of the obvious conflict between the definitional role of the probation officer, as a representative of court administration associated with punishment, and the constitutional presumption of innocence. The application of that practical difficulty here leads to the conclusion that this hesitancy, plus potential resentment that may arise on the part of the defendant at being so "classified" before a determination of guilt or innocent, may not only impede the probation officer in the performance of pretrial tasks but also may defeat the purpose of such services altogether. [Hearings, pp. 276–77.]

Moreover, the Board of Trustees approach has the same flexibility inherent in the planning group in title I, in that a complete understanding of the full range of local problems is brought to bear on the policymaking process and better, continuing communication is effected by an ongoing dialogue at the local level that would not exist if policy were dictated from national level.

Were experimentation not the fundamental purpose of this whole program, the Subcommittee would have faced a true dilemma in deciding between these two antithetical positions, since both have obvious merit. As it is, the Subcommittee saw no obstacle to dividing the demonstration districts evenly between the Division of Probation and locally-constituted Boards of Trustees. Therefore, in five districts under subsection (a) the Division of Probation will establish general policy and the Chief Probation Officer will appoint the chief pretrial services officer from among the probation officers in the district; in the rest, under subsection (b), the chief judge shall appoint a Board of Trustees which is empowered to establish policy and which will select a chief pretrial services officer after reviewing the recommendations of the judges of the district. The Subcommittee struck the requirement that the latter be a member of the local bar, since it felt that this restriction might preclude otherwise highly

qualified persons from consideration, a conclusion concurred in by Judge Zirpoli in his testimony before the Subcommittee. [Hearings, p. 374.]

One caveat should be added to the criteria considered in selecting the ten demonstration districts. The Committee, mindful of the reluctance on the part of some judges to assign probation officers to presentence reports before conviction as mentioned above, expresses the hope that the Chief Justice will bear this fact in mind in choosing the representative districts, and desires that the Administrative Office examine local policy in this regard before designating a district as either under the Division of Probation, or to be governed by a Board of Trustees.

Authorization for appropriations

In *Section 303* of H.R. 17409, the continuing appropriations clause, "and for each fiscal year thereafter, such sums as Congress may appropriate.", was striken from the authorization provision. The Committee made this amendment because it feels, as a matter of policy, that the future effectiveness of the pretrial services agencies program will depend upon the quality of scrutiny given it by the Congress. Therefore, oversight on a year-by-year basis, involving a thorough examination of the ongoing operation of these agencies and any attendant problems, is the better approach. This change effects that policy.

Exclusion of Superior Court

The Committee decided to exclude the Superior Court of the District of Columbia from H.R. 17408. Therefore, sections 3165, 3166 (b)(1), 3169(a) and 3170 of the bill as reported from the Subcommittee were amended by striking all references to the Superior Court. The Committee eliminated the Superior Court for two basic reasons:

First, a study of the present state of judicial authority and machinery reveals that the District of Columbia is truly a unique jurisdiction, as far as Superior Court is concerned. The entire politico-legal structure is changing; under the Court Reform and Criminal Procedure Act of 1970, Washington, D.C. acquired for the first time a "local" court system with jurisdiction over all local civil and criminal matters irrespective of subject matter or seriousness. Also for the first time, that city will have popularly-elected officials who will have a legitimate stake in decisions affecting community conditions, particularly with respect to the control of crime and the apprehension and punishment of criminals. Any Federal law that would become effective during this historic transition, bearing especially on matters of crucial importance to local welfare such as criminal justice, deserves the most cautious consideration. The Committee by approving this amendment expresses the feeling that it is not confident that the record that has been compiled to date satisfies the need for such circumspection.

Second, imposition of a speedy trial program that is tailored uniquely to the problems of delay in Federal criminal cases run counter to a trend of Federal disengagement from District of Columbia judicial and court administration affairs. As detailed in a letter from Superior Court Chief Judge Harold H. Greene, that court has just succeeded in enacting a local criminal justice act concerned with the

appointment and compensation of counsel for indigent defendants—after considerable controversy. The Judicial Conference and the Administrative Office, the agencies chiefly responsible for implementation and ongoing supervision of planning programs and resource recommendations under this legislation, took the position immediately after court reorganization that the Superior Court compensation program under the Federal Criminal Justice Act should be discontinued. As Judge Greene pointed out:

> Quite apart from other objections to this procedure, it is unlikely that the Judicial Conference and the Administrative Office, which spent several years actively seeking the removal of local criminal justice act operations from the federal system, would look favorably upon legislation which encumbered them with the responsibility for the operation of yet another aspect of the D. C. court system. [Hearings, p. 761.]

This observation is confirmed by a review of the Subcommittee testimony of representatives of the Conference and the Office. Director Kirks spoke directly to the point: "As you know, Mr. Chairman, for administrative purposes the Superior Court . . . is not part of the federal judicial system established under title 28 of the United States Code. From the standpoint of administrative control and supervision, it would appear inappropriate for the Superior Court to report to the Administrative Office." [Hearings, p. 180.] Judge Zirpoli was of the same mind: ". . . reference to the Superior Court . . . should be deleted since again the Superior Court is not part of the federal system of courts, and its own peculiar local programs should not be brought within the general federal program." [Hearings, p. 374.] There is also evidence that inclusion of the District's courts in this program during a period when the effects of transition under the 1970 reorganization act are still very apparent could do serious damage to their emerging judicial programs. Judge Greene makes the point that the premises upon which this bill is based—trials pursuant to Federal statutes—are inappropriate for common-law prosecutions heard in Superior Court. Moreover, Gerard D. Reilly, Chairman of the Joint Committee on Judicial Administration in the District of Columbia, voiced apprehension about the impact of speedy trial legislation on local appellate courts:

> As a result of the recent expansion of the Superior Court and its capacity to dispose of criminal case expeditiously, there has been an enormous increase in the volume of criminal appeals—the number having doubled in the past three years. [Hearings, p. 762.]

In short, although the District of Columbia is not totally free of Federal influence and must still depend wholly upon the Congress for revenue, the Committee feels it highly inadvisable to embark upon a course of legislative action that increases that influence without close and deliberate scrutiny first being given to all the ramifications thereof.

By approving this amendment, the Committee wishes to make it clear that in no wise does it intended to leave the impression that such action affects any future commitment to adequate judicial resources

for the Superior Court of the District of Columbia on the part of the Congress. Similarly, the Committee acknowledges the legislative oversight responsibilities the Congress has over the District of Columbia Code, at least for the moment, especially in connection with the legislation now before the Committee. According to section 11–502(3) of the D.C. Code, the United States District Court for the District of Columbia has jurisdiction over "any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any Federal ovense." In addition, prosecutorial authority for all major offenses committed in the District is vested in the United States Attorney for the District under section 23–101. It is conceivable that this type of overlapping jurisdiction could result in "forum-shopping" in an attempt to escape the speedy trial restrictions that will apply to the Federal courts in D.C. if this legislation is enacted. Such a result would be antiethical to the goals of Federal speedy trial legislation, and the Committee feels that the Congress would have an obligation upon discovering such abuses to remedy the situation through future legislation.

Federal rules of criminal procedure

Section 3161(h)(1)(f), as amended by the Committee, makes reference to proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure. Under the current version of these Rules, such proceedings are governed by Rule 20. Section 3162(c), as amended by the Committee, makes reference to procedures established in the Federal Rules of Criminal Procedure. Under the current version of these Rules, such procedures are governed by Rule 42. Section 3154(8), as amended by the Committee, makes reference to the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial. Under the current version of these Rules, such provisions are found in Rule 46(g).

V. COST OF THE LEGISLATION

H.R. 17409 authorizes to be appropriated the following sums:

(a) The sum of $2,500,000, for the purpose of carrying out the initial phases of planning and implementation of speedy trial plans under title I and the amendments made by that title; and

(b) The sum of $10,000,000, for the purpose of establishing pretrial services agencies in ten Federal demonstration districts under title II and the amendments made by that title, for the fiscal year ending June 30, 1975.

Although the sum authorized to be appropriated for the purpose of carrying out the provisions of title I shall remain available until expended, no continuing authorization for appropriation is made under either section 3171 or section 303.

VI. COMMITTEE APPROVAL

By voice vote, a quorum being present, the Committee on the Judiciary voted on November 21, 1974 to favorably recommend H.R. 17409, as amended, to the full House.

