

Spring 1982

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### Recommended Citation

George S. Bridges, The Speedy Trial Act of 1974: Effects on Delays in Federal Criminal Litigation, 73 J. Crim. L. & Criminology 50 (1982)

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# THE SPEEDY TRIAL ACT OF 1974: EFFECTS ON DELAYS IN FEDERAL CRIMINAL LITIGATION\*

GEORGE S. BRIDGES\*\*

## I. THE SPEEDY TRIAL ACT

The Speedy Trial Act of 1974 was enacted in response to widespread concern regarding the prevention and control of crime as well as Congress' perception that the public has a right to the prompt disposition of criminal cases.<sup>1</sup> The Act was designed to reduce crimes commit-

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\* Revised version of a paper presented at the annual meetings of the American Society of Criminology, San Francisco, 1980.

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<sup>1</sup> The legislative history of the Speedy Trial Act suggests that the Act's provisions are the outgrowth of a congressional recognition of a national concern about crime and the control of dangerous offenders. The Act's provisions represent an alternative to preventive detention of defendants in federal criminal cases which insures supervision and control of dangerous defendants and speedy trial of criminal cases.

Former Representative Mikva initially introduced the Speedy Trial Act in 1969 as the Pretrial Crime Reduction Act. He summarized the purpose of this early version as follows:

[T]he Pretrial Crime Reduction Act is an approach to the problems of crime by defendants released prior to trial which does not rely on jailing criminal defendants before they are found guilty. It provides to the judge alternative methods to insure supervision and control of dangerous defendants, it provides pretrial services agencies with adequate resources to make those pretrial controls effective, and it insures that defendants are brought to trial quickly enough that the pretrial controls need be used only for a minimum time.

115 CONG. REC. 34334-35 (1969). The legislative purpose of the Speedy Trial Act of 1974 reflects a concern for the reduction of crime and supervision of defendants. The Act's purpose, as stated in its introduction 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 and for other purposes." Speedy Trial Act of 1974, Pub. L. No. 93-619, 88 Stat. 2076 (1974).

The Speedy Trial Act introduced the concept that a public right to speedy trials exists independent of defendants' sixth amendment rights. The Act's proponents argue that absent speedy criminal trials, the criminal justice system loses its effectiveness in protecting the public. A. PARTRIDGE, *LEGISLATIVE HISTORY OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974* (Fed. Judicial Center 1980) [hereinafter cited as *LEGISLATIVE HISTORY*]; Ariola, DeMasi, Loughman & Reynolds, *The Speedy Trial Act: An Empirical Study* 47 *FORDHAM L. REV.* 713

ted by defendants in criminal cases released before trial and to accelerate the processing of federal criminal cases.<sup>2</sup> The Act's major sponsor, Senator Sam Ervin, underscored the need for the Act to combat delay, stating that the Act is based primarily upon

the premise that the courts, undermanned, starved for funds, and utilizing 18th century management techniques, simply cannot cope with burgeoning caseloads. The consequence is delay and . . . [t]he solution is to create initiative within the system to utilize modern management techniques and to provide additional resources to the courts where careful planning so indicates.<sup>3</sup>

To achieve the purpose of accelerating the pace of criminal litigation, the Act establishes automatic time limits for processing criminal cases that the court may extend only in accordance with the provisions of the Act. The Act also requires dismissal of cases not processed within the prescribed limits.<sup>4</sup>

Since passage of the Act, however, the time limits and dismissal sanction have been the subject of considerable controversy. Many observers believe that the time limits impose an arbitrary standard for the disposition of criminal cases, thus reducing the capacity of defense counsel, prosecutors, and the courts to litigate criminal cases effectively.<sup>5</sup> Others claim that the time limits work against defendants, particularly in cases initiated by indictment, by leaving defense counsel inadequate time to prepare cases.<sup>6</sup> Critics maintain that the Act reduces the effec-

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[hereinafter cited as *Fordham Study*]; Frase, *The Speedy Trial Act of 1974*, 43 U. CHI. L. REV. 667 (1976); Misner, *Delay, Documentation and the Speedy Trial Act*, 70 J. CRIM. L. & C. 214 (1979); Steinberg, *Dismissal with or without Prejudice under the Speedy Trial Act: A Proposed Interpretation*, 68 J. CRIM. L. & C. 1 (1977).

The provisions of the Speedy Trial Act pertain to the processing of defendants in criminal cases. Throughout the article, the term "cases" refers to *defendants* in criminal cases unless otherwise specified.

<sup>2</sup> See note 1 *supra*.

<sup>3</sup> 120 CONG. REC. 41618 (1974).

<sup>4</sup> 18 U.S.C. § 3162(a)(1)(2) (Supp. IV 1974). For a discussion of the purposes of the Act see note 1 *supra*.

<sup>5</sup> For general discussion and criticisms of the provisions of the Act, see Frase, *supra* note 1; Kozinski, *That Can of Worms: The Speedy Trial Act*, 62 A.B.A.J. 862 (1976); Misner, *supra* note 1; Platt, *The Speedy Trial Act of 1974: A Critical Commentary*, 44 BROOKLYN L. REV. 757 (1978); Steinberg, *Right to Speedy Trial: The Constitutional Right and its Applicability to the Speedy Trial Act of 1974*, 66 J. CRIM. L. & C. 229 (1975).

For a discussion of the Act's impact on the ability of courts and litigants to process cases effectively, see *Fordham Study*, *supra* note 1, at 644-668; Frase, *supra* note 1, at 675-76; Misner, *supra* note 1, at 223-226; H.R. REP. NO. 93-1508, 93d Cong., 2nd Sess. 1-333 (1974); LEGISLATIVE HISTORY, *supra* note 1.

<sup>6</sup> Defense attorneys have frequently complained that the Act's time limits allow little time to acquire information necessary for the preparation of an adequate defense. A study of the Act's effects in three federal districts is representative of defense attorneys' criticisms:

The vast majority of the defense attorneys interviewed in the District of New Jersey and the Eastern District of New York declared the limits insufficient to prepare an ade-

tiveness of criminal prosecution. Many believe the Act forces prosecutors to decline or defer—due to their heavy workload—otherwise prosecutable cases in favor of breaking the Act's time limits in major criminal cases.<sup>7</sup> Still others conclude that the provisions of the Act pressure already overworked courts to achieve unreasonable goals in adjudicating criminal cases.<sup>8</sup>

A pivotal issue in the controversy over the Act is whether delays in processing criminal cases have decreased significantly since passage of the Act. Many courts, prosecutors and defense counsel may prefer delayed disposition of criminal actions in order to manage litigation effectively.<sup>9</sup> Some observers believe these participants in litigation circumvent the purpose of the Act by using its provisions for time extensions, which were designed to make adjustments for uncontrollable delays in litigation, and not to accommodate unwarranted delays in litigation.<sup>10</sup> Quite certainly, if courts permit delay by granting extensions of processing time beyond the Act's limits, the Act may have a minimal impact on the problem of delay.

This article examines federal court compliance with the Speedy Trial Act since its enactment. The article is the outgrowth of research on the implementation of the Act in federal courts and offices of United

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quate defense. Only two of the sixteen interviewed thought the time limits were adequate for all cases; one of the two, however, handled only simple court-appointed work, and was thus not likely to experience pressure even under the most restrictive limits. Ten out of sixteen had not been ready to proceed to trial within the periods fixed by the courts, and attributed this primarily to the tighter scheduling procedures adopted by judges to avoid violation of the statutory restraints.

A common complaint was that the limits did not allow enough time to obtain and analyze what often amounted to thousands of pages of documents, such as financial records or wiretap transcripts, that the prosecution has spent months collecting and digesting. The problem was aggravated when the prosecution was late in turning over discoverable materials. Others noted the massive communication difficulties in coordinating defense among several defendants and their counsel in large conspiracy cases.

*Fordham Study, supra* note 1, at 665.

<sup>7</sup> Former Attorney General Saxbe voiced this concern when he opposed the pending legislation. The Attorney General claimed that the Act's provisions for mandatory dismissal were not in society's interest, that complicated cases required more time to prepare than the Act's provisions allowed, and that the rate of guilty pleas would be adversely affected. Misner, *supra* note 1, at 224. See also UNITED STATES DEPARTMENT OF JUSTICE, DELAYS IN THE PROCESSING OF CRIMINAL CASES UNDER THE SPEEDY TRIAL ACT OF 1974, 24, 29-31 (1979) [hereinafter cited as DEPARTMENT OF JUSTICE STUDY].