VII. DEPARTMENTAL COMMUNICATION

The following correspondence is attached to this report and made a part thereof:

(1) Letter of November 8, 1974, from Mr. Rowland F. Kirks, Director, Administrative Office of the United States Courts, to Honorable Peter W. Rodino, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

(2) Letter of November 15, 1974, from Honorable William B. Saxbe, Attorney General of the United States, to Honorable Peter W. Rodino, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

(3) Letter of November 18, 1974, from Honorable John Conyers, Jr., Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, to Honorable Peter W. Rodino, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

(4) Letter of November 25, 1974, from Honorable Walter E. Hoffman, Director, Federal Judicial Center, to Honorable Peter W. Rodino, Jr., Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
Washington, D.C., November 8, 1974.

HON. PETER W. RODINO, JR.,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN RODINO: This Office has had an opportunity to review the provisions of the bill, H.R. 17409, introduced by the members of the Subcommittee on Crime, which contains the Subcommittee's recommendations as to the "Speedy Trial Act of 1974".

Although several of the recommendations of this Office were included in the bill, we regret that these limited changes, particularly in the form in which they were made by the Subcommittee, fall far short of making the bill administratively workable.

While time is running on the cases covered by this legislation, the Administrative Office and the individual courts must somehow cope with planning, budgeting, organizing, funding, and making voluminous reports. The greater the volume of paper generated by a process, the longer that process is going to take.

To begin the process of implementing the bill will require funds, funds which we do not now have and for which this legislation makes no provision. If history provides any guide for the future, it is highly unlikely that Congress will provide funds for this program within 60 days of the enactment of this legislation.

Even after adequate funding has been provided, it is our judgment that 90 days is inadequate time in which to properly establish an interim plan in all 94 districts. The judges, the representatives of the U.S. attorneys' offices, etc., must all devote time to this activity which time can be obtained only by decreasing the time devoted to the speedy trial of criminal cases and their judicious termination.

In order that the entire process may be conducted in an orderly and realistic fashion, we must have as a minimum, a period of 180

days after funding before Title I of the bill takes effect. This will permit the various instructional materials to be written, the regulations and forms devised, and the personnel found and hopefully instructed and trained in their responsibilities. If this additional time is not granted, we are seriously concerned that in the most populous the most overworked of the districts, there may be a serious breakdown in the administration of justice.

With respect to specific provisions of Title I, a number of our substantial objections previously presented to the Subcommittee still remain. We, therefore, strongly suggest adoption of the following changes:

Section 3165. The planning group should not be required for every district in the country, but should be optional. Because of a diversity in the geographical size of the judicial districts, and a great diversity in their organization, it would be preferable to add some flexibility to the program. To illustrate: some districts are divided into statutory divisions, each of which represents a special situation and frequently each has its own divisional office with a deputy clerk in charge, and perhaps one judge or more in residence. Other courts are not divided into statutory divisions but may have numerous places of holding court. Each such court center in a large state may be served by a different bar, and may have problems which are quite distinct from the other court centers in the same district. To take a nearby example, the Eastern District of Virginia has three district court centers, Norfolk, Richmond and Alexandria, each with its distinct problems, and each with its own distinct planning needs. A more extreme example is the Western District of Texas which has six divisions, spread out over a land expanse which at some places is 750 miles in width. The court in San Antonio serves a constituency quite distinct from the court in El Paso, some 573 miles away.

Of course other districts of a more homogeneous nature might well benefit from a single planning group. The option, however, should be given to each district court according to its local needs.

As we previously mentioned, the Superior Court for the District of Columbia should be deleted from the bill entirely. That court functions very much as a state court does and is funded through District of Columbia appropriations. Provision for that court is not appropriate for inclusion in a bill relating to the federal district courts.

That provision of this section which provides that "a person skilled in criminal justice research and planning will act as a reporter for the group" may be extremely difficult to fulfill in a large number of districts, and this provision should, therefore, under any circumstance, be deleted. Not only are those skilled in criminal justice research and planning scarce, particularly in the more rural districts, but also it should be noted that such person's position with the planning group might raise a conflict of interest in the event that he was a member of the bar of the same district court.

It is also to be noted that the bill is not clear as to whether the reporter would receive a salary or fee and in what amount. Furthermore, the matter of travel expense of these non-federal members is not covered in the bill. No provision is made for a secretarial staff for the planning groups.

The final sentence of Section 3165(b) and all of (c) should be deleted. These provisions are well beyond the competency of a planning

group and include functions more appropriate for the court itself or the Congress. Particularly inappropriate are matters of under-enforcement, over-enforcement and discriminatory enforcement of the law, finality of criminal judgments, habeas corpus and collateral attacks, excessive reaches of criminal law, and appellate delay.

Section 3166. Once again, the Superior Court for the District of Columbia should be deleted.

Further, subparagraph 3 requires that plans be formulated after consultation with, and after considering the recommendations of the Federal Judicial Center. The Federal Judicial Center is a research and training facility rather than an operational and administrative body. If this reference to the Judicial Center were changed to read: "The Judicial Conference of the United States, or its designee", such amendment would be highly preferable. The Judicial Conference could then effectively use its own committee structure, as well as the Federal Judicial Center and Administrative Office of the United States Courts for various pertinent assignments to assist the courts.

Subsection (e) should be deleted as confusing and duplicative.

Section 3167. With respect to this section, we recommend that it be re-entitled "District Court Reports—General." and further recommend that a new subsection (a) read as follows:

> The district plans shall include such data and statistics to be specified by the Judicial Conference of the United States as will adequately reflect the operation of the plan within each individual district and the divisions or places of holding court therein.

We also recommend that subsections (b) and (c) be worded as follows:

> (b) Each court shall, consistent with Section 3168, annually make recommendations to the Administrative Office of the United States Courts with respect to reporting forms, procedures and time requirements necessary for assembling information concerning: (1) the incidents of and reason for extensions of time beyond the statutory or district standards; (2) the invocation of sanctions for non-compliance with time standards; and (3) the incidents and length of, reasons for, and remedies for detention prior to trial. These forms shall include the pretrial custody information required by Rule 46(g) of the Federal Rules of Criminal Procedure. 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 3168 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.
>
> (c) The recommendations specified in (b) above 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.

Section 3169. Again, we recommend that the Superior Court for the District of Columbia be eliminated. That court, of course, is funded from District of Columbia appropriations.

Subsection (b) should be deleted. Control over appropriated funds is inappropriate for a planning group and is otherwise a matter of decision for the Judicial Conference of the United States.

Section 3172. These provisions which concern the action to be taken in the event of a judicial emergency when time limits cannot be met are unduly complicated. Subsection (c) in particular should be deleted. It is cumbersome and wasteful of judicial time.

In subsection (a), in the first sentence, the words, "where the existing resources are being efficiently utilized," should be deleted. This is clearly to be a judgment made by both the judicial council and then the Judicial Conference and seems a meaningless addition to the initial step in the proceedings.

TITLE II

All of the ten pretrial services agencies should logically be integrated into the probation service and its line of administrative supervision, including the probation offices, the district courts, the division of probation in the Administrative Office of the United States Courts, the Director of the Administrative Office (see 18 U.S.C. § 3656), the Judicial Conference's Committee on the Administration of the Probation System, and the Judicial Conference of the United States.

The interposition into the administration of the program of a board of trustees appointed by the court is wasteful of time and energy. Furthermore, the distinction between the two systems of managing pretrial services will be more apparent than real. The Division of Probation of the Administrative Office will have responsibility for providing the supplies, funds, personnel, and space for these agencies. Secondly, it is far more desirable, as well as economical, to have a unified system. The establishment of divergent and competing organizations tend to Balkanize the system and to divert energies which otherwise might go into a directed effort to accomplish the objectives of the bill.

We do recommend that any probation officer who heads both the probation service and the pretrial services function be authorized appointment at the level of GS–16.

Under Section 3154, the information developed during the pretrial phase should also be available to the Bureau of Prisons in the event the individual is committed to custody. The last sentence of that subsection should be deleted in its entirety. The question of whether the information may be admissible on the issue of guilt should be the subject of separate legislation, if at all.

Subsection 4 should be amended to read, "through the Administrative Office, procure appropriate facilities for the custody or care of persons released under this chapter, including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services." This would allow the Administrative Office to make proper arrangements with the Bureau of Prisons and other public and private agencies.

Under Section 3155(a), the last sentence should be deleted in its entirety. Comparisons with dissimilar state programs and systems are not readily available (even if germane) and it would be an enormous undertaking now to initiate studies of all or even a significant number

of the various programs used in all the states and subdivisions thereof.

We, of course, adhere to the position conveyed to the Congress by the Judicial Conference of the United States at its September 1974 meeting, that action on this bill should appropriately await further experience under the programs of the Judicial Branch already in effect pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure which are proving successful in preliminary statistical analyses. However, if it is the wisdom of the Congress that the bill should be passed immediately, we urge the adoption of the recommendations and changes we have presented to the Committee in testimony and correspondence. It is essential to also recognize that the implementation of this legislation requires the expenditure of funds not appropriated by the Congress and, therefore, the expenditure of which is prohibited by statute.

We wish to thank the Committee for this further opportunity to comment on this legislation. If we may be of any further assistance, please do not hesitate to call upon us.

Sincerely,

ROWLAND F. KIRKS, *Director.*

DEPARTMENT OF JUSTICE,
Washington, D.C., November 15, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR PETE: During our meeting on Monday, November 11, I expressed to you my strong and urgent opposition to both the Senate and House versions of the "Speedy Trial Act of 1974" (S. 754 and H.R. 17409). As you know, S. 754 passed the Senate on July 29, 1974, and your Judiciary Subcommittee on Crime favorably reported an amended version, H.R. 17409, to your full Judiciary Committee on October 10, 1974.

The Department of Justice has and will continue to support all meaningful proposals to achieve speedy justice. I feel, however, that it would be irresponsible for the Department of Justice to support legislation which is directed to the symptoms of delay and fails to address the causes.

In order to more fully respond to the Committee, the Department recently solicited the views of all U.S. Attorneys on the merits of S. 754 and the probable impact of the bill in their respective districts. Responses were received from 92 of the 94 U.S. Attorneys. It is instructive to note that the 92 who responded unanimously opposed the enactment of S. 754.

Because of this Department's earnest apprehension over the potential adverse impact of this bill, let me re-emphasize some of the reasons for the widespread opposition to the bill:

(1) Under Rule 50(b) of the Federal Rules of Criminal Procedure all district courts now have "speedy trial" plans including rules relating to time limits within which procedures prior to trial, the trial itself, and sentencing must take place. According to the Administrative Office of U.S. Courts, Rule 50(b) is working.

(2) Mandatory dismissal of criminal cases not tried within 60 days can only serve to injure the public by releasing persons charged

with crime without an adjudication. This injures the public not only because the person may pose a danger to the public welfare, but also because it undermines the public's confidence in the criminal justice system to see persons charged with crimes released without trial.

(3) There are no provisions in the bill for additional judges, prosecutors or public defenders. No new judgeships have been created in more than four years although the Judicial Conference in September of 1972 recommended the creation of 51 judgeship positions in 32 separate districts.

(4) Short time limits in the bill and the burdens placed upon the Government to justify continuances of the time limits will discourage U.S. Attorneys from bringing complicated cases—white collar criminals will go uncharged and only violent criminals will be prosecuted.

(5) Our system of criminal justice presently depends on the guilty plea. Under this bill, criminals who would ordinarily plead guilty may insist on jury trial to take advantage of the automatic dismissal after sixty days. The system would be overwhelmed and wholesale dismissals would follow.

(6) The bill, because of its complicated structure and vague terminology ("complex" cases, "criminal episode," "ends of justice") will result in numerous hearings and appeals, thus further clogging the courts. As Chief Judge Reilly wrote: "Because of the complicated provisions in the bill relating to exceptions from the various time limits, it is plain that appeals based on these provisions and requiring construction of the new statute would proliferate at a time when the court is already hard pressed to keep current with its tremendous caseload."

I enjoyed our recent discussion of this and other important matters now before Congress and appreciate your consideration of the views of the Department of Justice.

Sincerely,

WILLIAM B. SAXBE, *Attorney General.*

CONGRESS OF THE UNITED STATES,
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C., November 18, 1974.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: A copy of a letter sent to you by the Attorney General on November 15, concerning S. 754 and H.R. 17409, the Senate-passed and the Subcommittee on Crime's versions, respectively, of the Speedy Trial Act of 1974, has come to my attention.

In the letter, the Attorney General articulates the Department of Justice's opposition to this legislation as presently drafted, and supports it by raising seven specific objections. I feel that these general issues, as stated, deserve some clarification.

First, as a general matter, every single proposition advanced by the Attorney General was raised before, and carefully considered by, the Senate Subcommittee on Constitutional Rights, the Senate Committee on the Judiciary, the full Senate, and the Subcommittee on

Crime. At each stage, although many of the Department's suggestions as to specific amendments were adopted, the general bases from which the Attorney General now argues were unanimously rejected. In point of fact, thn, no new basis for opposing this legislation emerges from the letter. All of these premises have already been considered by members in both bodies over the course of the past three-and-a-half years.

I would respond to each of these concerns as follows:

"SYMPTOMS" VERSUS "CAUSES"

The Attorney General contends "that it would be irresponsible for the Department of Justice to support legislation which is directed to the symptoms of delay and fails to address the causes."

Ironically, the Senate Judiciary Committee, when faced with the same allegation, concluded that it would be "irresponsible" to recommend legislative solutions to any perceived "causes" of delay without a more comprehensive analysis of the speedy trial problems of each of the federal judicial districts, as provided in sections 3166 through 3169 of the Speedy Trial Act. For example, the Committee's report explicitly states that "Congress could not at the present time resolve the delay problem by adopting specific criminal procedure reform proposals."

Furthermore, the hearings conducted by the Subcommittee on Crime graphically illustrate the total lack of agreement among criminal justice practioners as to the "causes" of delay. Prosecutors blamed backlogged court dockets and judges blamed prosecutors for filing indiscriminate, multi-count indictments. For their part, prosecutors and defense counsel alike found the dilatory tactics of their adversaries as a principal cause of delay.

RULE 50(b)

The Attorney General believes speedy trial legislation to be unnecessary, given the fact that the Judicial Conference of the United States has promulgated, and ninety-two of ninety-five districts have adopted, a model plan to reduce delay in criminal cases pursuant to Rule 50(b) of the Federal Rules of Criminal Procedure. According to the Attorney General, ". . . Rule 50(b) is working."

Information assembled by subcommittees in both bodies suggests just the opposite. The most recent corrected data compiled by the Administrative Office of the United States Courts shows that the overall median time interval, including all cases, has increased slightly. A computer study conducted by a research fellow at Yale Law School with the cooperation of the Administrative Office explains why Rule 50(b) plans as adopted cannot succeed. In essence, the study reveals that model plans taken from the Conference's version tend to preserve the *status quo*.

MANDATORY DISMISSAL

The Attorney General opposes mandatory dismissal of charges as a sanction for the government's failure to meet the time limits in the bill. I must subscribe to the position adopted six years ago by the American Bar Association in its *Standards Relating to Speedy Trial*, since reindorsed before the Subcommittee:

> The position taken here is that the only effective remedy for the denial of speedy trial is absolute and complete discharge. If, following undue delay in going to trial, the prosecution is free to commence prosecution again for the same offense, subject only to the running of the statute of limitations, the right to speedy trial is largely meaningless. Prosecutors who are free to commence another prosecution later have not been deterred from undue delay.

The Supreme Court, in *Strunk* v. *United States*, 412 U.S. 434 (1973), decided that the sole constitutional remedy for a denial of the right to a speedy trial was dismissal of the charges. In testimony before the Subcommittee on Crime, Judge Alfonso Zirpoli, Chairman of the Committee on Administration of the Criminal Law of the Judicial Conference, endorsed the ABA position, and Judge John Feikens of the Eastern District of Michigan cautioned the Subcommittee to consider "the impact on the grand jury system, and the time requirements of reindictment" of dismissals without prejudice, which would not bar reprosecution where exceptional circumstances are found to exist.

THE NEED FOR ADDITIONAL RESOURCES

The Attorney General maintains that present legislation is inadequate in that it makes no provision for additional resources for the federal criminal justice system. Just as it would be irresponsible to legislate specific remedies for "perceived causes" of delay, Congress should not provide additional resources to the Justice Department and the federal courts without first comprehensively analyzing the particular needs of each district, as provided in sections 3166 through 3169 of this legislation. Indeed, I view H.R. 17409 as providing the mechanism for swiftly and accurately determining such needs.

Specifically, the Attorney General cites Congress' failure to fill the Judicial Conference's most recent request for additional judgeships. In the past, Congress has given *carte blanche* to such requests, which were based on quadrennial surveys conducted by the Conference in 1964 and 1968. The 1972 survey concluded, based on projected increases in case filings and workloads, that fifty-five additional judgeships would be required to meet this increase. In hearings on and study of the Omnibus Judgeship Bill submitted to the Senate by the Conference, the Subcommittee on Improvements in the Judicial Machinery found these estimates in error. Case filings actually *decreased* in fiscal 1974, and a detailed examination of conditions in affected districts revealed that less than half of those judgeships were really necessary, based on objective workload criteria. This very example points up the wisdom of such a particularized approach, which this legislation contemplates.

COMPLEX CASES

The Attorney General complains that the combination of time limitations and the burden of justifying continuances will discourage prosecution of complicated cases.