<sup>8</sup> See note 5 *supra*. See also N. AMES, K. CARSON, T. HAMMETT & G. KENNINGTON, THE PROCESS OF FEDERAL CRIMINAL CASES UNDER THE SPEEDY TRIAL ACT OF 1974 (AS AMENDED IN 1979) 33-117 (1980) [hereinafter cited as ABT REPORT].

<sup>9</sup> For discussion of the interests criminal litigants have in delay, see Misner, *supra* note 1, at 219-23.

<sup>10</sup> The legislative history also indicates that concerns were expressed early in the development of the legislation about the problem of circumvention of the Act's purposes by improper use of the Act's provisions for excludable delay. LEGISLATIVE HISTORY, *supra* note 1, at 149-150. See Misner, *supra* note 1, at 216-17.

States Attorneys.<sup>11</sup> Unlike most previous writing on this subject, the article draws principally upon empirical information collected on defendants in criminal cases processed in the federal courts. The findings indicate that although federal courts meet the Act's time limits in processing most cases, the courts have achieved only slight improvements in the actual time elapsed in processing cases. Compliance with the time limits stems primarily from frequent and effective use of the Act's provisions for excluding case processing time rather than from substantial reductions in case processing time. The study findings show that courts process many criminal cases with no greater speed, in terms of elapsed calendar time, than prior to enactment of the Act.

## II. THE ACT'S PROVISIONS FOR DELAY

The Speedy Trial Act represents a significant effort by Congress to address the problems of delay in handling federal criminal cases.<sup>12</sup> The statutory scheme enacted in 1974 divides the period between arrest and trial into three distinct intervals: the time from arrest to the filing of a charge with the court (Interval 1),<sup>13</sup> the time from filing to arraignment on the charge (Interval 2)<sup>14</sup> and the time from arraignment to trial (Interval 3).<sup>15</sup> The Act also provides that the action be dismissed when the action exceeds the time limits associated with the intervals. The Act mandates application of this sanction irrespective of the stage at which the delay occurs.<sup>16</sup> Although dismissal is mandatory, the court decides in its discretion whether dismissal is with or without prejudice to reprosecution.<sup>17</sup>

To lend flexibility to the time limits, Congress provided for the exclusion of processing time attributable to circumstances generally beyond the control of the courts or counsel from the computation of time allowed under the limits.<sup>18</sup> The provisions for excluded time are essentially twofold. The first of the provisions is contained in Section 3161h(1)-(7) and involves exclusions for case processing time occasioned

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<sup>11</sup> See ABT REPORT, *supra* note 8; DEPARTMENT OF JUSTICE STUDY, *supra* note 7.

<sup>12</sup> For a general review of the background of the Act, see LEGISLATIVE HISTORY, *supra* note 1; Frase, *supra* note 1; Lohman, *Speedy Trial Act of 1974: Defining the Sixth Amendment Right*, 25 CATH. U. L. REV. 130 (1975).

<sup>13</sup> 18 U.S.C. § 3161(b) (Supp. IV 1974).

<sup>14</sup> 18 U.S.C. § 3161(c) (Supp. IV 1974).

<sup>15</sup> *Id.*

<sup>16</sup> 18 U.S.C. § 3162(a)(1), (2) (Supp. IV 1974).

<sup>17</sup> *Id.* For discussion of the issues surrounding the sanction of dismissal, see Frase, *supra* note 1, at 704-08; Hansen & Reed, *The Speedy Trial Act of 1974 in Constitutional Perspective*, 47 MISS. L. J., at 415-18 (1976); Steinberg, *supra* note 1, at 1-14.

<sup>18</sup> For comprehensive reviews of the development of the provisions for the exclusion of case processing time, see LEGISLATIVE HISTORY, *supra* note 1, at 92-185; Frase, *supra* note 1, at 689-704, 712-717; Hansen and Reed, *supra* note 17, at 409-11.

by specific pretrial litigating activities or events.<sup>19</sup> The provisions establish narrow exceptions to the Act's time limits that require automatic exclusion of case processing time by the court from the computation of elapsed calendar time. Many of the exceptions pertain to delays resulting from litigating activities such as mental competency proceedings, interlocutory appeals, or motion hearings.<sup>20</sup> Court orders or rulings associated with those activities serve as calendar points for determining the elapsed time occasioned by the activities.<sup>21</sup> Other exceptions involve the exclusion of time associated with such factors as the unavailability of a defendant or an essential witness, or proceedings that are under ad-

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<sup>19</sup> 18 U.S.C. § 3161(h)(1)-(7) (1975):

(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 appeal;

(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 co-defendant as to whom the time for trial has not run and no motion for severance has been granted.

<sup>20</sup> 18 U.S.C. § 3161(h)(1) (1975).

<sup>21</sup> Frase, *supra* note 1, at 691.

visement by the court.<sup>22</sup> The Act establishes no clear standards for determining the extent of excluded time associated with these other factors.<sup>23</sup>

The second method of exclusion of processing time permits a court to continue a case based upon an on-the-record finding that the "ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial."<sup>24</sup> Even though the Act establishes specific guidelines that courts must follow in granting such continuances, it grants courts full discretion in determining the overall extent of time excluded under the "ends of justice" clause.<sup>25</sup> Some observers believe this provision may allow courts and litigants too much flexibility in complying with the provisions of the Act, thus limiting the Act's overall effectiveness in reducing delays in criminal litigation.<sup>26</sup>

Recognizing the far-reaching consequences of the Act, Congress also provided for a gradual phase-in period, beginning on July 1, 1976,<sup>27</sup> during which the dismissal sanction would be held in abeyance and transitional time limits that became progressively narrower would be in effect.<sup>28</sup> The Act was to become fully effective on July 1, 1979, at which point the time limits would be thirty, ten and sixty days for the three intervals respectively. The purpose of this graduated implementation was to mitigate the anticipated effects of the Act on the administration of justice by giving districts the opportunity to plan for the Act's final implementation while under increasingly stringent time limits for

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<sup>22</sup> 18 U.S.C. § 3161(h)(1)-(7) (1975).

<sup>23</sup> Frase, *supra* note 1, at 691-93.

<sup>24</sup> 18 U.S.C. § 3161(h)(8) (1975).

<sup>25</sup> Frase, *supra* note 1, at 699.

<sup>26</sup> Misner, *supra* note 1, at 226-28. To the extent that courts utilize the "ends of justice" provision to accommodate unwarranted delays in criminal cases or to alleviate the pressures of congestion in case processing, courts may circumvent the purposes and provisions of the Act. The Act (18 U.S.C. § 3161(h)(8)(c)) prohibits courts from granting "ends of justice" continuances to accommodate court congestion.

<sup>27</sup> President Ford signed The Speedy Trial Act on January 3, 1975. However, a change in the implementation schedule of the Act tied all effective dates to July 1, 1976, instead of the date of enactment. LEGISLATIVE HISTORY, *supra* note 1, at 20.

<sup>28</sup> 18 U.S.C. § 3161 (f), (g) (1975):

(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 twelve-month period such time limits 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.

processing criminal cases.<sup>29</sup>

At the initiation of the Department of Justice and the Judicial Conference of the United States in the spring of 1979,<sup>30</sup> Congress considered and passed amendments to the Act effecting four major changes.<sup>31</sup> The amendments (1) merged the interval between indictment and arraignment with the arraignment-to-trial interval, creating one seventy-day postindictment period;<sup>32</sup> (2) postponed the dismissal sanction until July 1, 1980, for cases not meeting the amended time limits of the Act;<sup>33</sup> (3) revised the Act's provision for excludable time to include three additional grounds for exclusion;<sup>34</sup> and (4) simplified the procedures by which the district courts, when unable to comply with the time limits due to congestion in calendars, may seek temporary suspensions of the Act's time limits.<sup>35</sup> Congress intended that the amendments remedy compliance problems which arose during the initial phase-in period of implementation without altering the apparatus established to achieve speedy trials in the federal courts.<sup>36</sup> The added exclusions for processing time and the expanded grounds for granting "ends of justice" continuances provided greater flexibility in the overall time limits. Congress' postponement of the dismissal sanction gave the federal justice system one full year to experience working under the Act's final limits.