I would merely answer that the only constitutional method of considering a complex prosecution is to measure its particular circumstances, and this bill wisely so provides. The government has no reason not to rely upon the court's ability to satisfy the ends of justice under

the provisions for granting continuances in section 3161(h)(8). In any event, this approach is eminently preferable to a blanket exemption for specific classes of complex cases, as noted by the Senate Judiciary Committee in its report on S. 754 at page 44.

COMPLEX LEGISLATION

Nonetheless, the Attorney General criticizes provisions such as section 3161(h)(8) as overly complicated, leading to further clogging of the courts.

Three years of attempting to accommodate the Department and other affected parties has produced an intricate but precise piece of legislation. In structure, both bills are no more "complicated and vague" than plans already in effect. Moreover, it cannot be said that this bill would produce litigation which will "clog the courts," since it creates only one statutory motion per defendant. It is clearly intended that a motion to dismiss on ground of failure to provide a speedy trial is not a subject of interlocutory appeal.

GUILTY PLEAS

Finally, the Attorney General is of the opinion that enactment of this legislation would result in a decrease in the number of guilty pleas, since defendants would request jury trials with greater frequency.

In the first place, a system that must depend upon a certain percentage of defendants to forego due process to produce "justice" is a reality that demands change, not a basis for inaction. As a matter of fact, the experience of the Second Circuit after the imposition of speedy trial limitations coupled with a dismissal sanction was quite to the contrary. During the first full quarter after the rules became effective, the rate of disposition increased twenty percent, all due to increased guilty pleas.

In conclusion, it is sufficient to again point out that this legislation was neither hastily conceived nor considered. It mystifies me that the Department persists in these arguments, especially since they have been in full partner in some forty-two months of refinement, and have seen all but a few of over two dozen of their suggested changes included in what is now before the Committee.

Respectfully submitted,

JOHN CONYERS, JR.,
Chairman, Subcommittee on Crime.

THE FEDERAL JUDICIAL CENTER,
Washington, D.C., November 25, 1974.

Hon. PETER W. RODINO,
Chairman, House Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to respond to a request made by Mr. Maurice Barboza, Majority Counsel of the Subcommittee on

Crime, for the Center's assessment of the possible impact that the pending Speedy Trial Act of 1970 might have on the Judicial Center's operations within the federal judicial system.

It should be understood we have not attempted to estimate the total impact of this bill on the federal courts in terms of new judges, buildings, additional courtrooms, additional supporting personnel, et cetera, but we have, for purposes of example, focused on merely one category of expenditures which is related to one phase of the Center's activities.

The existing manual record keeping and information systems used by federal courts will not be capable of processing the volume of data envisioned by the Act. Those courts with a substantial criminal caseload will have to be provided with a computerized information system if the Act is to be effective. The Center is now developing a minicomputer base information and research system called COURTRAN II which will provide the data processing capability required to comply with the demands of the Act. The Center had previously planned only three pilot COURTRAN II installations during the next two years. To allow all federal courts to comply with the Act, it will be necessary to install COURTRAN II in approximately twenty-five district courts within two years of enactment of the legislation. Likewise the development and documentation of COURTRAN II software will have to be completed in a compressed time frame.

The cost of accelerated software development and equipment acquisition to support twenty-five COURTRAN II installations are set forth in attachment one. Attachment two graphically depicts the timing of expenditures over the three-year period following passage of the Act.

We have not addressed the question whether these costs could more properly be included in the budget requests of the Federal Judicial Center or the Administrative Office of the U.S. Courts. Our point is that these funds will have to be provided by the Congress to provide federal courts with the information processing capability necessary to allow them to comply with the provisions of the Act.

Faithfully yours,

WALTER E. HOFFMAN, *Director.*

Attachments (Two).

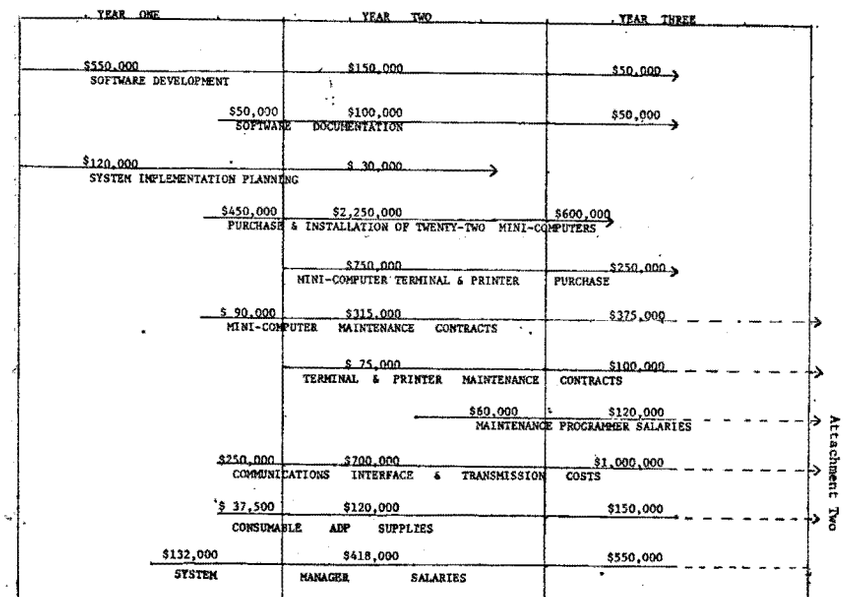
Estimated Cost of Providing Courtran II Service to Metropolitan Federal Courts to Assist Compliance with the Speedy Trial Act of 1974

A. 1-time costs:	
(1) Purchase of 22 minicomputer systems (assumes that we have already acquired three for a total of 25) at a cost of $150,000 per system	$3,300,000
(2) Purchase of terminals and printers for medium and small courts	1,000,000
(3) Contract money for software development and operator training	800,000
(4) Contract money for software documentation and operating manuals	200,000
(5) Contract money for implementation planning	150,000
Total 1-time costs	5,450,000

B. Annual costs:

(1) Maintenance contracts for 25 minicomputer systems at $15,000 per system per year	375,000
(2) Maintenance contracts for other terminals and printers	100,000
(3) Salaries and benefits for 25 system managers at $22,000 per person	550,000
(4) Salaries and benefits for 6 software maintenance programmers at $20,000 per person	120,000
(5) Annual communications transmissions and interfacee equipment charges	1,000,000
(6) Consumable ADP supplies for all systems at $500 per system per month	150,000
Total annual costs	2,295,000

ESTIMATED COST OF PROVIDING COURTRAN II SERVICE TO METROPOLITAN FEDERAL COURTS TO ASSIST COMPLIANCE WITH THE SPEEDY TRIAL ACT OF 1974



Section-by-Section Description of H.R. 17409 as Reported by the Committee

The first section of the Act provides the short title of the Act, the "Speedy Trial Act of 1974".

Title I—Speedy Trial

Section 101 amends title 18 of the United States Code by adding a new chapter 208, which has the following provisions:

A new section 3161 provides for the setting of trial by the appropriate judicial officer. (Subsection (a)) A thirty day limit is set for indictments after arrest or summons of a defendant, with an extension of thirty days where no grand jury has been

in session. (Subsection (b)) A basic sixty-day limit is established for the commencement of trial after arraignment. (Subsection (c)) If a defendant procures dismissal of an indictment or information, any subsequent indictment or information with respect to that crime and defendant must observe the requirements of subsections (b) and (c). (Subsection (d)) New trials after mistrials and the like must commence not later than 60 days after the action occasioning the retrial becomes final, with an exception in certain cases where unavailability of witnesses or the passage of time makes the sixty-day limit impractical. (Subsection (e)) Longer limits for indictment and trial are established by phase-in provisions. (Subsections (f) and (g)) Certain types of delay are excluded from the computation of time limits and a special procedure for granting continuances established. (Subsection (h)) A special rule is established for the commencement of time limits where a change of a defendant's plea has taken place. (Subsection (i)) A procedure for and duty of obtaining the presence of an accused for trial is established for the attorney for the Government. (Subsection (j))

A new section 3162 provides the sanction of dismissal with prejudice on motion of the defendant for violations of time limitations. (Subsection (a)) Punishment for Government and defense counsel is also provided in certain circumstances. (Subsections (b) and (c))

A new section 3163 establishes delayed effective dates for the various sections added to title 18 by this amendment. The sanctions do not take effect until four years after the enactment of the Act.

A new section 3164 requires an interim plan to assure speedy trials for detained persons and persons designated by the attorney for the Government as high risk, and establishes a special review of detention or bail procedure in cases of delay beyond the interim limits.

A new section 3165 provides for district court plans to bring into effect each phase of the increasingly shorter limit established by this Act over a period of years.

A new section 3166 details the contents of plans developed under section 3165. Plans shall consist of analyses of past criminal justice trends and of periods of time before trial and recommendations for improvements in the criminal trial process with a view to expediting the disposition of cases.

A new section 3167 requires periodic reports to Congress on the plans made under section 3165, and on the state of criminal dockets, together with recommendations, where appropriate, for legislative change.

A new section 3168 provides the machinery for the planning process, including the establishment in each district of a planning group with representation from various court-related criminal justice agencies.

A new section 3169 requires the Federal Judicial Center to advise and consult with the criminal justice advisory planning groups and the district courts in connection with their duties under the chapter.

A new section 3170 provides for the compilation of information by clerks of courts to be used for the planning process and the implementation of the time limits and objectives of the chapter.

A new section 3171 specifies a maximum authorization of $2,500,000 for the fiscal year ending June 30, 1975, to remain available until expended, to carry out the initial phases of planning and implementation under the chapter. Funds may be expended by a two-thirds vote of the relevant planning group.

A new section 3172 defines "judge" or "judicial officer" and offense for the purposes of the chapter.

A new section 3173 provides that the speedy trial limits imposed under this Act are not intended to preclude any claims based on denial of the sixth amendment right to a speedy trial.

A new section 3173 provides a limited escape hatch from the time limitations otherwise imposed in the effect of specified unusual emergencies, and a procedure of required prior approval of various levels of Government is established.

Section 102 amends the table of chapters in title 18 of the United States Code to reflect the addition made by section 101.

Title II—Pretrial Services Agencies

Section 201 strikes out the definitions section of chapter 207 (relating to release) of title 18 of the United States Code and substitutes a number of new sections as follows:

A new section 3152 provides for the establishment by the Director of the Administrative Office of the United States Courts of ten demonstration pretrial service agencies.

A new section 3153 provides that five of the demonstration pretrial service agencies shall be under the Division of Probation of the Administrative Office of the United States Courts, and the five others shall be under the control of boards of trustees composed of criminal justice officials and representatives of the defense bar and community organizations. Staffing is provided and other similar matters are dealt with in this section.

A new section 3154 sets forth the specific duties of each pretrial services agency, which relate primarily to the release of defendants pending judicial proceedings.

A new section 3155 requires the Director of the Administrative Office of the United States Courts to report to Congress on the pretrial services agencies established under the Act, and on the other amendments made by the Speedy Trial Act of 1974.

A new section 3156 sets forth new definitions for purposes of chapter 207.

Section 302 amends the chapter analysis for chapter 207 of title 18 of the United States Code to take account of the amendment made by section 201.

Section 303 authorizes the appropriation of up to $10,000,000 for the fiscal year ending June 30, 1975, to carry out title II and the amendments made by it.

Section 304 amends section 604 of title 28 of the United States Code to add the duty of establishing pretrial service agencies pursuant to section 3152 of title 18 of the United States Code, to the list of duties

of the Director of the Administrative Office of the United States Courts. This amendment also modifies certain of the duties already imposed to take into account the existence of pretrial service agencies.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18 OF THE UNITED STATES CODE

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TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

PART I.—CRIMES

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PART II.—CRIMINAL PROCEDURE

PART I.—CRIMES

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PART II.—CRIMINAL PROCEDURE

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CHAPTER 207.—RELEASE

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[§ 3152. Definitions.

[As used in sections 3146–3150 of this chapter—

[(1) The term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia; and

[(2) The term "offense" means any criminal offense, other than an offense triable by courtmartial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.]

§ 3152. Establishment of pretrial services agencies.

The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to

be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

§ 3153. Organization of pretrial services agencies.

(a) The powers of five pretrial services agencies shall be vested in the Division of Probation of the Administrative Office of the United States Courts. Such Division shall establish general policy for such agencies.

(b) (1) The powers of each of the remaining five pretrial services agencies shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

(2) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

(A) one member, who shall be a United States district court judge;

(B) one member, who shall be the United States attorney;

(C) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

(D) one member, who shall be the chief probation officer; and

(E) two members, who shall be representatives of community organizations.

(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (C) (other than a public defender) and (E) of subsection (b) (2) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (C) (other than a public defender) or (E) of subsection (b) (2) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(d) (1) In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a Federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS–15 by section 5332 of title 5, United States Code.

(2) In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b) (1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–15 by section 5332 of title 5, United States Code.

(3) The designated probation officer or the chief pretrial service officer, subject to the general policy established by the Division of

Probation or the Board of Trustees, respectively, shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established under chapter 53 in title 5, United States Code.

§3154. Functions and powers of pretrial services agencies.

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

(1) Collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person, but such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. In their respective districts, the Division of Probation or the Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to paragraph (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding, and in their respective districts, the Division of Probation or the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

(2) Review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147.

(3) Supervise persons released into its custody under this chapter.

(4) With the cooperation of the Administrative Office of the United States Courts, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services.

(5) Inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.

(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

(9) Perform such other functions as the court may, from time to time, assign.

§ 3155. Report to Congress.

"(a) The Director of the Administrative office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pertrial services agencies operated by the Division of Probation with those operated by Boards of Trustees and with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

(b) On or before the expiration of the forty-eighth-month period following the date of the enactment of the Speedy Trial Act of 1974, the Director of the Administrative office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.

§ 3156. Definitions.

As used in sections 3146 through 3155 of this chapter—

(1) the term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and

(2) the term "offense" means any 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).

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 summons 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) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.

(d) 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, for reasons other than those provided in section 3162(a), 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 subsection (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(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 sixty 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 sixty 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 of the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

(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 an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

(C) delay resulting from trials with respect to other charges against the defendant;

(D) delay resulting from interlocutory appeals;

(E) delay resulting from hearings on pretrial motions;

(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

(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 of 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 taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

(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).

§ 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 as required by section 3161(b) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. Dismissal with prejudice shall only apply to those offenses which were known or reasonably should have been known at the time of dismissal. The dismissing or dropping of such charge shall forever bar prosecution of the individual for that offense or any offense based on the same conduct.

(2) If a defendant is not brought to trial as required by section 3161(c), 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). Such dismissal shall forever bar prosecution of the individual for that offense or any offense based on the same conduct. Dismissal with prejudice shall only apply to those offenses which were known or reasonably should have been known at the time of dismissal. 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.

§ 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 the date of the enactment of the Speedy Trial Act of 1974; 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 the date of the enactment of the Speedy Trial Act of 1974; 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) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following the enactment of the Speedy Trial Act of 1974.

§ 3164. Interim limits.

(a) During an interim period commencing ninety days following the date of the enactment of the Speedy Trial Act of 1974 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim

plan to assure priority in the trial or other disposition of cases involving—

(1) detained persons who are being held in detention solely because they are awaiting trial, and

(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

(b) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

(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.

§ 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 Act. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the criminal justice advisory 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 the Act 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 the 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 the date of the enactment of this Act, 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 the date of enactment of this Act, each United States district court shall prepare and submit a plan in accordance with subsection (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth twelve-calendar month period following the effective date of subsection 3161 (b) and subsection 3161(c).

§ 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 information and statistics, by which the trial or other disposition of criminal cases have been expedited or may be expedited in the districts, consistent with the time limits and other objectives of this Act.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this Act, includign:

(1) the incidence of, and reasons for, request or allowance 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 rule 46(g) of the Federal Rules of Criminal Procedure; and

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications.

(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; and

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

(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 3168 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

§ 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 Act. 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.

§ 3168. Planning process.

(a) Within sixty days of enactment of this Act, 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, a private attorney experienced in the defense of criminal cases 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 the Act and in aid thereof, it shall be entitled to the planning funds specified in section 3169.

(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.

§ 3169. Federal Judicial Center.

The Federal Judicial Center shall advise and consult with the criminal justice advisory planning groups and the district courts in connection with their duties under this Act.

§ 3170. Speedy trial data.

(a) To facilitate the planning process and the implementation of the time limits and objectives of this Act, the clerk of each district court shall assemble the information and compile the statistics required by 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 criminal justice advisory planning group, the circuit council, and the Administrative Office of the United States Courts.

§ 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 of which sum up to $25,000 shall be allocated by the Administrative Office of the United States Courts to each Federal judical district, and to the Superior Court of the District of Columbia, 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.

§ 3172. Definitions.

As used in this chapter—

(1) the terms "judges" or "judicial officer" mean, unless otherwise indicated, any United States magistrate, Federal district judge, or judge of the Superior Court for the District of Columbia, and

(2) the term "offense" means any 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).

§ 3173. Sixth amendment rights.

No provision of this title shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution.

§ 3174. Judicial emergency.

(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. 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 shall find that no remedy for such congestion is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such 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) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall con-

tain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year.