To gain an understanding of factors associated with the Act's effects on delay in criminal litigation, it is useful to consider briefly the relationship between statutory compliance with the Act and the problem of delay in processing criminal cases. Clearly, the manner in which courts apply the Act's automatic exclusions and "ends of justice" continuances may affect compliance with the Act's time limits. Because processing time that falls within one of the Act's exclusions should not count against the limits, the manner in which courts apply the "automatic" provisions for excluded time may affect levels of compliance. Similarly, exclusion of processing time through "ends of justice" continuances may accommodate significant periods of delay that would otherwise result in violations of the limits. Compliance with the Act's time limits in a significant proportion of cases, thus, may not necessarily reflect efficiency in processing those cases. Courts and litigants may achieve compliance with the limits in many instances through frequent application and lib-

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<sup>29</sup> LEGISLATIVE HISTORY, *supra* note 1, at 18, 86-89.

<sup>30</sup> *Id.* at 20-21.

<sup>31</sup> Speedy Trial Act Amendments Act of 1979, Pub. L. No. 96-43 (1979).

<sup>32</sup> 18 U.S.C. § 3161(f) (1975).

<sup>33</sup> 18 U.S.C. § 3161(c) (1979).

<sup>34</sup> 18 U.S.C. § 3161 (h) (1) (c), (H), (I) (1979).

<sup>35</sup> 18 U.S.C. § 3174 (c)(1)-(2), (d)(1)-(2), (e) (1979).

<sup>36</sup> LEGISLATIVE HISTORY, *supra* note 1, at 20-23.



eral interpretation of the provisions for excluded time.<sup>37</sup> As a result, efforts to achieve compliance with the time limits may not reduce elapsed time in processing criminal cases or the likelihood that litigants will wait in long queues for court proceedings.

### III. THE STUDY

This article is based upon a study of the implementation of the Speedy Trial Act, with special emphasis on the problems of delay in criminal litigation. The study primarily relies upon empirical data provided by the Administrative Office of the United States Courts (AOUSC). The data include district-by-district information on levels of compliance with the Act's time limits, the use of exclusions and discretionary continuances, and the overall elapsed time from filing to disposition for defendants in criminal cases. Additionally, information regarding the general implementation of the Act is drawn from previous studies and published statistical reports on the operation of Offices of United States Attorneys and federal district courts.<sup>38</sup>

Discussion of the study findings is divided into three sections. The first section reviews annual trends in compliance with the Act's time limits during the period between July 1, 1976, and June 30, 1981, to describe changes in compliance that occurred. The second section examines the application of the provisions for excluded processing time. The final section discusses effects of the Act on case processing time for defendants in criminal cases. The study examined processing time among criminal cases terminated in federal courts since 1971 to ascer-

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<sup>37</sup> The DEPARTMENT OF JUSTICE STUDY found:

[R]epeated and marked inconsistencies in the way in which some of the exclusions are being interpreted and applied by the courts. In some districts, for example, more than half of the incidents prompting the exclusion of processing time were attributable to hearing and deciding pretrial motions, while in other districts these events produced not one instance of excluded processing time. Similarly, in one district, 80 percent of the examined cases experienced at least one incident of excluded processing time, while in another district the figure was only 4 percent.

Experience with the Act's exclusion of processing time when 'the ends of justice' served by a continuance outweigh the best interests of the public and the defendant in a speedy trial [18 U.S.C. § 3161(h)(8)(A)] is particularly instructive. On a national scale, this category accounts for approximately one-third of all incidents of excluded processing time. Yet, in one sample district it accounted for two-thirds of excluded incidents and, in another sample district, almost none.

DEPARTMENT OF JUSTICE STUDY, *supra* note 7, at 20-23.

<sup>38</sup> ABT REPORT, *supra* note 8; AD. OFF. OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR (1981); AD. OFF. OF THE U.S. COURTS, SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974: TITLE I (1980); AD. OFF. OF THE U.S. COURTS, FIFTH REPORT ON THE IMPLEMENTATION OF THE SPEEDY TRIAL ACT OF 1974: TITLE I (1980); DEPARTMENT OF JUSTICE STUDY, *supra* note 7; *Fordham Study*, *supra* note 1.

The analysis of data focuses strictly on the processing of defendants. Throughout the discussion of findings the term "cases" is used for clarity and ease of presentation, and refers to defendants in criminal cases unless otherwise specified.

tain whether delays in processing have decreased since the enactment of the Act. To account for factors that may have independently contributed to increased or decreased processing time during the eleven year period, changes in the volume and types of criminal cases terminated in the federal courts are also considered.

#### A. COMPLIANCE WITH THE ACT'S TIME LIMITS

As noted above, the Act established final time limits that went into effect in the fourth year of the implementation period. Changes in compliance with the final limits over the five year period measure success in implementing the provisions of the Act. Table 1 exhibits annual levels of compliance with the final time limits for criminal cases litigated in federal district courts between 1977 and 1981. Table 1 shows that levels of compliance with the limits for the Act's two intervals were relatively high throughout, particularly in the most recent year.<sup>39</sup> At both stages

**TABLE 1**

**NATIONAL LEVELS OF COMPLIANCE WITH THE TIME  
LIMITS OF THE SPEEDY TRIAL ACT: 1977-1981<sup>a</sup>**

| Year              | INTERVAL 1          |      | INTERVAL 2          |      |
|-------------------|---------------------|------|---------------------|------|
|                   | Total<br>Defendants | %    | Total<br>Defendants | %    |
| 1977 <sup>b</sup> | 20157               | 73.7 | 46077               | 75.4 |
| 1978 <sup>b</sup> | 14644               | 77.8 | 41243               | 73.2 |
| 1979 <sup>b</sup> | 14587               | 81.8 | 38081               | 78.9 |
| 1980              | 13193               | 90.8 | 32019               | 88.3 |
| 1981              | 14773               | 94.2 | 35358               | 93.4 |

<sup>a</sup> Source: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR, 1981; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974: TITLE I 1980.

<sup>b</sup> The 1979 amendments to the Speedy Trial Act revised the time limits by establishing two intervals for case processing. Before 1980, three intervals were employed. The data presented in this table describe the trends in compliance with the Act's time limits across all years with respect to the final two interval scheme.

<sup>39</sup> For the remainder of the article, the period from July 1, 1976 to June 30, 1977, will be referred to as "1977"; from July 1, 1977 to June 30, 1978, as "1978"; from July 1, 1978 to June 30, 1979, as "1979"; from July 1, 1979 to June 30, 1980, as "1980"; and from July 1, 1980 to June 30, 1981, as "1981".

Tables 1-3 examine trends in compliance with respect to the two stages of prosecution enacted in the 1979 amendments to the Act. The analysis is presented in this manner—as opposed to compliance with the three intervals enacted in the original legislation—for two reasons. First, it facilitates comparison of trends in compliance before and after enactment of the amendments. Second, comprehensive information on cases processed for each of the five implementation years was available in this form. One consequence of this approach is that the analysis examines compliance retrospectively through a scheme of time intervals that were not in existence before 1980. As a result, levels of compliance reported for Interval 2 are

of prosecution, most cases were processed within the Act's time limits. Further levels of compliance rose progressively—except for Interval 2 in 1978—over the five year period.

Case processing changes in a small portion of districts may partly explain these trends. Districts handling a disproportionate share of cases litigated in all federal courts may have a disproportionate influence on national levels of compliance. To ascertain whether the high levels of compliance and changes in compliance over time are associated with trends in compliance in a few districts, the study examined the number of districts fully compliant with the Act's limits. Table 2 shows annual trends in the number and proportion of those districts. The table indicates that relatively few districts achieved full compliance with the Act's time limits across the first five years of implementation. And despite

**TABLE 2**  
DISTRICTS FULLY COMPLIANT WITH THE TIME LIMITS OF  
THE SPEEDY TRIAL ACT: 1977-1981<sup>a</sup>

| Year              | Total<br>Districts | INTERVAL 1             |      | INTERVAL 2             |      |
|-------------------|--------------------|------------------------|------|------------------------|------|
|                   |                    | Compliant<br>Districts | %    | Compliant<br>Districts | %    |
| 1977 <sup>b</sup> | 95                 | 10                     | 10.5 | 1                      | 1.0  |
| 1978 <sup>b</sup> | 95                 | 8                      | 8.4  | 1                      | 1.0  |
| 1979 <sup>b</sup> | 95                 | 17                     | 17.9 | 0                      | —    |
| 1980              | 95                 | 30                     | 31.6 | 7                      | 7.4  |
| 1981              | 95                 | 39                     | 41.0 | 21                     | 22.1 |

<sup>a</sup> Source: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR, 1981; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974: TITLE I 1980; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FIFTH REPORT ON THE IMPLEMENTATION OF THE SPEEDY TRIAL ACT OF 1974: TITLE I (1980).