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TITLE 28 OF THE UNITED STATES CODE

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PART III.—COURT OFFICERS AND EMPLOYEES

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CHAPTER 41.—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

* * * * * * *

§ 604. Duties of Director generally.

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

(1) * * *

* * * * * * *

(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

[(9)] *(10)* Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, [and the Administrative Office and] the offices of *the* United States magistrates *and commissioners, and the offices of pretrial services agencies*;

[(10)] *(11)* Audit vouchers and accounts of the courts, the Federal Judicial Center, *the pretrial services agencies*, and their clerical and administrative personnel;

[(11)] *(12)* Provide accommodations for the courts, the Federal Judicial Center, *the pretrial services agencies*, and their clerical and administrative personnel;

[(12)] *(13)* Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.

* * * * * * *

Minority Views of Messrs. Hutchinson, McClory, Sandman, Dennis, Mayne, Butler, Lott and Froehlich

GENERAL STATEMENT

The Speedy Trial Act of 1974 is one of the most important pieces of legislation to be considered by this Congress, for it deals with one of the greatest weaknesses of the federal criminal justice system—unnecessary pretrial delay. In attempting to eliminate whatever pretrial delay exists in the federal courts, H.R. 17409 is praiseworthy. However, it is the conviction of the undersigned Members of the Committee on the Judiciary that the legislation as presently drafted, attempts to attain the goal of "speedy trials" by entirely the wrong methods. If the purpose of a speedy trial bill is to protect society as a whole by enabling the courts to promptly dispose of criminal defendants, then we fear that this bill will frustrate that end by allowing defendants to be set free. We can imagine no greater defect in the bill than the release of defendants without full determination of their guilt or innocence. Although on the suggestion of the undersigned the Committee adopted a number of perfecting amendments that alleviate some of the patent defects, the bill still remains defective and it is our intention to offer corrective amendments to the full House.

The bill is defective in its two most fundamental provisions. First, it provides for the mandatory dismissal with prejudice of criminal charges if the courts fail to meet the time limits for indictment or trial established in the bill. Second, the time limits themselves are unduly strict. The goal of the trial of criminal defendants within ninety days of arrest or within sixy days of indictment, although highly desirable, is virtually impossible.

It is important to note at the outset that the speedy trial bill has been strenuously opposed by both federal judges and federal prosecutors since its original introduction in the Senate several years ago. The Judicial Conference of the United States—the supreme policy-making body of the federal judiciary—has consistently opposed all forms of speedy trial legislation before the Congress, and representatives of the Judicial Conference and of the Administrative Office of the United States Courts appeared before the Subcommittee on Crime of this Committee to voice their opposition. In their view the bill was unduly harsh, unrealistic and administratively unworkable.

The Department of Justice has been consistently opposed to the concept of speedy trial legislation that establishes time limits and includes a mandatory dismissal sanction. Throughout the Senate consideration of the bill, and throughout the consideration by the Subcommtitee on Crime, the Department has strenuously insisted that the bill would detract from, rather than enhance, the quality of criminal justice in the federal system by releasing large numbers of criminal defendants without trial. The ninety-four United States Attorneys, who are responsible for the prosecution of crime in the federal judi-

cial districts are unanimously opposed to this legislation. Notwithstanding the strenuous objections of the two participants of the federal criminal justice system responsible for the enforcement of our criminal laws, the Committee has approved of a bill that suffers from substantial defects.

Before discussing the amendments which were rejected by the Committee and which we intend to offer to the full House, we must stress that we agree that the elimination of unconscionable pretrial delay in criminal cases is a goal that must be attained if the concept of justice in the American judicial system is to have any real meaning. The only beneficiary of long pretrial delay is the criminal defendant. While he waits, the case against him stagnates, and his opportunity for rehabilitation or correction are markedly lessened. It is "society" which benefits from speedy trials. The possibility of defendants committing crimes while on bail is reduced when trials are promptly held. The certainty of swift, but just, adjudication of criminal charges serves as a deterrent and engenders a healthy respect for the laws and the institutions that administer them. And perhaps most importantly, innocent defendants who can expect acquittal do not suffer the degradation caused by unresolved criminal charges hanging over them for an unnecessarily long period. Thus, as concerned citizens, and as Members of the Committee of the House charged with overseeing the American judicial system, we must unqualifiedly express our approval for the desired result of this legislation. We oppose only the means by which this legislation attempts to reach that result.

As a general matter, the speedy trial bill is designed to remedy the "symptoms" of pretrial delay, but not the causes. While impliedly recognizing that pretrial delay is attributable, at least in part, to a lack of sufficient judicial resources, the bill makes no provision for additional judges, prosecutors or defense counsel. Instead the bill provides restrictive time limits for the disposition of criminal charges, and provides a harsh dismissal sanction for the failure to meet those time limits. The proponents of this bill and the Members of the House must ask themselves whether the legislation in its present form will frustrate the administration of the federal criminal justice system. We submit that such frustration is inevitable and, thus, we intend to offer and urge the adoption of the following amendments.

ELIMINATION OF DISMISSAL WITH PREJUDICE

The heart of any speedy trial legislation is the remedy established for the failure to meet speedy trial standards. This legislation, in section 3162, adopts the harshest remedy possible by requiring the dismissal with prejudice of criminal charges which are not handled within the time limits established in the preceding section.

As in any legislative solution to a serious problem of the administration of justice, the question of a remedy involves the balance of countervailing policy considerations—in this case, the necessity of having a means of enforcing speedy trial time limits against the danger of releasing criminal defendants without a full and complete adjudication of their guilt or innocence. Without question there must be some means of ensuring that the speedy trial standards established by any legislative scheme shall be adhered to. Unless there is a compul-

sion on the participants of the court system—including the defendant as well as the prosecution and the court—it can be expected that speedy trial guidelines will be viewed as more of a prayer than command. We recognize that because of the character of the Sixth Amendment guarantee of a speedy trial, dismissal is "the only possible remedy." *Strunk v. United States*, 412 U.S. 434 (1973).

But apart from the nature of a constitutional "sanction," the legislative sanction contemplated by the bill should be tempered to meet sensible standards of justice as well as speedy trial time limits. The danger of a dismissal *with prejudice* sanction is that defendants who may have committed serious crimes would be released into society. *See Barker v. Wingo*, 407 U.S. 514, 522 (1972). The supposed justification—that is, the compulsion of public officials to engage in certain behavior—is, in our view, a curious technical charade, and is improperly adopted in this bill. (*See* Statement of Professor Dallin Oaks, 1973 Hearings on Speedy Trial before the Senate Committee on the Judiciary, Subcommittee on Constitutional Rights.) The enforcement of speedy trial standards must necessarily be outweighed by the society's right to have the guilt or innocence of a defendant determined:

> The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. *It does not preclude the rights of public justice. Beavers v. Haubert*, 198 U.S. 77, 87 (1905) (emphasis supplied)

Indeed, the Supreme Court has noted that the overzealous application of the dismissal sanction would infringe "the society interest in trying people accused of crime rather than granting them immunization because of legal error . . ." *Barker v. Wingo*, *supra*, at 522, fn. 16; and *United States v. Ewell*, 383 U.S. 116, 121 (1966). Unless the right of a defendant to a speedy trial has been grievously violated, dismissal of charges and discharge of the defendant should not be permitted to frustrate the full operation of the judicial process.

The experience of states which have attempted to grapple with pretrial delay is instructive. More than thirty-five states have attempted either by court rule or by statute to eliminate pretrial delay in criminal cases. In many speedy trial statutes the sanction of dismissal and the effect of such dismissal is not specifically dealt with. A few state statutes specifically state that discharge is never a bar to subsequent prosecution. (*See* N.D. CENT. CODE § 29–18–06 (1969)). Several states permit dismissal or discharge with prejudice only for misdemeanors. (*See* UTAH CODE ANN. § 71–51–6 (1953)). But only a very small number of states permit absolute discharge for violation of speedy trial standards. (*See* FLA. STAT. ANN. Rule 3.191, Rules of Crim. Pro.) The overwhelming majority of states will not countenance complete discharge of criminal defendants, because of a failure of the system.

It is our earnest belief that a dismissal with prejudice sanction is abhorrent to a reasonable accommodation between the need for prompt disposition of criminal charges, and the right of society to protection from criminals. Even the remote possibility of the release of guilty defendants should mandate a lesser remedy if such a compromise is possible. In our view current federal law presents the more realistic

approach to this problem. Under current federal law, the federal courts have the authority to dismiss criminal charges where unnecessary delay has occurred. Rule 48(b) of the Federal Rules of Criminal Procedure provides:

RULE 48. DISMISSAL

> ... (b) By Court. If there is unnecessary delay in presenting the charge to a grand jury or in filing an information against a defendant who has been held to answer to the district court, or if there is unnecessary delay in bringing a defendant to trial, the court may dismiss the indictment, information or complaint.