<sup>b</sup> The 1979 amendments to the Speedy Trial Act revised the time limits by establishing two intervals for case processing. Before 1980, three intervals were employed. The data presented in this table describe the trends in compliance with the Act's time limits across all years with respect to the final two interval scheme. Fully compliant districts with respect to the period between indictment and trial before 1980 (Interval 2) are those that were fully compliant with both Intervals 2 and 3 in the Act's original scheme. Data for years before 1980 are based upon reported levels of compliance for cases initiated and terminated during the year in question. As a result, the number of compliant districts for these years may be somewhat higher than the number for all cases terminated during those years. Data for 1980 and 1981 are based upon all terminated cases.

constructed from measures of processing time for Intervals 2 and 3 of the Act's original scheme. While the analysis may be viewed as artificial, it reflects more accurately than other approaches how effectively the courts performed and improved with respect to the final standards for case processing imposed under the Act.

Congress established a seventy-day post-indictment period. This gives courts and litigants greater flexibility and more processing time to comply with the Act's limits. Higher levels of compliance for this period would be expected as a direct result of the limitations revision.

large increases in the proportion of fully compliant districts in 1980 and 1981, the proportion remains less than one-half of all districts. Thus, most districts handled defendants in cases that exceeded the time limits at one or more stages of prosecution.

In brief, compliance with the Act's time limits was high throughout the implementation period among most district courts even though relatively few districts complied fully with the limits at each interval of processing.

#### B. APPLICATION OF THE ACT'S EXCLUDABLE TIME PROVISIONS

Another essential feature of the Speedy Trial Act is its provision for excluding time associated with certain pretrial litigating events from the computation of processing time charged against each interval. The purpose of the provision is to provide courts with the flexibility to accommodate serious problems of delay.<sup>40</sup> The provisions were also designed to facilitate normal pretrial preparation in criminal cases where no serious problems of delay occur.<sup>41</sup>

Previous writing on the Act's implementation establishes that individual districts apply the provisions for excludable processing time with great disparity.<sup>42</sup> One study indicates, for example, that in some districts a fairly large portion of incidences prompting exclusion of processing time is attributed to hearings on pretrial motions.<sup>43</sup> In other districts, a pretrial motion is never the basis for excluding processing time.<sup>44</sup> Also, clerks in some districts automatically apply exclusions by recording all instances of excluded processing time.<sup>45</sup> Other districts,

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<sup>40</sup> See note 8 & accompanying text *supra*.

<sup>41</sup> The 1974 Senate Report states:

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.

S. Rep. No. 93-3021, 93d Cong. 2d Sess. 21 (1974), in LEGISLATIVE HISTORY, *supra* note 1, at 93.

<sup>42</sup> See note 37 *supra*; ABT REPORT, *supra* note 8, at 36-50.

<sup>43</sup> See note 37 *supra*.

<sup>44</sup> *Id.*

<sup>45</sup> ABT REPORT, *supra* note 8, at 42-48.

however, exclude time only through court orders.<sup>46</sup> Finally, in some districts "ends of justice" continuances may account for a significant proportion of excluded incidents. In others they account for almost none.<sup>47</sup>

Such disparities among districts may result from confusion and lack of information among judges, court clerks and prosecutors regarding the application of the Act's excludable time provisions. In previous studies judges have admitted confusion regarding how to interpret the Act's provision for "ends of justice" continuances.<sup>48</sup> Clerks experience difficulty in the identification and determination of periods of excludable time.<sup>49</sup> Finally, some federal prosecutors may lack familiarity with the specific provisions of the Act.<sup>50</sup>

In order to ascertain how the Act's provisions for excluded time were applied on a national scale for the five year period beginning in 1977, trends in the incidence and prevalence of speedy trial exclusions were analyzed. Table 3 shows the trends. There was a substantial increase in the absolute frequency of applications of the Act's exclusions during Intervals 1 and 2 over the five year period. The increase is most apparent in applications of "ends of justice" continuances. The overall incidence of application of the continuances rose by a factor of almost seven in Interval 1 and by a factor just less than three in Interval 2. This increase occurred amid a significant decline in the number of cases processed in federal courts. Among defendants with excluded time, the frequency of applications of excluded time through "ends of justice"

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<sup>46</sup> *Id.* at 40.

<sup>47</sup> *See* note 37 *supra*; ANNUAL REPORT OF THE DIRECTOR, *supra* note 38.

<sup>48</sup> The analysis of cases processed in 18 representative districts and interviews with judges, prosecutors, defense attorneys and court personnel in six other districts indicates that variant interpretations of the provision

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

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

ABT REPORT, *supra* note 8, at 41. Certainly, confusion among judges was compounded by a lack of appellate litigation on the Act's provisions.

<sup>49</sup> *Id.* at 42-44.

<sup>50</sup> *Id.* at 39.

continuances relative to the number of individual defendants also increased. Table 3 shows this increase in terms of the prevalence of "ends of justice" continuances. The prevalence of such continuances in Interval 2 exemplifies the increase—while sixteen of every one hundred defendants indicted in 1977 had one "end of justice" continuance granted by the court, thirty-three of every one hundred defendants indicted in 1981 had one "ends of justice" continuance.<sup>51</sup> No increase occurred in the prevalence of automatic exclusions for Interval 2 and only a slight increase occurred in their prevalence during Interval 1.

**TABLE 3**  
**NATIONAL LEVELS OF INCIDENCE AND PREVALENCE OF**  
**APPLICATION OF SPEEDY TRIAL EXCLUSIONS:**  
**1977-1981<sup>a</sup>**

| Year              | INTERVAL 1       |                      |                                |                         |                                | INTERVAL 2       |                      |                                |                         |                                |
|-------------------|------------------|----------------------|--------------------------------|-------------------------|--------------------------------|------------------|----------------------|--------------------------------|-------------------------|--------------------------------|
|                   | Total Defendants | Incidence            |                                | Prevalence <sup>c</sup> |                                | Total Defendants | Incidence            |                                | Prevalence <sup>c</sup> |                                |
|                   |                  | Automatic Exclusions | "Ends of Justice" Continuances | Automatic Exclusions    | "Ends of Justice" Continuances |                  | Automatic Exclusions | "Ends of Justice" Continuances | Automatic Exclusions    | "Ends of Justice" Continuances |
| 1977 <sup>b</sup> | 20157            | 608                  | 39                             | .13                     | .01                            | 46077            | 12913                | 1758                           | 1.19                    | .16                            |
| 1978 <sup>b</sup> | 14644            | 504                  | 67                             | .14                     | .02                            | 41243            | 11480                | 2249                           | 1.14                    | .22                            |
| 1979 <sup>b</sup> | 14587            | 463                  | 96                             | .12                     | .02                            | 38081            | 10686                | 3316                           | 1.02                    | .32                            |
| 1980              | 13193            | 712                  | 191                            | .15                     | .04                            | 32019            | 12210                | 3593                           | 1.06                    | .34                            |
| 1981              | 14773            | 986                  | 262                            | .17                     | .05                            | 35358            | 16116                | 4616                           | 1.16                    | .33                            |

<sup>a</sup> Source: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR, 1981; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974: TITLE I 1980; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FIFTH REPORT ON THE IMPLEMENTATION OF THE SPEEDY TRIAL ACT OF 1974: TITLE I (1980).

<sup>b</sup> The 1979 amendments to the Speedy Trial Act revised the time limits by establishing two intervals for case processing. Before 1980, three intervals were employed. The data presented in this table describe trends in the incidence and prevalence of exclusions of case processing time across all years with respect to the final two interval scheme. Data for years before 1980 are based upon use of exclusions for cases initiated and terminated during the year in question. As a result, the incidence and prevalence of exclusions may be slightly lower than the number for all cases terminated during those years. Data for 1980 and 1981 are based upon all terminated cases. This difference may partly explain the sharp increase in use of automatic exclusions between 1979 and 1980.

<sup>c</sup> Prevalence measures the estimated number of incidents of excluded time per defendant among those with excluded time. In any one interval, prevalence is the ratio of the incidence of exclusions to the proportion of defendants in that interval with excluded time.

Table 4 exhibits the amount of processing time associated with application of the provisions for excluded time. The median amount of excluded processing time increased over the implementation period, although not progressively; and substantial increases occurred in the median number of days excluded per defendant through automatic

<sup>51</sup> Certainly, some of the increase in the incidence and prevalence of applications of the Act's provisions for excluded time is associated with the 1979 revisions of the Act, adding three grounds for exclusion of processing time. It is important to keep in mind, however, that the purpose of this part of the analysis is to determine whether the incidence and prevalence of applications of the provisions changed over the five year trend. Because courts exercise considerable discretion in applying and interpreting the provisions, addition of the grounds for excluded time should not alter interpretation of the trends.

TABLE 4

LENGTH OF PROCESSING TIME ASSOCIATED WITH SPEEDY  
TRIAL EXCLUSIONS 1977-1981<sup>a</sup>

| Year              | Defendants<br>with Excluded<br>Time | AUTOMATIC EXCLUSIONS           |  | "ENDS OF JUSTICE"<br>CONTINUANCES |  |
|-------------------|-------------------------------------|--------------------------------|--|-----------------------------------|--|
|                   |                                     | Median Days<br>per<br>Incident | Median Days<br>per<br>Defendant <sup>c</sup> | Median Days<br>per<br>Incident    | Median Days<br>per<br>Defendant <sup>c</sup> |
| 1977 <sup>b</sup> | 11013                               | 9.82                           | 12.96  | 35.62                             | 6.06   |
| 1978 <sup>b</sup> | 10118                               | 9.45                           | 12.10  | 41.67                             | 10.00  |
| 1979 <sup>b</sup> | 10169                               | 9.70                           | 11.06  | 48.86                             | 16.52  |
| 1980              | 11760                               | 18.17                          | 21.98  | 51.96                             | 19.74  |
| 1981              | 13951                               | 21.86                          | 27.76  | 49.14                             | 18.67  |

<sup>a</sup> Source: ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR, 1981; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974: TITLE I 1980; ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FIFTH REPORT ON THE IMPLEMENTATION OF THE SPEEDY TRIAL ACT OF 1974: TITLE I (1980).

<sup>b</sup> The 1979 amendments to the Speedy Trial Act revised the categories of pretrial litigating activities for which processing time may be excluded. Data for years before 1980 are based upon use of exclusions for cases initiated and terminated during the year in question. As a result, estimates of length of processing time associated with the exclusions may be somewhat lower than the number for all cases terminated during those years. Data for 1980 and 1981 are based upon all terminated cases. This difference may partly explain the precipitous increase in days excluded for automatic exclusions between 1979 and 1980.

<sup>c</sup> This figure is a weighted estimate of median days per defendant. The median number of days per defendant was weighted using the estimates of prevalence reported in Table 3. The estimated median number of days for Each individual was summed across all time intervals in order to obtain this composite estimate of the total amount of excluded time.

exclusions and "ends of justice" continuances. Growth in the length of excluded time, therefore, accompanied increased application of some of the provisions. As a result, the overall amount of time excluded among cases increased substantially over the five year period.

Before proceeding further, it may be useful to summarize the findings presented thus far. The increase in compliance with the Act's final time limits between 1977 and 1981 correlated with increased application of the Act's automatic exclusions and "ends of justice" continuances. Improvements in compliance with the time limits over the period resulted partly from increased application of the excluded time provisions and increased amounts of time excluded in each application. However, such improvements in compliance may not necessarily reflect actual reductions of delay in cases. The following section examines whether the improvements prompted reductions in overall case processing time in federal criminal litigation.

#### C. EFFECTS OF THE ACT ON DELAY

A stated purpose of the Speedy Trial Act is "to assist in reducing

crime and the danger of recidivism by requiring speedy trials."<sup>52</sup> And a major motivation for passing the Act was widespread concern over the problem of delay in federal courts.<sup>53</sup> But the existence of different methods for studying delay creates problems for estimating the effects of the Act on delay. While some writers refer to delay in terms of "court congestion" or "backlog," others refer to it in terms of "excessive" case processing time or the "pace" of litigation.<sup>54</sup> Still others differentiate between "court-system delay" and "lawyer-caused delay" or "filled" and "significant postponement" time in litigation.<sup>55</sup>

Each reference implies a different definition and a different interpretation of delay.<sup>56</sup> For example, backlog in courts may generally refer to the number of cases pending on court calendars. When characterized in terms of backlog or pending cases, delay is cast as a queuing problem in which the *size* of the queue of pending cases reflects the extensiveness of delay.<sup>57</sup> An alternative approach estimates delay by viewing it in terms of the time required to process cases. Unlike the size or extent of backlog, case processing time reflects the rate at which cases flow through the courts and how long they survive until reaching disposition. In these terms, delay is a problem of court efficiency in which the *length of time* required to process cases reflects the extensiveness of delay.

While observers generally agree that elapsed calendar time most accurately reflects courts' efficiency in disposing of cases, their views vary with respect to accurately measuring delays and empirically determining the amount of processing time that is "excessive."<sup>58</sup>

By setting time limits, the Act establishes standards defining excessive processing time. Delay represents case processing time in excess of the Act's prescribed limits, minus all periods of excluded time and con-

<sup>52</sup> Speedy Trial Act of 1974, Pub. L. No. 93-619, 88 Stat. 2076 (1974).

<sup>53</sup> See note 1 & accompanying text *supra*.

<sup>54</sup> For a general discussion and review of empirical approaches to study delay in courts, see T. CHURCH, J. LEE, T. TAN, A. CARLSON & V. MCCONNELL, *PRETRIAL DELAY: A REVIEW AND BIBLIOGRAPHY* (1978) [hereinafter cited *PRETRIAL DELAY*]; L. KATZ, L. LITWIN & R. BAMBERGER, *JUSTICE IS THE CRIME: PRETRIAL DELAY IN FELONY CASES* (1972); S. WILDHORN, M. LAVIN & A. PASCAL, *INDICATORS OF JUSTICE: MEASURING THE PERFORMANCE OF PROSECUTION, DEFENSE, AND COURT AGENCIES INVOLVED IN FELONY PROCEEDINGS: ANALYSIS AND DEMONSTRATION* (1977); H. ZEISEL, H. KALVEN & B. BUCHOLZ, *DELAY IN COURT* (1977); Church, *Who Sets the Place of Litigation in Urban Trial Courts?* 65 *JUD.* 2, 76 (1981); Grossman, Kritzer, Bumiller & McDougal, *Measuring the Pace of Civil Litigation in Federal and State Trial Courts*, 65 *JUD.* 2, 86 (1981); Levin, *Delay in Five Criminal Courts*, 4 *J. LEGAL STUD.* 83 (1975); Rosenberg & Sovern, *Delay and the Dynamics of Personal Injury Litigation*, 59 *COLUM. L. REV.* 1115 (1959); Ryan, Lipetz, Luskin & Neubauer, *Analyzing Court Delay Reduction Programs: Why Do Some Succeed?*, 65 *JUD.* 2, 76 (1981).

<sup>55</sup> M. ROSENBERG, *THE COURTS, THE PUBLIC, AND THE LAW EXPLOSION* (H. Jones ed. 1965); Rosenberg & Sovern, *supra* note 54, at 1124-26.

<sup>56</sup> See *PRETRIAL DELAY*, *supra* note 54, at 1-8.

<sup>57</sup> *Id.* at 1-2.

<sup>58</sup> *Id.* at 3-4.



tinuances granted in the "ends of justice."<sup>59</sup> As noted earlier, however, the Act's meaning of delay is associated with districts' application of its provisions for excluded processing time. Thus, delay as measured by the Act, reflects variation among districts in the application of the provisions; and as a result, delay may significantly vary among courts and individual cases according to each district's exclusion of case processing time. Thus, delay may not necessarily measure the actual pace of litigation but rather disparities among districts in the interpretation and implementation of the Act's statutory scheme.

An alternative approach to measuring delay in criminal cases—and thus measuring the Act's impact on criminal litigation—is to specify delay in terms of elapsed processing time.<sup>60</sup> The extent of delay in individual cases and, in the aggregate, among courts may be measured in terms of the average amount of case processing time and how much cases deviate from the average. This approach measures delay by the general speed of case processing rather than by the application of time limits and exemptions that may vary significantly among courts. The Act's effect on delay may be identified by comparing changes in overall case processing time since implementation of the Act with levels of case processing time prior to the Act's implementation. To ensure the comparison accurately describes effects of the Act, changes in the types and disposition of criminal cases processed in federal courts that may influence overall processing time must also be considered.<sup>61</sup>

Using plots of the range of case processing times for each year, Figure 1 shows the trends in elapsed processing time, estimated in days

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<sup>59</sup> 18 U.S.C. § 3161 *et. seq.* (1979).