This provision allows the court sufficient flexibility to dismiss charges either with or without prejudice as the facts of a particular case may warrant. This is a much preferred approach since it does not establish a blanket dismissal provision for all criminal cases, but allows sufficient discretion to the court to deal with each individual case as the ends of public justice require.

The amendment offered by Mr. Wiggins, and rejected by the Committee would continue current law. We will offer this amendment when H.R. 17409 is considered by the House.

EXPANSION OF TIME LIMITS

When H.R. 17409 was under consideration by the full Committee, Mr. Dennis offered a series of amendments that would have increased the permissible time within which the trial of a defendant must be commenced, The following comparative chart sets forth the time periods under the present bill and the time limits established by Mr. Dennis' amendments:

COMPARISON OF H.R. 17409 AND DENNIS AMENDMENTS

	Year 1	Year 2	Year 3	Year 4	Year 5 plus
H.R. 17409:					
Arrest—indictment	No time	60 days	45 days	35 days	30 days; §§ 3161(b)(f), 3163(a).
Indictment—arraignment	No time	10 days	10 days	10 days	10 days; §§ 3161(c), 3163(b).
Arraignment—trial	No time	180 days	120 days	80 days	60 days; §§ 3161(c)(g), 3163 (b).
Dismissal sanctions	No	No	No	No	Yes; §§ 3162(a), 3163(c).
H.R. 17409 as amended by the Dennis amendment::					
Arrest—indictment	No time	120 days	90 days	90 days	60 days.
Indictment—arraignment	No time	10 days	10 days	10 days	10 days.
Arraignment—trial	No time	180 days	150 days	120 days	90 days.
Dismissal sanctions		No	No	No	Yes; but only if due to government delay in prosecuting.

From the fifth year after enactment the Dennis amendments would add two months to the total time period between arrest and trial. Rather than thirty days, the time between arrest and indictment would be increased to sixty days; and rather than sixty days, the time between arraignment and trial would be increased to ninety days. Under both versions the time between indictment and arrest would be ten days.

As a matter of policy it is difficult to determine from the record in the House or the Senate why the 30–10–60 day limits were selected.[1]

[1] 30 days from arrest to indictment, § 3161(b); 10 days from indictment to arraignment, § 3161(c); 60 days from arraignment to trial, § 3161(e).

Certainly there is no proof that these time limits are either practical or desirable, and we question whether the federal court system could ever attain the goal of trial within three months of arrest.

It has been argued, however, that the court system and the federal prosecutor can easily be ready for trial within ninety days, if sufficient resources are put in place to handle the criminal caseload. Perhaps the courts and prosecutors could be sufficiently strengthened so that such time limits could be attained. But what of defense counsel? Throughout the country there is an acknowledged shortage of criminal defense lawyers. The shortage can be attributed to a number of factors, but the fact remains the experienced criminal lawyers are too few, and they are overburened with the number of cases they are to handle. The time limits established by the bill would operate most harshly on a defendant's counsel who often has too many cases to handle adequately under present time limits. Often a criminal lawyer has ten or twenty cases to prepare and if the time limits of the present bill go into effect they will be absolutely unable to represent any of their clients effectively.

Realistically, of course, the courts and prosecutors will also benefit from the additional time to be established by these amendments. But, after a review of the record compiled by the Committee, we feel that the additional two months recognizes the difficulty by which the courts have in meeting present speedy trial time limits under Rule 50(b) of the Federal Rules of Criminal Procedure—in most case 180 days. It is our firm conviction that the courts cannot be expected to attain the 30–10–60 day time limits within the five year phase-in period. The amendments to be proposed would establish a more realistic timetable.

READY RULE

During the Committee's consideration of H.R. 17409, Mr. Wiggins offered an amendment that would require that the charges would be dismissed if the government was not ready for trial. The amendment was offered because under H.R. 17409, cases would be dismissed if certain stages of the proceedings were not reached within a set period of time, regardless of the cause of the failure. Dismissing charges against serious offenders because of the passage of time, regardless of the reason for the delay would be highly detrimental to the criminal justice system and to the public.

The amendments would provide for dismissal only where undue delay is attributable to the federal prosecutor. The first amendment would require that the prosecutor be ready for trial within sixty days of arraignment of the defendant. The second amendment provides that, if the government is not ready in the prescribed time, a date certain be set for the trial and that the case be dismissed if the government is not ready at that time.

Under these amendments, cases would not be dismissed because, for example, an individual judge was involved in an extended trial and was unable to reach another case through no fault of his own or of the judicial system. Instead, the government could announce that it was ready to try the case, and the judge could set it for trial at the earliest possible time following completion of the ongoing trial. To dismiss a case in circumstances such as these would accomplish little other than to release persons charged with serious crime to society without any

benefit to the public or the judicial system. As we have argued above, such release is intolerable and should not be retained in the bill.

We, the undersigned Members of the Committee on The Judiciary, hereby subscribe to the above stated Minority Views.

EDWARD HUTCHINSON.
ROBERT MCCLORY.
CHARLES W. SANDMAN, JR.
DAVID W. DENNIS.
WILEY MAYNE.
M. CALDWELL BUTLER.
TRENT LOTT.
HAROLD V. FROEHLICH.

ADDITIONAL VIEWS OF HON. DAVID W. DENNIS OF INDIANA

I concur generally in the dissenting views which I have signed.

I strongly favor realistic action against undue delays in trial.

I question the wisdom of attempting passage of a bill of this importance so late in the Session when, in the nature of things, most Members have had, and can have, no adequate opportunity to consider it.

I would like to be able to vote for this bill, and I believe that the amendments discussed in the Minority report are such, if adopted, as to make it a practicable and reasonable bill which can be supported.

For this reason I urge Members to support these amendments when they are offered; and I even hope that, upon reflection, some Members of the Majority on our Committee may conclude to accept them.

DAVID W. DENNIS.

○

CORRECTED SHEET

S. 754

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Speedy Trial Act of 1974".

TITLE I—SPEEDY TRIAL

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207, a new chapter 208, as follows:

"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 summons 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) The arraignment of a defendant charged in an information or indictment with the commission of an offense shall be held within ten days from the filing date (and making public) of the information or indictment, or from the date a defendant has been ordered held to answer and has appeared before a judicial officer of the court in which such charge is pending whichever date last occurs. Thereafter, where a plea of not guilty is entered, the trial of the defendant shall commence within sixty days from arraignment on the information or indictment at such place, within the district, as fixed by the appropriate judicial officer.

"(d) 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.

"(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 sixty 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 sixty 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 sixty days impractical.

"(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 an examination of the defendant, and hearing on, his mental competency, or physical incapacity;

"(B) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

"(C) delay resulting from trials with respect to other charges against the defendant;

"(D) delay resulting from interlocutory appeals;

"(E) delay resulting from hearings on pretrial motions;

"(F) delay resulting from proceedings relating to transfer from other districts under the Federal Rules of Criminal Procedure; and

"(G) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement.

"(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 taken as a whole is so unusual and so complex, due to the number of defendants or the nature of the prosecution or otherwise, that it is unreasonable to expect adequate preparation within the periods of time established by this section.

"(iii) Whether delay after the grand jury proceedings have commenced, in a case where arrest precedes indictment, is caused by the unusual complexity of the factual determination to be made by the grand jury or by events beyond the control of the court or the Government.

"(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).

"§ 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.

"§ 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) Section 3162 of this chapter shall become effective after the date of expiration of the fourth twelve-calendar-month period following July 1, 1975.

"§ 3164. Interim limits.

"(a) During an interim period commencing ninety days following July 1, 1975 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b) and section 3161(c) of this chapter become effective, each district shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

"(1) detained persons who are being held in detention solely because they are awaiting trial, and

"(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

"(b) During the period such plan is in effect, the trial of any person who falls within subsection (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

"(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.

"§ 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.

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"(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 subsequent twelve-calendar month periods following the effective date of subsection 3161 (b) and subsection 3161(c).

"(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents.

"§ 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; and

"(8) the incidence of; and reasons for each thirty-day extention under section 3161(b) with respect to an indictment in that 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; and

"(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition.

"(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.

"§ 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.

"§ 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, a private attorney experienced in the defense of criminal cases 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.

"§ 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.

"§ 3170. Speedy trial data.

"(a) To facilitate the planning process and the implementation of the time limits and objectives of this chapter, the clerk of each district court shall assemble the information and compile the statistics required by 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.

"§ 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.

"§ 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

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court-martial, military commission, provost court, or other military tribunal).

"§ 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.