<sup>60</sup> Recent studies using this approach include T. CHURCH, A. CARLSON, J. LEE, & T. TAN, *JUSTICE DELAYED: THE PACE OF LITIGATION IN URBAN TRIAL COURTS* (1978); Church, *supra* note 54; Grossman, Kritzer, Bumiller, & McDougal, *supra* note 54; Ryan, Lipetz, Luskin & Neubauer, *supra* note 54.

<sup>61</sup> It is necessary to compare changes in elapsed processing time with changes in the types and disposition of cases processed in federal courts in order to ascertain whether the changes in elapsed time stem solely from the Act or perhaps also from changes occurring in the work of courts over time. *See* text accompanying notes 65-66 *infra*.

The number and types of criminal cases prosecuted in federal courts reflect the policies and practices of the Department of Justice and individual Offices of United States Attorneys. In 1977, for example, the Attorney General announced that the Department of Justice and the Offices of United States Attorneys would concentrate their resources on the investigation and prosecution of complex offenses involving "white-collar" crimes, narcotics violations, organized crime, and offenses involving corruption of public officials. This change in policy may have contributed to a substantial decline in criminal cases processed in federal courts. Examples of policy decisions which affect the federal criminal caseload include: deferral to state or local authorities of auto thefts when the theft is not connected to organized criminal activity, deferral of certain offenses that are committed by persons under 21, deferral of cases involving first time offenders accused of weapons and firearms violations, deferral of bank robberies, and reduction in prosecution of minors for drug violations. AD. OFF. OF U. S. COURTS, ANN. REP. OF THE DIRECTOR 6-7 (1979).

from filing to disposition, for all criminal cases terminated in federal courts between 1971 and 1981.<sup>62</sup> The figure shows a slight but progressive decline in the median processing time—the midpoint of the distribution of processing time—from 1974 to 1977. And even though the rate of this decline increased slightly between 1974 and 1975, the introduction of the Act's time limits seemingly did not reduce median levels of processing time. Indeed, since the time limits became effective in 1977, the median time from filing to disposition has remained almost constant.

It is possible, however, that the average processing time among cases would not reflect significant changes in the overall distribution of case processing time among cases. Because the Act's time limits serve as upper limits for case processing time rather than standards for average processing time,<sup>63</sup> it is necessary to ascertain whether changes occurred among cases that terminated only after long periods of time as well as among cases that terminated relatively quickly. Figure 1 also exhibits the amount of time from filing to disposition for the "slowest" and "fastest" ten percent and twenty-five percent of all cases terminated each year between 1971 and 1981. While a decline occurs between 1974 and 1977 in processing time among the "fastest" cases terminated each year, larger progressive declines occurred among the "slowest" cases. Processing time declined steadily among the "slowest" twenty-five percent of all

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<sup>62</sup> Elapsed time from filing to disposition measures the time between first official court notice and final disposition, including all time through sentencing for convicted defendants. Thus, elapsed processing time covers a larger period of processing time than that computed under the provisions of the Act.

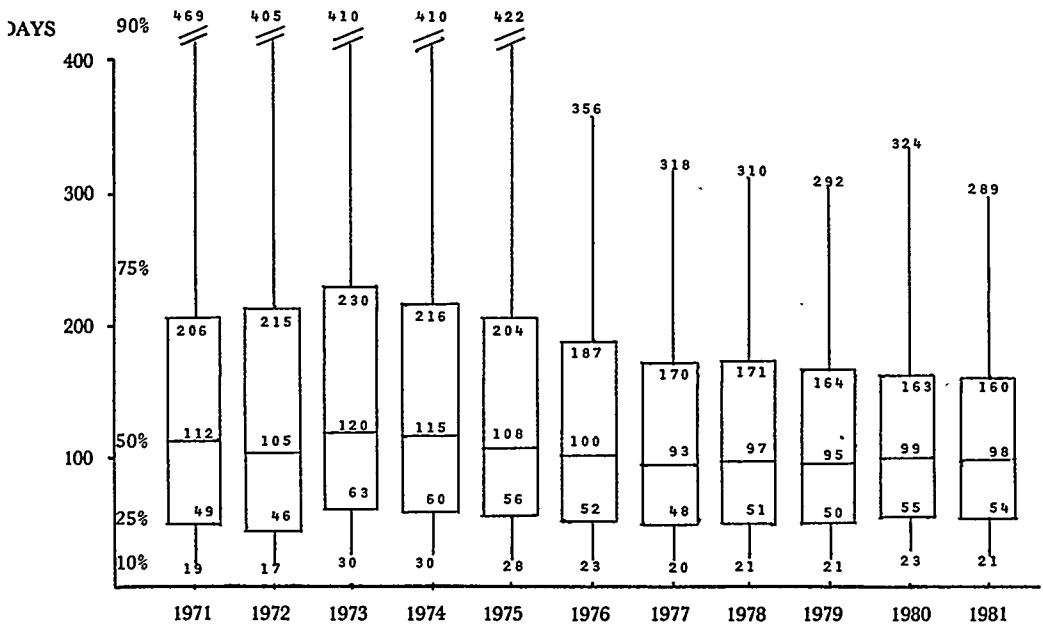
Two concerns arise in comparing aggregate trends in elapsed processing time with aggregate measures of compliance with the Act. The first involves the possible distorting effects of processing time between sentencing and conviction on elapsed processing time. Aggregate estimates of elapsed time may vary in part according to the number of defendants sentenced and the time required to sentence them. To ascertain whether trends in elapsed processing time presented in Figure 1 correlate with trends in the sentencing of convicted defendants—that is, trends in the proportion of defendants sentenced or the elapsed time associated with the sentencing process—the study analyzed statistical trends in the number of convictions and elapsed time associated with convictions by guilty plea. Analysis of data provided by the Administrative Office of the U.S. Courts on defendants to whom the provisions of the Act apply indicates that no significant changes that would distort interpretation of elapsed processing time as an appropriate measure of delay occurred between 1974 and 1981 in 1) the proportion of defendants convicted and sentenced and 2) the median time from filing to disposition of defendants convicted by guilty pleas.

A second concern involves fugitivity and whether changes in the number of fugitive defendants or elapsed time associated with fugitivity influences overall measures of elapsed processing time. Limited published statistical data exist on these subjects. Trends in pending criminal cases between 1977 and 1981 reveal no substantial changes in patterns of fugitivity that would distort interpretation of overall elapsed processing time.

<sup>63</sup> ABT REPORT, *supra* note 8, at 108.

**FIGURE 1**

**DISTRIBUTION OF ELAPSED PROCESSING TIME (IN DAYS)  
AMONG DEFENDANTS IN FEDERAL CRIMINAL  
CASES FROM FILING TO DISPOSITION:  
1971-1981<sup>a</sup>**



<sup>a</sup> Source: Statistics Division, Administrative Office of U.S. Courts. The distributions are based upon all defendants, excluding defendants in selective service cases and "non-speedy trial" cases (misdemeanors, juveniles, state court removals, appeals from U.S. magistrate decisions, Rule 20 transfers out of districts). Defendants in selective service cases were excluded from the time series because of the dramatic drop in number in 1978.

cases between 1973 and 1981. And among the "slowest" ten percent, case processing time has declined since 1976, with an interruption in 1980.

Courts may achieve faster overall processing time such as that observed in Figure 1 by selectively processing fewer "slow" cases and more "fast" cases. In this instance, faster overall processing would be an artifact of change in the number of "slow" cases rather than change in the actual pace of litigation. To determine whether the changes in processing time shown in Figure 1 represent such an artifact, the study also examined changes in the actual rate of case processing between 1971 and 1981. Figure 2 shows the distributions of defendants in criminal cases terminated for each year in the eleven year trend. Each distribution in the figure plots the proportion of defendants whose cases continued over successive intervals of time. The slopes of the eleven distributions reflect the rates of terminations and the pace of litigation—a steep slope indicates faster litigation pace than a gradual slope.

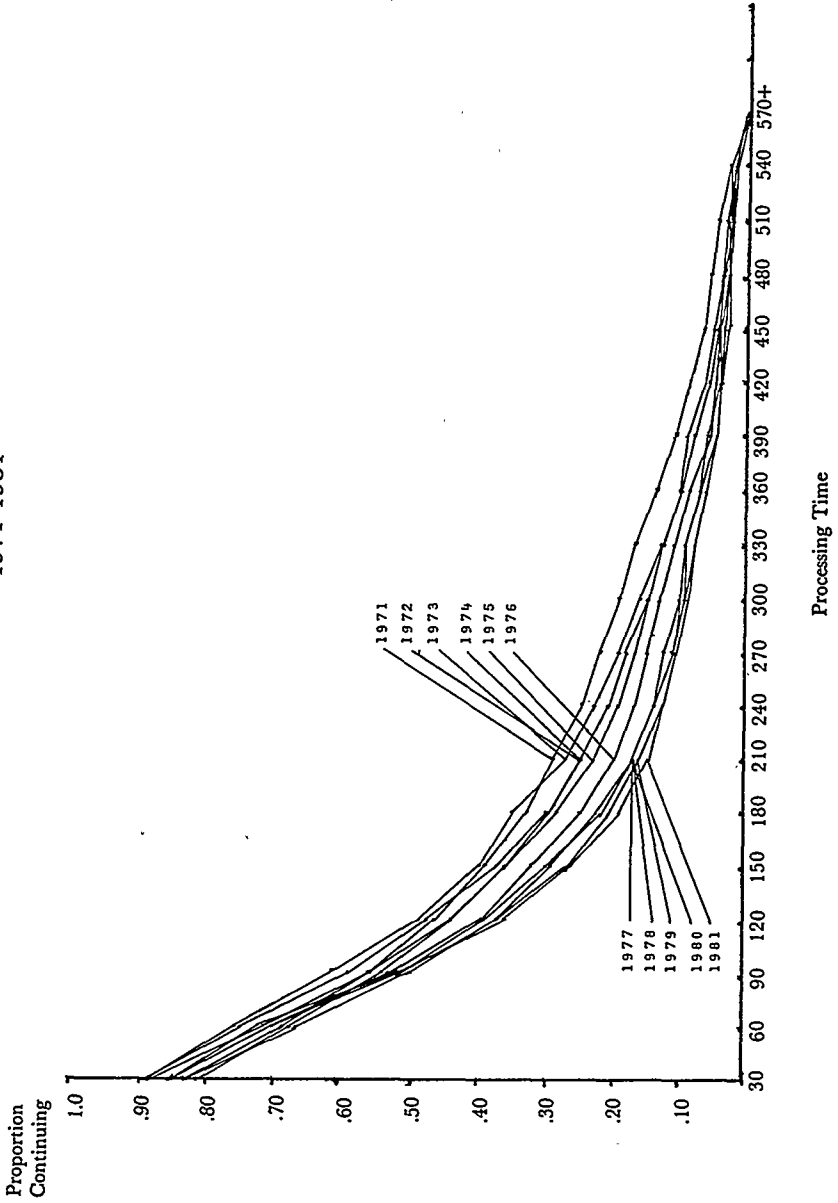
Despite the similarity between years the litigation pace progressively increased beginning in 1971 with litigation proceeding at a slightly faster rate in years following the Act. The greatest differences between years occurred between 90 and 300 days after filing. In years following the Act, the proportions of cases continuing through this period were slightly smaller than in years prior to the Act.<sup>64</sup> Further, in years following the Act slightly fewer cases continued past 180 days of filing than in years before the Act.

Several factors may intervene between compliance with the Act's time limits and case processing time. A relatively slight decline in average elapsed time may occur despite significant improvements in case processing resulting from efforts to comply with the Act's provisions. For example, a substantial increase in the proportion of complex criminal cases may increase the elapsed time from filing to disposition. Over a short period of time the increase in complex cases would hide the effects of reductions in elapsed processing time resulting from increased compliance with the Act. Despite the improvements, cases would generally be more complex and thus would involve greater average elapsed time than other types of cases. Similarly, a substantial decrease in the proportion

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<sup>64</sup> The observation that the proportion of cases terminated between 90 and 300 days after filing was smaller in years following the Act is based upon comparison of the cumulative distributions of case terminations across the eleven year trend. The specific proportions of cases terminated during that period are available from the author on request. The proportions are omitted from the article simply for the purposes of brevity. The source of the information is the Administrative Office of U.S. Courts, Statistics Division.

**FIGURE 2**  
CUMULATIVE DISTRIBUTIONS OF TERMINATIONS AMONG  
DEFENDANTS IN FEDERAL CRIMINAL CASES BY  
PROCESSING TIME (IN DAYS):  
1971-1981



a Source: Statistics Division, Administrative Office of U.S. Courts. See note a, Figure 1 *supra*.

of criminal cases terminated by plea would effectively increase the average elapsed time from filing to disposition and would thereby mask the possible effects of reductions in case processing time. In both examples, courts and litigants may achieve accelerated dispositions of criminal cases even though the achievement would not be apparent in measures of elapsed time.

In order to determine whether findings reported in Figures 1 and 2 correlate with changes in the types and disposition of cases litigated in the federal courts, the study also examined trends in criminal prosecutions between 1974 and 1981.<sup>65</sup> Specific information on defendants in criminal cases—by category by offense—was not available before 1974. Table 5 summarizes the nature of cases terminated over the period

TABLE 5

MAJOR CATEGORIES OF CRIMINAL CASES TERMINATED IN  
FEDERAL DISTRICT COURTS BY NATURE OF  
DEFENDANT'S OFFENSE, MEDIAN  
PROCESSING TIME (IN DAYS) AND DISPOSITION: 1974-1981<sup>a</sup>

| Year | ROBBERY          |       |     |             | LARCENY AND THEFT |       |      |             | EMBEZZLEMENT |       |     |             | FRAUD |       |      |             |       |
|------|------------------|-------|-----|-------------|-------------------|-------|------|-------------|--------------|-------|-----|-------------|-------|-------|------|-------------|-------|
|      | Total Defendants | Total | %   | Median Time | %Plea             | Total | %    | Median Time | %Plea        | Total | %   | Median Time | %Plea | Total | %    | Median Time | %Plea |
| 1974 | 45437            | 1915  | 4.2 | 128         | 56.4              | 4039  | 8.9  | 110         | 69.0         | 1785  | 3.9 | 97          | 79.0  | 3780  | 8.3  | 158         | 64.3  |
| 1975 | 47877            | 2355  | 4.9 | 113         | 62.1              | 4790  | 10.0 | 94          | 70.6         | 1825  | 3.8 | 88          | 82.8  | 3990  | 8.3  | 140         | 66.8  |
| 1976 | 51112            | 2710  | 5.3 | 113         | 65.7              | 5192  | 10.2 | 100         | 70.0         | 1922  | 3.8 | 85          | 81.3  | 4791  | 9.4  | 131         | 66.4  |
| 1977 | 49774            | 2306  | 4.6 | 110         | 69.2              | 5474  | 11.0 | 82          | 76.6         | 2110  | 4.2 | 82          | 84.4  | 5700  | 11.4 | 113         | 71.9  |
| 1978 | 44908            | 1889  | 4.2 | 110         | 71.1              | 4932  | 11.0 | 85          | 74.7         | 2026  | 4.5 | 79          | 84.3  | 5794  | 12.9 | 122         | 70.2  |
| 1979 | 40349            | 1496  | 3.7 | 110         | 69.2              | 4131  | 10.2 | 85          | 73.6         | 1889  | 4.7 | 85          | 84.0  | 5988  | 14.8 | 110         | 72.8  |
| 1980 | 35918            | 1529  | 4.3 | 106         | 71.6              | 3600  | 10.0 | 88          | 71.3         | 1589  | 4.4 | 85          | 81.8  | 5470  | 15.2 | 110         | 69.9  |
| 1981 | 37294            | 1596  | 4.2 | 110         | 69.8              | 3586  | 9.6  | 91          | 72.9         | 1877  | 5.0 | 85          | 84.0  | 5519  | 14.7 | 110         | 69.2  |