"§ 3174. Judicial emergency.

"(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. 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 shall find that no remedy for such congestion is reasonably available, such council may apply to the Judicial Conference of the United States for a suspension of time limits set forth in section 3161(c). The Judicial Conference, if it finds that such calendar congestion cannot be reasonably alleviated, may grant a suspension of the time limits in section 3161(c) for a period of time not to exceed one year for the trial of cases for which indictments are filed during such 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 arrangement 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) Any suspension of time limits granted by the Judicial Conference shall be reported to the Congress within ten days of approval by the Director of the Administrative Office of the United States Courts, together with a copy of the application for such suspension, a written report setting forth detailed reasons for granting such approval and a proposal for increasing the resources of such district. In the event an additional period of suspension of time limits is necessary, the Director of the Administrative Office of the United States Courts shall so indicate in his report to the Congress, which report shall contain such application for such additional period of suspension together with any other pertinent information. The Judicial Conference shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress. Such consent may be requested by the Judicial Conference by reporting to the Congress the facts supporting the need for a suspension within such six-month period. Should the Congress fail to act on any application for a suspension of time limits within six months, the Judicial Conference may grant such a suspension for an additional period not to exceed one year."

SEC. 102. The tables of chapters for title 18 of the United States Code and for part II of title 18 of the United States Code are each amended by inserting immediately after the item relating to chapter 207 the following new item:

"208. Speedy trial ..... 3161".

TITLE II—PRETRIAL SERVICES AGENCIES

SEC. 201. Chapter 207 of title 18, United States Code, is amended by striking out section 3152 and inserting in lieu thereof the following new sections:

"§ 3152. Establishment of pretrial services agencies.

"The Director of the Administrative Office of the United States Courts shall establish, on a demonstration basis, in each of ten representative judicial districts (other than the District of Columbia), a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

"§ 3153. Organization of pretrial services agencies.

"(a) The powers of five pretrial services agencies shall be vested in the Division of Probation of the Administrative Office of the United States Courts. Such Division shall establish general policy for such agencies.

"(b) (1) The powers of each of the remaining five pretrial services agencies shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

"(2) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

"(A) one member, who shall be a United States district court judge;

"(B) one member, who shall be the United States attorney;

"(C) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

"(D) one member, who shall be the chief probation officer; and

"(E) two members who shall be representatives of community organizations.

"(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (C) (other than a public defender) and (E) of subsection (b) (2) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (C) (other than a public defender) or (E) of subsection (b) (2) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

"(d) (1) In each of the five demonstration districts in which pretrial service agencies are established pursuant to subsection (a) of this section, the pretrial service officer shall be a Federal probation officer of the district designated for this purpose by the Chief of the Division of Probation and shall be compensated at a rate not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code.

"(2) In each of the five remaining demonstration districts in which pretrial service agencies are established pursuant to subsection (b) (1) of this section, after reviewing the recommendations of the judges of the district court to be served by the agency, each such Board of Trustees shall appoint a chief pretrial service officer, who shall be compensated at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–15 by section 5332 of title 5, United States Code.

"(3) The designated probation officer or the chief pretrial service officer, subject to the general policy established by the Division of Probation or the Board of Trustees, respectively, shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established under chapter 53 of title 5, United States Code.

"§ 3154. Functions and powers of pretrial services agencies.

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

"(1) Collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person, but such information as may be contained in the agency's files or presented in its report or which shall be divulged during the course of any hearing shall be used only for the purpose of a bail determination and shall otherwise be confidential. In their respective districts, the Division of Probation or the Board of Trustees shall issue regulations establishing policy on the release of agency files. Such regulations shall create an exception to the confidentiality requirement so that such information shall be available to members of the agency's staff and to qualified persons for purposes of research related to the administration of criminal justice. Such regulations may create an exception to the confidentiality requirement so that access to agency files will be permitted by agencies under contract pursuant to paragraph (4) of this section; to probation officers for the purpose of compiling a presentence report and in certain limited cases to law enforcement agencies for law enforcement purposes. In no case shall such information be admissible on the issue of guilt in any judicial proceeding, and in their respective districts, the Division of Probation or the Board of Trustees may permit such information to be used on the issue of guilt for a crime committed in the course of obtaining pretrial release.

"(2) Review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147.

"(3) Supervise persons released into its custody under this chapter.

"(4) With the cooperation of the Administrative Office of the United States Courts, and with the approval of the Attorney General, operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services.

"(5) Inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions.

"(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

"(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

"(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrail detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

"(9) Perform such other functions as the court may, from time to time, assign.

"§ 3155. Report to Congress.

"(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies operated by the Division of Probation with those operated by Boards of Trustees and with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

"(b) On or before the expiration of the forty-eighth-month period following July 1, 1975, the Director of the Administrative Office of the United States Courts shall file a comprehensive ~~report~~ with the Congress concerning the administration and operation of the amendments made by the Speedy Trial Act of 1974, including his views and recommendations with respect thereto.

"§ 3156. Definitions.

"(a) As used in sections 3146–3150 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia; and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress.

"(b) As used in sections 3152–3155 of this chapter—

"(1) the term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, 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)."

SEC. 202. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3152. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

SEC. 203. For the purpose of carrying out the provisions of this title and the amendments made by this title there is hereby authorized to be appropriated for the fiscal year ending June 30, 1975, to remain available until expended, the sum of $10,000,000.

SEC. 204. Section 604 of title 28, United States Code, is amended by striking out paragraphs (9) through (12) of subsection (a) and inserting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

"(10) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

FOR IMMEDIATE RELEASE JANUARY 4, 1975

Office of the White House Press Secretary

THE WHITE HOUSE

STATEMENT BY THE PRESIDENT

I have given my approval to S. 754, the so-called "Speedy Trial Act of 1974." I have done so, however, with some reservations.

I fully endorse the goal of speedy justice, but I am concerned about the sanctions imposed by the bill. If its time limits are not met, Section 3162 provides for dismissal of the indictment and permits the trial judge to decide whether a subsequent reindictment would be permitted. I believe that dismissal without precluding reindictment would constitute an ample sanction to insure that prompt trials do take place. I hope that the sound discretion of our Federal District Court judges will minimize the possibility that a defendant will be unnecessarily exonerated from punishment for a serious offense without ever having undergone a trial.

I also take this opportunity to call for prompt Congressional action on the recommendation of the Judicial Conference of the United States for the creation of 51 additional Federal District Court judgeships in 33 separate judicial districts across the country. This measure recognizes that justice delayed is too often justice denied. However, without a commitment to meet the increased demands which the bill will impose on our federal judiciary, as well as prosecutors, its benefits become transparent.

The Judicial Conference recommendation was advanced in 1972 and Senate hearings incorporating the proposal were conducted in 1973. To date, however, this legislation has not been scheduled for action. I hope that it will be a priority item for the 94th Congress.

# # # # #

December 24, 1974

Dear Mr. Director:

The following bills were received at the White House on December 24th:

S.J. Res. 40
S.J. Res. 133
S.J. Res. 262
S. 251
S. 356
S. 521
S. 544
S. 663
S. 754
S. 1017
S. 1083
S. 1296
S. 1418
S. 2149
S. 2446
S. 2807
S. 2854
S. 2888
S. 2994
S. 3022
S. 3289
S. 3358
S. 3359
S. 3394
S. 3433
S. 3481
S. 3548
S. 3934
S. 3943
S. 3976
S. 4073
S. 4206
H.J. Res. 1178
H.J. Res. 1180
H.R. 421
H.R. 1715
H.R. 1820
H.R. 2208
H.R. 2933
H.R. 3203
H.R. 3339
H.R. 5264
H.R. 5463
H.R. 5773
H.R. 7599
H.R. 7684
H.R. 7767
H.R. 8214
H.R. 8322
H.R. 8591
H.R. 8958
H.R. 8981
H.R. 9182
H.R. 9199
H.R. 9588
H.R. 9654
H.R. 10212
H.R. 10701
H.R. 10710
H.R. 10827
H.R. 11144
H.R. 11273
H.R. 11796
H.R. 11802
H.R. 11847
H.R. 11897
H.R. 12044
H.R. 12113
H.R. 12427
H.R. 12884
H.R. 13022
H.R. 13296
H.R. 13869
H.R. 14449
H.R. 14461
H.R. 14600
H.R. 14689
H.R. 14718
H.R. 15173
H.R. 15223
H.R. 15229
H.R. 15322
H.R. 15977
H.R. 16045
H.R. 16215
H.R. 16596
H.R. 16925
H.R. 17010
H.R. 17045
H.R. 17085
H.R. 17468
H.R. 17558
H.R. 17597
H.R. 17628
H.R. 17655

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.