| Year | FORGERY AND COUNTERFEITING |       |      |             | DRUGS AND NARCOTICS |       |      |             | WEAPONS AND FIREARMS |       |     |             |       |
|------|----------------------------|-------|------|-------------|---------------------|-------|------|-------------|----------------------|-------|-----|-------------|-------|
|      | Total Defendants           | Total | %    | Median Time | %Plea               | Total | %    | Median Time | %Plea                | Total | %   | Median Time | %Plea |
| 1974 | 45437                      | 4861  | 10.7 | 113         | 75.4                | 10988 | 24.2 | 134         | 61.0                 | 2742  | 6.0 | 113         | 63.9  |
| 1975 | 47877                      | 5195  | 10.8 | 110         | 77.4                | 10975 | 22.9 | 134         | 60.0                 | 3299  | 6.9 | 113         | 64.7  |
| 1976 | 51112                      | 5031  | 9.8  | 103         | 73.8                | 10885 | 21.3 | 131         | 59.0                 | 3438  | 6.7 | 110         | 63.5  |
| 1977 | 49774                      | 4623  | 9.2  | 97          | 80.6                | 9460  | 19.0 | 131         | 62.9                 | 3072  | 6.1 | 97          | 69.1  |
| 1978 | 44908                      | 4628  | 10.3 | 100         | 81.3                | 7773  | 17.3 | 140         | 58.3                 | 3299  | 7.3 | 100         | 67.9  |
| 1979 | 40349                      | 3915  | 9.7  | 103         | 80.9                | 6590  | 16.3 | 137         | 56.6                 | 1969  | 4.9 | 131         | 64.2  |
| 1980 | 35918                      | 2744  | 7.6  | 106         | 78.8                | 6332  | 17.6 | 140         | 55.5                 | 1151  | 3.2 | 116         | 59.3  |
| 1981 | 37294                      | 2338  | 6.3  | 110         | 78.6                | 7062  | 18.9 | 140         | 54.9                 | 1401  | 3.7 | 113         | 65.8  |

<sup>a</sup> Source: Statistics Division, Administrative Office of U.S. Courts. Information on defendants in criminal cases to which the provisions of the Act apply—by category of offense—was not available for years before 1974. The total number of cases available each year for this part of the analysis is slightly less than that reported in previous tables because information on the nature of the offense was not available for a small number of offenses each year. There is no evidence that the analysis is unrepresentative as a result of this missing information.

<sup>65</sup> If the nature and types of cases became more complex over time and required more time from filing to disposition, improvements in case processing associated with efforts to achieve compliance with the Act's time limits would be hidden in aggregate measures of case processing time.

showing the overall frequency, method of disposition, and elapsed time associated with processing each of the major categories of offenses.

Three findings are important. First, the total number of defendants in criminal cases in federal courts declined between 1974 and 1980—the number progressively declined between 1976 and 1980. The number increased slightly in 1981. Second, the relative proportion of defendants charged with acts of fraud increased substantially over the eight year period, rising from eight percent to almost fifteen percent of all cases processed. Fraud cases may be more complex and generally involve greater processing time than many other types of criminal cases in federal courts.<sup>66</sup> Thus, the decline in criminal cases prosecuted in federal courts may correlate with an increase in the prosecution of complex cases.

A third trend involves the method of disposition and median time for processing criminal cases. The use of guilty pleas in five of the seven types of offenses increased over the eight year trend. Between 1977 and 1980, however, use of guilty pleas declined in weapons and firearms cases, drugs and narcotics cases, and larceny and theft cases. Further, the median processing time among defendants charged in those cases increased slightly. The decline in the use of guilty pleas and this increase in processing time may reflect a general increase in the complexity of litigation in those types of cases.

These trends shed little light on the distributions of elapsed processing time shown in Figures 1 and 2. While the increased complexity of criminal litigation after 1977 may have complicated efforts to comply with the Act, the substantial decline in defendants over the same period probably lightened the burden of compliance. Although it is not possible to determine statistically the effects of such opposite trends on elapsed processing time, it is likely that the effects partly offset each other and thereby minimize the overall role of changes in the nature of criminal litigation on trends in elapsed processing time.

#### IV. SUMMARY AND INTERPRETATION

The federal justice system achieved relatively high levels of compliance with the Act's time limits during the past five years. A steady increase in levels of compliance with the Act's final time limits occurred over this period. Perhaps because the increase was closely associated with increased application of the Act's provisions for excluded processing time, elapsed time in processing most criminal cases changed little

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<sup>66</sup> See T. DUNGWORTH & J. HAUSNER, ALLOCATION OF RESOURCES TO U.S. ATTORNEYS' OFFICES: A CASE WEIGHTING APPROACH (1979).

during the period. The median elapsed time among all criminal cases from filing to disposition was relatively constant between 1977 and 1981, and a major decline in elapsed processing time occurred only among the slowest cases handled in federal courts.

These findings undermine observers' concern that litigants and courts could not comply with the Act's statutory scheme. Most criminal cases were processed within the Act's time limits during the five year period. This is particularly significant because the dismissal sanction was effective only during the final year of the five year period. Thus, there was no threat in four of the five years that criminal actions would be dismissed for failure to meet the time limits. Imposition of the sanction resulted in even higher levels of compliance. Clearly, prosecutors, defense counsel and courts effectively adapted to the threat posed by the dismissal sanction.

Because improvements in compliance during the implementation period were partly realized through application of the Act's provision for excluded time, courts and litigants have achieved less with respect to the speedy trial goal. Time required to process most criminal cases changed little following passage of the Act. This result may stem from the general interests of litigants and courts in delay as well as their reaction to perceived consequences or "costs" associated with achieving the speedy trial goal. Some observers suggest those perceived costs may include heightened pressures for prosecutors to decline minor criminal cases, less thorough defense preparation and more frequent and longer delays in civil cases.<sup>67</sup> Among the costs, delays in civil cases have perhaps received greatest attention in writing on the Act.<sup>68</sup>

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<sup>67</sup> For a general review and discussion of the Act's impact on federal civil litigation, see *Fordham Study*, *supra* note 1, at 652-59; *see also* ABT REPORT, *supra* note 8, at 101-18; Misner, *supra* note 1.

<sup>68</sup> As part of the 1979 amendments to the Act, for example, Congress explicitly required that the Department of Justice report on "the impact of compliance with the time limits in subsection (b) and (c) of § 3161 upon the litigation of civil cases by the Offices of United States Attorneys and the rule changes, statutory amendments and resources necessary to assure that such litigation is not prejudiced by full compliance with [the Act]." 18 U.S.C. § 3167(c)(5) (1979).

Many observers, including federal judges, have expressed fears that the imposition of the Act's time limits and dismissal sanction would result in a dramatic increase in the volume of pending civil cases. As expressed by Judge Feikens in the 1974 House hearings on the Act:

[I]f we have to put all our attention on criminal cases, we will not reach our civil docket. I am in danger right now of that. . . . [I]f you say to us "now put these criminal cases front and center at the exclusion of the civil cases," we can do that, but the civil litigants are going to suffer.

*Hearings on S. 754, H.R. 7873, H.R. 207, H.R. 658, H.R. 687, H.R. 773, and H.R. 4807, Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 93d Cong., 2d Sess. 241 (1974).

Two recent studies of the Act's impact on civil litigation across all federal districts indicates that the Act has had no independent effect on the volume or flow of civil litigation in federal courts. *See* ABT REPORT, *supra* note 8, at 102-18; AD. OFF. OF THE U.S. COURTS,



Compliance with the Act's provisions may be viewed as placing an unwelcome burden on prosecutors, defense attorneys and federal courts. This study indicates that litigants and courts may have lessened the perceived burden of achieving substantial reductions in delays in criminal cases complying with the Speedy Trial Act's time limits through frequent and effective application of the Act's provisions for excluded time.<sup>69</sup>

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SIXTH REPORT ON THE IMPLEMENTATION OF TITLE I OF THE SPEEDY TRIAL ACT OF 1974, C1-C16 (1980).

<sup>69</sup> This interpretation is supported by research on delay in litigation in state courts that suggests efforts to reduce litigation delay encounter 1) opposition to those efforts among participants in litigation and 2) the belief among the participants that externally imposed changes in litigation may be improper and unfair. Many writers believe that in every community a "local legal culture" exists within which there exists a shared set of values regarding the conduct and pace of litigation. The imposition of a new set of values, such as standards mandated by the Speedy Trial Act, may contradict existing values of the legal culture and be viewed as placing an unwelcome burden on participants in legal proceedings. See T. CHURCH, *supra* note 54; T. CHURCH, A. CARLSON, J. LEE & T. TAN, *supra* note 60; Ryan, Lipset, Luskin & Neubauer, *supra* note 54.